

REPORT
OF THE
ATTORNEY GENERAL
TO THE
Governor of Virginia

From October 1, 1923, to June 30, 1925

RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1926

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OF THE
ATTORNEY GENERAL
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RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING

ATTORNEYS GENERAL OF VIRGINIA

From 1776 to 1925

EDMUND RANDOLPH	1776-1786
JAMES INNES	1786-1796
ROBERT BROOKE	1796-1799
PHILIP NORBORNE NICHOLAS	1799-1819
JAMES 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
JOHN GARLAND POLLARD	1914-1918
*J. D. HANK, JR.	1918
JOHN R. SAUNDERS	1918-1922
JOHN R. SAUNDERS	1922

Office of the Attorney General

JOHN R. SAUNDERS	<i>Attorney General</i>
LEWIS H. MACHEN	<i>Assistant Attorney General</i>
LEON M. BAZILE	<i>Assistant Attorney General</i>

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

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REPORT

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., October 10, 1925.

His Excellency, E. LEE TRINKLE,
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 period from October 1, 1923, to June 30, 1925.

This report does not contain all of the opinions rendered by this office, but only those have been selected which are of the utmost importance.

Respectfully,

JNO. R. SAUNDERS,
Attorney General.

Cases Decided in the Supreme Court of Appeals of Virginia

1. *Anthony v. Commonwealth.* Prohibition. From circuit court of Louisa county. Affirmed.
2. *Barrack v. Commonwealth.* Prohibition. From circuit court of Lancaster county. Affirmed.
3. *Billups v. Commonwealth.* Prohibition. From circuit court of Mathews county. Error confessed.
4. *Bonner v. Commonwealth.* Murder. From circuit court of Prince George county. Affirmed.
5. *Bowman v. Commonwealth.* Constitutionality of motor vehicle law. From State Corporation Commission. Reversed.
6. *Burner v. Commonwealth.* Prohibition. From circuit court of Page county. Affirmed.
7. *Brown v. Commonwealth.* Murder. From circuit court of Southampton county. Reversed.
8. *Carr v. Commonwealth.* Prohibition. From circuit court of Louisa county. Affirmed.
9. *Carroll & Echard v. Commonwealth.* Constitutionality of motor vehicle law. From State Corporation Commission. Reversed.
10. *Casey v. Commonwealth.* Prohibition. From circuit court of Amherst county. Affirmed.
11. *Clawson v. Commonwealth.* Rape. From circuit court of King William county. Error confessed.
12. *Cox v. Commonwealth.* Prohibition. From circuit court of Albemarle county. Reversed.

13. *Dickenson v. Commonwealth*. Prohibition. From circuit court of Giles county. Affirmed.

14. *Edens v. Commonwealth*. Prohibition. From circuit court of Scott county. Affirmed.

15. *Edmondson v. Commonwealth*. Forfeited automobile. From circuit court of Charlotte county. Reversed.

16. *Enoch v. Commonwealth*. Murder. From hustings court of city of Richmond. Reversed.

17. *Fortune v. Commonwealth*. Removal from office. From circuit court of Campbell county. Error confessed.

18. *Fuller v. Commonwealth*. Grand larceny. From circuit court of Northampton county. Error confessed.

19. *Gauss v. Commonwealth*. Prohibition. From corporation court No. 2, city of Norfolk. Affirmed.

20. *Gills v. Commonwealth*. Unlawful assault with attempt to maim. From circuit court of Campbell county. Affirmed.

21. *Graham v. Commonwealth*. Prohibition. From circuit court of Scott county. Affirmed.

22. *Gruber v. Commonwealth*. Constitutionality of motor vehicle law. From State Corporation Commission. Affirmed.

23. *Hagy & Phelps v. Commonwealth*. Prohibition. From circuit court of Washington county. Affirmed.

24. *Harris, J. R., v. Commonwealth*. Prohibition. From circuit court of Greenville county. Affirmed.

25. *Harris, John Allen, v. Commonwealth*. Murder. From circuit court of Brunswick county. Error confessed.

26. *Hausenflack v. Commonwealth*. Murder. From corporation court of city of Hopewell. Error confessed.

27. *Hawkins v. Commonwealth*. Prohibition. From circuit court of Princess Anne county. Reversed.

28. *Hay v. Commonwealth*. Unlawful wounding. From circuit court of Dickenson county. Reversed.

29. *Henninger v. Commonwealth*. Prohibition. From hustings court of city of Richmond. Error confessed.

30. *Holloman v. Commonwealth*. Grand larceny. From circuit court of Sussex county. Affirmed.

31. *Howard v. Commonwealth*. Prohibition. From circuit court of York county. Reversed.

32. *Hudgins v. Commonwealth*. Prohibition. From circuit court of Mathews county. Reversed.

33. *Hudson v. Commonwealth*. Sodomy. From corporation court of city of Norfolk. Reversed.

34. *Johnson, Elijah, v. Commonwealth*. Larceny. From circuit court of Northampton county. Affirmed.

35. *Johnson, Jasper, v. Commonwealth*. Prohibition. From circuit court of Norfolk county. Error confessed.

36. *Johnson, William J., v. Commonwealth.* Prohibition. From circuit court of Hanover county. Affirmed.

37. *Jones, Herman W., v. Commonwealth.* Forfeited automobile. From hustings court of city of Portsmouth. Reversed.

38. *Jones, Waymond L., v. Commonwealth.* Obstructing an officer in the performance of his duty. From the circuit court of Henrico county. Reversed.

39. *Kelly v. Commonwealth.* Prohibition. From circuit court of Alleghany county. Affirmed.

40. *Kilgore v. Commonwealth.* Prohibition. From circuit court of Scott county. Affirmed.

41. *Knights of the Ku Klux Klan v. Commonwealth.* Transacting business in this State without first obtaining license. From State Corporation Commission. Affirmed.

42. *Lamb v. Commonwealth.* Unlawful assault with intent to maim. From circuit court of Madison county. Affirmed.

43. *Lee v. Commonwealth.* Abduction. From circuit court of Orange county. Reversed.

44. *Little v. Commonwealth.* Prohibition. From hustings court of city of Richmond. Affirmed.

45. *Lorey v. Commonwealth.* Prohibition. From circuit court of Elizabeth City county. Error confessed.

46. *Marable v. Commonwealth.* Prohibition. From circuit court of Prince George county. Affirmed.

47. *Marshall v. Commonwealth.* Resisting an officer in the performance of his duty. From the circuit court of Rockingham county. Reversed.

48. *Martin, Earl, v. Commonwealth.* Murder. From corporation court of city of Roanoke. Affirmed.

49. *Martin, Nettie, v. Commonwealth.* Murder. From corporation court of city of Roanoke. Affirmed.

50. *Massie v. Commonwealth.* Felony. From circuit court of Amherst county. Reversed.

51. *Mawyer v. Commonwealth.* Prohibition. From circuit court of Nelson county. Affirmed.

52. *Mazer v. Commonwealth.* Prohibition. From hustings court of city of Richmond. Reversed.

53. *Mitchell, Douglas, v. Commonwealth.* Assault and battery. From circuit court of Albemarle county. Reversed.

54. *Mitchell, John, Jr., v. Commonwealth.* Fraudulent entry of bank account. From hustings court of city of Richmond. Reversed.

55. *Morton v. Commonwealth.* Unlawful wounding. From hustings court of city of Richmond. Error confessed.

56. *Motley v. Commonwealth.* Prosecutions under tobacco warehouse law. From circuit court of Halifax county. Affirmed.

57. *Motor Finance Corporation v. Commonwealth.* Forfeited automobile. From circuit court of Henry county. Error confessed.

58. *McGlothlin v. Commonwealth.* Perjury. From circuit court of Buchanan county. Error confessed.

59. *McMurray v. Commonwealth*. Murder. From circuit court of Scott county. Affirmed.
60. *Nettles v. Commonwealth*. Prohibition. From circuit court of York county. Reversed.
61. *Omohondro v. Commonwealth*. Grand larceny. From corporation court of city of Norfolk. Affirmed.
62. *Painter v. Commonwealth*. Nonsupport. From circuit court of Giles county. Reversed.
63. *Parker v. Commonwealth*. Prohibition. From circuit court of Scott county. Reversed.
64. *Parsons v. Commonwealth*. Murder. From circuit court of Northampton county. Reversed.
65. *Patterson v. Commonwealth*. Murder. From hustings court of city of Petersburg. Affirmed.
66. *Pembroke Limestone Works v. Commonwealth*. Taxation. From circuit court of Giles county. Affirmed.
67. *Phillips v. Commonwealth*. Prohibition. From circuit court of Wise county. Judgment reversed in part.
68. *Reeves Warehouse Corporation v. Commonwealth*. Prosecutions under tobacco warehouse law. From circuit court of Halifax county. Affirmed.
69. *Richardson, John W., v. Commonwealth*. Prohibition. From corporation court of city of Radford. Error confessed.
70. *Richardson, Wiley, v. Commonwealth*. Assault and battery. From circuit court of Russell county. Affirmed.
71. *Roller v. Commonwealth*. Prohibition. From circuit court of Scott county. Error confessed.
72. *Scott v. Commonwealth*. Murder. From circuit court of Wise county. Affirmed.
73. *Sharf v. Commonwealth*. Prohibition. From circuit court of Elizabeth City county. Affirmed.
74. *Sheets v. Commonwealth*. Constitutionality of motor vehicle law. From State Corporation Commission. Affirmed.
75. *Smith v. Commonwealth*. Forfeited automobile. From circuit court of Pittsylvania county. Reversed.
76. *Snead v. Commonwealth*. Seduction. From circuit court of Nelson county. Reversed.
77. *Spencer v. Commonwealth*. Murder. From circuit court of Lee county. Affirmed.
78. *Springer, John, Jr., v. Commonwealth*. Prohibition. From circuit court of Spotsylvania county. Reversed.
79. *Staples v. Commonwealth*. Prohibition. From circuit court of Albemarle county. Reversed.
80. *Stapleton v. Commonwealth*. Larceny; receiving stolen goods. From corporation court of the city of Roanoke. Affirmed.
81. *Tanner v. Commonwealth*. Unlawful shooting. From circuit court of Campbell county. Error confessed.

82. *Timmons v. Commonwealth*. Prohibition. From circuit court of Prince William county. Error confessed.

83. *Triplett v. Commonwealth*. Prohibition. From corporation court of the city of Danville. Reversed.

84. *Twin City Motor Company v. Commonwealth*. Forfeited automobile. From circuit court of Henry county. Error confessed.

85. *Vincyard v. Commonwealth*. Prohibition. From circuit court of Scott county. Affirmed.

86. *Wade v. Commonwealth*. Prohibition. From circuit court of Spotsylvania county. Reversed.

87. *Webster v. Commonwealth*. Prohibition. From circuit court of Rockingham county. Affirmed.

88. *Widgeon v. Commonwealth*. Prohibition. From circuit court of Princess Anne county. Reversed.

89. *Williams and Kirk v. Commonwealth*. Obstructing an officer in the performance of his duty. From circuit court of Lee county. Affirmed.

90. *Wonzer v. Commonwealth*. Prohibition. From corporation court of city of Alexandria. Reversed.

91. *Wood and Hatfield v. Commonwealth*. Murder. From circuit court of Dickenson county. Reversed.

92. *Xippas v. Commonwealth*. Election fraud. From corporation court of city of Norfolk. Reversed.

Cases Pending in the Supreme Court of Appeals of Virginia

1. *Anderson v. Commonwealth*. Violation of prohibition law. From circuit court of Elizabeth City county.

2. *Bates v. Commonwealth*. Violation prohibition law. From circuit court of Scott county.

3. *Brown v. Commonwealth*. Contempt. From hustings court of the city of Richmond.

4. *Byrd v. Commonwealth*. Violation of prohibition law. From circuit court of Charles City county.

5. *Caskie and Gravatt v. State Corporation Commission*. Order under blue sky law. From State Corporation Commission.

6. *Collins v. Commonwealth*. Forfeited recognizance. From the corporation court of Radford.

7. *Commonwealth v. Columbian Paper Company*. Taxation. From corporation court of Radford.

8. *Commonwealth and Giles County v. Pembroke Limestone Works*. Erroneous assessment. From circuit court of Giles county.

9. *Connell v. Commonwealth*. Manslaughter. From circuit court of Brunswick county.

10. *Denis v. Commonwealth*. Forgery. From hustings court of the city of Richmond.

11. *Gimmell v. Commonwealth*. Violation prohibition law. From circuit court of Roanoke county.

12. *Hall v. Commonwealth*. Violation of prohibition law. From circuit court of Wise county.

13. *Hall, Oscar B., v. Commonwealth*. Violation prohibition law. From circuit court of Albemarle county.

14. *Hamilton v. Commonwealth*. Violation toll laws. From circuit court of Augusta county.

15. *Harrison v. Commonwealth*. Violation prohibition law. From circuit court of Surry county.

16. *Layne v. Commonwealth*. Contempt. From circuit court of Charlotte county.

17. *Lee, Arthur T., v. Commonwealth*. Rape. From corporation court of Hopewell.

18. *Lee, Mitchell, v. Commonwealth*. Attempted homicide. From circuit court of Essex county.

19. *Looney v. Commonwealth*. Violation prohibition law. From circuit court of Buchanan county.

20. *Mansfield, Ida, v. Commonwealth*. Violation prohibition law. From circuit court of Albemarle county.

21. *Messer v. Commonwealth*. Violation prohibition law (two cases). From circuit court of Giles county.

22. *Mundy v. Commonwealth*. Manslaughter. From circuit court of Buckingham county.

23. *Nelson, Sam, v. Commonwealth*. Manslaughter. From circuit court of Nelson county.

24. *Nikis v. Commonwealth*. Taxation. From circuit court of Arlington county.

25. *Palmer, Sam, v. Commonwealth*. Murder. From circuit court of Alleghany county.

26. *Perdue v. Commonwealth*. Violation prohibition law. From circuit court of Giles county.

27. *Phillips v. Commonwealth*. Larceny. From circuit court of Buckingham county.

28. *Raby v. Commonwealth*. Murder. From circuit court of Prince George county.

29. *Ramey v. Commonwealth*. Violation prohibition law. From circuit court of Buchanan county.

30. *Rhodes v. Commonwealth*. Embezzlement. From corporation court of Bristol.

31. *Riner v. Commonwealth*. Violation prohibition law. From circuit court of Scott county.

32. *Rosenbaum v. Commonwealth*. Larceny. From circuit court of Washington county.

33. *Royals v. Commonwealth*. Violation prohibition law. From circuit court of Norfolk county.

34. *Shiflett v. Commonwealth*. Murder. From circuit court of Albemarle county.

35. *St. Clair v. Commonwealth*. Felony. From circuit court of Wythe county.
36. *Thomason v. Commonwealth*. Violation prohibition law. From circuit court of Fluvanna county.
37. *Walker, et al., v. Commonwealth*. Forfeited recognizance. From circuit court of Brunswick county.
38. *Warren v. Commonwealth*. Murder. From circuit court of Prince George county.
39. *Wiseman v. Commonwealth*. Unlawfully influencing juror. From circuit court of Shenandoah county.
40. *Wood v. Commonwealth*. Misdemeanor. From circuit court of Grayson county.

Cases Pending in the Circuit Court of the City of Richmond

1. *Commonwealth v. O. B. Thomas, Treasurer of Fluvanna County*.
2. *Commonwealth v. G. P. Barr, Treasurer of Washington County*.
3. *Commonwealth v. W. M. Gray and J. J. Geisler*.
4. *Commonwealth v. A. D. Foster, Adm'r*.
5. *Commonwealth v. A. D. Phillips, et als*.
6. *Commonwealth v. A. M. Browning*.
7. *Commonwealth v. Chesapeake and Ohio Railway Company*.
8. *Commonwealth v. A. C. L. Railway Company*.
9. *Commonwealth v. S. A. L. Railway Company*.
10. *Commonwealth v. Virginia Railway and Power Company*.
11. *Commonwealth v. John F. Fitzgerald, etc*.
12. *Commonwealth v. John B. Evans, Sergeant*.
13. *Commonwealth v. E. Thompson, Clerk*.
14. *Commonwealth v. R. E. Glover, Com'r of Revenue*.
15. *Commonwealth v. John C. Neimeyer, etc*.
16. *Commonwealth v. Southeastern Iron Corp*.

IN CHANCERY

1. *Commonwealth v. P. H. Huffman, et als*.
2. *Commonwealth v. Walter Milan*.
3. *Commonwealth v. T. J. Young*.
4. *Commonwealth v. A. A. Chapman*.
5. *Commonwealth v. B. Vandregift, et als*.
6. *Commonwealth, ex rel Jos. Button, Com'r of Insurance, v. Surety Corporation of America*.
7. *Blue Ridge Overalls Company v. State Penitentiary*.
8. *Fidelity and Deposit Company of Maryland v. Commonwealth*.
9. *A. G. Harwood v. State Highway Commission, et als*.
10. *Carter Glass v. State Live Stock Sanitary Board*.
11. *C. W. Hicks v. C. Lee Moore, Auditor of Public Accounts*.
12. *R. H. Stuart's Ex'ors v. Commissioners of Sinking Fund*.
13. *Minton W. Talbott v. C. Lee Moore, Auditor of Public Accounts*.
14. *W. P. Weaver v. State Live Stock Sanitary Board*.

Portraits of Former Attorneys General Now in the Office of the Attorney General

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

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

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

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

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

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

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OPINIONS

ACCOUNTANTS—Is the use of words “and company” a violation of section 2 of act establishing a State Board of Accountancy?

RICHMOND, VA., January 26, 1924.

MR. A. M. PULLEN,
Secretary of Virginia State Board of Accountancy,
Richmond, Va.

MY DEAR MR. PULLEN:

Acknowledgment is made of your letter in which you state that there are two accountants holding C. P. A. certificates, issued in accordance with chapter 158 of the Acts of Assembly 1910, page 247, who style themselves A. Lee Rawlings & Company, Certified Public Accountants, and Frederick B. Hill & Company, Certified Public Accountants. You also state that A. Lee Rawlings is the sole owner of A. Lee Rawlings & Company, and Frederick B. Hill is the sole owner of Frederick B. Hill & Company. You then ask whether they are violating section 2 of the act by using the words “and company” after their names when there is only one member of the firm.”

The section in question provides that no partnership, all the members of which have not received a certificate from the Virginia State Board of Accountancy, shall assume the title of certified public accountants.

As these gentlemen are the only members of their respective firms, and each holds such certificate, I am of the opinion that they do not violate section 2 of the act in question by using the words “and company” after their names.

Yours truly,

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

ACCOUNTANTS—Qualifications of members of Board of

RICHMOND, VA., October 26, 1923.

HON. A. M. PULLEN,
Virginia State Board of Public Accountancy,
Richmond, Va.

MY DEAR MR. PULLEN:

Acknowledgment is made of your request as to the qualification necessary to be a member of the Virginia State Board of Public Accountancy.

Section 1, of chapter 158 of the Acts of Assembly of 1910, creating a State Board of Accountancy, provides that the first accountants who are members of the board shall be practicing accountants who have actually engaged in such practice on their account for at least three years next preceding such appointment.

The same section provides that, after January 1, 1910, all accountants appointed to serve on the board must be holders of C. P. A. certificates, under the provision of the act.

I am of the opinion, therefore, that any person who is *now* appointed as a member of your board must be a holder of a certified public accountant certificate, issued by your board, and must also be a practicing public accountant who has actually engaged in such practice on their account for at least three years next preceding appointment.

Yours truly,

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

ACCOUNTANTS—Certificate from Board necessary to practice in State of Virginia

RICHMOND, VA., *October 26, 1923.*

HON. A. M. PULLEN,
Virginia State Board of Public Accountancy,
Richmond, Va.

MY DEAR MR. PULLEN:

Acknowledgment is made of your request as to whether a person has a right, in the State of Virginia, to advertise as a certified public accountant, showing, however, that his certificate was obtained from some other State or organization, when no certificate has been granted such person by the Virginia State Board of Accountancy.

Section 2 of chapter 158, of the Acts of Assembly of Virginia of 1910, creating a State Board of Accountancy in Virginia, provides that no person who has not received a certificate of his qualifications to practice as an expert public accountant from the Virginia State Board of Public Accountancy shall, in this State, assume such title, words, letters or abbreviation tending to indicate that he is a certified public accountant.

In other words, the law of Virginia forbids any person from holding himself out as a certified public accountant unless he has received a certificate as such from the Virginia State Board of Public Accountancy; and this is true regardless of whether he has received a certificate from any other State or any other organization.

Yours very truly,

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

AGRICULTURE—Authority of Board to issue certificate with reference to potato wart disease

RICHMOND, VA., May 28, 1925.

HON. J. H. MEEK,
*Director Division of Markets,
1030 State Office Building,
Richmond, Va.*

DEAR MR. MEEK:

Acknowledgment is made of your letter of May 26, 1925, which you delivered to me this morning. In this letter you say, in part:

"Chapter 113 of the Acts of Assembly of 1924 enacts, in the first paragraph thereof, the following:

"In order to promote, protect, further and develop the agricultural interests of this State, the director of Division of Markets, with the approval of the Commissioner of Agriculture, is hereby authorized, when requested by parties financially interested in a lot of *any* agricultural products, *to investigate and certify the quality, condition, grade or other classification* of such agricultural product, under such rules and regulations as he may prescribe, including payment of such fees as he deems reasonable for the services rendered or performed by employees or licensed agents of the Division of Markets of the Department of Agriculture."

"In the opinion of this division, this language is broad enough to include, and does include, anything affecting the condition of the potato, such, for instance, as the presence or absence of diseases, especially such a disease as the potato wart which is manifest to the eye. Will you please advise if you concur in this construction of the law? The presence or absence of diseases, such as the wart disease of potatoes, has a direct effect on the quality and condition of the lot.

"For your information, I will advise that Cuba has placed an embargo on American-grown potatoes, except such lots as are accompanied by a certificate issued and signed by a duly authorized officer, stating that the shipment of potatoes is free from wart disease and that the region or district where they were grown is not affected."

As I advised you in my letter of May 21, 1925, there is nothing in chapter 113 of the Acts of 1924 which would prohibit your issuing a statement with reference to the potato wart disease, such as was embodied in the certificate which you enclosed with your letter to me of May 18, 1925, to the effect that the potatoes in question had been examined and found free of this disease, and that potatoes grown in Virginia had never been affected by or had this disease.

You will observe that, while the above-quoted portion of chapter 113 of the Acts of 1924 authorizes your division to investigate and certify the quality, condition, grade, or other classification of agricultural products, the act does not compel your department so to do.

Therefore, as I told you in my letter of May 21st, there is nothing in this statute which would prohibit your department from making the above-mentioned certificate with reference to the potato wart disease.

On the other hand, I think that your department has authority to make such certificate as a part of its certificate of quality, condition, etc., as provided by chapter 113 of the Acts of 1924.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AGRICULTURE—Dairy and Food Department—Rye mealRICHMOND, VA., *December 6, 1923.*

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

MY DEAR MR THORNHILL:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention, in which you ask whether the sale of rye meal in this State comes within the purview of chapter 52 of the Code of 1919, with reference to stock feed.

Section 1233 of that chapter provides, in part, as follows:

"That the term concentrated commercial feeding stuffs, as used in this chapter, shall be held to include all feeds intended for feeding to live stock and poultry, except hays, straws and corn stover, when the same are not mixed with other materials; nor shall it include the pure products of corn, known as corn meal."

It is manifest, therefore, that, if the rye meal is intended "for feeding to live stock and poultry," it comes within the scope of the act, and before sales thereof can be made the provision of the act must be complied with.

You state in your letter that it is contended that the same rule should apply to the sale of rye meal sold for feeding to live stock and poultry as applies to corn meal. This is not true, because the chapter expressly excepts the latter.

Furthermore, section 1239 of the Code of 1919 (being also a section of the chapter in question) expressly provides for registration by the millers of pure corn meal, but makes no provision for rye meal.

I note that you are asked why rye meal should not come under the same provision that is made for corn meal. The answer to this is that the legislature did not so provide.

I am of the opinion, therefore, that, if rye meal is intended for feeding to live stock and poultry, the provisions of chapter 52 must be complied with before it can be offered for sale.

Yours truly,

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

AGRICULTURE—Dairy and Food Department—Warrants Issued byRICHMOND, VA., *May 24, 1924.*

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

MY DEAR SIR:

Your letter of the 19th is received. In this you say:

"At recent meeting of the State Board of Agriculture a resolution was adopted requiring: That all warrants hereafter issued by the Dairy and

Food Commissioner upon the Auditor of Public Accounts for the payment of salaries and other expenditures of the Dairy and Food Division of the Department of Agriculture, be countersigned by the Commissioner of Agriculture when presented to him in proper forms and with itemized statement of the expenditure for which the warrant is drawn duly attached.

"I was directed to ask your opinion as to whether or not the board is within its legal right in the adoption of this resolution requiring the countersignature of the commissioner to such warrants of the Dairy and Food Commissioner, and whether they have the legal right to enforce its provisions."

Section 1158 contains this provision:

"The salaries and actual and necessary expenses of the State Commissioner, deputy commissioner and assistants, in the performance of their official duties, shall be audited by the State Board of Agriculture and Immigration, and paid upon warrants issued by the Dairy and Food Commissioner upon the State Auditor."

This provision authorizes the Dairy and Food Commissioner to issue such warrants without their being countersigned by the Commissioner of Agriculture. It, therefore, appears that the State Board of Agriculture has only authority to audit, and not to prescribe a countersigning of the warrants.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

AGRICULTURE—Payment for animals failing to react to tuberculin test

RICHMOND, VA., June 15, 1925.

HON. LAWRENCE T. BERRY, *Secretary,*
Department of Agriculture and Immigration,
Richmond, Va.

DEAR MR. BERRY:

I beg leave to acknowledge receipt of your letter of recent date, in which you advise me that there will be a meeting of the State Board of Agriculture held in Richmond on tomorrow, June 16, 1925.

You further state that Hon. W. W. Sproul, a member of that body, has requested you to obtain from me a written opinion relative to the payment for certain animals belonging to Messrs. W. M. Cease and J. J. Burleigh which failed to react to the official tuberculin test applied by the State, and which said animals, under the advice of Dr. J. G. Ferneyhough, State Veterinarian, were classified as reactors and surrendered to the State.

In this connection, I beg to say that, in giving my oral opinion to the State Board of Agriculture on November 12, 1924, I was governed by the spirit rather than the letter of sections 1224, 1225, 1226, 1227 and 1228 of the Code of Virginia, since I was of the opinion that it was the evident intent of the General Assembly to provide for the slaughter of tuberculous animals and for the payment of the State's proportionate share of the cost.

As I recall the matter, twenty-two of the nonreacting animals proved to be

tuberculous by post-mortem examination, and only six failed to show tuberculous lesions. For these six, after deducting salvage, there was a net loss to the State of only \$87.00.

I realize that a strict construction of the sections of the Code enumerated above might prevent the payment of compensation except for those animals which definitely react to the tuberculin test, but I am disposed to believe that it would be wise to authorize the slaughter of all animals which give indication of having bovine tuberculosis, to the end that the people of the State, and more especially the little children who consume milk, may, as far as human wisdom and foresight may accomplish that purpose, have their health and their lives protected against the terrible disease of tuberculosis. I feel sure all will agree that, in a matter of such vital concern, the State can well afford to expend upon occasions a few dollars, even under questionable statutory authority, rather than permit or encourage the progress of disease and death among our citizens.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ALIENS—Right to own real estate

RICHMOND, VA., *March 19, 1924.*

REV. PAUL B. WATERHOUSE,
120 N. San Pedro Street,
Los Angeles, California.

MY DEAR SIR:

Acknowledgment is made of your letter of March 14, 1924, in which you request me to advise you whether Virginia has enacted any law prohibiting aliens from owning land in this State.

We have no such statute. On the contrary, our statute, section 66 of the Code of 1919, provides as follows:

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

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

APPEALS—By the Commonwealth in criminal prosecutions

RICHMOND, VA., *April 21, 1925.*

HON. THOMAS H. LION,
Commonwealth's Attorney,
Manassas, Va.

MY DEAR MR. LION:

Acknowledgment is made of your letter of April 17, 1925, in which you sug-

gest that an appeal be taken by the Commonwealth from the action of the circuit court of your county in dismissing the criminal prosecution against E. S. Reid, who was indicted for obstructing or resisting an officer in the discharge of his duty.

In my opinion, section 8 of the Constitution, which provides that no man shall be put twice in jeopardy for the same offense, prohibits the Commonwealth from appealing such a case, it not being a prosecution for a violation of the law relating to the State revenue.

With my best wishes, I am

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

APPROPRIATIONS—Expenditure of

RICHMOND, VA., May 12, 1924.

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

MY DEAR MR. KOINER:

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

"At the 1924 session of the General Assembly there was appropriated to the Department of Agriculture 'for special laboratory fixtures in the State Office Building' the sum of \$36,870 for the year ending February 28, 1925. This amount was not included in the budget estimates approved by the State Board of Agriculture as presented to the Governor through the director of the budget, but, I am informed, was subsequently included in our budget estimates on instructions of the Governor.

"All contracts for the building and installation of the laboratory fixtures in the State Office Building were let by the Building Commission. I, personally, have no knowledge of the cost thereof and can not pass upon the expenditures for this purpose. Section 1102 of the Code provides: 'The board shall have control of all the funds of the department, and none of said funds shall be paid out except upon appropriations made at a regular meeting of the board.' Section 1106 provides: 'All salaries and expenses of the department, and all expenditures, shall be paid out of the funds in the treasury to the credit of the department upon warrants drawn by the commissioner and countersigned by the president of the board.'

"I have been requested to draw a warrant on the Auditor of Public Accounts in favor of the State Office Building construction fund for the sum aforesaid, in order that the cost of the special laboratory fixtures may be paid for by the Board of Building Commissioners. You will observe from the foregoing that neither the board or the commissioner are concerned with the expenditure of this fund, although the appropriation has been made to the department and can only be drawn upon in the manner prescribed by the Code. I do not know what portion of this fund is necessary for the purposes set out in the appropriation bill for the reasons herein stated. It is, therefore, my desire to act in such manner as will relieve myself, as well as the board, from any responsibility in the premises and to avoid any unjust criticism that might arise, though I do not contemplate any.

"I desire your opinion, therefore, in order that the fund may be legally expended and my rights in the matter duly safeguarded. I am undecided which of the following methods of expenditure would be the better—

"To draw warrant on the Auditor of Public Accounts in favor of the

State Office Building construction fund for the total amount of this appropriation, the same to be expended by the Board of Building Commissioners for the purposes indicated by the appropriation bill; or

"To expend the said sum, or so much thereof as may be necessary, upon itemized accounts, duly approved by the said Board of Building Commissioners, by warrants on the Auditor of Public Accounts drawn in the manner prescribed by the Code.

"I prefer to do the former if, in your opinion, it is the better method, and am submitting draft of a letter to me from the chairman of the Board of Building Commissioners, and my proposed reply, for your approval. It is not my intention to limit you to the two methods herein outlined if, in your opinion, there is a better way to handle this proposition I will gladly abide by your decision. I will appreciate your prompt reply, as I understand the Auditor is now carrying an overdraft on account of the building fund."

The appropriation bill, found on page 172 of the Acts of 1924, contains this provision, under the appropriation for the Department of Agriculture and Immigration:

"For special laboratory fixtures in State Office Building.....\$36,870.00"

This is an appropriation by the General Assembly to your department for a specific purpose, and I do not think that you could have the authority to turn this fund over to any other department or commission for the purpose of being spent. Having been appropriated to your department, the burden is imposed on your department, by the General Assembly, to see that this fund is expended in accordance with the directions of the General Assembly. If it had been the legislative intent that some other body or commission was to expend this fund, it would not have been appropriated to your department.

It is, therefore, my opinion that this fund, or so much thereof as is required, should be paid out by your department in the manner prescribed by law only upon properly itemized vouchers approved by the Board of Building Commissioners.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ASSESSMENTS—Capital—Deductions

RICHMOND, VA., March 6, 1924.

MR. E. W. COX, *Cashier,*
The Citizens Bank of Highland,
Monterey, Va.

MY DEAR SIR:

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

"In the capital stock report, whereby tax is based on the capital, surplus and undivided profits less the assessed value of real estate owned (may we add that we do not own the banking house in which we do business; but we do own two farms in Augusta county, these farms being bought by us to secure debt).

"Now, the question that confronts us is, are we allowed to deduct the

assessed value of these farms from capital, surplus and undivided profit fund?

"These farms are being carried on our books as real estate owned."

In reply, I beg leave to call your attention to chapter 142 of the Acts of 1915, page 209, which amends certain sections of the tax law. You will find, by reading the first paragraph of this section, that a part of the said section reads as follows:

"From the total value of the shares of stock of any such bank, banking association, trust or security company, which shall be ascertained by adding together its capital, surplus and undivided profits, there shall be deducted the assessed value of its real estate otherwise taxed in this State, * * *."

I would further state that this section of the law is in keeping with section 182 of the Constitution.

I am, therefore, of the opinion that the assessed value of the two farms in question should be deducted, regardless of the fact that your bank is not located on the property.

With kindest personal regards, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ASSESSMENTS—Lands lying in different districts of different counties— How assessed

RICHMOND, VA., April 29, 1925.

MR. C. M. GARNETT,

Assessor of Lands,

R. F. D. 2, Charlottesville, Va.

MY DEAR SIR:

I am in receipt of your letter of April 28, 1925, in which you say:

"As assessor of lands for District No. 2 of Albemarle county, Va., I am taking the liberty of writing you for information. Mr. E. D. Chatterton owns a farm in Greene county, Va., containing ninety-six, and one in Albemarle county containing seventy-seven acres; these farms adjoin, but were originally separate tracts, one always being assessed in Greene county and one in Albemarle county.

"The assessor of Greene county has notified me that he is going to assess both farms in Greene county under section 2289 of the Code of Virginia. Does this section apply to such a case? Please let me know as soon as possible."

Section 2289 of the Code of Virginia, 1919, so far as is applicable to the question submitted by you, provides that:

"* * * where a tract containing two thousand acres or less lies partly in one county and partly in another, it shall be entered by the commissioner of the county, or if there be more than one, by the commissioner of the district in which the greater part thereof lies. * * *"

In my opinion, the word tract has reference to the time of the assessment, and not to the original acquisition of the land forming the tract; therefore, it follows that the assessor for Greene county has the authority to assess the whole tract, as the greater part thereof lies in Greene county. The Auditor, to whom your letter was submitted, concurs in this opinion.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ASSESSMENTS—Mineral lands

RICHMOND, VA., *February 21, 1925.*

HON. C. M. CHICHESTER, *Counsel,*
State Corporation Commission,
Richmond, Va.

MY DEAR MR. CHICHESTER:

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

"I should like very much to have an opinion on the proper construction of sections 2234-2240, inclusive, Code of Virginia, having to do with the assessment of mineral lands, and especially section 2238 on the two following questions:

"(1) Is the function of the State Corporation Commission, through the mineral land assessor, merely advisory, or must it concur with the commissioner of the revenue in the assessment of mineral lands and improvements thereon?

"(2) Assuming that the function is concurrent and not merely advisory, and the commissioner of the revenue and the mineral land assessor employed by the State Corporation Commission cannot agree and a proceeding is had before the circuit court, or judge in vacation, under section 2238, is there an appeal from the judge's decision to the Supreme Court of Appeals?"

I have examined sections 2234-2240, inclusive, of the Code of Virginia, 1919, and in response to your first question, it is my opinion that section 2238 of the Code of 1919 requires the assessment to be made jointly by the commissioner and the special assessor employed by the State Corporation Commission where the State Corporation Commission has exercised the authority conferred on it by this section of the Code and appointed the assessors therein provided for. You will observe that it is provided in this section, in part:

"The assessment shall be made jointly by the commissioner and the special assessor employed by the State Corporation Commission."

This, in my opinion, conclusively answers your first question.

In response to your second question, it is my opinion that an appeal may be taken from the decision of the circuit judge to the Court of Appeals. You will observe, from a reading of the last sentence of section 2238 of the Code of 1919, that it is therein expressly provided that:

"Nothing contained therein shall prevent the Corporation Commission, or the owner, from appealing to the Supreme Court of Appeals, as herein provided."

This unquestionably refers to the last sentence of section 2237 of the Code of 1919, which provides, in part, as follows:

"* * * the Commonwealth and the person whose property is assessed shall have the right of appeal from the decision of the said circuit or corporation court to the Supreme Court of Appeals."

Of course, any appeal taken by the Corporation Commission would be in the name and on behalf of the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ASSESSMENTS—Validity of act fixing basis of

RICHMOND, VA., *March 14, 1924.*

His Excellency E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of a copy of your letter of March 13th to Senator Alfred C. Smith, of Norfolk county, relative to Senate bill 36.

This bill seeks to amend and re-enact section 2386 of the Code of 1919, which section deals with the question as to when the court may order assessments to be collected, and the money refunded. The amendment to the bill reads as follows:

"Relief shall be granted if the assessed valuation of the property is in excess of the averaged valuation of similar property in the same community."

In my judgment, this amendment is not germane to section 2386. Evidently the bill was intended to amend section 2248 of the Code of 1919, which provides for the correction of the erroneous assessment of lands.

I note in your letter to Senator Smith that you refer to section 169 of the Constitution of Virginia, which section provides how property must be assessed.

This amendment, in my judgment, is entirely in contravention of this section of the Constitution, because it provides that all real estate and tangible personal property shall be assessed at their fair market value, to be ascertained as prescribed by law. This amendment would make it compulsory upon the court to reduce the assessed valuation of the property, if in excess of the averaged valuation of similar property in the same community, which, of course, virtually destroys the mandate of the Constitution.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ASSESSMENTS—When to be made,RICHMOND, VA., *March 24, 1924.*

MR. B. T. TONER,
Deputy Recorder,
Claremont, Va.

MY DEAR MR. TONER:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention.

In this you cite the amendments to the act incorporating the city of Claremont, and contained in the Acts of Assembly 1894, page 640, section 4 of which provides that "the said council shall annually, in the month of March, appoint an assessor, or assessors, whose duty shall be to assess all lands and personal property within the corporate limits."

You ask whether these assessors can assess real estate and personal property, as referred to in this section "in recess of the State assessment; also, if the appointment of assessors annually, as prescribed by this section, is in conflict with the law of the State of Virginia."

Section 4 of your charter provides that the duties of the assessors appointed by the council shall be to make out a list of the real estate and the value thereof, and a list of persons chargeable with personal property and the value of such subjects, according to the law of the State governing State assessments of personal property, and the common council is authorized to base its rate of taxation for corporate purposes upon such assessment.

The Constitution of Virginia, section 171, and the Code of Virginia, 1919, chapter 95, provide for the assessment of all real estate every five years by assessors appointed by the circuit courts of the counties and by the corporation courts of the cities.

Section 2271 provides that the value of lands and lots, as ascertained in pursuance of the provisions of chapter 95, shall only be changed to allow the addition of the value of improvements, or the total or partial deduction of the value of such improvements.

The general State laws further provide that the various commissioners of revenue shall place on the land books and assess any land omitted by the assessors, and also assess each year all the personal property not exempt from taxation within their various jurisdictions. In other words, the general laws of the State provide for the valuation of all real estate by the assessors appointed every five years, and all personal property by the various commissioners of revenue of the State.

Section 3025 of the Code provides that, in cities and towns, the assessment of real estate and personal property for the purpose of municipal taxation, shall be the same as the assessment thereof for the purpose of State taxation, whenever there shall be a State assessment of such property.

Section 2211 of the Code provides that the value of all real and personal property shall be ascertained and determined, and the taxes, local and State, shall be extended on the values thereof in the manner prescribed by law.

I am of the opinion, therefore, that, while your council may appoint an assessor, or assessors, for the purposes contained in section 4 of your charter, the

valuation placed upon all real and personal property, which has been assessed for the purpose of State taxation, must be the valuation placed upon such property by such assessor, or assessors, for the purpose of town taxation. That is to say, the rate of taxation for your corporate purposes must be based upon the valuation placed on these subjects for State taxation.

I would be very glad to give you any further information I can on this subject.

Yours truly,

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

ASSESSORS OF LAND—Member of board of supervisors cannot be

RICHMOND, VA., *February 5, 1925.*

HON. THOMAS H. HOWERTON,
Waverly, Virginia.

MY DEAR MR. HOWERTON:

I am just in receipt of yours of February 2nd, to which I will reply at once. In this you enclose me a written memorandum expressing an opinion that a member of the board of supervisors can be an assistant land assessor. As much as I dislike to differ from you in your opinion, I am constrained to do so in this instance, for the following reasons:

Section 2702 of the Code, as amended by chapter 385 of the Acts of 1924, provides, among other things, that a supervisor shall not hold any other office, elective or appointive, at the same time, except certain offices exempted, which exemption has no reference to a land assessor or assistant land assessor.

The question, therefore, resolves itself into this. Is the assistant land assessor an appointive officer? Unquestionably, I think he is, for the following reason:

Section 2233 of the Code, as amended by chapter 291 of the Acts of 1924, provides that the court may appoint one or more assistants to aid the assessor in his duties as shall be deemed most expedient; "but before any person thus appointed shall enter upon the duties of his office he shall take the oath prescribed by the Constitution and execute the bond prescribed by section 438." In this connection, I would further call your attention to the incompatibility of the two positions for this reason. Section 2250 of the Code provides as to how the assessors of land and their assistants shall be paid. And, among other things, provides that boards of supervisors of a county may further increase the per diem salary of the assessor and assistant assessor, such increase to be paid out of the funds of the county.

You can, therefore, see that it would be very inconsistent for a member of the board of supervisors to be an assistant land assessor, and at the same time be a member of the body with authority to increase his own salary.

I would add that I have discussed this matter with Mr. Moore, the Auditor, and he concurs in this view of the matter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Chauffeur's LicenseRICHMOND, VA., *April 9, 1925.*MR. W. M. WHITEHEAD,
Chatham, Va.

MY DEAR MR. WHITEHEAD:

Acknowledgment is made of your letter of April 2, 1925, in which you state that you have a boy who is employed by you in the capacity of a servant to do anything you call on him to do, either in your home or in your store.

In 1916 (Report of the Attorney General, 1916, pages 30, 32), Hon. John Garland Pollard, then Attorney General, in an opinion given Hon. B. O. James, Secretary of the Commonwealth, had occasion to consider the question which you have submitted to me. In the course of his opinion, Mr. Pollard said:

"Of course, the question you have asked is one of fact, as every person other than the owner who operates a machine for pay must take out a chauffeur's license. I do not think that the fact that the chauffeur who runs an automobile truck is at the same time a laborer, performing any work a merchant may call upon him to do, in any way affects the question. If a part of his duty is to run an automobile truck, I think that it is necessary for him to procure a chauffeur's license."

I fully concur in the view expressed by Mr. Pollard. The question submitted by you is, therefore, one of fact, and, if a part of the boy's duty is to run your automobile, I think it is necessary for him to procure a chauffeur's license. On the other hand, if it is not a part of his duty to run the automobile, but he does sometimes do so at intervals, then he would not come within the terms of the statute.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Chauffeur's LicenseRICHMOND, VA., *May 6, 1925.*HON. J. P. JERVEY, *City Manager,*
Portsmouth, Va.

MY DEAR MR. JERVEY:

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

"Recently a State inspector notified certain city employees that it was necessary to take out a chauffeur's license.

"As I read section 2129, the city employees are municipal servants, regularly employed not only for driving, but in street work, street cleaning, garbage collection, police duties, duties as firemen, as engineers, as inspectors and various duties other than those pertaining strictly to driving machines. In other words, the machines are simply incidental to their duties.

"It, therefore, appears to me that they might properly operate automobiles without payment of license. I would be glad to have you either confirm or reverse this opinion as soon as convenient for you."

In 1916, Hon. John Garland Pollard, who was then Attorney General, had occasion to examine the statute which is now section 2129 of the Code of Virginia, 1919. The conclusion reached by him is thus expressed (Report of the Attorney General, 1916, p. 32):

"Of course, the question you have asked is one of fact, as every person other than the owner who operates a machine for pay must take out a chauffeur's license. I do not think that the fact that the chauffeur who runs an automobile truck is at the same time a laborer, performing any work a merchant may call upon him to do, in any way affects the question. If a part of his duty is to run an automobile truck, I think that it is necessary for him to procure a chauffeur's license."

I have always concurred in this opinion. It would, therefore, seem that the question would turn on whether or not it is a part of the employee's duty to drive an automobile. If it is, then a chauffeur's license is required; otherwise, it is not.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Chauffeur's License

RICHMOND, VA., *June 25, 1925.*

MR. W. J. BRIGGS,
Smithfield, Virginia.

DEAR MR. BRIGGS:

Your recent letter has remained unanswered because of my absence from the city on official business for more than a week.

You ask me in regard to chauffeur's license for your porter, and enclose letter of J. M. Hayes, Jr., Motor Vehicle Commissioner, saying a license is necessary. You also state that \$5.00 has been sent to Mr. Hayes for this license. It, therefore, appears that this is a moot question in regard to the proper construction of the statute requiring chauffeur's license.

Attorney General John Garland Pollard construed this law to require a license in those cases in which it was part of the employee's duty to drive a truck or car. There have been several sessions of the legislature since that construction was put upon the law, and there has been no amendment to reverse that ruling. Therefore, I have not thought it proper to do so. As you say, there is room for differences of opinion if the matter were being presented as an original proposition.

I am returning Mr. Hayes' letter.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Chauffeur's LicenseRICHMOND, VA., *October 15, 1924.*JUDGE E. V. GRESHAM,
Virginia Beach, Va.

MY DEAR JUDGE:

I am just in receipt of your letter of October 11, 1924, which is as follows:

"Please give me an opinion in regard to individuals driving cars and trucks for merchants, etc., where the merchant does not hire the party to drive said machine, but hires him as a clerk in the store. Also give me your opinion how section 2129 of the Code should be construed."

Section 2129 of the Code provides that:

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

You will see from a reading of this section that there are two classes of persons who can operate a machine owned by another party without obtaining a chauffeur's license, and these are members of the family, and a servant regularly employed for other purposes by the owner of the machine.

Of course, there can be no question but what any member of the family of the owner of a machine can operate the machine without obtaining a chauffeur's license. The only question is, who is a servant within the meaning of the statute?

A clerk who is regularly employed by a merchant to work in his store, in my judgment, has a right to drive the merchant's machine for purposes connected with the merchant's business without obtaining a chauffeur's license; but, on the other hand, a merchant would have no right to hire a chauffeur to drive his machine and then use him temporarily in the store, and thereby avoid paying a chauffeur's license.

Of course, all of these cases, as you know, depend upon the facts and circumstances connected with each case, and you, as judge, will have to determine the guilt or innocence of the party from the facts as presented to you.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Driving while intoxicatedRICHMOND, VA., *December 28, 1923.*HON. WM. M. HELSLEY, *Mayor,*
Mt. Jackson, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of December 21, 1923, in which you say, in part:

"I have a man who I found guilty of running a car while intoxicated. About three months ago I imposed a fine and deprived him of running his car for one year. Now he and some of his friends want me to grant him permission to run his car. Would that be right?"

You have no authority to permit one found guilty of operating an automobile while intoxicated to drive an automobile during the period prohibited by the statute.

The only person who can remove the penalty imposed by the statute is the Governor.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Driving while intoxicated—Effect of conviction under town ordinance

RICHMOND, VA., July 25, 1924.

THOMAS E. DIDLAKE, ESQ.,

Attorney at Law,

Manassas, Virginia.

MY DEAR MR. DIDLAKE:

Please pardon my delay in replying to your letter of recent date, but for the past two weeks I have been busy moving my offices, and your first letter was misplaced in moving, and I only succeeded in finding it this morning.

In this letter you state that William Goode was convicted in a trial before the mayor of Manassas for operating his automobile on the streets of Manassas while intoxicated. You further state that Goode was not prosecuted under the provisions of chapter 87 of the Acts of Assembly of 1923, but was tried for violating an ordinance of the town of Manassas, which contained no restrictions as to the right of a party convicted to operate his automobile. You then desire to be advised whether or not, by virtue of this conviction, Goode is deprived of the right to operate his automobile.

I am of the opinion that, inasmuch as your town ordinance does not contain the provision that a party convicted thereunder is deprived of his right to operate his automobile for the period of one year, this does not take away the right of Goode to continue to operate his car. Of course, if he had been tried under the State law and convicted, this would take away his right to operate his car for one year from the date of the judgment.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Gas Tax—Expenditure of gasoline tax money—Roads and HighwaysRICHMOND, VA., *April 18, 1924.*

HON. JAMES M. BARKER,
Commonwealth's Attorney,
Abingdon, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of April 14, 1924, with reference to the previous correspondence between you and this office, and Hon. Joseph F. Hall, counsel for the State Highway Commission, with reference to the expenditure of the 1-cent gas tax provided for by chapter 107 of the Acts of 1923.

You ask me the following question: whether or not the money paid to a county from the 1-cent gas tax could be divided equally among the districts of the county for the purpose of constructing in each of the said districts a portion of the county highway system that is in each district.

I agree with you that there is nothing in the gas tax law which requires all of the money to be spent on one stretch of road, but you will observe that section 4 of chapter 107 of the Acts of 1923 provides that this fund shall be distributed among the several counties "in the same manner, for the same purposes, and upon the same conditions as State money aid is now distributed to said counties, except," etc.

You will also observe from an examination of the provisions of chapter 88 of the Code, particularly section 2100 of the Code of 1919, that all applications for the expenditure of State money aid for roads must receive the approval of the commissioner. It is my understanding that Mr. Shirley has declared it to be his purpose to refuse to approve the expenditure of these funds for small patches of road, but that he insists upon the funds being spent in such a way as to insure the construction of a connected stretch of road that will be of some benefit to the community.

It would appear from the provisions of section 2100 of the Code, which clearly apply to the expenditure of the gas tax money, that the approval of the commissioner is necessary. Therefore, I do not see very well how it is possible to get around this.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Gas Tax—Gasoline shipped from outside of the State of Virginia and consigned to Federal government, at Virginia points, not subject to taxRICHMOND, VA., *May 13, 1924.*

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

MY DEAR SIR:

Acknowledgment is made of your letter of May 10, 1924, with which you

enclose a letter from Mr. J. M. Graves, branch manager of the Standard Oil Company of New Jersey, in which he submits to you the question as to whether shipments of gasoline originating outside of the State of Virginia, and consigned to the Federal government at Virginia points for use by the Federal government in the State of Virginia, are subject to the gasoline tax imposed by chapter 107 of the Acts of 1923.

I am of the opinion that such shipments are not subject to tax by the Commonwealth of Virginia under chapter 107 of the Acts of 1923, as I informed you several days ago in my conversation with you in reference to this subject.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Gas Tax—Payment by State departments

RICHMOND, VA., *July 24, 1924.*

DR. ENNION G. WILLIAMS,
*State Board of Health,
Richmond, Virginia.*

MY DEAR SIR:

I have your letter of recent date in which you call my attention to the fact that your department, in buying gasoline from dealers, is required to pay, in the cost price of the same, the 3-cent tax imposed on the dealer by the State. You ask if your department is entitled to have a refund on this tax.

I have examined the statute with care, and it is my opinion that this tax is imposed on the seller of gasoline and not on the purchaser thereof, and, for this reason, I do not think your department would be entitled to buy gasoline free of the tax.

For some strange reason, no provision was made in that part of the act, permitting the Secretary of the Commonwealth to refund the tax to purchasers of gasoline for purposes other than motor transportation over the roads of the State, for refunds to State departments paying the tax, although provision was made therein for refunds to municipalities.

It is, therefore, my opinion that your department is entitled to no refund on gasoline purchased by it for motor transportation.

I would further state that the Highway Department and all of the other State agencies, which operate automobiles owned by the State, pay this gasoline tax and do not receive any refund.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**AUTOMOBILES—Gas Tax—Tax on gasolizine sold to Federal government
for governmental purposes in this State**

RICHMOND, VA., *January 10, 1924.*

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

MY DEAR SIR:

You will recall that on June 2, 1923, I sent you an opinion given Assistant United States Attorney Callom B. Jones, of Richmond, in which I held that no tax should be required on gasoline sold to the Federal government for governmental purposes in this State under the provisions of chapter 107 of the Acts of 1923.

Since writing that letter, the Federal government has continued to require the tax to be paid on automobiles purchased by the Commonwealth of Virginia. The position taken by the Attorney General of the United States, and the solicitor for the Bureau of Internal Revenue, Treasury Department, Washington, D. C., is to the effect that section 900 of the revenue act of 1921 of the Federal Congress imposes the tax on the manufacturer, producer or importer, and not on the State, and that the State is entitled to no refund if the manufacturer passes this tax burden on to the Commonwealth by adding it into the price of the machine.

There is no difference in principle between the gasoline tax levied under the third section of chapter 107 of the Acts of 1923, and the tax levied on the sale of automobiles under the provisions of section 900 of the Federal revenue act of 1921.

In view of the position taken by the Federal government, it is my opinion that hereafter the Commonwealth should decline to refund any part of the gasoline tax which may have been paid on the purchase of gasoline by the Federal government, as there is no difference in principle between the tax imposed on the sale of gasoline by chapter 107 of the Acts of 1923, and the tax imposed on the sale of automobiles by section 900 of the Federal revenue act of 1921.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Gas Tax—What gasoline exempt

MOTOR VEHICLE LAW—SEE AUTOMOBILE LAW.

RICHMOND, VA., *October 1, 1923.*

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

DEAR SIR:

Acknowledgment is made of your letter of September 30th, addressed to the Attorney General, in whose absence I am taking the liberty of answering. With your letter you enclose a letter to you from Mr. Lewis C. Williams, dated September 28th, in which letter Mr. Williams says:

"The Richmond Rapid Transit Corporation, being a large consumer of gasoline and finding it advantageous to purchase gasoline in large quantities, is entering into an arrangement for the purchase of gasoline from producers outside of the State of Virginia. The gasoline so purchased will be brought into this State *for its own use, but not for sale and delivery.*

"We have advised the company that gasoline, purchased in other States and brought into this State and used by it is not taxable under the tax imposed by chapter 107 of the Acts of the General Assembly of Virginia 1923. We are of the opinion that this is clear from the terms of the act levying this tax, but the company is desirous that no question be raised, and has requested us to ask for your ruling on this point."

While it is true that subsection C of section 1 of chapter 107 of the Acts of 1923, is broad enough to embrace within its meaning Mr. Williams' client, this section is not the controlling test by which it may be determined whether or not the purchase and use of gasoline in the manner outlined in Mr. Williams' letter is taxable under chapter 107 of the Acts of 1923.

Section 2 of that act requires the dealer, as defined in this act, who is engaged in the sale and distribution of motor vehicle fuels, to report to you on the 20th of each month, in which report the dealer is required to show the quantities of motor vehicle fuels "sold and delivered within the State of Virginia during the preceding calendar month," and such dealer is required at the same time to pay the tax or taxes "hereinafter levied on all motor vehicle fuels sold and delivered as shown by such statements."

Section 3 of this act, which is the section levying the motor vehicle tax, provides as follows:

"There is hereby levied a tax of 2 cents per gallon on all motor vehicle fuels, as herein defined, which is *sold and delivered in this State*, and is not under the protection of the interstate commerce clause of the Constitution of the United States; and on and after July 1, 1923, there is hereby levied on all motor vehicle fuels, as herein defined, which is *sold and delivered in this State*, and is not under the protection of the interstate commerce clause of the Constitution of the United States, an additional tax of 1 cent per gallon."

A careful examination of this section shows that the tax is levied only on motor vehicle fuels which are "sold and delivered in this State," and which are not under the protection of the interstate commerce clause of the Federal Constitution. The gasoline referred to in Mr. Williams' letter will not be sold and delivered by his client in this State, and therefore, in my opinion, his client is not taxable upon the use of motor vehicle fuels brought into and used in this State in the manner outlined in Mr. Williams' letter. Of course, if his client undertakes to sell any part of this fuel, it will be taxable on the same; but so long as it confines its use to vehicles owned by it, no tax can be required of it under chapter 107 of the Acts of 1923.

Yours very truly,

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

AUTOMOBILES—Liability of the State or the Health Department for an injury caused through the operation of one of its automobilesRICHMOND, VA., *March 18, 1924.*

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

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of March 17, 1924, in which you state that the State Board of Health owns and operates a number of automobiles in connection with the necessary functions of this department of the State government. You ask me to advise you whether the Commonwealth, or your department, would be pecuniarily responsible for an injury caused some person through the operation of one of these automobiles.

Neither the Commonwealth, nor your department, which is an arm of the Commonwealth, would be liable for damages for an injury caused through the operation of one of the vehicles in question. The State is not subject to suit or action by individuals, except with its consent, and no provision has, as yet, been made by which the State has consented to be sued for a tort inflicted by the State, or its representatives. It is possible, however, that the individual who operates the vehicle in question, which caused the injury, would be personally answerable in damages if the injury was inflicted through his negligence.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Liability of the State and Virginia Truck Experiment Station for injuries to persons or propertyRICHMOND, VA., *June 7, 1924.*

T. C. JOHNSON, ESQ., *Director,*
Virginia Truck Experiment Station,
Norfolk, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 27th ultimo, which has remained unanswered because of my being obliged to attend the session of the Supreme Court of Appeals at Wytheville. In your letter you say:

"Some time since, the Virginia Truck Experiment Station purchased a Ford touring car, which is being used for official purposes of the station. Recently we purchased a one-ton Ford truck, which will also be used for official work. One or two insurance agencies have requested the privilege of issuing accident and liability insurance on these machines. You will probably recall that the Virginia Truck Experiment Station, which owns and operates these machines, was created one of the regular State institutions in 1920, chapter 268, Acts of the General Assembly.

"I would like to know, first, if the State or the station would be liable for any accident that might be incurred in the operation of either the truck or the touring car to (a) persons, and to (b) property which might be destroyed in such accidents; and, second, if the station would be liable to

an employee of the station operating either of these machines in the discharge of his duty, if he should sustain injuries in the course of such work. If so, would that liability come under the workmen's compensation act, or would it be a separate liability?

"If the station would be liable, as outlined, I presume it would be perfectly proper for us to take out this insurance and pay for it from the regular funds of the station which were appropriated by the General Assembly in 1924. However, no item covering this specific point was included in the budget submitted to the Governor in October, 1923."

I reply that, in my judgment (1) neither the State nor the station would be liable for injuries to persons or property caused by the operation of the truck or touring car; that (2) the station would be liable, under the workmen's compensation act, for injuries to employees of the station suffered in the course of their employment; and that (3) it would be proper for you to take out insurance and pay for it from the regular funds, available for the maintenance and operation of the station, appropriated by the General Assembly of 1924.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—License

RICHMOND, VA., May 23, 1924.

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

MY DEAR SIR:

Acknowledgment is made of your letter of May 16, 1924, in which you say:

"I have received several letters from Z. Talbott, 1210 Kennedy street, N. W., Washington, D. C., in reference to proper tags for his machine, and he now requests an opinion from you on the subject.

"Mr. Talbott lives in Washington and has a machine with District tags on it. His parents live on a farm in Fairfax county, Va., and he drives there frequently, using this machine, remaining from one to eight hours a day, always returning to Washington at night. He does not go there every day.

"Judge Pickett, of Alexandria, has ruled that Virginia tags must also be placed on this machine. In my opinion, the machine is properly licensed with the Washington tags, as Mr. Talbott is a resident of the District and only comes into this State occasionally."

I agree with you in your opinion that the machine in question is properly licensed. I do not think that a nonresident of Virginia is required to obtain a Virginia license under the circumstances set out in your letter above. Section 2137 of the Code of Virginia, 1919, as amended.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—License

RICHMOND, VA., May 8, 1924.

HON. THOMAS R. KEITH,
Attorney at Law,
Fairfax, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of the 6th, in which you ask my ruling of the following question:

"Mr. Ferguson is the president of the R. K. Ferguson Company, a Delaware corporation, engaged in business in the city of Washington, and, in connection with the business of the company, owns and operates an automobile which is duly licensed under the laws of the District of Columbia. Mr. Ferguson frequently drives this machine to his residence in Virginia and back again to his place of business the following morning. A traffic officer has made the point that he cannot do this without registering the machine in Virginia. Mr. Ferguson does not believe this is required under the reciprocity arrangement existing between the State of Virginia and the District of Columbia, and he has requested me to submit the matter to the Attorney General for ruling on the question."

After careful consideration of the Virginia motor vehicle law, I am constrained to hold that the reciprocity arrangement to which you refer applies only to residents of the District of Columbia. Mr. Ferguson, being a resident of Virginia, cannot operate a machine in this State without obtaining a license therefor. The fact that a machine operated by a resident of Virginia for his personal use is also being used in connection with the business of a foreign corporation in Washington, D. C., does not bring the machine within the exempted class.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—License of State-owned automobiles

RICHMOND, VA., July 18, 1924.

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

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of July 17, 1924, in which you say:

"Much to our surprise, we have been asked to pay a local license on one of our department cars used for public health work in a Virginia county. As you are aware, we pay no State license on these cars used for State work, and we do not believe that we should be asked to pay a local license."

No municipality of the State has any authority to impose a license tax on any of the instrumentalities of the State, and, therefore, your department cannot be

compelled to obtain municipal licenses for automobiles owned and operated by your department in the performance of its governmental functions. Virginia Constitution, section 183.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—License of

RICHMOND, VA., July 16, 1924.

HON. D. R. HUNT,
*Commissioner of Revenue,
Roanoke, Va.*

DEAR SIR:

Acknowledgment is made of your letter of July 11, 1924, addressed to James M. Hayes, Esq., Motor Vehicle Commissioner, which he has referred to this office for attention.

In your letter you ask the following questions:

"Please tell me what corporations, if any, are exempt from the payment of the State motor vehicle license.

"Are public service corporations, or any of them, exempt under the present law?"

Every motor vehicle operated in this State, except motor vehicles operated by railroad and canal companies, must have the license required by section 2125 of the Code of 1919, amended by Acts of 1923, before it can be lawfully operated in Virginia. The only exceptions to this rule, as I have said, are motor vehicles owned by railroad and canal companies, and these are exempt by reason of the fact that section 177 of the Constitution of Virginia exempts the property of railway and canal companies from further taxation than that imposed by this section of the Constitution and laws in active pursuance thereto.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—License for

RICHMOND, VA., March 18, 1924.

GEORGE K. PICKETT, ESQ.,
*Justice of the Peace,
Fairfax, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of March 17, 1924, in which you request my opinion on the following statement of facts:

"I am a justice of the peace of Fairfax county, Va., and several cases

have come before me concerning the liability of parties to procure Virginia automobile licenses, and the following statement of fact, I believe, is typical:

"Defendant actually resides in Virginia with father more than one-half of his time; he works in Virginia and drives his car to work every day; he claims to own a house in the District of Columbia, which is rented, but claims to reserve a room for his use; he has a D. C. license and claims that he should not be required to take out a Virginia license. This man is a voter in Fairfax county, Va.

"Under the law, should I find the defendant guilty of operating a car without a Virginia license; or, in other words, should the defendant be required to take out a Virginia license?"

If you will examine section 2125 of the Code of Virginia, 1919, as amended, and the other sections found in chapter 90 of the Code of 1919, you will see that the man in question is required to register his car in this State, and obtain a Virginia license before operating the same in Virginia. The only exception is found in section 2137, which applies to motor vehicles owned by nonresidents of this State, other than foreign corporations doing business in Virginia.

The man mentioned in your letter does not come within the exceptions found in section 2137 of the Code of 1919, as amended, reference being had to the facts stated in your letter.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—License plates for dealers

RICHMOND, VA., *March 20, 1924.*

I. D. WHITE, ESQ.,

Justice of the Peace,

Madison, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 19, 1924, in which you say, in part:

"Please advise me on the following facts, to-wit: The Carpenter Motor Company, of Madison, Va., has three sets of automobile tags, which are dealer's tags, and their numbers are as follows: 688-688, 689-689, 690-690, respectively. The said Carpenter Motor Company had two cars at a public sale on yesterday in the county, with only one tag on each car—688 on one and 688 on the other car. Of course, the Carpenter Motor Company can use their tags on any of their cars, and in this case the Carpenter Motor Company had plenty tags to put two tags on each car, but through negligence they failed to do so. Now, what I want to know, are they subject to a fine, and, if so, what is the minimum?"

Dealers are required to obtain licenses for the operation of their automobiles as prescribed by section 2128 of the Code of 1919, as amended. This, as you will see, entitles such dealers to three sets of license tags for the first \$50.00 license tax paid.

Section 2131 of the Code of 1919, as amended, in my opinion, applies to non-

ber plates issued to dealers as well as to number plates issued to individuals, and requires the plates to be placed upon the front and rear of machines operated under the dealer's license as well as on machines operated under individual licenses.

The penalty for violating this provision is prescribed by section 2145 of the Code of 1919, as amended, and the minimum fine prescribed by this section is \$2.50 for each offense.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Lien for repair of

RICHMOND, VA., *June 16, 1925.*

MR. B. F. KIRKLAND,

Kirkland Auto Service Co.,

15 East Washington Street,

Petersburg, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 15, 1925, with reference to your right to hold and dispose of an automobile placed in your shop for repairs and repaired by you, the owner having failed to pay for the same.

In response thereto, I call your attention to section 6443 of the Code of 1919, as amended by the Acts of 1924, page 638, which gives a mechanic a lien for labor and repairs placed on articles of personal property. I also call your attention to section 6449 of the Code of 1919, which provides the method by which such liens shall be enforced. These sections are too long to be copied into a letter, but you can easily find the same in the clerk's office of your city.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Loan of

RICHMOND, VA., *July 21, 1924.*

MR. J. C. GAITHER,

Harrisonburg, Va.

MY DEAR MR. GAITHER,

I beg leave to acknowledge receipt of your letter of July 17th, in which you desire to be advised concerning the following case:

You state that you own a Ford coupe (and I presume, of course, you have paid the proper license tax for operating the same), which you desire to lend to a young lady, who is teaching music, to be used by her in going to and from her classes.

You further state that you make no charge for this, but simply let her have the use of the car free of charge. You, then, wish to know whether there is any law which prohibits you from doing this.

In reply, I beg to state that I know of no law which prohibits one, who owns an automobile, from lending it to a friend.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Motor vehicle carriers

RICHMOND, VA., *March 3, 1925.*

MR. W. W. GRESHAM,
*c/o E. T. Gresham Co.,
Norfolk, Virginia.*

DEAR SIR:

Yours of February 23rd was duly received, but I had to go out of town and have not had an opportunity to answer until now.

After a careful consideration of your letter and of the act of March 14, 1924 (p. 330), relating to motor vehicle carriers, I am bound to hold that all trucks carrying, for pay, material not belonging to their owners are required to have a certificate "D" of one of the classes "X," "Y" and "Z," according to the weight of the trucks and the number of miles traveled over the improved highways of the State during the year for which the license is issued. Of course, trucks carrying only material belonging to the owners of the trucks pay only the regular truck license. A five-ton truck, including carrying capacity, if equipped with pneumatic tires, is charged 2/5c for each ton mile, multiplied by the total number of miles that the application shall show will be traveled by such motor vehicle over the improved public highways of this State during the year for which license is issued.

You are quite right in saying that the law regulating to certificates "A," "B" and "C" does not apply to you.

You will observe that section 3 is very comprehensive in its terms. It says:

"No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway without first having obtained from the commission, under the provisions of this act, a certificate and paid the license fee herein required."

As to bonds, you will observe that under section 4 of the act:

"The commission may, in the granting of a certificate, require the applicant to procure and file with said commission liability and property damage insurance, or bond with surety, on such motor vehicles as have been granted certificates."

It appears to me that the commission has been granted a discretion in this matter, subject, of course, to a review of its action by the courts if it should abuse the discretion.

With regards and best wishes, I am

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Motor vehicle carriersRICHMOND, VA., *February 17, 1925.*

HON. P. G. RAGLAND,
Commissioner of the Revenue,
Danville, Va.

DEAR SIR:

Acknowledgment is made of your letter of February 10, 1925, in which you ask me to construe the last part of the last sentence in paragraph (2) of section 5 of chapter 222 of the Acts of 1924, which reads as follows:

"* * * nor shall any city or town impose a license fee or license tax on such motor vehicle carrier for the use of streets or roads maintained by such city or town, greater than the State license fee or license tax computed upon a mileage basis; that is to say, computed upon the proportion that the route over such streets or roads within the corporate limits of such city or town bears in length to the entire route of such motor carrier."

You then say:

"Now, I consider this to mean that the prohibition against cities and towns refers only to the licensing of bus line privileges, but does not void the city license tax law which imposes a \$25.00 license on every passenger motor vehicle used on the streets for the transportation of passengers, and for hire. In addition, the cities are allowed to tax bus lines on a passenger mileage basis at the same rate that the State charges for the mileage operated within the city limits and the city has the right, in addition to this, to charge the regular license fee on motor vehicles of \$25.00."

After a careful consideration of the matter, I do not think that the above-quoted provision of chapter 222 of the Acts of 1924 permits a city or town to impose any greater or other license tax on a motor bus than that provided for in the above-quoted language of subsection (2) of section 5 of chapter 222 of the act.

Of course, I do not think that this provision has any application to the holders of class "C" certificates, operators of for hire cars, taxicabs, etc.

You will realize, however, that this is, strictly speaking, a question between the operators of motor vehicles and your city, and I would suggest that you be guided by the opinion of your city attorney until the matter has been passed on by the courts.

With my best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Motor vehicle carriers—Certificate C—Necessity forRICHMOND, VA., *May 25, 1925.*

HONORABLE R. T. W. DUKE, JR.,
Commonwealth's Attorney,
Charlottesville, Va.

MY DEAR JUDGE DUKE:

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

"The State Corporation Commission has granted to a firm in this city certificate C to transport passengers in automobiles. This certificate is granted to any applicant who does not propose to, in any way, solicit the transportation of persons over the improved public highways nor to operate upon a regular schedule, but who is privately employed for a specific drive or who does not solicit or receive passengers along the route.

"Now, the holder of certificate C is a keeper of a garage for the sale of automobiles and incidentally transports passengers on specific trips when so requested, receiving pay therefor.

"Now, does certificate C, granted to this firm in Charlottesville, carry a right to transport passengers for hire on specific trips in Albemarle county and outside of the city of Charlottesville?

"Again, has a man any right whatever to carry passengers for hire even on a specified trip without first obtaining certificate C?"

It is my opinion that the holder of class C certificate, such as referred to in your first question, can transfer passengers anywhere in the State.

In reply to your second question, it is my opinion that it should be answered in the negative, with the qualification that where the trip is wholly made on an unimproved road that certificate C would not be required. It is my understanding, however, that the Corporation Commission has construed the law to mean that any road on which any money has been spent is an improved highway.

With my best wishes, I am

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Motor vehicle carriers—Improved highways

RICHMOND, VA., *June 19, 1924.*

HON. MARTIN WILLIAMS,

Attorney at Law,

Pearisburg, Va.

MY DEAR JUDGE WILLIAMS:

Acknowledgment is made of your letter of June 18, 1924, in which you call my attention to chapter 222 of the Acts of 1924, amending in part chapter 161 of the Acts of 1923, and then request me to advise you as to the meaning of the term "improved public highways in this State," as used in section 2, prohibiting the operation of motor vehicles for transportation purposes over such roads until the owners or operators thereof have complied with the provisions of the statute.

I have been unable to find a judicial definition of the term. In my opinion, however, this term embraces all of the public roads in the State, whether they are parts of the State highway system or not, when such roads have been constructed either of hard surface, gravel or soil, making the road better than the ordinary mud road, with which the people of Virginia are familiar. I think that the legislature had this object in view, and, in my opinion, unless a road has been improved to the extent of having something more than a mud surface, it is not an improved road within the meaning of this act, even though it may be a part of the State highway system.

With reference to your second question, you will note that the act uses the

term "improved public highways in this State." As I have said, in my opinion, this includes all improved roads in the State, whether a part of the State highway system or not.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Motor vehicle carriers—License of

RICHMOND, VA., March 17, 1925.

HON. N. G. PAYNE,
Commonwealth's Attorney,
Madison, Va.

MY DEAR MR. PAYNE:

Acknowledgment is made of your letter of the 13th, in which you submit the following proposition:

"There are several parties in this county who own three-ton trucks. These trucks were bought by them for the purpose of hauling their farm produce and their own lumber. What I want to know is this: Suppose the owner of one of these trucks was asked to haul some lumber not his own for pay, and did so haul said lumber, would he be required to get a certificate in order to do so? It seems to me that the law seems to imply that the owners of trucks who have to have certificates are those who have a regular schedule. The parties I have in mind have no regular schedule; in fact, no schedule at all, and may haul over one road for a few days and then over another road for a few days, and again may not haul at all for a month or more."

In reply, I beg to say that the act of 1924 relating to motor vehicle carriers (p. 330) provides for a certificate "D" for property-carrying vehicles of the class "X," weighing three tons or less (sec. 5, subdivision (2), p. 334). The law contemplates that all trucks which haul property not belonging to the owners of the trucks, even though there may be no regular schedule maintained, are liable to the license tax imposed, if they are operated over the improved public highways of the State. You will note that the fee is 1/5c for each ton mile, multiplied by the total number of miles that the application shows will be traveled by such vehicle over the improved public highways during the year for which the license is issued.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Motor vehicle carriers—License of—Refund of

RICHMOND, VA., March 14, 1925.

HON. JAMES M. HAYES, JR.,
Motor Vehicle Commissioner,
Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of the 11th, in which you say:

"I desire that you furnish me with your opinion in regard to a question which is now pending in my office concerning Brent Bowman, of Harrisonburg.

"Mr. Bowman was issued a certificate of authority to operate a bus line between Harrisonburg and Staunton in 1923; later, this certificate was revoked by the State Corporation Commission. Mr. Bowman appealed the case, and was heard before the Court of Appeals. Their ruling, as you know, reversed the Corporation Commission, and Mr. Bowman was issued a certificate.

"On January 12, 1925, Mr. Bowman appeared at this office and secured bus-line license to operate two Buick cars between Harrisonburg and Staunton. He paid this office \$123.56 to cover the fee of State license.

"Around four or five days after Mr. Bowman began operating, he sold or assigned his certificate to the Town Bus Line, of Harrisonburg, retaining his cars and licenses. Mr. Bowman requested this office for a refund of the license fees paid by him to this office, with the exception of the four or five days he operated.

"Under section 6 of the motor vehicle carriers act, in the last paragraph, you will observe that no portion of the license fee paid, as aforesaid, will be refunded for any part of the year during which said license was not used.

"I will thank you to advise me whether this office should make a refund of this license fee paid by Mr. Bowman."

In reply, I beg to say that, in my judgment, the law does not permit your office to make a refund of the license fee paid by Mr. Bowman. Section 6 of the motor vehicle law contains no exception or qualification as to this point, but says:

"No portion of the license fee paid, as aforesaid, will be refunded for any part of the year during which said license is not used."

Much less could it be refunded in cases in which the license and certificate were being used, whether by himself or his assignee.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Motor vehicle carriers—Operation of trucks in connection with private business

RICHMOND, VA., *September 23, 1924.*

L. E. PETTYJOHN, ESQ., *Secretary-Treasurer,*
Powhatan Cheese Company,
Powhatan, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 19th, in which you requested my opinion in relation to the operation of trucks in connection with the business of your company. You say:

"We operate here six trucks—one from Amelia county, one from Chesterfield county, one from near the Cumberland county line, one from the James river, and one from the Appomattox river neighborhoods. These truckse are under written contracts with us, and we pay them 34.7c per hundred pounds for the milk they bring to our plant. The milk they bring is milk that we have contracted for from people along the route, for which

we have agreed to pay, at the present time, on the basis of 40c per pound of butter-fat contained therein, less a charge of 29.2c per hundred pounds for hauling this milk.

"In addition to the above, we have one truck under contract to haul our cheese to the depot, to Richmond to the cold storage, and to get such materials in Richmond as we may need and such freight as may be shipped to us there. For this hauling, we pay him on the basis of 25c per hundred pounds hauled if the load exceeds a ton, and \$12.00 for the trip to Richmond if the load is less than a ton. This truck is the same truck that brings our milk from Amelia county.

"All of these trucks are operating under written agreements with us, and the milk they haul is milk that we have contracted for with the patrons and for which we pay to the patrons direct. At no time do any of these trucks haul anything other than products belonging to the Powhatan Cheese Company, while operating under our contracts."

In this connection, I beg to say that, under the conditions stated, these trucks do not come, in my judgment, within the purview of chapter 222 of the Acts of 1924 (p. 330), commonly known as the motor vehicle carrier law. The fact that these trucks are operated by you and are engaged exclusively in the transportation of your products, shows that they are not in any sense common carriers, nor are they motor vehicle carriers within the definition of section 1, subsection (d), of chapter 161 of Acts of 1923 (p. 195).

It should be noted, however, that, while these trucks are being operated under your direction and pursuant to contracts for their sole employment in the transportation of your products, your company will occupy the relation of principal toward the drivers of these trucks, who will be your agents. Therefore, in case of accident, your company will be liable for negligence on the part of these drivers. I would suggest that, for your protection, the contracts with all of the said drivers should be in writing, and in each case should express the nature of the contract in unmistakable terms.

I feel sure that the legislature never intended to place upon such companies as yours, employing and controlling trucks in assembling the materials for your products, the burden of complying with statutes intended to regulate common carriers.

I am taking the liberty of filing a copy of your letter of the 19th, and of this reply, with the counsel of the State Corporation Commission for his information.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Motor vehicle carriers—Power of Corporation Commission to issue class C certificates to certain persons operating property carrying vehicles

RICHMOND, VA., December 6, 1924.

HON. JAMES M. HAYES, JR.,
Motor Vehicle Commissioner,
Richmond, Va.

MY DEAR MR. HAYES:

Following a conference which you and I had with the State Corporation

Commission, at which conference all members of the commission were present, and at which time the matter of issuing class C certificates under chapter 222 of the Acts of 1924 was fully discussed and considered, and likewise the opinion rendered by Hon. Oscar L. Shewmake, a member of the State Corporation Commission, on July 29, 1924, with reference to the power of the Corporation Commission to issue class C certificates to certain persons operating certain property-carrying vehicles.

Since that conference, I have given this matter, as well as Judge Shewmake's opinion, further consideration. In his opinion, Judge Shewmake says:

"Section 3 of chapter 222 of the Acts of Assembly for 1924, speaking with respect to the certificate C, provides as follows:

"The commission shall have power to grant a certificate C to any applicant who does not propose to in any way solicit the transportation of persons over such improved public highways, nor to operate upon a regular schedule, but who is privately employed for a specific trip and who will not solicit or receive patronage along the route."

"Subsection 2 of section 5 of this act makes provision for the granting of a certificate D for property-carrying vehicles.

"You will observe by referring to the subsection just referred to that the motor vehicle operating under a certificate D, operates over a definite route and on a definite schedule. The tax on its license is regulated at so much per ton mile, multiplied by the total number of miles that said application shall show will be traveled by such motor vehicles over the improved public highways of this State during the year for which its license is issued.

"The operation contemplated by Mr. Forbes is that of a motor vehicle operating for hire for the transportation of property, and no definite route or schedule is contemplated. Further, the operation contemplated by him is typical of many hundreds of like character, and brings him in that class which includes every motor vehicle operating for hire for the transportation of property, not on a schedule or a particular route.

"A certificate D was not granted to Mr. Forbes because his application was for an operation without route or schedule, and, therefore, it would be impossible to calculate the tax provided for by the act and to be imposed on a carrier operating under certificate D. He was, therefore, awarded a certificate C.

"You will observe that the provisions with relation to a certificate C do not specifically require a carrier operating under that certificate to transport passengers alone. In other words, those provisions, after authorizing the commission to grant a certificate C, relates rather to what the holder of that certificate may not do, than to what he may do.

"This commission believes that the primary object of this law is the promotion of the public convenience and necessity, and that laws should be construed wherever possible in the interests of the public service, rather than to the oppression and inconvenience of the public.

"If the certificate D is the only certificate this commission has power to grant for the transportation of property by motor vehicles, then for-hire carriers operating on no schedule will entirely escape the payment of any license tax because of the impossibility of calculating it, or will be unable to operate lawfully, just as for-hire passenger carriers were, following the passage of the motor vehicle act of 1923. If such carriers were compelled to pay the tax provided for with respect to a certificate D, many of them would find the amount beyond their means, even if it could be calculated.

"I have been unable to locate the provisions of the law in the face of which I am advised this commission has acted without warrant. It is probably true that the construction placed on this act by this commission with reference to this matter is somewhat strained; but, if so, the construction adopted is in the public interest and will operate both to increase traffic facilities for the public and bring additional revenue into the treasury

of the Commonwealth. And any other construction would militate against both of these highly desirable objects.

"In conclusion, I deem it proper to state this matter concisely in the following words:

"It is the practice of the State Corporation Commission, acting under authority of chapter 222 of the Acts of 1924, to grant a certificate C to a person, firm or corporation who desires to operate a motor vehicle for the transportation of property over the improved public highways of this State for hire and who do not expect to operate over a definite route nor upon a regular schedule, but who is privately employed for a specific trip and who will not solicit nor receive patronage along the route."

On August 12, 1924, I advised the State Corporation Commission and you that I had reached the conclusion "that the construction placed on this act, with reference to the issuance of class C certificates, by the State Corporation Commission is correct."

I am convinced that the position taken by the commission is correct, for the reasons stated in the opinion of Judge Shewmake, and that it is your duty to be governed accordingly.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Motor vehicle carriers—Prosecution for violation of law relating to

RICHMOND, VA., *October 4, 1923.*

COL. B. O. JAMES,

*Secretary of the Commonwealth,
Richmond, Va.*

DEAR SIR:

I beg leave to acknowledge receipt of your letter of October 2, which is as follows:

"One of my inspectors, in handling bus-line cases, has several in court, and desires an opinion as to whether or not they should be tried in the circuit court or magistrate court.

"While I am of the opinion that the circuit court is the only place we can try these cases, I will, nevertheless, appreciate your opinion, so I can pass it on to him and the Commonwealth's attorney."

In reply thereto, I would call your attention to section 8 of chapter 161 of the Acts of 1923, relating to motor vehicle carriers, which provides as follows:

"Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provisions of this act, or who fails to obey, observe or comply with any lawful order, decision, rule or regulation, direction, demand or requirement of the commission or any part or provision thereof, shall be guilty of a misdemeanor, and punishable by a fine of not exceeding five hundred dollars to be imposed by the circuit court of the county or the corporation court of the city where the offense is charged to have been committed."

You will observe, from reading this section, that all cases for violations of this law must be tried in the circuit court of the county or the corporation court of the city where the offense is charged to have been committed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Motor vehicle carriers—Violation of this law

RICHMOND, VA., January 2, 1924.

DONALD T. STANT, ESQ.,
Commonwealth's Attorney,
Bristol, Tenn.

MY DEAR MR. STANT:

Acknowledgment is made of your letter calling attention to section 8 of the 1923 motor vehicle carriers act, which provides that punishment thereunder shall be imposed by the circuit court of the county, or the corporation court of the city, where the offense under the act is charged to have been committed.

You ask my views as to whether this section prevents a police justice from issuing a warrant under the act and binding over the offender to the grand jury, a bond being given, or whether it means that where this law has been violated, no action can be taken until the grand jury meets, and the offender is proceeded against by indictment or information.

While the act restricts the imposition of fines for violation thereof to the circuit or corporation court, I am of the opinion that this does not prevent the arrest of the violator on a warrant issued by a police justice or magistrate and the binding of such offender over to the grand jury.

The punishment for the violation of many other crimes can be imposed only by a court of record, yet, upon the commission of such crimes, it is the invariable practice to arrest the perpetrator on a warrant and have him bound over to the grand jury by a police justice or magistrate, as the case may be, and I can see no reason why the same rule would not apply for a violation of the chapter in question.

Any other interpretation of the act would thwart its very purpose, because of an arrest for a violation of the provisions of the act could only be made after the grand jury met, the doors would be open for continual violation without any remedy therefor. I can not believe that the legislature ever intended that such a condition should exist, and I can see no reason why a misdemeanor committed under the provisions of this act should not be proceeded against in the same manner as any other misdemeanor, over the trial of which a court of record has exclusive jurisdiction.

If I can give you any further light on the matter, I hope you will call on me, because it is always a pleasure to serve you.

With the kindest personal regards and the season's greeting, I remain

Yours truly,

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

AUTOMOBILES—Operating cars for hire under dealer's licenseRICHMOND, VA., *April 30, 1924.*HON. HARRY P. DAVIS, *Mayor,*
Manassas, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of April 29, 1924, in which you request me to advise you whether a person having a dealer's license for the demonstration of automobiles can hire such cars out to be operated under authority of his dealer's license, or use the same for pleasure, etc., under authority of his dealer's license, without violating the law.

Section 2128 of the Code of 1919, as amended, which provides for the use of license plates on machines used principally for demonstrating purposes, expressly provides, in part:

"* * * It shall be unlawful for any such manufacturer, dealer, agent or any other person to use such number plates other than on a machine used principally for demonstrating purposes, and any violation of this section shall be punished by a fine of not less than ten dollars (\$10.00) and not more than fifty dollars (\$50.00)."

I cannot say that it would be a violation of this statute for a dealer, under authority of his dealer's license, to use his automobile, which is principally used for demonstrating purposes, now and then for his business or pleasure; but it is certainly a clear violation of the law for a dealer to hire automobiles out to be operated under authority of his dealer's license, and it is equally clear that it is a violation of the law for a dealer to operate an automobile under his dealer's license for some independent business venture, such as the demonstration of Delco light plants, delivery trucks, service trucks, etc.

I appreciate the spirit in which your request comes to me. It is always a pleasure to know that the municipal officers of this Commonwealth are interested in seeing that the laws of the Commonwealth, as well as the municipal ordinances of their town, are being observed.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Penalty for driving while intoxicatedRICHMOND, VA., *March 20, 1924.*HON. HERBERT I. LEWIS,
Commonwealth's Attorney,
West Point, Va.

MY DEAR MR. LEWIS:

Acknowledgment is made of your letter of March 18, 1924, in which you say:

"Section 4722 of the Code of Virginia, as amended, Acts 1923, page 108, provides for the punishment of any person who shall drive or run automobiles, etc., while under the influence of intoxicants and contains the

provision that the judgment of conviction shall of itself operate to deprive him of his right to drive any such vehicle or conveyance for a period of one year from the date of such judgment.

"The question has arisen that the party thus convicted for running an automobile while under the influence of intoxicants is also the owner of a truck used at his store for the delivery of goods, does the conviction prohibit his running said truck?

"In other words, does the section referred to in the case of a conviction for running an automobile while under the influence of intoxicants of itself operate to deprive him of his right to drive or run a truck?"

Section 4722 of the Code of 1919, as amended by chapter 87 of the Acts of 1923, page 108, so far as is applicable to the question here under consideration, reads as follows:

"It shall be unlawful for any person to drive or run any automobile, car, truck, engine, or train while under the influence of intoxicants. If any person violates the provisions of this section, he shall be guilty of a misdemeanor, and the judgment of conviction shall of itself operate to deprive him of his right to drive any such vehicle or conveyance for a period of one year from the date of such judgment. If any person so convicted shall, during such year, drive any such vehicle or conveyance, he shall be guilty of a misdemeanor; * * *"

In my opinion, this section prohibits one convicted of driving an automobile, while under the influence of intoxicating liquors, from driving a truck or any other motor vehicle, whether owned by him or not, for a period of one year from date of the judgment of conviction.

Yours sincerely,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Penalty for operating car without license

RICHMOND, VA., March 8, 1924.

W. M. MINTER, Esq.,

Attorney at Law,

Mathews, Va.

MY DEAR MARVIN:

Acknowledgment is made of your letter of March 5, 1924, in which you say, in part:

"Have you ever had occasion to construe that portion of section 2132 of the 1922 Code, which provides a fine of from \$10 to \$20 for any person operating an automobile without license, as to whether a person is liable to the fine under this section when he has made a bona fide effort to secure license and failed to do so because of circumstances for which he is not to blame, such as, for instance, failure of a previous owner to register and pay license on the machine?"

After examining section 2132 of the Code of 1919, and sections 2125 and 2126 of the Code, it is my opinion that one cannot lawfully operate an automobile in this State after the first day of February without first having procured a license

for his car. I do not think that failure to secure a license, due to the fact that one from whom he bought the car had failed to register the same, would be a valid excuse for the operation of the machine without having first previously obtained a license therefor.

If you will examine section 2154-2 of Morrissett's General Laws of Virginia, 1923, Acts of 1920, page 596, section 2, you will see that the law prohibits the purchase or sale of an automobile in this State until the title has been registered in accordance with the automobile title registry act. I do not see how, under any circumstances, one could justify a violation of sections 2132, 2125 and 2126 of the Code of 1919 by showing that he was prevented from obtaining a license to operate his car, due to the fact that he had violated another section of the Code, or statute of the State.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

**AUTOMOBILES—Railroad companies not required to secure State license
for operating motor trucks in certain cases**

RICHMOND, VA., *December 21, 1923.*

EDWARD R. WILLCOX, ESQ.,

1015 *National Bank of Commerce Bldg.,*

Norfolk, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of December 19, 1923, in which you say:

"Justice Joseph Duke, of Norfolk county, has requested me to secure from you an opinion as to whether or not railroad companies are required to secure a State license for operating motor trucks. In this connection, I refer you to section 177 of the Constitution of Virginia 1902, which, in my opinion, clearly shows that it is not necessary for railroad companies to pay a license tax on motor vehicles."

In view of the provisions of section 177 of the Constitution of Virginia 1902, I am inclined to the opinion that section 2125 of the Code of 1919, as amended, does not apply to motor vehicles owned and used by railroad companies in connection with the necessary operation of their railroads.

By this, do not understand me to mean that a railroad company could establish an additional freight or passenger line over the highways of this State by means of motor vehicles without obtaining the necessary license therefor.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Refusal of commissioner to issue license until fee for previous year is paidRICHMOND, VA., *March 11, 1924.*

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

MY DEAR SIR:

Acknowledgment is made of your letter of March 10, 1924, in which you say:

"At the request of Mr. T. E. Chambers, of Blackstone, Va., I desire to bring to your attention these facts:

"In handling the automobile license department, Mr. Hayes declined to issue license to Mr. Chambers until he had paid his 1923 license.

"It appears, as a matter of fact, that Mr. Chambers, early in 1923, purchased a Dodge car, and not only failed to register the title, but failed to obtain license on this machine. He operated this car with license issued to some other car, and in attempting to get his 1924 license he was required to pay the 1923 fee in order to get the 1924 license.

"This was done rather than take each of the owners into court and prosecute for failing to transfer license and register the title.

"Mr. Hayes tells me he had a similar case up with you, and I would appreciate your advice as to whether or not, in your opinion, the action of the office was entirely legal in this matter."

I have examined chapter 57 of the Acts of 1919, as amended, and chapter 90 of the Code of 1919, as amended, and am of the opinion that your department acted exactly right in declining to issue Mr. Chambers a 1924 license until he had paid for a 1923 license.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Registration of title to automobiles sold under executionRICHMOND, VA., *December 4, 1924.*

CHAS. H. REAVES, ESQ.,
*Attorney at Law, Harris Bldg.,
South Boston, Va.*

MY DEAR SIR:

Reply to yours of recent date has been delayed because of the fact that it arrived while I was in southwest Virginia attending to some important business, and in some way it became mislaid and has only just been brought to my attention. Please accept my apologies.

Replying to your question as to whether there is any other method of registering automobiles sold under executions of judgment than that prescribed by the Motor Vehicle Commissioner, viz: to furnish the same title certificate to automobiles sold by the sheriff as are necessary in cases of those sold through regular channels of exchange, I beg to say that I do not find any other method permitted by our present laws.

I can well understand the disadvantages under which you labor, but that appears to be a matter which the legislature did not take into consideration.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Running with mufflers open

RICHMOND, VA., March 9, 1925.

MR. W. R. HOLTON,
Suffolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 5, 1925, with reference to the rule or regulation promulgated by the State Highway Department prohibiting the operation of automobiles on roads in the State highway system with the muffler open.

The State Highway Department has taken the position that section 2143a of the Code applies only to roads which are not a part of the State highway system, and under authority of section 5 of chapter 448 of Acts of 1924, it has the right to make such a regulation. To say the least, as applied to country roads, it is certainly an unnecessary regulation, but I can not say that the commission is without authority to adopt even such a regulation if it so desires.

For your further information, I am forwarding your letter to Hon. J. F. Hall, counsel for the State Highway Department, with the request that he advise you further as to this matter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Speed limit of motor busses

RICHMOND, VA., July 7, 1924.

HON. W. STANLEY BURT,
Attorney at Law
Claremont, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 30, 1924, in which you state that Dominion Motor Transit Corporation, operating a bus line between Richmond, Petersburg and Smithfield, is operating their motor buses in excess of the speed limit allowed by section 2138 of the Code of 1919, as amended.

You call attention to the fact that these bus lines operate under authority from the State Corporation Commission, and then say:

"I will be obliged if you will advise me if it is within the power of the Corporation Commission to grant authority to a bus line to operate their carriers in excess of the speed provided by general law, which, in this instance, would limit the speed to twenty miles per hour, these buses having a capacity of over seven passengers?"

The speed limit for motor vehicles is fixed by section 2138 of the Code of 1919, as amended. It is my opinion that any machine operated in excess of the speed allowed by this section is being operated in violation of the law. Of course, the State Corporation Commission has no authority to license any person to violate the law, and, therefore, is without authority to license any motor transportation line to operate at a speed in excess of the speed allowed by law. I have discussed this matter with members of the State Corporation Commission, and they fully agree with this view.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

RICHMOND, VA., July 23, 1924.

HON. W. D. SAUNDERS,
Blacksburg, Virginia.

MY DEAR MR. SAUNDERS:

Acknowledgment is made of your request that I give you my views as to what is meant by the provision contained in section 2138 of the Code of 1919, which prohibits the operation of a machine "which has a seating capacity of more than seven passengers" on the public highways of this State at a rate of speed in excess of twenty miles per hour.

It is my opinion that this provision has reference to a machine which is built, or altered, for the purpose of furnishing seats for more than seven passengers. I do not think that it can be construed so as to apply to a Ford car, for example, which is crowded with more than seven passengers, nor do I think that it applies to a machine built for the purpose of carrying seven passengers in which more than seven passengers are crowded.

You will observe that the statute makes the proviso applicable to machines which have a seating capacity of more than seven passengers. The fact that a machine, which has seats only for seven passengers, is crowded, does not make the machine one which has a seating capacity of more than seven passengers.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

AUTOMOBILE LAW—The State is not subject to action for injuries inflicted through the negligence of its employees

RICHMOND, VA., October 13, 1924.

DR. ENNION G. WILLIAMS,
*State Board of Health,
Richmond, Virginia.*

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of October 10, 1924, in which you state it is your understanding that, while the driver of vehicles owned and operated by the State, or the State and a county jointly, or one of the departments of the

State, such as the sanatoria, may be subject to suit for damages, if it can be shown that he or she inflicted the injury through negligence, no action can be brought against the State or county for the operation of an automobile or other vehicle owned exclusively by the State, or one of its subdivisions, and operated for public purposes, even though the injury be inflicted through negligence.

The above statement is correct. Neither the State, its political subdivisions, nor any of the departments of the State government, are subject to action for injuries inflicted through the negligence of its or their employees or servants. The State can be sued only with its consent, and no consent has ever been given for the maintenance of tort actions against the State, or actions for negligence against counties. *Field v. Albemarle County*, 2 Va. Dec. 67 (1895); *Fry v. County of Albemarle*, 86 Va. 195 (1890).

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BAIL BONDS—Collection of

RICHMOND, VA., June 23, 1924.

HON. WILLIAM P. WOOLS,
Attorney for the Commonwealth,
109 N. Fairfax St., Alexandria, Va.

MY DEAR MR. WOOLS:

Your letter, addressed to the Auditor of Public Accounts of Virginia, has been referred to this office by that officer for a reply, which has been delayed by difficulty in securing the enclosed forms from local clerk's office.

In your letter you say:

"There are several real estate bonds here that should be forfeited and collected for the use of the Commonwealth, and under section 2510 of the Code it appears that suit to enforce collection should be instituted in your name. However, in reading this section and section 2517, etc., I am not certain of the exact procedure to be followed. The real estate stands in the names of the sureties, and upon failure of the principals to appear in accordance with the recognizance, the bonds have been forfeited. Will you please advise me the customary manner of collecting the penalties of the bonds?"

It appears from an examination of sections 2510 and 2517 of the Code that, upon a motion made by you as attorney for the Commonwealth in the name of the Auditor of Public Accounts, the court may direct the clerk to issue a writ of *feri facias* against all defendants and their sureties indebted or liable to the Commonwealth by reason of the forfeiture of bonds, and that the sergeant of your city may advertise and sell the goods, chattels and real estate of the persons so indebted or liable, and that upon the confirmation by the court of the sale of real estate, the Auditor of Public Accounts, by order of the court, may give to the purchasers deeds of special warranty of title. The court, in such cases, would exercise chancery jurisdiction by the appointment of a special commissioner, or otherwise to report taxes and other liens, as in other causes involving the sale of real estate to satisfy judgments, etc. Of course, the forfeiture of the bond must

first be ordered by the court, following the issuance of a writ of *scire facias*, commanding the parties to be summoned to show cause why the bond should not be forfeited. I enclose forms of the two writs mentioned.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BAIL BONDS—Cost of Enforcing

RICHMOND, VA., May 27, 1924.

HON. THOMAS H. WILCOX, JR.,
Commonwealth's Attorney,
Norfolk, Va.

MY DEAR SIR:

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

"I desire your opinion in connection with collection of forfeited bail bonds. If a person becomes surety on a bail bond for a person for \$500.00 and the bond is forfeited, a *scire facias* issued and served, and a judgment had, should the judgment be for the face of the bond or should it include:

"(a) Sergeant's fee and clerk's costs.

"(b) The \$10.00 fee plus 5 per cent commissions allowed the Commonwealth's attorney?"

After examining Code sections relating to recoveries on forfeited recognizances, it is my opinion that the judgment should carry with it the costs provided for such proceedings. You will observe that section 4979 of the Code of 1919 provides that the surety may be discharged after default by paying into court the amount for which he is bound "with such costs as the court may direct."

These items should be taxed, however, as costs and not as a part of the principal of the obligation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BAIL BONDS—Forfeiture of

RICHMOND, VA., May 11, 1925.

HON. FRANK P. BURTON, *Commonwealth's Attorney,*
MR. S. A. THOMPSON, *Attorney at Law,*
Stuart, Va.

GENTLEMEN:

I have your joint letter of recent date, in which you say, in part:

"There is an indictment for felonious assault pending in the circuit court of Patrick county, Va., against one Ed Lawson. It was a horrible crime, the victim having been shot from ambush as he was riding along the road near his home late one evening. We think we have ample evidence to convict the accused if we can bring the case to trial. He was under bond for his appearance at court at the December term, 1924. Judge R. S. Ker,

of Staunton, was sent here to open the court, which he did, and after entering a few orders, entered the following adjourning order: 'Ordered that court be adjourned until the day. Richard S. Ker.'

"After entering this order he left and did not return. For some reason, Judge Clement did not come to take up any further business at the December term at all, and nothing more whatever was done.

"The defendant, Ed. Lawson, was here on that first day of the term, but left after the above order was entered and has never returned. It was announced at the time that Judge Clement would be here in a few days, or the Governor would send some other judge here to complete the December term, and that all bonds would hold over until such judge should come, or words to the effect. No judge came, and the term expired by limitation.

"At the March term, 1925, the defendant, Ed. Lawson, failed to appear, and, it is reported, has skipped the country. His bond of \$3,000 was declared forfeited, and at the next term of the court the question will arise as to whether his securities are liable on that bond. As we take it, the matter will be controlled by the proper construction of sections 5971 and 5972 of the Code of 1919."

I have examined sections 5971 and 5972 of the Code of Virginia, 1919, referred to in your letter with care, and it is my opinion that these sections were enacted for the purpose of meeting just such a contingency as has arisen in the case mentioned in your letter, and are also applicable to this case. See *Nicholas v. Commonwealth*, 91 Va. 741, 743-4 (1895). Also see the annotations under section 5972 of the Code.

In addition to this, I call your attention to section 4973 of the Code of Virginia, 1919, which, it seems to me, has a material bearing on this case. This section provides in part that the condition of a recognizance shall be that the person "shall not depart thence without the leave of said court, judge, or justice." It would seem from this that the subsequent departure of the accused from the court, after his appearance, without leave of the court, was itself a breach or forfeiture of the recognizance, which would render the accused and his sureties liable therefor. See *Archer v. Commonwealth*, 10 Gratt. (51 Va.) 627.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BAIL BONDS—Forfeiture proceedings

RICHMOND, VA., December 4, 1924.

C. A. JOHNSON, ESQ.,
Deputy Clerk,
Wise, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 2nd, in which you say:

"Would you mind giving me your construction of section 4978 of the Code in regard to violation of forfeited recognizance or bonds?"

"Must, in your opinion, the forfeiture be noted of record at the term of court to which the accused is to answer, or can it be noted at a subsequent term in case of his default?"

In reply, I would say that the judgment of forfeiture should be entered at the same term at which the default of the party is taken and entered. However, in some States, the forfeiture of a recognizance may be recorded *nunc pro tunc* where through neglect record at the time of forfeiture was not made.

I see no reason why the same rule should not apply in Virginia, although, so far as I am aware, our Supreme Court of Appeals has not passed upon the question.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BAIL BONDS—Validity of

RICHMOND, VA., May 13, 1924.

E. PEYTON TURNER, ESQ.,
Attorney at Law,
Emporia, Va.

DEAR MR. TURNER:

Acknowledgment is made of yours of May 1st, in which you ask:

"Is a bail bond or recognizance taken for the appearance of accused to answer a criminal charge valid, if the same is executed on Sunday?"

In reply, I beg to say that I would answer this question in the affirmative.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BLOOD HOUNDS—Payment for use of

RICHMOND, VA., September 24, 1924.

CAPTAIN CHARLES C. BERKELEY,
Commonwealth's Attorney,
Newport News, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of the 20th, in which you ask whether a provision can be made for the payment of bill for dogs assisting in the capture of Samuel, alias Rex, Williams at Dendron, in Surry county.

In this connection, I beg leave to call your attention to section 4960 of the Code, which appears to me to be the proper provision under which this payment might be made. Should the court not see fit to order the payment of this bill under this section, recourse might be had to section 2176, as the last resort.

Officer Harris and his assistants are entitled to a great deal of credit for capturing this desperate man, and the bill for the dogs, if reasonable, should by all means be paid by the State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARDS OF SUPERVISORS—Allowances by to officers

RICHMOND, VA., March 3, 1924.

HON. CHAS. B. GODWIN, JR.,
Commonwealth's Attorney,
Suffolk, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of February 27, 1924, in which you say in part:

"I have a matter before me which I would like to have your opinion on, and that is whether or not the board of supervisors of a county has the right to pay for additional stenographic work or clerical work for the treasurer and clerk of a county. For instance, the treasurer might be behind in making up his reports and books which he is forced to do sometimes under the present law, under those circumstances, would the board be justified in paying for additional help to alleviate such delay? Also there are numbers of times in which the clerk is required to hire additional help for many purposes connected solely with his duties as clerk, under those circumstances, would the board be justified in paying for the additional help required in his office?"

In my opinion, the board of supervisors is not authorized to pay out of the public funds for anything which is not expressly authorized by law. Although I have examined the index to the Code with care, I cannot find where the board is authorized to employ assistants for either the treasurer or the clerk.

If you will examine section 2726 of the Code of 1919, as amended by the Acts of 1922, you will see that the board of supervisors of your county is authorized to make the clerk an allowance not in excess of \$1,200.00 per annum. In addition to this, under the provisions of section 2723 of the Code of 1919, as amended, the clerk may be allowed not in excess of \$150.00 per annum for his services as clerk to the board of supervisors. There are perhaps other small duties for which the clerk receives compensation, such as the preparation and certification of copies of the voting list, etc.

The treasurer is also entitled to certain allowances in addition to the commissions provided by law, but I know of no law which would authorize the board of supervisors to allow either the clerk, or the treasurer, any additional compensation for clerical help, as that, in effect, would be making these officers allowances in excess of the allowances provided by law, since the clerk and treasurer would be required to defray these expenses out of their income if no additional allowance was made by the board of supervisors.

For your information, I will say that I have discussed this matter with Honorable Andrew J. Ellis, Commonwealth's attorney for Hanover county, who has also given some consideration to this matter, and he arrived at the same conclusion which was reached by me.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARDS OF SUPERVISORS—Right to establish ferries

RICHMOND, VA., July 25, 1924.

HON. J. BOYD SEARS,
Commonwealth's Attorney,
Mathews, Virginia.

MY DEAR BOYD:

I beg leave to acknowledge receipt of your letter of recent date, in which you request an opinion as to whether the board of supervisors of Mathews county can establish and operate a free public ferry between the mainland and Gwynn's Island, in Mathews county, without being so authorized to do by special act of the General Assembly.

In my conversation with you over the telephone relative to this, you stated that the citizens of Mathews county would have free use of this ferry, but persons from elsewhere would have to pay a reasonable toll for use of the ferry. I can well understand why this is necessary in order to maintain and operate the ferry.

I am frank to say that I have been able to find practically no authority relative to your inquiry, but I am inclined to the opinion that if the board of supervisors of your county desire to establish the ferry in question, and wish to charge a reasonable toll for its use except to citizens of Mathews county, the board is not authorized to do this without a special act of the legislature.

With kindest regards, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARDS OF SUPERVISORS—Right to establish school zones

RICHMOND, VA., April 1, 1925.

MR. THOMAS E. HAMM,
Barboursville, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 31, 1925, in which you ask whether the board of supervisors has the right to establish a school zone and fix the speed of automobiles in that zone.

It would appear that the board has such power under chapter 426 of the Acts of 1924, provided the ordinance does not conflict with the general State law regulating speed of automobiles or motor vehicles over the roads of the Commonwealth. See also section 2743 of the Code of Virginia, 1910, as amended by the Acts of 1924, page 307.

In this connection, I call your attention to section 2138 of the Code of Virginia, 1919, as amended by the Acts of 1922, page 747, which provides, in part:

“* * that no machine shall be operated at a speed of more than fifteen miles per hour when a street or highway passes the built-up portions of unincorporated towns or villages; and provided, that no machine shall be operated at a speed of more than ten miles per hour at points

on any public highway outside of incorporated towns and cities where there is a gathering of horses or persons."

It would seem clear that a school, when in session, is a gathering of persons, and that automobiles cannot be lawfully operated by schools at a speed in excess of ten miles per hour.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARDS OF SUPERVISORS—Payment of claims by

RICHMOND, VA., April 7, 1924.

HON. JAMES S. EASLEY,
*Commonwealth's Attorney,
Halifax, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of April 4, 1924, in which you say:

"I write to inquire whether your office has ever had occasion to advise any of the boards of supervisors of the counties as to the meaning and effect of section 2724 of the Code.

"The specific point that I have in view is this: our board has, in past years, been in the habit of issuing warrants payable out of a future levy; for instance, when the current funds are insufficient to meet the expenses, they would issue a warrant and insert in the warrant payable on a certain date in the following year. I have never liked this practice and have advised the board against it, but holders of such warrants have asked me for an opinion as to their validity. If you have rendered such an opinion, I would be glad to be advised of it, and if not, I would appreciate your views on this question."

Section 2724 of the Code of 1919 reads as follows:

"The board shall have power to examine, settle and allow all accounts chargeable against such county, and, when so settled, issue warrants therefor, as provided by law. The board of supervisors of any county shall not issue in any one year a greater amount of warrants than the amount of county tax levied for such year; but if the county treasurer shall have in his hands at any time a surplus of county funds, the said board, in addition to the amount of county tax levied for such year may issue warrants to the amount of such surplus. No interest shall be paid by any county on any county warrants."

It is my opinion that this section prohibits the boards of supervisors from issuing in any one year warrants for amounts in excess of the county tax levied for such year. I do not think that the section is open to any other construction, and I fully agree with you in the view which you have expressed to your board.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

BOARDS OF SUPERVISORS—Shortening of hunting season by

RICHMOND, VA., July 14, 1924.

HON. M. D. HART, *Secretary,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of July 12th, in which you enclose copy of an order of the board of supervisors of Frederick county, Virginia, as to open season for hunting, and asking my opinion as to whether said section of the order is in due form in accordance with provisions of section 3356, as amended by the General Assembly of 1924. The said order is as follows:

"At a regular meeting of the board of supervisors held for Frederick county, Va., at the courthouse thereof, in Winchester, Va., Monday, July 7, 1924.

Present H. B. Kline, chairman, W. E. Smith, F. D. Good, Scott Grant and John Myers.

OPEN SEASON FOR HUNTING

On motion it is ordered that the open season for killing or capturing game, birds, and animals and fur-bearing animals shall be as follows:

For rabbits, quail, pheasants and wild turkeys, from November 15th to December 31st, except that rabbits may be killed by landowners or tenants, when doing actual damage to their property, at any time; for deer, from November 15th to December 31st, but it shall be unlawful to chase deer with dogs at any time; for squirrels, from September 1st to October 15th, and during the open season for game birds, from November 15th to December 31st, and for all fur-bearing animals, from December 1st to February 15th; providing, however, that this shall not prevent any landowner or tenant from killing any fur-bearing animal when actually doing damage to his property; nor shall this prevent the *bona fide* owner of fox hounds from chasing foxes at any time with such hounds."

After careful examination of section 3356, as amended by chapter 474, Acts of 1924, page 755, and comparing it with the above order, it appears that the order is regular, except that the open season allowed by the State law for shooting squirrels, which is from September 1st to January 31st, has been shortened by the board, which has provided two open seasons for squirrels, one from September 1st to October 15th, and the other from November 15th to December 31st.

The question at issue is whether this is in compliance with the seventh paragraph of section 3356, which says:

"The board of supervisors of any county (on written petition of one hundred licensed resident hunters or landowners thereof) shall have power to shorten the open season in their said county, etc."

In my judgment, this paragraph must be read in connection with the second paragraph, which provides:

"The current closed season fixed in section second (subsections "a" and "b") may be lengthened only by fixing a date for same to take effect as otherwise provided earlier than prescribed in this act."

In other words, the evident intention of the legislature was that the boards of supervisors should only shorten the open season by fixing a date earlier than that fixed in the law upon which the season should close. Therefore, the board of supervisors could only cut off the open season at the rear end and could not cut it off at the front end nor out of the middle.

If my construction of this section is correct, it follows that the provisions in the order of the board of supervisors of Frederick county, relating to squirrels, is inoperative so far as it closes the season from October 15th to November 15th.

It is my opinion also that the order should show upon its face that it has been passed pursuant to the written petition of one hundred licensed resident landowners of Frederick county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BURIAL PERMITS

RICHMOND, VA., July 8, 1924.

DR. W. A. PLECKER, *State Registrar,*
Bureau of Vital Statistics,
State Board of Health,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 7th, in which you inquired whether it is necessary for a person applying for a burial permit, or a permit to act as midwife, is required to present a certificate showing the payment of capitation tax, under chapter 276 of the Acts of Assembly 1924.

I beg to say that, in my judgment, no such certificate is necessary in either case. Burial permits are merely intended to show that there is no legal obstacle to the burial, and the permit of a midwife, as I understand it, is simply a certificate of qualification and not a license from which the State derives a revenue.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Certificate required before license can be issued

RICHMOND, VA., August 26, 1924.

GEORGE E. FISHER, ESQ., *Treasurer,*
New Kent County,
Quinton, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of the 22nd, in which you say:

"Please advise me if I should require a written certificate (stating that he has paid the capitation tax assessed against him for the year immediately preceding the last preceding tax year) from a person applying

to me for a dog license, when the person so applying has personally paid me this tax?"

In reply, I would say that it is necessary for a person applying for a dog license to submit a written statement saying that he has paid the capitation tax assessed or assessable against him for the year preceding the last preceding tax year, no matter to whom he has paid the tax.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—List of delinquent—How made

RICHMOND, VA., January 6, 1925.

CHAS. L. HUTCHINS, Esq., *Clerk,*
Circuit Court of the City of Suffolk,
Suffolk, Virginia.

MY DEAR MR. HUTCHINS:

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

"I have had two or three different interpretations of just what is required of the clerk under Code section 2423 relative to the list of capitation taxes, made up by the clerk for the capitation tax collector. I am writing you to kindly give me your opinion as to what list I give under this section. I claim, for instance, that if a person is delinquent for the years 1923, 1922, 1921, 1920 and 1919, being the five year limit, I can then give the collector these five years. Others claim that they must be in arrears three years, and I go back of the three years and give the list two years back of the first three years, making the five year limit. I shall be very glad to have you advise me as early as practicable, just what is required of me."

Section 2423 of the Code of 1919 provides that the list to be made by the clerk shall be "of all persons within his county or city who shall be as much as three and not exceeding five years delinquent in the payment of capitation taxes * * * ." Therefore, you cannot put any name on the list which is more than five years delinquent in the payment of capitation taxes, nor can you place any name on that list which is less than three years delinquent. The provision with reference to the three years is, of course, governed by section 22 of the Constitution of Virginia which provides: "The collection of the State poll tax assessed against any one shall not be enforced by legal process until the same has become three years past due."

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

Yours very truly,

JNO. R. SAUNDERS,
Attorney General

CAPITATION TAXES—Not required of nonresidents as prerequisite to being licensed

RICHMOND, VA., September 13, 1924.

MR. C. E. DANIELS,

*Pig Point Ordnance Reserve Depot,**Pig Point, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of September 12, 1924, in which you say:

"This is written for the purpose of obtaining information as to whether a person (not a resident of this State) who resides on a government reservation, comes under the recent act pertaining to the payment of poll taxes.

"The writer desires to know whether it is compulsory or mandatory for him to pay this tax in order to obtain an auto license for 1925."

In *Bank of Phœbus v. Byrum*, 110 Va. 708 (1910), the Court of Appeals held that land which had been ceded to the Federal government for a reservation is no longer a part of the Commonwealth of Virginia, and that persons residing on the same did not reside in Virginia within the meaning of our laws relating to residents.

If you are a resident of Reserve Depot at Pig Point and this depot has been ceded to the Federal government, you would, of course, be a nonresident of Virginia and, therefore, not subject to the payment of capitation tax. If not subject to the payment of capitation tax, of course, you would not have to pay the same in order to obtain a license.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***CAPITATION TAXES—Payment of as prerequisite to issuance of license**

RICHMOND, VA., September 9, 1924.

GEORGE K. TAYLOR, JR., ESQ.,

*Commonwealth's Attorney,**Amelia C. H., Va.*

DEAR SIR:

Acknowledgment is made of your letter of the 6th, in which you say:

"I beg to ask your idea about the propriety of the clerk of the circuit court in issuing a license, required to be issued by him under the law, to act upon the list of the treasurer of the county, certified and on record in his office, showing the names of persons who have paid the capitation tax required under the provisions of Acts 1924, p. 407, without writing out a separate certificate and having it signed by the applicant."

In reply I will say that, in my judgment, it is necessary under the Acts of 1924, p. 407 (chapter 276), for an applicant to submit a certificate in writing that

he has paid the capitation tax for the year immediately preceding the last preceding tax year before the license can be issued.

No doubt some inconvenience will arise because of this requirement and, unquestionably, the clerk might find it more convenient to act upon his own examination of the treasurer's list, but I do not think an administrative officer would be justified in substituting some other method for that provided by the statute. I assume that, if it causes too much inconvenience, it will be amended at the next session of the General Assembly.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Payment of as prerequisite to issuance of license

RICHMOND, VA., July 23, 1924.

DR. F. D. JACKSON, *Secty.-Treasurer,*
State Board of Examiners in Optometry,
212-213 *Tazewell Building,*
Norfolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 22, 1924, in which you refer to chapter 276 of the Acts of 1924, and then ask if it applies to the following cases:

"a. Certificates to practice optometry to persons who pass the required examination in optometry (section 1629, Code 1919).

"b. Certificates of payment of annual renewal fee on certificates to practice optometry (section 1631, Code 1919).

It is my opinion that chapter 276 of the Acts of 1924 does apply to the certificate issued under authority of section 1629 of the Code of 1919, and, therefore, your first question should be answered in the affirmative.

Section 1631 of the Code provides that every registered optometrist shall pay to the secretary of the board each year \$3.00 as a yearly fee for renewal of certificate. While this section requires an affirmative act on the part of all registered optometrists, it does not require the issuance of any certificate by your board. It would appear that upon the payment of the fee prescribed, the certificate is automatically renewed. Therefore, I do not think that chapter 276 of the Acts of 1924 applies to the receipt issued by your board for the fee paid pursuant to the provisions of section 1631 of the Code of 1919. The receipt issued for the payment of this fee is not, in my opinion, a license, permit or authorization required by the laws of this State.

In response to your last question, I am sending you herewith a copy of a circular issued by the Auditor of Public Accounts with reference to chapter 276 of the Acts of 1924, in which he suggests a form of certificate, which, in my opinion, complies with the requirements of the law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Payment of as prerequisite to issuance of license

RICHMOND, VA., June 20, 1924.

HON. HENRY S. ELEY,
*Treasurer of City of Suffolk,
Suffolk, Virginia.*

DEAR SIR:

Acknowledgment is made of your letter of June 18, in which you say:

"Please refer to the Acts of General Assembly, 1924, page 407, chapter 276, and give me your opinion on the following questions:

"Does this act apply to the issuance of dog licenses, city building permits, sewer permits, electric permits, city licenses?

"Does the law apply to firms not incorporated; that is, if two or more persons are doing business under their respective names as a company, would each one have to produce a capitation tax receipt, also if a person doing business under the name of The Suffolk Grocery Company, T. J. Smith, proprietor, would the capitation tax receipt be required?

"Does the law refer to capitation taxes paid for the year immediately preceding the last preceding tax year? This part of the law particularly is not at all clear, as in the beginning the law is headed—'Showing that the State capitation taxes assessed or assessable against such person for the last preceding tax year have been paid.' I would take this to mean the tax for the year 1923. Further on in the body of the law it reads: 'Such person shall file with such officer his certificate in writing, setting forth that the capitation tax assessed or assessable against such person for the tax year immediately preceding the last preceding tax year.' I would infer from this that it means 1922. Does the law require the taxes be paid for the year 1922 or 1923? Our city licenses are issued beginning July 1, 1924."

In reply, I would say that the law applies to every applicant for any license, permit or authorization required by the laws of this State, or by any political subdivision thereof and, therefore, clearly includes building permits, sewer permits, electric permits and city licenses.

Also I hold that the law applies to all persons seeking to operate under any license, permit or authorization, whether such persons be acting singly or in groups (except that corporations, not being assessable with capitation tax, are exempt), *i. e.*, members of firms and partnerships must each present a certificate (the law does not require the exhibition of a capitation tax receipt) in order to secure the license. The law specifically requires the certificate to show the payment of the tax for "the tax year immediately preceding the last preceding tax year." The capitation tax year runs from the first of February. Therefore, persons applying for city licenses in Suffolk on July 1 should present certificates showing payment of capitation taxes for the tax year ending February 1, 1923.

The reason for section 2, which states the act "shall not be applicable to any person who, under the laws of this State, was not legally assessable with State capitation tax for the preceding tax year" evidently is the assumption that a person not assessable with the tax for the preceding year was not assessable for the year before the preceding tax year. If you bear in mind that the tax year runs

from the first of each February to the first of February of the succeeding year, you will escape any confusion upon this point.

Hoping that I have replied to all of your questions satisfactorily, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CAPITATION TAXES—Payment of as prerequisite to issuance of license

RICHMOND, VA., June 19, 1924.

O. B. WATSON, ESQ.,

*Treasurer of Orange County,
Orange, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of the 9th, answer to which was delayed by unavoidable absence from the office, in which you ask the following questions in relation to chapter 276 of the Acts of 1924:

"Does this include dog license, teachers' certificates, auto license and every kind of license or permit, certificates, etc., except marriage license?"

"Also please advise me just what year I should now collect and just how long I should continue to collect the said year you may designate?"

"About what form of certificate should the taxpayer file with officer to whom said taxpayer may be applying for license or permit, and should this certificate be sworn to before an officer who is qualified to administer oaths?"

In reply I beg to say the law includes every kind of license, permit or authorization required by the laws of this State or by any political subdivision thereof, except the marriage license.

On and after July 1st of the present year applicants must show certificate showing that the capitation tax assessed or assessable for the tax year ending February 1, 1923, has been paid. Those applying after the first day of February, 1925, must present certificates showing capitation tax has been paid for the tax year ending the first of February, 1924, and so on. The law does not require the payment of the capitation tax except for the one year, viz: "For the tax year immediately preceding the last preceding tax year." The officer issuing the license, therefore, is not concerned as to whether the capitation taxes for any other years have or have not been paid.

No particular form of certificate is prescribed by the statute, but any writing, in which the applicant certifies that the necessary tax has been paid, will be sufficient.

The statute does not require that the certificate should be sworn to and does not contemplate that it should be verified under oath. Section 4 makes a false certificate a misdemeanor. Doubtless, the legislature considered that it would frequently be inconvenient and expensive for applicants to acknowledge the certificates before officers qualified to administer oaths.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CAPITATION TAXES—Payment of as prerequisite to issuance of license

RICHMOND, VA., July 2, 1924.

CRAIG C. HATCHETT, ESQ., *Treasurer,*
Victoria, Virginia.

DEAR MR. HATCHETT:

Acknowledgment is made of your letter of June 24th, in which you say:

"I am writing requesting that you construe or set me right on a section of law on page 407 of the Acts of 1924 in regard to payment of capitation taxes before license is issued.

"First: I do not exactly understand this language 'that the capitation tax assessed or assessable against such person for the tax year immediately preceding the last preceding tax year has been paid.' For instance, if a person on July 1, 1924, applies for merchant's license, does this language mean to cover the years 1922 and 1923?

"Second: Does this clause apply to the issuing of a dog tag; I suppose a dog tag is considered a license?

"Third: A number of the teachers are under the impression that they will have to pay all unpaid back taxes in order to teach. Please set me right on this point; just how many years they will have to pay.

"Fourth: As I understand the law, whenever any person wants a license of any kind, including dog tags, he will have to furnish me with a certificate in writing, stating that he has paid his capitation tax. Is he required to do this when applying to the treasurer and is the treasurer required to keep these certificates on file? In other words, the burden is on the applicant and not on the treasurer to look up the records in each case and see whether the party has paid or not.

"I can foresee that I am going to be flooded with applications for certificates showing that these parties have paid their capitation taxes for certain years, and from the reading of the law, it does not seem to be my duty to look this up.

"Again, if the commissioner should issue a license to a party through error or otherwise who has not paid his capitation tax as required, should I accept the money and keep a record of the fact that the capitations were not paid?

"I am sorry to trouble you with so many questions, but without your setting me straight, I fear I may get balled up on this section of the law."

In reply, I would say:

First: If a person applies this month for a merchant's license, he should submit a certificate in writing that he has paid his capitation tax for the tax year ending February 1, 1923, which we should call the 1922 tax.

Second: I have held that a dog license, of which the tag is the evidence, comes within the terms of the law.

Third: It seems clear to me that teachers' certificates are not licenses, but only evidences of qualification and, therefore, do not come within the law.

Fourth: A person applying for a license should at the time of application present a certificate in writing that he has paid his capitation tax for the proper year. There is no requirement in the law that the treasurer should keep these certificates on file, but it would probably be a wise precaution for him to do so. The law does not place upon the treasurer the burden of looking up the records to see whether an applicant has paid his proper tax or not. It is the duty of the

applicant to make a correct certificate, and the law provides a penalty for making an incorrect one.

Fifth: Section 3 of the act provides that an officer issuing a license to a party who does not present the proper certificate is guilty of a misdemeanor and shall be fined not exceeding \$500.00. The officer is not responsible for the correctness of the certificate, but he should not accept a license fee from any applicant who does not present a certificate.

I am enclosing a printed copy of instructions issued by the Auditor of Public Accounts to officials authorized to issue licenses, which may give you further information.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Payment without assessment

RICHMOND, VA., *February 7, 1924.*

EIVENS TILLER, ESQ.,
Treasurer,
Clintwood, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of January 31, 1924, in which you ask my opinion on the following statement of facts:

"I wish to call your attention to page 253, section 116 of the tax laws of Virginia. Omitted capitation taxes and capitation taxes of persons becoming of age after February first.

"My predecessor in office has received the taxes above referred to without any assessment by the commissioner of the revenue and as our county is a mountainous county and many of the roads are rough, the people seem to like this method as it relieves them of hunting the commissioner and they (the people) are asking that I follow the example of the outgoing treasurer and receive their capitation taxes without an assessment from the commissioner, this seems contrary to my duties as defined by our Supreme Court in the case of *I. M. Warren v. Commonwealth*, 29 Virginia Appeals, page 369."

If you will examine the case of *Smith v. Bell*, 113 Va. 667, 668, *et seq.* (1912), you will see that the Court of Appeals there held that a person could not be disfranchised if he paid the capitation taxes with which he was assessable to the treasurer, and the fact that he had not been assessed with such taxes at the time of payment was immaterial.

In the course of this opinion, the court said (p. 669):

"It is plain that section 21 contemplates the payment of poll taxes not only by persons who have been assessed with such taxes, but also by persons who are *assessable* therewith. Nevertheless, the decision of the circuit court denies such right to the lower class, and to that extent nullifies the provision and disfranchises citizens who have fully complied with its terms * * *."

This was one of the reasons for which the judgment of the lower court in that case was reversed. Section 21, mentioned in the above quotation from the opinion of the court, refers to section 21 of the Virginia Constitution. I, therefore, take it that the decision in the Court of Appeals in this case means that one cannot be disfranchised simply because the commissioner of the revenue has failed or neglected to perform the duty imposed on him by law, and that the treasurer is required by the provisions of the Constitution, relating to this subject, to accept the capitation tax of a person who is assessable therewith, even though such person has not in fact been assessed with such tax by the commissioner of the revenue.

Of course, this does not mean that the commissioner of the revenue is to be relieved from his duty with reference to the assessment of capitation taxes. The law expressly requires the commissioner of the revenue to assess all persons above the age of twenty-one, inhabitants of this State, except those pensioned by this State for military service, with the capitation tax. If the commissioner of the revenue neglects his duty in this respect so as to leave unassessed any considerable number of persons, whom the law requires him to assess, I think that such acts on his part might well fall within the meaning of section 2705 of the Code of 1919, which was invoked in *Warren v. Commonwealth*, 29 Va. Appeals, 369 (1923).

I do not think, however, that the last cited case applies to the receiving of capitation taxes by you which have not been assessed. In that case, the commissioner of the revenue collected license taxes which he was prohibited from collecting. In the instant case, however, the Court of Appeals has decided that the Constitution itself imposes the duty on the treasurer to receive the capitation tax of a party assessable therewith, even though the tax itself has not been assessed, and, therefore, I do not think that the acceptance of such tax by you as treasurer would render you subject to the provisions of section 2705 of the Code of 1919, although, as I have said, the neglect of a commissioner of the revenue to make the proper assessment, if carried to such an extent as to indicate malfeasance on his part, might well bring him within the meaning of such statute.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Town capitation tax

RICHMOND, VA., February 2, 1925.

MR. W. E. MAYTON, *Treasurer,*
Town of Ivor, Virginia.

MY DEAR MR. MAYTON:

Acknowledgment is made of your letter of January 29, 1925, in which you say:

"Under a recent amendment to our charter granted by the circuit court of Southampton county, Virginia, we were granted the power to levy a specific head tax upon each male citizen over the age of twenty-one years residing in the town of Ivor, Virginia, this tax being in addition to the State head or poll tax. Will you kindly give us your opinion as to whether we can collect this tax by a levy on property in the same manner that the payment of other taxes are enforced."

I have been unable to find the amendment of your town charter referred to in your letter, but in the absence of any restriction in your charter I know of nothing which will prevent your collecting town capitation taxes the same as other town taxes are collected. The only prohibition against the collection of capitation taxes by means of levy, etc., relates to State capitation tax until it is three years past due.

This provision of the Constitution, however, has no reference whatever to town capitation taxes (see sections 22 and 173 of the Constitution). It is only the State capitation tax which cannot be enforced by legal process until three years past due.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Who exempt

RICHMOND, VA., *April 24, 1924.*

MR. R. M. WALLER,
Woodford, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of yours of April 21st, in which you desire to be advised whether the widows, daughters and sons of Confederate veterans are exempt from payment of capitation taxes.

In reply, I will state that they are not.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Who exempt from payment of

RICHMOND, VA., *February 9, 1925.*

HONORABLE ROBERT O. CRADDOCK,
Treasurer of Halifax County,
Halifax, Va.

MY DEAR MR. CRADDOCK:

Acknowledgment is made of your letter of February 5, 1925, in which you request me to advise you whether a World War veteran is exempt from the payment of the State capitation tax, and, therefore, relieved from complying with the provisions of chapter 276 of the Acts of 1924. He is not.

If you will examine schedule A, of the Virginia tax bill, sections 4 and 5 thereof, you will see that all male inhabitants of this State who have attained the age of twenty-one years, except those pensioned by the State for military services, are subject to the payment of the State capitation tax, and, therefore, must comply with the provisions of chapter 276 of the Acts of 1924 relating to the filing of the certificate for the payment of such tax as a prerequisite to obtaining a license in this State.

The State of Virginia has not pensioned any World War veterans, and,

therefore, World War veterans are not exempt from the payment of such tax or from the filing of such a certificate.

Trusting that this gives you the desired information, and with my best wishes, I am,

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Who liable for

RICHMOND, VA., *April 3, 1924.*

MRS. E. A. COOPER,
Unionville,
Orange County, Va.

MY DEAR MADAM:

Acknowledgment is made of your letter of April 2, 1924, in which you ask the following question:

"Is it compulsory for a lady to pay capitation tax in this State, who has never registered?"

The State capitation tax cannot be enforced against either a man or woman until it is three years past due. After that, if either the man or woman assessed with the capitation tax declines to pay it, the collection of it can be enforced whether the party in question has registered and voted or not.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Who liable for

RICHMOND, VA., *September 6, 1924.*

HON. L. B. MASON, *Clerk,*
King George, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of September 2, 1924, in which you say:

"I wrote you some days ago in reference to people residing on the Naval Proving Ground at Dahlgren, Virginia, which was formerly a part of King George county, whether they should pay their capitation taxes before they can obtain a license.

"Will you kindly give me your opinion in this matter at an early date?

"People residing on the Government property are not assessed with a capitation tax by the authorities of this county."

The Court of Appeals of Virginia held, in *Bank of Phoebus v. Byrum*, 110 Va. 708 (1910), that territory which has been ceded to the United States is no

longer a part of the State, and that persons residing thereon are not citizens of the State of Virginia.

It would, therefore, appear that, if the Naval Proving Ground, at Dahlgren, Virginia, has been ceded to the United States Government, persons residing thereon are not residents of Virginia and, therefore, not assessable with capitation taxes.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CAPITATION TAXES—Who liable for

RICHMOND, VA., *November 20, 1924.*

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

DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, which is as follows:

"A teacher in the public schools in the city of Richmond, who claims residence in the State of North Carolina, living in Richmond only during the scholastic year, has been assessed with State capitation tax, also city capitation tax. Please advise me if in your opinion such taxation is erroneous in view of the provisions of chapter 144, page 228, Acts of 1922, which defines a resident of Virginia for the purpose of taxation.

"This teacher reports for taxation by the State of North Carolina as income the salary received as teacher in the public schools in the city of Richmond."

I am of the opinion that the lady in question is not assessable with either State or city capitation taxes in Virginia, as unquestionably she is a resident of North Carolina. The fact that she teaches in the public schools in Virginia during the school session does not, in my judgment, make her a resident of the State. Moreover, if she reports for taxation in the State of North Carolina, it shows very clearly her intention of continuing her residence in that State. As you know, the Court of Appeals has decided that the question of residence is largely one of intention, *Williams v. Commonwealth*, 116 Va., 272.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CHILD LABOR LAW—To whom applicable

RICHMOND, VA., *July 18, 1924.*

JUDGE F. J. HARRIS,
Juvenile and Domestic Relations Court,
East Radford, Va.

DEAR JUDGE:

Acknowledgment is made of yours of the 14th inst., in which you ask whether

boys under the prescribed age may be allowed to work with and for their fathers in stores, barber shops, bottling plants, etc., where there is no hazard.

In reply, I would say that the only exceptions relate to work upon farms, orchards and gardens. The law, as you know, relates to all children gainfully employed. No doubt there are some cases in which it would be better for the children to be at work, but there is no way for them to go to work under the law except by obtaining employment certificates in accordance with sections 1816-4 of the Code.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CHILDREN—Apprentice of

RICHMOND, VA., *February 13, 1924.*

MISS LILLIE PENCE,
Lowmoor, Va.

MY DEAR MISS:

The Commissioner of Labor has referred to me your letter in which you ask whether it is lawful in the State of Virginia for a father to bind out his children to a master.

Section 5298 of the Code of Virginia provides that any minor may be bound as an apprentice by his guardian, or if none, by his father, or if neither father nor guardian, by his mother, with the consent entered of record of the circuit or corporation court of the county or city in which the minor resides; or without such consent if the minor, being fourteen years of age, agrees in writing to be so bound.

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

Very truly yours,

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

CHILDREN—Change of names of

RICHMOND, VA., *February 25, 1924.*

DR. W. A. PLECKER,
*Registrar of Vital Statistics,
State Board of Health,
Richmond, Virginia.*

MY DEAR SIR:

I am in receipt of yours of the 23rd in which you ask whether the name of a child can be changed without an order of court.

In reply, will state that the only way in which the name of a child can be changed is by compliance with the provisions of section 5983 of the Code of Virginia 1919, which provides that this must be done by an order of court.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CHILDREN—Residence ofRICHMOND, VA., *November 3, 1924.*

MR. ARTHUR W. JAMES, *Special Agent,*
State Board of Public Welfare,
Richmond, Virginia.

MY DEAR MR. JAMES:

I beg leave to acknowledge receipt of your letter of October 28th.

In this you state that Richard Walthall and wife, who were natives and residents of Nottoway county, died in said county about five years ago. They left four children. One of the four was taken to Washington, D. C., by an aunt, Pinkney Jenkins, about five years ago when the child was about eleven years of age.

You further state that the child, Alberta Walthall, has become a dependent, crippled and delinquent case on the hands of the Washington authorities, and that the aunt is unwilling to care for her; that the board of childrens' guardians has written to the board of public welfare that the child is a charge upon the State of Virginia, and requests that arrangements be made to have her returned to Virginia.

I concur with you in the view that the child unquestionably is a resident of Washington city inasmuch as the aunt resides there, and, having taken this child with her to Washington some years ago, she stands *in loco parentis*, and, therefore, the child is not a charge upon the State of Virginia.

With regards, I am,

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

CHILDREN—Legitimation ofRICHMOND, VA., *February 14, 1925.*

HON. E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

DEAR GOVERNOR:

Acknowledgment is made of your letter of the 7th, in which you enclosed communication of Honorable Charles E. Hughes, Secretary of State, and certain correspondence in regard to Momo E. (Myrtle E.) Moore, and requested me to let you know the law governing the case stated by Secretary Hughes.

The letter of Secretary Hughes is as follows:

"I have the honor to enclose copies of despatches No. 156 of September 10, 1924, and No. 14 of April 11, 1924, from the American Consul General at Tientsin, China, also the enclosures received with the latter despatch concerning the legitimation of Momo E. (Myrtle E.) Moore, the illegitimate daughter of Aker H. Moore and a Japanese woman, to whom he was never married and who is now deceased, and request to be informed whether, under the laws of your State, upon the facts and circumstances shown in the documents above mentioned, the daughter in question can be held to be the legitimate daughter of Aker H. Moore."

In reply, I beg to say that the law in regard to the legitimation of illegitimate children in Virginia is to be found in section 5269 of the Code of Virginia, which is as follows:

"If a man, having a child or children by a woman, shall afterwards intermarry with her, such child or children, or their descendants, if recognized by him, before or after marriage, shall be deemed legitimate."

It will be seen that, in order for a child born out of wedlock to become legitimate, his parents must intermarry, and the woman in this case having died before there was a marriage, there is no means under our law by which the child can be made legitimate. See the following cases:

Eldred v. Eldred, 97 Va. 606, 630, 34 S. E. 477;
Cumming v. Cumming, 127 Va. 16, 102 S. E. 577;
Hoover v. Hoover, 131 Va. 522, 105 S. E. 91, 109 S. E. 424;
Bennett v. Toler, 15 Gratt. (56 Va.) 588, 623.

In view of these authorities, it is impossible for the illegitimate girl, Momo E. (Myrtle E.) Moore, to be held legitimate in Virginia.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

CHIROPRACTORS—Treatment of contagious diseases

RICHMOND, VA., October 8, 1923.

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

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of October 5, in which you enclose a letter from the American Medical Association, accompanied by a clipping in regard to a chiropractor treating contagious diseases. You ask my opinion as to whether chiropractors can be prevented by law from attempting to treat contagious diseases, and if they can be prosecuted for so doing. You then refer to the seriousness of the situation if a man without training in regard to diagnosing contagious diseases should attempt to look after cases of smallpox, diphtheria, etc.

I have carefully read the article from the Fredericksburg Free Lance. I observe that the chiropractor inserting the advertisement resides in Washington. In this advertisement, he states that it is in "the acute conditions, fevers, spasms, strokes, fits and other suddenly arising abnormalities, that the chiropractor gets his best results and quickest responses." In the fourth paragraph, he states that "contagious diseases yield readily to adjustment, and, furthermore, do not run their medical course, nor leave the after effects which were suffered by so many victims of influenza. Where it is impossible for the patient to be taken from the bed, you will find that the chiropractor will conveniently arrange to adjust the patient right on the bed."

Under chapter 68 of the Code of 1919, which relates to the practice of

medicine, the latter part of section 1618, which section seems to deal particularly with the practice of medicine, I find this provision:

"It is further provided that graduates of any sectarian school of medicine who profess to practice medicine according to the tenets of said schools shall fulfill all the conditions of the board and of the State Board of Education, save that they may be exempted from taking the examination of the regulars on practice of medicine, materia medica and therapeutics. A license to practice such sectarian school of medicine shall not permit the holder thereof to administer drugs or practice surgery unless he has qualified himself so to do by examination before the board, nor shall it permit members of such sectarian schools now practicing in this State to perform surgery with the use of instruments unless they satisfy the board that they have had adequate clinical facilities at their respective colleges of graduation, or by hospital work, to enable them to perform such operations."

The portion of the section just quoted embraces the law applicable to chiropractors. You will see from this that chiropractors would have no right to administer drugs or practice surgery unless they are qualified to do so by an examination before the board, nor permitted to perform surgery with the use of instruments unless they satisfy the board that they have had adequate clinical facilities at their respective colleges, etc.

To be frank with you, the law is not entirely clear as to whether or not a chiropractor could, without administering drugs, undertake to cure contagious diseases by what is termed "adjustment."

Of course, if you know of any specific case where a chiropractor is doing the things mentioned in your letter, the only way to test the matter would be to have him prosecuted.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CITIES AND TOWNS—Definition of word town

RICHMOND, VA., January 23, 1925.

MR. ARTHUR W. JAMES, *Special Agent,*
State Board of Public Welfare,
Richmond, Virginia.

MY DEAR MR. JAMES:

Acknowledgment is made of your letter of January 22, 1925, in which you ask the following question:

"Will you kindly give us your opinion as to these two views? Do you think that section 2802 of the Code was drawn to omit such an arrangement in the cities, by the use of the words, 'counties' and 'towns,' or do you think that the word 'town' was used to include both town and city?"

Section 2802 of the Code of 1919 reads as follows:

"On the complaint of the overseer of any district, or of the sergeant of other officer of any town, to a justice of his county or town, or any officer in such town having the authority and powers of a justice, that any person

has come into such county or town who is likely to be chargeable thereto, such justice or other officer may, by warrant, cause such person to be removed to the county or town wherein he was last legally settled, unless he be so sick or disabled that he cannot be removed without danger to life; in which case he shall be provided for at the charge, in the first instance, of the county or town wherein he is, and after his recovery, shall be removed."

It is my opinion that this section has no application to cities, as the word "town" is not embraced within the meaning of the word "city," nor is the word "city" embraced within the meaning of the word "town." *Jordan v. South Boston*, 138 Va. 838 (1924).

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CITIES AND TOWNS—Jurisdiction of

RICHMOND, VA., September 16, 1924.

JACK RIPPEL, ESQ., *Manager,*
Rippel's Comedians,
Esmont, Va.

DEAR SIR:

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

"The State of Virginia has a law stating that an incorporated town or city has the right to license and control exhibitions, shows, athletic contests, etc., within a mile and a half from the corporate limits of town or city. Now, does this apply over the county line? For instance, Buckingham county is one side of the James river across from Nelson county. Would a town have the jurisdiction over an exhibition just across the river and county line from the town, which would be not more than one-fourth of a mile from the corporate limits."

In reply, I would say that, in my judgment, the provision in question does apply over the county line.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CITIZENSHIP—Effect of marriage on

RICHMOND, VA., September 17, 1924.

MR. EDWARD MCSWEENEY,
Fine Creek Mills, Va.

DEAR SIR:

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

"My wife was born in Germany and came to this country as an immigrant in 1913. I married her in 1915 and we have lived continuously on this farm since that time as residents of Powhatan county, Va.

"I, myself, am a native citizen, born in Pittsburgh, Penna., and have lived continuously here since 1908. I own this farm and have paid taxes thereon since 1908 and have paid poll tax for myself and Mrs. McSweeney during several years past.

"Mrs. McSweeney wishes to vote at the coming election as a citizen of the United States. Is she entitled to do so? She is of lawful age, intelligent, able to read English, as well as German, and has acquired considerable knowledge of the Constitution and of our institutions.

"I am advised that, since she arrived in this country before the passage of the recent restrictive laws, she became a citizen of the United States by reason of her marriage with me, a citizen."

It is my opinion that when your wife, who was an alien, married you, an American citizen, she became a citizen of the United States. *Kelly v. Owen*, 7 Wall. 496, 19 L. Ed. 283; *Dorsey v. Brigham*, 177 Ill. 250, 42 L. R. A. 809, 810.

Your wife, therefore, so far as citizenship is concerned, is entitled to vote in this State, if otherwise qualified.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Clerks of more than one court holds separate offices

RICHMOND, VA., *March 16, 1925.*

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

MY DEAR MR. MOORE:

Acknowledgment is made of your letter of March 10, 1925, with reference to the report to be filed by Mr. R. J. Watson, clerk of the corporation court, clerk of the law and chancery court, and clerk of the circuit court of the city of Roanoke, together with certain enclosures.

I have examined this file and the statutes with care, and I am of the opinion that Mr. Watson's case is similar to that of Mr. James V. Trehy, late clerk of the Norfolk courts, opinion about which was given you on September 25, 1924, to the effect that although Mr. Trehy was clerk of three courts, in fact, he was as much a separate officer with respect to each of those courts as if other persons had been the officers of those courts.

It being a fact that the law and chancery court and the circuit court of the city of Roanoke were in existence prior to the year 1917, and according to the statement of Mr. Watson, clerk of those courts, that all the fees, allowances, commissions, salaries, etc., in each of those courts did not amount to as much as \$2,500.00 in either court for the year ending December 31, 1917, I am of the opinion that, in view of the amendment to the West fee bill, he is not required to make a report of the fees, allowances, commissions, salaries, etc., with respect to each of those courts.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Compensation ofRICHMOND, VA., *January 15, 1925.*HONORABLE B. I. BICKERS,
Stanardsville, Va.

MY DEAR MR. BICKERS:

I am just in receipt of your letter of January 13th, in which you call my attention to chapter 303, Acts of 1922, page 512, which authorizes the filing of notices of Federal tax liens with clerks of State courts, and to provide for the recordation and indexing thereof.

My attention had not been called to this statute until your letter. However, it seems to be very plain when it provides "that no fees shall be collected by the clerks of the courts for filing and recording such notices." With this provision in the statute, I do not think that the clerks of courts are permitted to charge any fees for doing this work.

I agree with you that there should be some compensation for this work, but the intention of the legislature is clearly expressed in the law that there should be no fee. I wish I could help you in the matter.

With kindest personal regards and best wishes, I am,

Very sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Compensation of West fee billRICHMOND, VA., *January 22, 1925.*HONORABLE C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Va.

MY DEAR MR. AUDITOR:

Acknowledgment is made of your letter of January 22, 1925, in which you say:

"Hon. G. Taylor Gwathmey, clerk of Norfolk county, has forwarded to me his report of fees, allowances, commissions, salaries and other compensation, etc., for the year ending December 31, 1924. He has not included in his report five per cent commission on delinquent county taxes collected by him for which he is to account to the board of supervisors and pay over to the treasurer of the county, being of the opinion that the law does not require him to include those commissions in his report, the reasons for doing this he sets out clearly in his letter to me, dated January 21, 1925, which I enclose herein.

I do not concur in the construction placed on the law by Mr. Gwathmey. On the contrary, I think by the provisions of the law which he quotes in his letter he is expressly required to include those commissions in his report, because they are allowed him specifically by State law, namely sections 2491 and 2502 of the Code of Virginia."

Mr. Gwathmey's position is based on that part of chapter 493 of the Acts of 1920 amending section 1 of the West fee bill, which reads as follows:

"Provided 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; * * *." (Italics supplied.)

The only law to which you have referred me and the only statute which I have been able to find which provides any compensation to the clerk for collecting delinquent taxes is section 2491 of the Code of 1919. This section provides that the owner of the real estate returned delinquent may redeem the same by paying to the clerk the amount "for which the sale was made, together with such additional sums as would have accrued from taxes and levies if the same had not been purchased by the Commonwealth," with interest, etc. This section then allows the clerk a fee of fifty cents for making statement, calculating interest, etc., which must be paid by the person redeeming the land.

The statute then provides:

"The clerk shall annually, at the time he makes report to the Auditor of Public Accounts of taxes collected by him, report upon blanks to be furnished by the Auditor the amounts received by him for redemption of delinquent lands, and shall *pay the same into the public treasury* at the time fixed by law for paying in other public money received by him. *For his services in receiving this money and paying it into the treasury he shall be entitled to a commission of five per centum.*" (Italics supplied.)

If standing alone, this section might possibly be ambiguous. Its meaning is perfectly clear when section 2502 of the Code of 1919 found in the same chapter (section 2491 of the Code of 1919) is read in connection with this section.

Code section 2502 reads as follows:

"The clerk shall pay over to the county or city treasurer, or in case of a town, to the person authorized by the council of such town to receive the same, all levies received by him under this chapter, within ten days after collecting the same, and take and file receipts therefor in his office."

It, therefore, clearly appears that the only tax which the clerk is to pay into the public treasury is the State tax and not the county levies. Therefore, "this money" as used in the last sentence of section 2491 of Code of 1919 has reference only to the money which is paid into the public (State) treasury, and not the levies which are paid by the clerk to the local treasurer, because of the provisions of section 2502 of the Code of 1919.

Although I have examined the index to the Code with care, I have been unable to find any statute which allows the clerk any compensation for collecting delinquent local levies. It, therefore, follows that if the clerk receives compensation for collecting such levies, he does not receive it as a commission allowed by State law for collecting and disbursing and otherwise handling taxes or levies, and for

this reason is not required to make report thereof in the report required by the West fee bill as amended.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Fees of

RICHMOND, VA., *April 22, 1925.*

MESSRS. WILLIAMS & COMBS,
Attorneys at Law,
Grundy, Virginia.

GENTLEMEN:

Acknowledgment is made of your letter of April 13, 1925, in which you state that a client of yours bought a number of tracts of land from different parties and that to each deed a plat had been attached. You further state that a blue print of each plat has been made and furnished the clerk, which he records in the plat book provided for by section 3393a of the Code of Virginia, 1924. You ask to be advised whether the clerk is entitled to compensataion under clauses 2 and 3 of section 3484 of the Code of Virginia, 1919, as amended.

So far as is applicable to the question here under consideration, section 3393a of the Code of Virginia, 1924, provides in part:

"All plats and maps may in the discretion of the clerks of the several circuit, corporation or hustings courts be recorded in a book to be known as the plat book. * * *"

So far as is applicable to the question here under consideration, it is provided by section 3484 of the Code of Virginia, 1919, as amended, clauses 2 and 3 thereof, that the clerk's compensation shall be as follows:

"(2) For recording a plat of not more than six courses or lines, or for a copy thereof, fifty cents.

"(3) For each other distinct line or course above six, five cents."

In my opinion, the act of the clerk in pasting the blue prints of the plats referred to in the plat book and the making of the necessary references and certificate operates as a recording of the plat, for which the clerk is to be compensation in accordance with the provisions of subsections 2 and 3 of section 3484 of the Code of Virginia 1919, as amended. Of course, if the plat has not been recorded, the clerk would not be entitled to compensation, but if the act referred to amounts to the recording of the plat in the contemplation of law, no matter how it is recorded, if in fact it has been recorded, the clerk is entitled to the compensation provided by section 3484 of the Code of Virginia 1919, as amended.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Fees of

RICHMOND, VA., April 28, 1924.

HON. CHARLES B. GODWIN, JR.,
Commonwealth's Attorney,
Suffolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 21, 1924, in which you request my opinion on the following statement of facts:

"Section 2002 of the Code as amended provides that the clerk of the board of supervisors of Nansemond county may receive as compensation for his duties, under chapter 84, the sum of \$250.00 each year, section 2773 provides that the clerk of the board of supervisors shall receive a reasonable compensation for his services as clerk of the board, not exceeding in any one year the sum of \$150.00.

"I take it for granted that under the provisions of those two sections our clerk would be entitled to \$150.00 as clerk of the board of supervisors and \$250.00 for his duties performed under chapter 84, making a total of \$400.00 a year."

Section 2002 of the Code of 1919, as amended by the Acts of 1922, is found in chapter 84 of the Code of 1919, relating to county roads and bridges, and in part provides:

"The clerk of each board of supervisors *shall receive for the duties to be performed by him under the provisions of this chapter* compensation to be fixed and allowed to him by the said board, not to exceed fifty dollars per annum, provided, that the clerk of the board of supervisors of * * * Nansemond, * * * may receive a salary not exceeding two hundred and fifty dollars, * * * the same to be paid out of the tax levied under section nineteen hundred and eighty-six, * * *." (Italics supplied.)

Section 2773 of the Code of 1919, as amended by the Acts of 1920, provides as follows:

"Such clerk shall receive a reasonable compensation for his services as clerk of the board, not to exceed in any one year the sum of one hundred and fifty dollars, and the clerk of the board of supervisors of the counties of Augusta and Wise may, in the discretion of the said boards, receive a salary not exceeding seven hundred and twenty dollars per annum."

This last section is found in chapter 109 of the Code of 1919, relating to the general powers and duties of the boards of supervisors.

Both of these acts, in substantially their present form, are found in the Code of 1919, what is now section 2002 having been added to the statute law of the State in 1904, while what is now section 2773 was found in the Code of 1887 as section 852.

Of course, you are familiar with the rule in construing statutes, that two statutes apparently dealing with the same subject are to be reconciled, if possible, as repeals by implication are never favored. If possible, both acts are to be given effect.

Construed by this well established rule, it is my opinion that these acts are not in conflict, and both should be given effect.

It will be observed that section 2773 of the Code of 1919, as amended, provides for the compensation to be paid to the clerk for his general services as clerk of the board of supervisors, while section 2002 of the Code of 1919 provides for the compensation to be paid to the clerk for the special duties imposed upon him by chapter 84 of the Code of 1919, with reference to the county roads, bridges, etc.

I, therefore, fully agree with you in your opinion, as expressed in the above quoted portion of your letter.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Fees of

RICHMOND, VA., November 14, 1924.

L. W. TYUS, ESQ., *Assistant Secretary,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of November 13th, in which you say:

“Section 3333 of the Code of Virginia provides as follows:

“‘Clerks shall retain ten cents for a county license and twenty cents for a State license, from the money received for each license issued by them, and shall pay the balance to the State Treasurer on the first day of each month, which amount shall be covered into the game protection fund, and said clerks shall report to the commissioner on the first day of each month the number of licenses issued and the licenses and the amount of money remitted to the State Treasurer.’”

There is no provision in the game laws for the exchange of a county license after it is issued for a State license, or for issuing a duplicate when one is lost. Strict adherence to this would work an inconvenience and hardship in many cases, and the department, therefore, has instructed issuing clerks as follows:

“‘No provision is made in the game law for the exchange of licenses after they have been issued, but clerks may, if they so desire, redeem a county license for residents and issue in lieu thereof a State license; provided the exchange is made in the same calendar month that the original county license was issued. In no case should licenses be exchanged after reported as sold and remittance made to the Auditor of Public Accounts. An applicant for duplicate license must furnish affidavit explaining cause for application and disposition of original license, the affidavit received in exchange for duplicate license must be attached to and accompany monthly report for the month in which duplicate licenses are issued, and sent to the department of Game and Inland Fisheries.’

“Inasmuch as the exchange is not provided for, and, if made, is a matter of courtesy on the part of the clerk, whereby he forfeits his original fee, this department would like to be advised if it would not be permissible for clerks, if they so desire, to redeem county licenses in such cases, less the

original fee for issuing same—the exchange being for the accommodation of the purchaser; also, if it would not be permissible to charge purchasers the usual clerk's fee allowed on the original by law for issuing duplicates.”

In reply, I beg to say that, after a careful examination of this question, I can see no objection to the clerks of courts redeeming county licenses in such cases and charging the purchasers an additional fee for issuing the licenses.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Fees of in condemnation proceedings

RICHMOND, VA., February 4, 1924.

MR. W. E. RASNICK, *Clerk,*
Clintwood, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of yours of the 29th, to which I will reply at once.

In this you state that a condemnation proceeding has been brought in your county by the State Highway Commissioner, and that the owner of the land has been awarded damages amounting to \$2,500.00, which amount has been turned over to you as a clerk, subject to the future order of the court. You then desire to be advised whether or not you are entitled to a percentage of this fund, and, if so, how much.

In reply, I wish to state that I know of no provision in the law which allows the clerk to receive any part of a fund of this nature. Of course, you are entitled to your fees as clerk, which are taxable as a part of the cost in a suit of this nature, but they, I imagine, will be paid by the Highway Commission, and not charged against the defendant whose land was condemned.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Fees of—Writ tax

RICHMOND, VA., March 20, 1925.

ROBERT CRACK, ESQ.,
Justice of the Peace,
Ballston, Va.

DEAR MR. CRACK:

Acknowledgment is made of your letter of the 14th, in which you say:

“I am writing to request that you please give me your interpretation and opinion of section 6017 of the Code of Virginia 1919. There have been several removal cases brought to my attention during the past year and there is a difference of opinion among the attorneys and clerk as to what party must pay the costs before the case may be filed in the clerk's office for a hearing in the circuit court. The clerk of our circuit court contends

that after the defendant has paid the accrued costs of \$1.50 and the writ tax of \$1.00 it is then the duty of the plaintiff to pay \$4.00 additional before the case be set on the docket for trial. Is the position of the clerk well taken?

"I was of the opinion that the cost of the writ tax is \$1.00, while the clerk here contends that \$5.00 must be collected as a writ tax. Please give me your ruling on this point."

In reply, I beg to say that, in my judgment, section 2401 of the Code and section 14 of the tax bill provide for a writ tax of \$1.00 in the case of "an appeal of a cause from a justice court," except in case of unlawful detainer proceedings.

As to the right of the clerk to require the payment of fees in advance, this matter has been determined by an opinion of Hon. Leslie C. Garnett, Assistant Attorney General, on May 15, 1917, copy of which is enclosed.

It seems to me that the reasoning of this opinion also applies to cases removed or appealed from justices of the peace. I am informed that it is the practice of clerks of courts in Richmond and adjoining counties to collect these fees in advance.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

Clerks—Miscellaneous lien books—Papers to be recorded in

RICHMOND, VA., May 16, 1925.

HON. H. C. SOUTHWORTH,

*Clerk of the Circuit Court of Essex County,
Tappahannock, Va.*

MY DEAR MR. SOUTHWORTH:

Acknowledgment is made of your letter of May 14, 1925, in which you say in part:

"I wish you would refer to section 3393 of the Code and advise me whether any paper except a lien on personal property should be recorded in the book referred to in this section and known as miscellaneous lien book.

"At first I was under the impression that no paper should be recorded in this book except a paper giving a lien on personal property. I expect I got this impression from the name of the book. In the last few days I have received three papers for record, two of them conveying telephone property and one conveying stock of merchandise. One of these papers reserved a vendor's lien and the other two reserved no lien but conveyed absolute title to the property. No real estate was conveyed by any of these papers. What I would like for you to advise me is what book should these papers be recorded in, whether the deed book or the miscellaneous lien book and if in your opinion these papers should be recorded in the deed book, then is it not necessary to also record the one reserving the vendor's lien in the miscellaneous lien book."

The second paragraph of section 3393 of the Code of Virginia 1919, as amended by the Acts of 1920, reads as follows:

"All mortgages of personal property, bills of sale, and all other contracts, or liens as to personal property not mentioned in sections fifty-one

hundred and eighty-nine and sixty-four hundred and fifty-two of this Code, as amended, which are by law required or permitted to be recorded; all mechanics' liens, and all other liens not especially directed to be recorded elsewhere, shall be recorded in a book to be known as 'miscellaneous liens.' If a deed conveys both real and personal property, it shall be recorded in the deed book only, but shall be indexed in the general index of both deed book and the book of miscellaneous liens."

In view of this provision of section 3393, it is my opinion that all the papers referred to in your letter should be recorded in the miscellaneous lien book.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Residence of deputy

RICHMOND, VA., *April 11, 1925.*

MR. F. I. JOINVILLE,
Corporation Court,
Newport News, Va.

MY DEAR SIR:

I am just in receipt of your letter of April 10th. In this you state that a question has been raised as to whether or not you can serve as deputy clerk of the corporation court of Newport News, due to the fact that you maintain your residence in Elizabeth City county. You further state that Judge Barham is doubtful as to whether he could sanction your appointment as such deputy.

Inasmuch as a deputy clerk discharges practically all the duties which devolve upon the clerk, I am of the opinion that the law contemplates that he should be a resident of the county or city in which he is appointed.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Term of office of clerk of Hopewell

RICHMOND, VA., *March 26, 1924.*

MR. G. C. ALDERSON,
Clerk, Corporation Court,
Hopewell, Va.

MY DEAR MR. ALDERSON:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention. In it, you state that, in November, 1917, the clerk of the corporation court of your city was elected, and qualified for the term beginning February 1, 1918, and ending January 31, 1926, in accordance with the charter of the city of Hopewell.

You call attention to section 129 of the Code of 1919, amended by the act of the General Assembly of 1924 (advance sheets, page 48), which provides that the clerk of the corporation or hustings court shall be elected on the first Monday in November, 1921, and every eight years thereafter. You then ask the effect that

this section has upon the term of office of the clerk of the corporation court of the city of Hopewell, no person offering for clerk of that court at the November election 1921.

It is proper to note that the amendment by the General Assembly of 1924 in no way affects the question, because this section, as adopted in the Code of 1919, is re-enacted, save that special provision is made with reference to Roanoke and Lynchburg by the Assembly of 1924.

It is further worthy of note that the section in question, as contained in the Code of 1919, is practically the same as that contained in the Code of 1887, section 98. Section 98 provides that the clerk of the corporation court shall be elected in November, 1905, and every eight years thereafter, the second election of which would be 1921, and section 129 of the Code of 1919, which became effective January 13, 1920 (Code of 1919, section 6567), changed, of course, the year 1905 to the year 1921.

The charter of the city of Hopewell, cited to me by you and contained in the Acts of Assembly 1916, page 89, does provide (page 95) for the election of a clerk of the corporation court on the Tuesday after the first Monday in November, 1917, but, from a cursory reading of the charter, I do not find that it designates the length of term of a clerk so elected. This being true and taken in conjunction with section 98 of the Code of 1887, which was in force at the time that the charter was granted by the legislature, it would seem that the charter only provided for the election of the clerk to hold office until the regular election of clerks to be held in November, 1921, in accordance with the general law.

Be that as it may, however, the adoption in the Code of 1919 of section 129, providing that the corporation court clerks—with certain exceptions which are not material to the question here—should be elected in November, 1921, fixed the time for the election of the clerk of the corporation court of the city of Hopewell as November, 1921, regardless of its charter.

If, therefore, the legislature intended by the charter that the clerk elected in November, 1917, should hold office for eight years and be again elected in November, 1925, by the adoption of section 129 of the Code of 1919, it changed the date of the election and readjusted the commencement of the official term. *Wayt v. Glasgow*, 106 Va. 110.

Section 129 further provides that the next election for clerks of corporation courts shall be held in November, 1929. In the interim, I find no provision for the election of a clerk.

Section 33 of the Constitution provides that all officers elected or appointed shall continue to discharge the duties of their office after their terms of office have expired and until their successors have qualified. The failure to elect a clerk in November, 1921, did not cause a vacancy in the office, which can be filled by section 136 of the Code, because the vacancy referred to therein is a vacancy occurring during the term of office by death, resignation, removal and the like, and not the failure to elect a successor to the incumbent who is to hold until his successor has qualified. In the latter case, there could be no vacancy. *Craddock v. Burke*, 103 Va. 694.

It is true that the act in question continues the office of the incumbent for a longer period than he would otherwise hold it, at the same time, this does not

affect the situation. *Wayt v. Glasgow*, 106 Va. 110. In that case, it was held that, where the charter of the city of Staunton provided that the police justice should be elected by the council of the city for one year on the first of July of each year, and the legislature subsequently passed an act, becoming effective on June 12, that the police justice should be elected by the qualified voters of the city at a designated regular election, the council had no power to elect a police justice after the act went into effect, even though the time designated for the election of a police justice by the people would not occur for three years after the time for which the police justice had been elected by the council had expired.

The court said the act of the Assembly providing that the police justice should be elected by the qualified voters was by implication a repeal of the city charter, so far as it provided for his election by the council, and that, in the interim between the termination of the term for which the council had elected him and the time when the qualified voters could elect his successor, the incumbent had a right to hold the office.

I am of the opinion, therefore, that the present clerk of the corporation court of the city of Hopewell has a right to continue in office until his successor is elected in November, 1929, to take office the first of February of the second year after such election, and has duly qualified.

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

With kindest personal regards, I remain,

Yours truly,

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

COMMISSION OF FISHERIES—Payment of counsel fees from funds of

RICHMOND, VA., July 11, 1924.

HON. C. LEE MOORE,

*Auditor of Public Accounts,
Richmond, Virginia.*

MY DEAR MR. MOORE:

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

"The Commission of Fisheries, by an order entered June 25, 1924, has drawn an order, No. 3540, bearing that date, directing me to pay E. P. Buford \$1,100.00 for '*salary and expenses in investigation.*'"

"Evidently this is an attorney's fee, and I doubt the authority of the Commission of Fisheries to direct its payment out of the appropriation made to the Commission of Fisheries by the General Assembly of Virginia, and I request your opinion if I am authorized to issue a warrant for this money and charge same against the appropriation for the appropriation year commencing March 1, 1924, to the Commission of Fisheries. If I am authorized to do this kindly advise against which item of the appropriation, as set out on page 187, Acts 1924, the payment should be charged."

The law is well settled that "no money shall be paid out of the State treasury except in pursuance of appropriations made by law." Virginia Constitution, section 186.

A careful examination of the general appropriation bill, and the statutes

relating to the Commission of Fisheries, fails to disclose any appropriation or authority for the payment of counsel fees incurred in a proceeding of the character of the legislative investigation recently held with reference to this department. In the absence of express authority from the General Assembly to the Commission of Fisheries, or to the Commissioner, to employ counsel to represent either the Commissioner, or the department, in a legislative investigation, no authority exists for the employment of counsel by the Commissioner, or the Commission, at the public expense.

I am aware of the fact that the Commission of Fisheries entered an order directing the employment of counsel and the payment of this fee; but no action of the Commission could justify the payment of money out of the funds of the department which was not authorized by law.

While it is true that the budget does contain a recommendation for the appropriation to the Department of Fisheries of an allowance of \$2,500.00 for counsel fees, such an appropriation, however, was for counsel fees in connection with the enforcement of the laws pertaining to the Commission of Fisheries, and, in my opinion, should not be employed for the purpose of aiding that department in a legislative investigation.

It is, therefore, my conclusion that no authority in law exists for the payment of this counsel fee for services rendered in connection with this investigation from the public treasury.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

COMMISSIONERS OF THE REVENUE—Compensation of

RICHMOND, VA., *November 1, 1924.*

HON. F. COKER BAUGH,
*Commonwealth's Attorney,
Disputanta, Va.*

MY DEAR SIR:

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

"I am writing to ask you what limitation is put upon the power of the board of supervisors of the county to pay compensation to the commissioner of the revenue for extending the levies in his land books and personal property books. I refer particularly to section 2337 of the Code as amended by the 1924 legislature, found in the Acts of Assembly for 1924, page 284.

"I particularly want to know whether the board of supervisors is limited in the amount it may pay the commissioner of revenue on the first ten thousand dollars in taxes assessed. Some seem to think that the board of supervisors cannot pay more than five per cent on the first ten thousand dollars, and others say that the board may pay whatever amount it may deem reasonable."

Of course, you realize that this is an inquiry which does not fall under my jurisdiction, and what is said here is written merely as a matter of courtesy to you, to give you such assistance as I can.

I have examined section 2337 of the Code of 1919, as amended by chapter 171 of the Acts of 1924, with care, and it is my conclusion that the board of supervisors may allow the commissioner of the revenue any compensation which is deemed reasonable by the board, provided the sum is not less than five per cent on the first ten thousand dollars. The act, you will see from an examination of the same, fixes no maximum limit. As to amounts in cases of more than ten thousand dollars, it is my opinion that the board is governed by the scale fixed by section 2337 of the Code of 1919, as amended, and that the compensation can neither be less nor in excess of the scale fixed by the act.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH—Conveyance of real estate belonging to

RICHMOND, VA., *October 31, 1924.*

MR. JAMES CASKIE, *Chairman of the Board,*
Virginia Industrial School for Boys,
Richmond, Virginia.

DEAR MR. CASKIE:

Acknowledgment is made of your letter of October 15, 1924, in which you say:

"By an act of the legislature of 1920, found in the Acts of 1920, page 64,* and in General Laws of Virginia, 1923, section 1968, page 561, the Prison Association of Virginia, was authorized to convey to the Commonwealth of Virginia its property and the Commonwealth of Virginia after said conveyance was to take possession and carry on the work of the Prison Association of Virginia under the name of the Virginia Industrial School for Boys.

"The conveyance was made to the Commonwealth of Virginia, and since that time it has carried on the work of the Prison Association of Virginia under the name of the Virginia Industrial School for Boys. Section 5 of the act provided that the Governor of Virginia and the board of directors of said institution were authorized to make sale of its property, or any part thereof. A sale of a part of the property being 175 acres of land, more or less, situated at Laurel, Henrico county, Virginia, has been made to Mr. A. A. Harvey with the approval of the Governor. The question is, whether the deed to Mr. Harvey should be made by the Commonwealth of Virginia and the Virginia Industrial School for Boys, or whether it is sufficient that the deed be made by the Virginia Industrial School for Boys, the Governor having already placed his approval to the resolution of the sale by signing his name thereto.

"The act does not in terms state by whom the conveyance should be made. Under section 4, it provides that the proceeds of the sale of said property shall be reinvested in the reformatory institution, set forth in the charter of the Prison Association of Virginia. I now desire to ask, whether under that provision of section 4, the Virginia Industrial School for Boys can receive the cash payment and notes to be given by the purchaser and use them for the improvements at Beaumont, Powhatan county, Virginia, where the Virginia Industrial School for Boys is now operated, or whether the cash and notes have to be delivered to the Second Auditor to be kept by him in a separate account. If this be the proper disposition, how can the Virginia Industrial School for Boys get posses-

sion of the cash and notes for its building purposes? It was understood at the time that the act was passed, that the sale of all or any part of the property conveyed was to be used for the improvement purposes of the Virginia Industrial School for Boys. That institution, which is now located at Beaumont, Virginia, is greatly in need of new buildings."

The property referred to is the property of the Commonwealth of Virginia, and not of the prison board; therefore, the Commonwealth is a necessary party to this deed, although, in view of the provisions of chapter 76 of the Acts of 1920, I am of the opinion that the Governor and the Virginia Industrial School for Boys should also be made parties to this deed. See sections 4 and 5 of chapter 76 of the Acts of 1920.

It is further my opinion that the property being the property of the Commonwealth, the sale price thereof must be paid to the Commonwealth and into its treasury in the manner prescribed by law. In view of the provisions of section 4 of chapter 76 of the Acts of 1920, I am further of the opinion that your board, with the approval of the Governor, would have the right to reinvest this money as authorized by that section, and to that end the authority would exist to check the same out of the treasury.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH—Real estate of to be held in name of

RICHMOND, VA., August 29, 1924.

DR. J. S. DEJARNETTE, *Supt.,*
Western State Hospital,
Staunton, Va.

DEAR DR. DEJARNETTE:

Acknowledgment is made of your letter of August 22nd, in which you say:

"The trustees of the Western State Hospital recently purchased a piece of property on which there was a deed of trust. Our board decided if the deed was made out to me that it could be sold without any long process of law. They thought by making this deed to me that I could make an entry in the minutes of the board that this property was deeded to me for the purpose and use of the Western State Hospital as a trust fund for the amount of the debt and it would make the hospital safe.

"Being some doubt about this proposition, I am writing to ask you if this is a safe method. If not, will you please write me the proper procedure and to whom the deed to the property should be made. A quicker sale could be made when a purchaser is found."

In reply, I have come to the conclusion, after considering this matter carefully, that it would not be proper for you to take the title to this property in the manner indicated; that entry in the minutes of the board would not divest you of the title; and that several contingencies might arise in which a chancery suit would be necessary to clear up the title.

Therefore, I hold that all property purchased by the Western State Hospital should be conveyed to the board to hold for the benefit of the State. I

am aware that a quicker sale might be made if you held the title to the property than if an act of the legislature were necessary to sell it, but I am constrained to believe that the only safe method is to have the property conveyed to the board.

I return herewith deed from Joseph Whitehead, trustee, to you and Frank Marshall.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEY—Duties and fees of

RICHMOND, VA., *December 31, 1924.*

HON. CHARLES B. GODWIN, JR.,
Commonwealth's Attorney,
Suffolk, Virginia.

MY DEAR SIR:

Some time ago, you wrote me with reference to the duties imposed on you by section 4864 of the Code of 1919. In your letter, you said, in part:

"It has been a custom in the county for the justices to ask my services in the prosecution of misdemeanor cases, and I would like very much to have your opinion as to whether or not I am entitled to fees for my services in prosecuting same. I refer you to section 4864 of the Code, which provides that it is my duty to institute proceedings and prosecute all matters of a penal nature brought to my attention, also the Acts of 1924, page 687, which provides that I am entitled to fees for services in all misdemeanor cases which I am required by law to prosecute.

"I have assumed it to be my duty under section 4864 to prosecute all cases that I was asked to prosecute by officers, and that I was entitled to be paid by the defendants in misdemeanor cases."

Due to the great number of Commonwealth cases in the Court of Appeals, since the receipt of your letter, we have been unable to give the same the consideration to which it was entitled until the last few days, which occasioned my delay in reply thereto.

Section 3505 of the Code of 1919, as amended by chapter 458 of the Acts of 1924, provides, so far as is applicable to the question here under consideration, 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."

It is your contention that section 4864 of the Code of 1919 requires you to prosecute all misdemeanor cases before justices of the peace, which you are

asked to prosecute. This section, so far as is applicable to the question here under consideration, provides as follows:

"Every commissioner of the revenue, sheriff, constable, or other officer shall give information of the violation of any penal law to the attorney for the Commonwealth, who shall forthwith institute and prosecute all necessary and proper proceedings in such case, whether in the name of the Commonwealth or of a county or corporation, and may in such case issue or cause to be issued a summons for any witness he may deem material to give evidence before the court or grand jury * * *."

I have given the matter careful consideration and, in my opinion, section 4864, especially when read in connection with section 5890 of the Code of 1919, does not require you, as Commonwealth's attorney, to prosecute misdemeanor cases before justices of the peace.

The provision of section 3505 of the Code of 1919, as amended, has reference, in my opinion, to those statutes which expressly require the Commonwealth's attorney to appear in misdemeanor cases before justices of the peace, such as for offenses against the forestry laws, the juvenile laws, and some others that could be mentioned. This, it seems to me, is the proper construction to be given section 3505 of the Code of 1919, as amended, in view of the language "court or grand jury" used in section 4864, especially when it is considered that the circuit court has original jurisdiction in misdemeanor cases. Section 5890 of the Code of Virginia, 1919.

You will readily see that the words, "a misdemeanor, which he is required by law to prosecute," used in section 3505 of the Code of 1919, as amended, would be meaningless if any other construction were placed on the law. The General Assembly certainly had some definite object in view when this plain term was used in section 3505 of the Code of 1919, as amended, and it was meant, in my opinion, to apply only to those misdemeanor cases in which some statute requires you to appear in the interest of the Commonwealth before a justice of the peace.

Section 4864 of the Code of Virginia, 1919, for the reasons above given, does not require you to appear in such cases before a justice of the peace.

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

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

COMMONWEALTH'S ATTORNEY—Duty to prosecute ouster proceedings

RICHMOND, VA., January 22, 1925.

HONORABLE POSIE J. HUNDLEY,
Chatham, Virginia.

MY DEAR MR. HUNDLEY:

I am just in receipt of yours of the 25th in which you enclose copy of complaint filed in the circuit court of Pittsylvania county by a citizen of said county asking for the removal of a member of the board of supervisors of said county. You further state in your letter that you had not been requested to institute any

prosecution or ouster proceedings. You then desire to be advised whether it is your duty in the premises to appear at the trial and take part in the proceedings.

Section 2705 of the Code, with which of course you are familiar, provides how proceedings of this nature should be instituted. Section 2706 provides that in any trial under section 2705 the attorney of the Commonwealth shall represent the Commonwealth.

I am of the opinion that you have correctly stated your duty in your letter, namely—that you should appear at the trial and take part therein, especially since the law makes you the legal adviser for the board of supervisors. You call my attention to the case of *Warren v. Commonwealth*, which came up from Hopewell. In that case the Commonwealth, as you know, instituted proceedings against Warren, due to the fact that he had improperly handled funds belonging to the State.

With my kindest personal regards, in which your good friend, Leon Bazile, unites, I am,

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEY—Fees of

RICHMOND, VA., December 26, 1924.

HONORABLE HUGH H. KERR,
Commonwealth's Attorney,
Staunton, Virginia.

MY DEAR MR. KERR:

Acknowledgment is made of your letter of recent date in which you state that recently a bond given under section 41 of the Layman prohibition law was forfeited. You further state that as soon as the bond was declared forfeited you took every step to insure its collection, but that before a judgment was obtained, the surety paid the money into court, and that the clerk has construed section 3505 of the Code of 1919, as amended, to provide that no fee can be taxed for the Commonwealth's attorney except where a judgment is awarded in behalf of the Commonwealth, on a *scire facias*, or other proceeding upon a forfeited recognizance.

I have read sections 7 and 29 of the prohibition law referred to in your letter with care, and it is my opinion that neither of these sections authorizes the payment of the fee of the attorney for the Commonwealth out of that portion of the bond which belongs to the Commonwealth, namely, the penalty thereof. If you are entitled to any compensation, it would be payable by the principal or his surety, and would have to be recovered by you as a part of the costs. In this connection, I call your attention to section 4979 of the Code of 1919, which provides as follows:

"A surety in a recognizance may, after default, pay into the court from which the process has issued, or may issue thereon, the amount for which he is bound, with such costs as the court may direct, and be thereupon discharged."

I am inclined to believe that under this section the court would have the

authority to fix the amount of your compensation to be taxed as costs by the clerk, and that your remedy would be to apply to the judge to have this done.

I regret very much the delay in replying to your letter, but it came at a time when we were busily engaged in the Court of Appeals, and in some manner it became misplaced on the desk.

With the compliments of the season, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

COMMONWEALTH'S ATTORNEY—Fees of

RICHMOND, VA., January 12, 1924.

HON. GEORGE K. TAYLOR, JR.,
Commonwealth's Attorney,
Amelia, Virginia.

MY DEAR MR. TAYLOR:

I beg leave to acknowledge receipt of your letter of January 11, to which I will reply at once.

In this you ask for a construction of a portion of section 3505 of the Code of Virginia 1919, as amended by the Acts of 1922, page 547. For convenience, I quote you a portion of that part of the section which you wish construed:

"For each trial of a felony case in his" (meaning the Commonwealth's attorney) "circuit or corporation court, in which only one person is tried at a time, if the punishment prescribed may be death, twenty dollars; * *."

You wish to be advised whether or not the Commonwealth's attorney, where there has been several trials in a case of this nature, is entitled to \$20.00 for each trial. I am of the opinion that he is.

I would further state that I have just discussed the matter with the Auditor, and he agrees that this is what the statute means.

With kindest regards, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

COMMONWEALTH'S ATTORNEY—Fees of

RICHMOND, VA., March 3, 1925.

FRED M. DAVIS, ESQ.,
Assistant Commonwealth's Attorney,
510 Krise Bldg.,
Lynchburg, Va.

DEAR SIR:

Acknowledgment is made of your letter of February 23, in which you say:

"The Commonwealth's attorney has asked me to write to you with

reference to a chancery suit pending in the corporation court for the purpose of recovering the amount due to the Commonwealth on a forfeited recognition. The property which was sought to be subjected was, according to the deed books, much encumbered and it was necessary to make a number of parties defendants. Finally after negotiations and labor a settlement was effected. Apparently, from reading a portion of section 3505, all that is there allowed the attorney for the Commonwealth is a \$10 fee plus five per cent of the judgment recovered. This will amount to comparatively small sum.

"Mr. Yancey desires me to inquire of you whether there is not some provision of law or way in which a greater compensation can be allowed, taking into consideration the labor and effort involved. Among other points upon which he wishes information is whether or not a taxed attorney's fee of \$15, in addition to the foregoing amounts, can be taxed."

In reply, I beg to say that, in my judgment, under section 3505 the attorney for the Commonwealth is allowed \$10 fee to be taxed against the defendant and five per cent of the judgment to be deducted from the amount payable to the State. For bringing a chancery suit to enforce the judgment he is entitled to \$5 additional fee if the amount involved is less than \$100, or \$15 if the amount is more than \$100, to be taxed against the defendant in either case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEY—Fees of

RICHMOND, VA., *April 10, 1925.*

HON. R. H. WILSON,
*Commonwealth's Attorney,
Lebanon, Virginia.*

MY DEAR MR. WILSON:

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

"Five indictments were returned in the circuit court of Russell county against one Clyde Meade for violations of the prohibition law on five occasions upon the evidence of different witnesses; in like manner seven indictments were returned against Charles Dorton for violations of the prohibition law; eleven indictments were returned against Bryan Powers for selling ardent spirits on eleven different occasions to different persons; two indictments were likewise returned against Milton Ennis and two against P. M. Hartsock. All of them for violations of the prohibition law. Charles Hickman and Hobart Hickman appealed from the decision of a justice on two warrants against each charging violation of the prohibition law for drunkenness.

"When these cases above mentioned were called for trial the clerk swore the jury to try the defendant on indictment No. 1; indictment No. 2 and so on and true verdicts render in each case according to the law and the evidence. Verdicts of not guilty were rendered by the jury on each of the cases above mentioned and a separate and distinct verdict was rendered on each indictment and on each warrant, the facts and the evidence being different on each indictment and warrant. I made off my claim against the Commonwealth for a fee of \$10.00 on each indictment and warrant where

the verdict was not guilty as is provided by law. The Auditor of Public Accounts returned the claim and says he is of opinion that I am entitled to but one fee for the trial of the eleven indictments against Bryan Powers for example and requested me to have your opinion on the question should I be of a different opinion."

It is well settled that, in the absence of statute, the Commonwealth is not liable for costs whether the defendant be acquitted or convicted. While it is competent for the legislature to subject the State to liability for costs under certain circumstances, a statute imposing such liability on the Commonwealth is strictly construed. 15 C. J. p. 328, section 815.

By virtue of section 46 of the Layman prohibition law, section 3505 of the Code of Virginia, 1919, as amended, controls the question referred to in your letter.

The sections which precede section 3505 of the Code of Virginia, 1919, as amended, which provides for the payment from the treasury to the attorney for the Commonwealth, have been strictly construed by the appellate court of this State. *Commonwealth v. Sprinkles*, 4 Leigh 702, 703. This section, so far as is applicable to the question here under consideration, provides that the attorney for the Commonwealth shall be paid out of the State treasury as follows:

"For each *trial* of a felony case in his circuit or corporation court, in which only one person is tried at a time, if the punishment prescribed may be death, twenty dollars; if the punishment prescribed is less than death, ten dollars; * * *."

It appears that in the cases referred to by you there were a number of separate indictments against the same individual. All of these indictments were, by agreement between you and counsel for defendants in the respective cases, tried together. Therefore, there was but one trial of the eleven indictments in the one case, and but one trial in the other cases where the accused was tried under more than one indictment at the same time. While the indictments were separate and distinct, there was but one trial.

You will observe that the statute does not read for each indictment tried, but provides that the fee shall be paid for each trial. It, therefore, follows that I am of the opinion that where the same person accused is tried under a number of indictments at the same time there is but one trial within the meaning of section 3505 of the Code of Virginia, 1919, as amended, and that but one fee can be assessed for such trial.

I am informed by the Auditor's office that this is the construction which has been heretofore placed upon the statute by that office, and in that construction I must concur.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEY—Fees of

RICHMOND, VA., June 16, 1925.

HON. GEORGE F. WHITLEY,
Commonwealth's Attorney,
Smithfield, Virginia.

MY DEAR MR. WHITLEY:

Acknowledgment is made of your letter of recent date, in which you ask whether the attorney for the Commonwealth is entitled to a fee of \$35.00 where the accused is convicted of owning and having in his possession a still.

An examination of section 21½ of the Mapp prohibition law, as amended, will show that it contained in the fourth paragraph thereof the same provision, as to a fee of \$10.00 for the Commonwealth's attorney, as is found in the fourth paragraph of section 20 of the Layman prohibition law. An examination of section 55 of the Mapp prohibition law, as amended, shows that the third paragraph thereof contained practically the same provision, with reference to the fees of the attorneys for the Commonwealth, as is found in the third paragraph of section 46 of the Layman prohibition law.

Prior to the enactment of the Layman prohibition law, I had occasion to construe sections 21½ and 55 of the Mapp prohibition law, as amended, and in doing so I reached the conclusion that the fee for the Commonwealth's attorney was, in such a case as is referred to in your letter, \$25.00 and not \$35.00 as contended by some attorneys for the Commonwealth, and not \$10.00 as contended by the accused in several cases. The reason upon which that opinion was based is found in the letter written by me to Honorable J. E. Parrott, Commonwealth's attorney, Stanardsville, Virginia, a copy of which I am sending herewith.

Trusting that this gives you the desired information, and with my best wishes, I am,

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEY—Fees of—Payment from treasury

RICHMOND, VA., July 2, 1924.

WILLIAM M. SMITH, ESQ.,
Commonwealth's Attorney,
Cumberland, Va.

DEAR MR. SMITH:

Acknowledgment is made of your letter of June 20th, to which answer has been delayed due to unavoidable absence from the city, in which you say:

"Under section 3504, as amended by Acts of 1924, page 766, do you understand that a Commonwealth's attorney is entitled to a fee for prosecuting a misdemeanor case, such as, for instance, assault and battery, before a justice, to be paid by the Commonwealth when there is no prosecutor and there is an acquittal?

"In such case where there is a conviction should the Commonwealth's attorney be paid a fee to be taxed as a part of the cost against the defendant?

"Under section 3505, as amended by Acts of 1924, page 687, it is provided: '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 for a misdemeanor which he is required by law to prosecute,' or

"In such cases as prosecutions for petit larceny, assault and battery and such like, is a Commonwealth's attorney required by law to prosecute? If he is required by law to prosecute in such cases, he is clearly entitled, I think, to be paid."

In reply, I will say that section 3504, as amended by chapter 481, Acts of 1924, must be construed in connection with section 3505, as amended by chapter 458 of the Acts of 1924, from which I understand that the Commonwealth's attorney is entitled to a fee for prosecuting a misdemeanor case only when it is one "which he is required by law to prosecute." I do not know of any law which requires the Commonwealth's attorney to prosecute a case of assault and battery, petit larceny, etc. Section 46 of the Layman prohibition law makes an exception of violations of that law, which may be misdemeanors, and allows a fee even when the trial is before a justice or any court not of record.

Clearly a Commonwealth's attorney is entitled to a fee of \$5.00 for prosecuting for any misdemeanor in his circuit or corporation court. Here again there are special provisions, with which you are doubtless familiar, regarding the violation of the liquor laws.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONSTITUTIONAL LAW—Special laws

RICHMOND, VA., *March* 5, 1924.

HON. MORGAN R. MILLS,
Senate Chamber,
Richmond, Va.

MY DEAR SENATOR:

Acknowledgment is made of your request of March 4, 1924, that I advise you whether the committee substitute for Senate Bill No. 363 is in conflict with subsection 9 of section 63 of the Virginia Constitution. This section of the Constitution, so far as is applicable to the question here under consideration, provides as follows:

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

* * * * *

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

From an examination of the committee substitute for Senate Bill No. 363, it appears that the object of this bill is to refund to certain hotels in the cities of Richmond and Norfolk certain license taxes illegally exacted of these hotels by the Commonwealth, the Court of Appeals having decided in *Hotel Richmond*

Corporation v. Commonwealth, 118 Va. 607 (1916), that the taxes which this bill seeks to refund to the hotels have been illegally exacted by the Commonwealth. Due to the running of the statute of limitations as to the taxes which this bill seeks to refund, the same could not be recovered by legal proceedings by the hotels affected.

Under the decision of the Court of Appeals in *Commonwealth v. The Ferries Company*, 120 Va. 827 (1917), a special act refunding taxes illegally collected by the Commonwealth is not in violation of subsection 9 of section 63 of the Constitution.

The fifth paragraph of the syllabus in *Commonwealth v. The Ferries Company*, *supra*, thus states the holding of the court:

"Section 63, clause 9, of the Constitution of Virginia, prohibits the legislature from refunding by private act money lawfully paid into the treasury. But the Constitution imposes no limitation upon the power of the legislature to refund money unlawfully paid or collected. The fact that the Constitution in terms prohibits the one and is silent as to the other, creates a strong presumption that it was not intended to trench upon the absolute control of the legislature in its management of the business of the State with respect to refunding money unlawfully paid into the treasury."

The taxes which this bill seeks to refund having been illegally collected by the Commonwealth, can, therefore, lawfully be refunded by special act of the General Assembly.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONSTITUTIONAL LAW—Statutes Empowering localities to impose fines

RICHMOND, VA., March 19, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Va.

MY DEAR GOVERNOR:

Yours of March 14th, enclosing S. B. 221, received. This bill authorizes the boards of supervisors of Dinwiddie, Pittsylvania and Mecklenburg to enact special and local legislation for the protection of the public roads, ways and bridges of said counties, and for the regulation of traffic thereon.

It further provides that any violation of such local legislation, as shall be enacted by the said counties, shall be deemed an offense against the county which enacted the same, and shall be punished by a fine of not less than \$2.50 nor more than \$100.00, which is to be paid to the county, or by imprisonment in jail not more than thirty days, or by both fine and imprisonment.

You then ask whether this bill, on account of the provision which makes the fine payable to the county, is unconstitutional, due to the fact that section 134 of the Constitution provides that all fines collected for offenses committed against the State shall be paid into the literary fund.

In this connection, I beg leave to call your attention to section 2013 of the Code of 1919, which authorizes the boards of supervisors to enact special and

local legislation to protect the public roads and bridges in the counties. This is still the law and has not been repealed.

This section provides that any violation of such enactments shall be deemed a misdemeanor. In pursuance of the provisions contained in this section, the county of Spotsylvania enacted certain local legislation for the protection of the roads of said county.

One Benjamin Polglaise was tried before a justice of the peace and convicted for a violation of these regulations passed by the board of supervisors of Spotsylvania county. The circuit court of Caroline county affirmed the judgment of the justice of the peace and his case was appealed to the Supreme Court of Appeals, which case is reported in 114 Va. at page 850.

The Supreme Court affirmed the decision of the circuit court, and, in an opinion handed down by Judge Cardwell, the court stated that the legislature of the State had absolute power to make any reasonable provision it may deem necessary with reference to the public highways of the counties or cities and towns within the State regulating the uses that may be made of them.

The court further held that the boards of supervisors of the respective counties are made a co-ordinate branch of the State government, and have full power and authority of the State for the purposes for which these agencies are established.

In view of this section of the Code and the decision of the Supreme Court in the above cited case, I am of the opinion that Senate Bill 221 is not unconstitutional. While the policy of the law may be doubtful, at the same time, that is a matter which addresses itself to the discretion of the legislature in enacting such a law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONVICTS—Admission to penitentiary

RICHMOND, VA., June 24, 1924.

MAJOR R. M. YUELL, *Supt.,*
The Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YUELL:

I have just been informed by you that R. O. Garrett, and Larkin C. Garrett, his brother, both of whom were recently convicted in the circuit court of Cumberland county, and sentenced to serve five and four years, respectively, in the State Penitentiary for the homicide of one E. S. Pierce, have voluntarily come to the State Penitentiary for the purpose of serving their terms of confinement therein.

You state that you have no copy of the final order of the court sentencing them to the State Penitentiary. You then desire to be advised that inasmuch as they are already at the penitentiary, and voluntarily delivered themselves up, will it be proper for you to receive them under these conditions.

While it is true that section 4948 of the Code of 1919 requires that the clerk of the court in which a prisoner is sentenced to the penitentiary shall forthwith transmit to the Superintendent of the Penitentiary a copy of the judgment, and upon receiving such copy the Superintendent shall send a guard to the county or

corporation with a warrant directed to the sheriff, authorizing him to deliver the person convicted, and whose duty it shall be to take charge of the said prisoner and take him to the penitentiary, I take it that the legislature in enacting this law intended to provide the method, or means, whereby persons convicted of crime should be transported to the penitentiary, yet, when one voluntarily comes to the penitentiary for the purpose of serving out the sentence imposed by the court, I see no reason why he cannot be received, and why the order of the court so sentencing him cannot be later sent to the Superintendent of the Penitentiary.

I am, therefore, of the opinion that inasmuch as the Garrett brothers are now at the State Penitentiary, and have stated to you that they came for the purpose of serving out their terms of confinement, that it would be proper for you to receive them, and at once admit them as prisoners in the penitentiary. I would suggest, however, that you communicate with Judge Hutchinson, the judge of the court at Cumberland, and request that a copy of the final order in these cases be immediately sent you.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONVICT ROAD FORCE—Allowance for good behavior

RICHMOND, VA., May 13, 1924.

JUDGE B. W. DODSON,

Bachelor's Hall,

R. 1, Danville, Va.

MY DEAR JUDGE:

Acknowledgment is made of your letter of yesterday, in which you inquire:

"If a man is convicted of desertion and nonsupport of his dependents and fails and refuses to support them and an order is issued by the court trying him, requiring him to pay to the court a certain sum per week or month for the support of such dependents and to give bond with surety, and he fails or refuses to give such bond and is sent to the State convict road for twelve months at hard labor, and an order entered requiring the State Highway Department to pay a certain sum to the court per month of his wages or earnings for the support of such dependents; does he get any time off for good behavior?"

In reply, I beg to say that section 2094 of the Code, as amended by Acts of 1920 (p. 12), provides that all persons sentenced by any of the courts of this Commonwealth, or by justices of the peace, to work on the public roads or in public quarries, in lieu of jail sentence, and all persons confined in jail, who are worked on such road or quarry force, shall be allowed credit for good behavior on their sentence to the same extent and upon the same terms as are provided for convicts in the penitentiary. Section 5017 of the Code provides that convicts in the penitentiary shall have ten days deducted from their terms for every month that they faithfully observe the rules of the prison, under certain conditions.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CONVICT ROAD FORCE—Length of time member of can be held

RICHMOND, VA., June 30, 1925.

MAJOR R. M. YOEUELL, *Superintendent,*
The State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YOEUELL:

Acknowledgment is made of your letter of June 18, 1925, in re certain members of the convict road force from Surry county who were convicted of violations of the State prohibition law.

It appears that these men were sentenced to serve a certain time as members of the State convict road force in lieu of a jail sentence, and to pay certain fines and the costs incident to their prosecution. As authorized by section 8 of the Layman prohibition law, the judgment provided that for failure to pay the fine and costs by a certain day these men should be required to serve as members of the State convict road force for an additional period of six months. You call attention to section 2095 of the Code of 1919, which provides that persons held to labor in the State convict road force for the nonpayment of any fine imposed upon him shall be required to work out the full amount thereof, including the legal costs, at the rate of fifty cents per day for each day so held, Sundays' excepted, and shall be entitled to a credit of twenty-five cents for each day of his confinement, whether he labors or not, and ask me to advise you whether, in view of the opinion given by me to you on November 14, 1924, these men should be discharged when they have paid their fine and costs by the method prescribed by section 2095 of the Code.

It appears from the opinion which I gave you on November 14, 1924, that the prisoner in that case had been sentenced to serve an additional term of ninety days for the nonpayment of his fine and costs as authorized by section 8 of the Layman prohibition law, and that subsequent to such sentence he paid the fine and costs. In that opinion I wrote you:

"Section 8 of the Layman prohibition law is in the same words as section 5¼ of the Mapp prohibition law construed by the Court of Appeals in *Gilreath v. Commonwealth*, 136 Va. 709 (1923).

"In this case the court said (p. 715):

"The method of enforcing the collection of such fines is now made more simple and expeditious. The actual punishment, however, is the fine, so that its payment, with the costs, relieves the defendant and discharges his obligation. * * * This is all that is intended or accomplished by the new act. * * *

"As I understand this language of the Court of Appeals, it means that no matter when the fine and costs are paid the accused is to be automatically discharged, and that the prisoner is to be detained for the additional time only when he fails to pay the fine and costs assessed against him."

A person held to labor in the State convict road force may pay the fine and the costs assessed against him in his prosecution in one of two ways: First, in actual cash, and second, by means of his labor as provided by section 2095 of the Code of 1919. In my opinion, there can be no difference in the effect of such payment whether it be made in money or as authorized by section 2095 of the Code. In either event when the fine and costs have been paid it is my understanding of

the opinion of the court in *Gilreath v. Commonwealth*, *supra*, that a prisoner held for the additional time provided by section 8 of the Layman prohibition law, because of the nonpayment of his fine and costs, must be discharged.

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

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CORPORATIONS—Charters, recordation of

RICHMOND, VA., September 18, 1924.

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

MY DEAR SIR:

Acknowledgment is made of your letter of September 16, 1924, in which you say:

"I herewith submit the following facts and request that you consider the question involved, and after having done so, render your opinion as to the authority I have to act in an official manner in admitting such papers for record in this office.

"It has been represented to this office that the society of The Nuns Academy of The Visitation of Monte Maria was by order of the circuit court of Richmond in the year 1868 granted a charter, thereby creating the above named society a body corporate and under which charter this society has acquired property in the city of Richmond and has operated as a corporate body. It further appears that this original charter granted by the court was never presented to this office for record and the original copy of the charter is not to be found in the files of this office or the clerk's office of the court granting the charter.

"The association or society herein named, desiring to amend the charter granted by the court, has presented to this office for record a copy of the court order mentioned in this matter. It would seem that the Corporation Commission refuses to consider or permit the amendment of the charter until recorded in this office.

"The question on which I respectfully request your opinion is as to what authority, if any, I have, as Secretary of the Commonwealth, to admit such paper to record in this office.

"The laws in effect at the time the court granted this charter were not complied with at the proper time, and since that time new and vastly different laws concerning corporations have been enacted, and under which charters are now admitted to record in this office; which facts have aroused in my mind a doubt concerning my authority to admit this charter to record.

"I am, therefore, requesting your opinion before admitting this copy of court order to record in this office."

I have carefully considered the subject of your inquiry and have examined the charter referred to in your letter. I have also examined the provisions of chapter 65 of the Code of 1860 governing the incorporation of the society in question and, in view of the fact that none of the provisions contained in this charter is in conflict with any of the provisions of the law at the present time, but all are such provisions as might be authorized by the Corporation Commission at the present time, I am of the opinion that you should admit the charter referred to to recordation in your office.

While the facts are not similar to the instant case, nevertheless, those involved in *Elliott's Knob Iron, Steel & Coal Co. v. Corporation Commission*, 123 Va. 63 (1918), have some features in common with the matter now under consideration. In that case the court held that every presumption was in favor of a continued existence and against the conclusion that the charter of a corporation has been forfeited.

It is, therefore, my opinion that the charter referred to should be admitted to record.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CORPORATIONS—Meaning of phrase “doing business”

RICHMOND, VA., October 13, 1923.

MR. L. B. FOOTE, *Vice-President,*
The Guardian Savings & Trust Co.,
Cleveland, Ohio.

DEAR SIR:

Acknowledgment is made of your letter of the 10th instant, in which you say, in part:

“This company is acting as treasurer of The Church Home, an eleemosynary institution of this city under the auspices of the Episcopal church, and having as its object the care of aged and infirm women. One of the rules of the home requires that, upon entering, the inmates convey to the home such property as they may have. In this way the home is in possession of a deed from one of the inmates to lot 9, block 10, in Groves' subdivision of Mount Ida, Alexandria, Va. Inquiries made by us in that vicinity would indicate a value of not to exceed \$600.00 or \$700.00 for the lot.”

You then state that it is the desire of your corporation to sell this lot, and you request me to advise you whether or not the taking of title to this lot, and the sale of the same, constitutes the doing of business within this State so as to require your corporation to qualify under the Virginia corporation laws, as a prerequisite to the right to pass title to this lot.

It appears from your letter that this is an isolated transaction, and that your corporation has done no business in Virginia, and expects to do no business in this State other than the acquisition of this lot in the manner set out in your letter and the sale of the same.

The question of what constituted doing business in this State was considered in an opinion given the State Corporation Commission by this office on May 3, 1917 (Report of Attorney General, 1917, p. 43). In that opinion, it was held that the phrase “doing business,” within the meaning of our statutes, was the doing of the business of the character of the business for which the corporation was organized, and, therefore, that the selling and issuance of the stock of a corporation did not constitute a transaction of business within the State, as contemplated by our statute.

It appears from your letter that the corporation in question is not engaged

in the business of buying and selling real estate, but that the acquisition of this lot was merely incidental to the purpose for which the corporation was incorporated.

Under these circumstances and being a single transaction, it is my opinion that the acquisition of the lot and the sale of the same does not constitute a doing of business in this State within the meaning of our statutes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CORPORATIONS—Stock transfers

RICHMOND, VA., January 9, 1925.

MESSRS. DAVIES, AUERBACH & CORNELL,
Attorneys at Law,
34 Nassau St.,
New York City.

GENTLEMEN:

Acknowledgment is made of your communication of January 9, 1925, in which you call my attention to sections 5348 and 5349 of the Code of 1919, the latter as amended, and to section 44½ of the Virginia tax bill, as amended.

You request me to advise you whether, in my opinion, the notice of publication authorized by section 5348 of the Code of 1919 is required as the prerequisite to the transfer of stock in a Virginia corporation, or whether it may be waived by the corporation.

I have examined this section and, in my opinion, this notice may be required if the corporation so desires, but there is nothing to prevent the corporation from waiving the notice, and it is my understanding that it has been the practice of Virginia corporations since the passage of section 44½ of the Virginia tax bill to transfer stock without requiring the publication provided for by section 5348 of the Code of 1919.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COSTS—In criminal cases do not carry interest

RICHMOND, VA., March 3, 1925.

HON. FRED M. DAVIE,
Assistant Commonwealth's Attorney,
Lynchburg, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you refer to a letter received by you from the Auditor of Public Accounts, and request me to advise you whether the costs in criminal cases bear interest from the date of the judgment.

Since I received your letter, I have conferred with the Auditor and he states

that in writing you he did not intend to express the opinion that the costs carried interest, but that a judgment for fines or recognizances would carry interest.

It is our opinion that costs do not carry interest. *Ashworth v. Tramwell*, 102 Va. 852, 859-60 (1904); 22 Cyc. p. 1520.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COURT OF APPEALS—Powers of

RICHMOND, VA., *November 15, 1923.*

HON. E. E. DENISON,
411 *House Office Building*,
Washington, D. C.

MY DEAR SIR:

Acknowledgment is made of your letter of November 8, 1923, addressed to the Attorney General, in whose necessary absence from the office I am taking the liberty of answering.

In your letter you ask the following questions:

"Is there now, or has there ever been, any statute or constitutional provision in your State which limited the power of the Supreme Court of your State to declare an act of the State legislature unconstitutional or required such a decision to be given by any particular number of the court other than a majority?"

"Has any such legislation ever been attempted in your State; if so, what was the result?"

"Has the right of the Supreme Court of your State to declare an act of the legislature unconstitutional ever been questioned in any legal proceedings; if so, will you kindly give me reference to the same?"

"Were acts of the Colonial Assembly or legislature of your State ever held invalid by the courts of the State before the Federal Constitution was adopted?"

Your first two questions are answered by the last two sentences of section 88 of the Virginia Constitution (1902). This part of section 88 of our Constitution reads as follows:

"The assent of at least three of the judges shall be required for the court to determine that any law is, or is not, repugnant to the Constitution of this State, or of the United States; and if, in a case involving the constitutionality of any such law, not more than two of the judges sitting agree in opinion on the constitutional question involved, and the case cannot be determined, without passing on such question, no decision shall be rendered therein, but the case shall be reheard by a full court; and in no case where the jurisdiction of the court depends solely upon the fact that the constitutionality of a law is involved, shall the court decide the case upon its merits, unless the contention of the appellant upon the constitutional question be sustained. Whenever the requisite majority of the judges sitting are unable to agree upon a decision, the case shall be reheard by a full bench, and any vacancy caused by any one or more of the judges being unable, unwilling, or disqualified to sit, shall be temporarily filled in a manner to be prescribed by law."

This section of the Constitution was construed in *Funkhouser v. Spahr*, 102 Va. 306, 46 S. E. 376, 9 Va. L. Reg. 954. See also *Charlottesville & A. R. Co. v. Rubin*, 107 Va. 751, 60 S. E. 101; also 9 Va. L. Reg. 826 and 13 Va. L. Reg. 810.

Your attention is also called to section 6365 of the Code of Virginia, 1919.

With reference to your third question, I have been unable to find any case in this State which questioned the right of the Supreme Court to declare an act of the General Assembly invalid. There are a number of cases, however, in which our Supreme Court has declared unconstitutional acts of the General Assembly.

I have been unable to find any authority in this State bearing on your last question.

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

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

COURT OF APPEALS—Special court

RICHMOND, VA., July 22, 1924.

HON. H. STEWART JONES, *Clerk,*
Supreme Court of Appeals,
Richmond, Virginia.

MY DEAR MR. JONES:

Acknowledgment is made of your letter of July 22, 1924, in which you say:

"I am writing you for a construction of that part of the act creating the Special Court of Appeals which reads as follows:

"The Special Court of Appeals shall hold its sessions at Richmond, Staunton, or Wytheville, and the officers of the Supreme Court of Appeals shall be the officers of the Special Court of Appeals, and discharge like duties and receive the like compensation as in the Supreme Court of Appeals."

"I will be obliged if you will advise me if I am not entitled to my salary of \$550.00 per year to be paid by the month so long as the special court functions."

I have examined section 5873 of the Code of Virginia, 1919, and it is my opinion that the above quoted provision thereof clearly provides for the payment to you, as clerk of the Court of Appeals, exactly the same compensation for your services as clerk of the Special Court of Appeals that you receive as clerk of the Supreme Court of Appeals.

For your information, I will say that I have talked with Hon. C. Lee Moore, Auditor of Public Accounts, and he concurs in this view.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COURT OF APPEALS—Special court—Salaries of judges of

RICHMOND, VA., July 1, 1924.

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

DEAR SIR:

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

"The General Assembly by act approved March 15, 1924, chapter 264, page 391, Acts 1924, amended section 5873 of the Code of Virginia, which makes provision for a special court of appeals, and that section as amended directs that the judges of such court 'shall receive as compensation for their services ten dollars per day during the term of such court, for mileage and expenses, to be paid out of the public treasury.'

"Please advise me if the word 'term' means the actual days the court is sitting or the period of time fixed by the section as the life of such special court."

In reply, I beg to say that, in my judgment, the word term in the statute means a period of time fixed by the statute as the life of such special court. I am led to construe the word term in this sense because the statute refers to the times when the court is sitting as the "sessions" of the court, and because this word term is almost universally construed by the courts to mean the period or limit of time during which an incumbent is permitted to hold office. Under the statute in question, the term of office of the judges shall continue until the court shall have completely disposed of all cases designated, not later than the first day of July, 1926.

I am confirmed in the above view by the fact that the act of 1924 repealed section 5876 of the Code which provided that "each circuit judge, sitting on said special court, shall have ten dollars a day for every day's attendance on such court, and in addition thereto, has actual expenses, paid out of the treasury."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CRIMES—Compromise of misdemeanors

RICHMOND, VA., December 1, 1923.

MR. GEORGE E. HEATH,
Justice of the Peace,
Route No. 2,
Ashland, Virginia.

MY DEAR MR. HEATH:

Acknowledgment is made of your request that I advise you on the following statement of facts:

"Recently a party applied to me for the issuance of a warrant against a man, charging him with petit larceny. At the time fixed for trial, the party applying for the warrant notified me that the accused had settled with

her for the property alleged to have been stolen, and requested that the warrant be dismissed, costs being tendered."

Section 4849 of the Code of Virginia, 1919, reads as follows:

"When a person is in jail or under a recognizance to answer a charge of assault and battery or other misdemeanor, or has been indicted for an assault and battery, or other misdemeanor, for which there is a remedy by civil action, unless the offense was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured appear before the judge or justice, who made the commitment, or took the recognizance, or before the court in which the indictment is pending, and acknowledge in writing that he has received satisfaction for the injury, such judge, justice, or court may, in his or its discretion, by an order, supersede the commitment, discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of costs accrued to the Commonwealth, or any of its officers."

In *Glidewell v. Murray-Lacy*, 124 Va. 563, the Court of Appeals held that the words "other misdemeanors" included other misdemeanors than those of a kindred nature to assault and battery and embraced all misdemeanors for which there was a remedy by civil action.

As the party has a remedy by civil action to recover for property converted by means of petit larceny, it is my opinion that the party applying for the warrant had the authority to compromise the matter with the accused, and that you, in your discretion, may dismiss the prosecution "upon payment by the defendant of costs accrued to the Commonwealth, or any of its officers," provided the party applying for the warrant appears before you and acknowledges in writing that she has received satisfaction for the injury, as is provided by the statute.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

CRIMES—Former jeopardy

RICHMOND, VA., April 4, 1924.

HON. JOHN W. CARTER, JR.,
Commonwealth's Attorney,
Danville, Va.

DEAR JOHN:

Acknowledgment is made of your letter of March 31 in which you say:

"Several months ago a party was indicted and pleaded guilty in the circuit court of Pittsylvania county for violating the prohibition act. He served his sentence and a few weeks ago he was again arrested for illegal possession of ardent spirits. He bears a reputation of a notorious bootlegger. He was tried Saturday morning in the mayor's court, under the terms of the city ordinance paralleling the prohibition act. The warrant charged the prior conviction and there was presented in evidence the certified copy of the judgment of the circuit court of Pittsylvania. Counsel for the defendant made the contention that under the authority of *McKay v. Commonwealth*, 120 S. E. 13, the prior conviction could not be considered. This contention was sustained by the mayor and the minimum

penalty of thirty (30) days and a fine of \$50.00 was imposed. An appeal was noted but whether it will be pursued I do not know..

"If it is possible for me to do so, I wish to indict this man on a felony charge immediately upon the convening of the next grand jury and I would be glad if you would render me an opinion on the questions involved, particularly I desire to know whether a conviction under such circumstances would be a bar to my proceeding under the State law. I am taking the liberty of sending a copy of this letter to our mutual friend the Honorable Thomas Whitehead."

It is my opinion that you cannot now proceed against this man under the said statute, after having been convicted for a violation of the same act under the ordinance of your city. *Bryan v. Commonwealth*, 126 Va. 749 (1919).

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

• CRIMES—Former jeopardy

RICHMOND, VA., January 3, 1924.

MR. H. I. LEWIS,
Commonwealth's Attorney,
West Point, Virginia.

MY DEAR HERBERT:

Acknowledgment is made of your letter of December 17, 1923, with which you enclose copies of the bills of exception in the case of the *Commonwealth v. Hattie Harris and Todd Harris*. It appears from the record that Hattie and Todd Harris were indicted for unlawfully having in their possession a still.

While it is true that section 45 of the prohibition law provides that "in all cases arising under this act the State shall have the right of appeal, except when such appeal is forbidden by the Constitution," section 8 of the Virginia Constitution expressly provides that no man shall "be put twice in jeopardy for the same offense." That an appeal was regarded by the framers of the Constitution as placing one in jeopardy a second time is evidenced by the words immediately following this provision of section 8, which expressly allows an appeal to the Commonwealth in all prosecutions for the violation of a law relating to the State revenue.

The case in question being a prosecution for a criminal offense under the prohibition law, and not under a law relating to the State revenue, it is my opinion that the Commonwealth has not the right of appeal in this matter, since such an appeal is expressly prohibited by section 8 of the Constitution.

I am returning the papers which accompanied your letter.

Very sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

CRIMES—Liability of State for horse killed in arresting one accused of crimeRICHMOND, VA., *November 8, 1924.*

J. T. McALLISTER, ESQ.,
Attorney at law,
Hot Springs, Va.

MY DEAR MR. McALLISTER:

Mr. H. B. Smith has just referred to me your letter of October 29, 1924, with reference to the horse owned by J. S. McCray, which was stolen by two criminals, Palmer and Scott, and killed by one of the officers who attempted to arrest these criminals in an effort so to do.

I do not see how there can be any liability on the Commonwealth for this. Certainly I have no fund which I would be authorized to use in paying such a claim. It would seem to me that Mr. McCray's claim would be against Palmer and Scott. Of course, I sympathize with Mr. McCray in his loss, but in the absence of express legislative authority for so doing, I could not use my contingent fund for the payment of such a claim.

Moreover, this horse was killed in an effort to capture two murderers, and not by persons at the time engaged in the violation of the prohibition law, so you will see that in no event could it be a charge against the prohibition fund.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CRIMES—Limitation of prosecutionRICHMOND, VA., *December 3, 1924.*

HON. WM. R. SHANDS, *Director,*
Securities Division, State Corporation Commission,
Richmond, Va.

DEAR MR. SHANDS:

Acknowledgment is made of your letter of the 2nd in which you say:

"Under the Virginia securities law, better known as the blue sky law, a violation of it is made a misdemeanor. Prior to the special session of 1923, the statute of limitations on any prosecution under this section was then one year. In 1923, this section was amended, increasing this time to two years. The amendment was passed as an emergency measure, but in the enrollment of the bill the emergency clause was omitted.

"In 1923, between the time the act was amended and it went into effect, there was committed a violation of it. Under the limitation of one year, which was in effect at the time the act was committed, its perpetrator can not now be prosecuted. If the two-year period be applied, he could be.

"I shall appreciate your considering this point and giving me a ruling on it. The matter referred to has arisen in Charlotte county, and it is desired to prosecute the offender if the limitation will not stop us."

In reply, I would say that, in my judgment, this case is governed by the limitation effective when the act was committed, *i. e.*, one year. As the Court of Ap-

peals held in *Culbertson v. Commonwealth*, 137 Va. 752, the law in effect at the time of the commission of an act is the one which governs.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CRIMES—Statute of limitations

RICHMOND, VA., *April 21, 1924.*

HON. H. C. TYLER,
Attorney at Law,
Radford, Virginia.

MY DEAR MR. TYLER:

When you were in Richmond the other day, you asked me to look into the question as to whether a prosecution against John W. Richardson would be barred, in the event that error was confessed in the case now pending on the docket of the Court of Appeals at Wytheville.

You will observe that section 4 of the prohibition law provides that any person who shall violate any of the provisions of sections 3 and 3-a of "this act" shall be deemed guilty of a misdemeanor for the first offense, and of a felony for any subsequent offense committed after the first conviction.

As the record in the case does not contain the evidence, it is impossible for me to say whether the offense charged against Richardson is one of the offenses created by sections 3 and 3-a of the prohibition law. It does appear, however, from the fifth count of your indictment, that Richardson was convicted in the circuit court of Pulaski county, Va., in September, 1920, of unlawfully transporting ardent spirits, one of the offenses created by section 3 of the prohibition law, and that he was also convicted in the corporation court of the city of Radford in November, 1919, for the same offense.

Assuming that the offense with which Richardson is now charged is an offense against section 3 or 3-a of the prohibition law, unquestionably, if guilty, he is guilty of a felony and not of a misdemeanor, as it would be a subsequent offense committed after the first conviction, and, therefore, by the express terms of section 4 of the prohibition law, a felony. This being so, I know of no statute of limitations which would prohibit a further prosecution of the accused on a new indictment in the event that error is confessed, and the case now pending in the Court of Appeals reversed.

The general statute of limitations relating to prosecutions is section 4768 of the Code of 1919. You will see from an examination of this section that a felony such as the felony committed by Mr. Richardson is not barred by this section.

The limitation for violation of the revenue laws is found in section 2396 of the Code of 1919, and for abduction or seduction in section 4413 of the Code of 1919. With the exception of section 4926 of the Code of 1919, I have been unable to find any other statute creating a limitation for the prosecution of a felony.

I do not think that this latter section would apply to a new indictment found against the accused where error had been confessed for the reason that the indictment was defective.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

CRIMES—Trial of accused in his absenceRICHMOND, VA., *March 25, 1924.*

MR. E. PEYTON TURNER,
Attorney at Law,
Emporia, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 21, 1924, in which you say:

"Will you give me your opinion on the matter following:

"One accused or charged with misdemeanor, to-wit, a violation of the prohibition law, enters into recognizance for appearance in the circuit court to answer indictment. Accused fails to appear, and bond or recognizance is forfeited. Can accused be tried in his absence, unless summons to answer indictment has been executed ten days?

"See sections 4883 and 4889 of the Code of 1919. Also section 4012, Code of 1904 (1887).

"You will observe that the following language, 'or if accused was admitted to bail and make default,' has been omitted in the pertinent sections of the Code of 1919."

I have examined with care sections 4883 and 4889 of the Code of 1919, and section 4012 of the Code of 1904, and I am of the opinion that one who has been bailed by a justice of the peace to answer an indictment for a violation of the prohibition law can not be tried in his absence, unless he has appeared and answered the indictment or been summoned, as required by section 4889 of the Code of 1919, to answer the indictment.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CRIMINAL PROSECUTIONS—Sentence not in conformity with lawRICHMOND, VA., *July 3, 1924.*

HON. THOS. H. WILLCOX, JR.,
Commonwealth's Attorney,
Norfolk, Va.

MY DEAR MR. WILLCOX:

Acknowledgment is made of your letter of June 27, 1924, in which you say, in part:

"In a prohibition case tried this month, the jury fixed the punishment at thirty days in jail instead of one month in jail. A motion for a new trial is pending, and that is the only error assigned.

"I have a very distinct impression that I have seen some decision of the Supreme Court sustaining such a verdict, but I am unable to put my hands on it. If you know of any such case, won't you please give me a reference to it?"

In the recent case of *P. K. Dickenson v. Commonwealth*, affirmed at Wytheville, June, 1924, the verdict of the jury fixed the punishment of the accused at a fine of \$500.00 and confinement for thirty days in jail. Record, page 8.

No point was made, however, as to this, and therefore, I suppose the court did not pass on the question, although I do not know what they said, as I have not seen the opinion as yet.

So far as I recall, this question has never been passed on by the Court of Appeals. In view of *Nemo v. Commonwealth*, 2 Gratt. 560 (1845), and *Jones v. Commonwealth*, 20 Gratt. 848 (1871), I doubt very much if the verdict could be sustained where this is assigned as error.

Hon. W. W. Beverley, Commonwealth's attorney of Henrico county, tells me that he is satisfied that such a verdict is bad, and that the circuit court of Henrico county has so decided in a case involving this particular question.

As I recall, there have been several cases affirmed by the Court of Appeals in which the verdict was for thirty days instead of one month, but I feel certain that in none of these cases was the point made that the verdict was bad.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DEAD BODIES—Disposition of

RICHMOND, VA., September 27, 1924.

HON. CHARLES A. OSBORNE,
Commissioner of State Hospitals,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 25, 1924, with which you enclose the following extract from the minutes of the meeting of the General Board of Directors of State Hospitals, held on August 13, 1924, on which you desire my opinion:

"Dr. Osterud appeared before the board and presented a petition to the General Board of Directors from the University of Virginia and the Medical College of Virginia relative to securing unclaimed dead bodies from State insane hospitals to be used for anatomical purposes at the two institutions, and the general board being in doubt as to its right, or the right of any special board of the various institutions to furnish bodies for anatomical work under section 1779 of the Code of Virginia; therefore, be it

"Resolved, That the Commissioner of Hospitals be requested to obtain the legal opinion of Hon. John R. Saunders, Attorney General of Virginia, as to the right of the general board or any special board to furnish bodies as provided for in section 1779 of the Code of Virginia, especially as to the right of any of the hospitals which are within the corporate limits of cities, such as the Eastern State Hospital, at Williamsburg, and the Western State Hospital, at Staunton, to furnish such bodies. The commissioner is requested to report such opinion to the general board at its next meeting."

Section 1779 of the Code of 1919, referred to in your letter, has no bearing on the subject of your inquiry, and is evidently a typographical error.

Section 1729 of the Code of 1919 provides for the State Anatomical Board

for the purpose of distributing and delivering dead human bodies "as and for the purposes provided in the following sections."

Section 1731 of the Code of 1919 provides as follows:

"All officers, agents, and servants of every city in the State, and of every almshouse, prison, morgue, hospital, jail, or other public institution in such city, having charge or control of any dead human body, which is required to be buried at the public expense, and every officer or other person having charge or control of the body of any person upon whom the sentence of death for crime has been executed under the law, shall notify the said board, or such person or persons, as may, from time to time, be designated by the board or their duly authorized officer or agent, whenever and as soon as any such body comes to his or their possession, charge, or control; and shall, without fee or reward, deliver such body, and permit the said board and its agents, and such physicians and surgeons as may, from time to time, be designated by the board and shall have given bond required by section 1734, to take and remove any such body, to be used for the advancement of medical science; but no such notice need be given, nor shall any such body be delivered, if any person claiming to be, and satisfying the authorities in charge of said body that he is, of kin or related by marriage to the deceased, shall claim the body for burial and pay the expense thereof; nor shall the notice be given, or the body be delivered, if the deceased was a traveler who died suddenly."

This section, in my opinion, means that all officers, agents and servants of every almshouse, prison, morgue, hospital, jail, or other public institution, in every city of the State, are required to comply with the terms and provisions thereof. This section imposes no duty on public institutions which are not located in such cities.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

DELINQUENT CHILDREN—Marriage of

RICHMOND, VA., April 28, 1924.

REV. J. T. MASTIN, *Commissioner,*
State Board of Public Welfare,
Library Building, Richmond, Va.

DEAR SIR:

Acknowledgment is made of yours of the 24th in which you say:

"In section 1905, under 'delinquent, dependent and neglected children,' it is declared that juvenile and domestic relations courts have the right to declare such children to be, for the purposes of this chapter, wards of the State. I am writing to ask if the State Board of Public Welfare, in case of a child being duly committed as delinquent, has the right, as guardian of said child, to give consent to obtain a marriage license?"

In reply, beg to say that, after careful consideration of the Code section mentioned and other related laws, I hold that your question should be answered in the affirmative.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

DELINQUENT CHILDREN—Who responsible for care ofRICHMOND, VA., *August 4, 1924.*

DR. J. T. MASTIN, *Commissioner,*
State Board of Public Welfare,
Richmond, Va.

MY DEAR DR. MASTIN:

Acknowledgment is made of your letter of July 29, 1924, in which you state that one Joseph Pegram, a negro boy, was committed to the State Board of Public Welfare, on February 11, 1924, from the juvenile court of Hopewell. You further state that it has been discovered that this boy is suffering from tuberculosis, and that it is necessary to place him in a sanatorium for tuberculosis.

You then say:

"He has been legally committed to the State Board of Public Welfare, as above stated, and the question has arisen as to whether this boy is entitled to free treatment at Piedmont Sanatorium as a State patient or whether the city of Petersburg, where the boy had legal settlement before commitment to this board, should pay for such treatment."

Section 1910 of the Code of Virginia, 1919, as amended, authorizes the commitment of certain children to the State Board of Public Welfare, and then provides, in part, "that all delinquent children intended to be placed in a State institution shall be committed to the State Board of Public Welfare—it being the purpose of this chapter to make said board the sole agency for the guardianship of delinquent children committed to the State."

In view of this provision, it is my opinion that the child in question, after he was legally committed to your board, became a ward of the State, and your board possesses the exclusive right to dispose of the child. Under these circumstances, it would appear as if the State must care for him, unless, in accordance with the provisions of section 1912 of the Code of 1919, as amended, the person from whose custody the child was taken is able to bear the expense of the care of the child, and the court thinks that such person should be made to provide the money necessary to care for him.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

DIVORCE—When annulment proceedings properRICHMOND, VA., *April 18, 1924.*

DR. W. A. PLECKER,
Registrar of Vital Statistics,
Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of April 17, 1924, in which you request me to advise you whether an annulment or a divorce proceeding should be instituted for the causes shown in sections 5087, 5088, 5089 and 5090 of the Code of Virginia, 1919.

The causes for absolute divorces are enumerated in section 5103 of the Code of 1919, and the causes for divorces *a mensa et thoro* are enumerated in section 5104 of the Code of 1919.

Therefore, divorce proceedings may be instituted only for the causes enumerated in these two sections of the Code. It follows from this that annulment proceedings must be instituted for the causes set out in the sections of the Code referred to by you.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

DRINKING CUPS—Communion cups

RICHMOND, VA., June 8, 1925.

REV. GEORGE CRAIG STEWART,
St. Luke's Church,
Evanston, Illinois.

MY DEAR SIR:

Acknowledgment is made of your letter of June 2, 1925, *in re* legislation relating to the use of a common chalice or cup in the administration of Holy Communion.

The only legislation in this State relating to the use of common drinking cups is section 1554a of the Code of Virginia, 1924, which reads as follows:

"The use of the common drinking cup on railroad trains and in railroad stations, public hotels, boarding houses, restaurants, clubs, steamboats, schools, factories, stores or publicly frequented places in Virginia is hereby prohibited. No person or corporation in charge of the aforesaid places, and no person or corporation shall permit on the said railroad train, in railroad stations, public hotels, boarding houses, restaurants, clubs, steamboats, schools, factories, stores or any publicly frequented place in Virginia, the use of the drinking cup in common.

"Any person or corporation violating the provisions of this act shall, upon conviction, be fined in any sum not less than one dollar, and not more than ten dollars, and each day's violation of any of the provisions of this act shall be considered a separate offense, punishable by fine in the amount named above."

In view of the provisions of section 16 of the Virginia Bill of Rights, I doubt if this law could be construed so as to apply to the use of a common chalice.

Section 16 of the Virginia Bill of Rights reads as follows:

"That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercises of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other."

I am informed by the State Board of Health, which has charge of the enforcement of the provisions of section 1554-a of the Code of Virginia, 1924, that

that law has been construed by that department as not being applicable to the use of a common chalices, as the department did not think that the law was intended to interfere with the exercise of any religious right. The department, however, is waging an educational campaign against the use of any cup used by more than one person, I am informed, but this is limited to an educational campaign and is not directed toward the enactment of further legislation.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters

RICHMOND, VA., *October 31, 1923.*

HON. C. R. McCORKLE,
*Commonwealth's Attorney,
Wise, Virginia.*

MY DEAR MR. McCORKLE:

Yours of the 30th received, the contents of which I have carefully noted.

I am of the opinion that where a voter, expecting to be absent, has obtained his ballot from the registrar, marked it, and returned it for the purpose of having the same deposited in the ballot box on election day, even though he may be present in person the day of the election, he can not vote, but his ballot, as marked, should be deposited.

In my judgment, 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 don't think there can be any doubt as to this conclusion.

You can very readily understand the reason for this. It certainly prevents fraud on the part of the elector, and would prevent him from voting twice.

With kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters

RICHMOND, VA., *November 1, 1924.*

HON. E. R. COMBS,
*Dominion Bank Building,
Bristol, Va.*

Replying to your inquiry as to whether registrar can deliver official ballot to voter in person applying under absent voters' law instead of sending same to voter by registered mail, it is my opinion, since the amendment by the legislature at its session in 1924 of sections 203 and 208 absent voters law, the registrar can deliver official ballot to voter in person, and not essential for same to be forwarded by registered mail, registered mail provision being merely directory and not manda-

tory, since the amendment obviates the necessity of marking ballot by absent voter in presence of postmaster.

Opinion given by me on June 9, 1921, to the contrary, was based on law prior to amendment. Law must be liberally construed in favor of absent voter, the chief purpose being that the registrar shall have a valid ballot from the absent voter. Law now specifically provides that voter can deliver official ballot to registrar in person, and it would be inconsistent with this provision to require registrar to forward ballot by registered mail. You have my authority to give this opinion to the press.

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters

RICHMOND, VA., June 25, 1925.

MR. J. M. HILLMAN, JR.,
St. Paul, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of June 18, 1925, in which you say:

"I wish to submit the following question for your opinion, viz: A makes application to B, a registrar, for a ballot to vote by mail. On receipt of the application, B forwards the ballot by registered mail to the address given by A, which is duly received, but before the election at which the ballot was to be cast, A returns to his home town and desires to vote as though he had not made application for the ballot to vote by mail, claiming that he received the ballot sent him by the registrar, B, but destroyed it when he found he could be at home at his voting precinct on the day of election.

"The registrar, B, has his list of those who have made application for and been sent ballots to vote by mail posted, as required by law (but has no return ballot from A). On the day of election, A applies to the judges of the election for a ballot to vote, as other qualified electors do. Have the judges a right to deliver A another ballot, knowing he has been furnished one by the registrar to vote by mail?"

In my opinion, the gentleman in question is not entitled to another ballot under the circumstances narrated in your letter. See Report of the Attorney General, 1920, page 67; *Id.*, 1922-1923, page 153. One who has availed himself of the absent voters' law must cast his ballot by mail, if at all.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters

RICHMOND, VA., June 25, 1925.

HON. HERBERT B. GILLIAM,
Attorney at Law,
Petersburg, Va.

DEAR MR. GILLIAM:

Acknowledgment is made of your letter of yesterday, in which you submit to me. for my opinion. the following proposition:

"A voter of this city is intending to sail for Europe, and will be absent on election day. On account of the fact that this party sails a considerable time ahead of the primary election day, it is probable that, unless the vote is properly prepared under the absent voters' law before sailing from this country, the ballot can not be returned to the registrar in time to reach him on election day. Under these circumstances, the question, therefore, arises as to whether the registrar could mail the ballot to the voter at his address in this city, and, while the voter is still in this city, the voter to take the ballot away and mark it at some point out of Petersburg. It would seem, that with the registrar having a list of the applicants applying for the right of suffrage under the absent voters' law, and that, if the envelope returning the ballot were postmarked somewhere other than Petersburg, this might be a compliance with the law."

In reply, I beg to say that, in my opinion, it section 203 is complied with, it is not important where the ballot is mailed, provided it reaches the registrar in time to be deposited according to section 211. Of course, the ballots would be prepared in accordance with section 208 of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters

RICHMOND, VA., July 8, 1925.

MR. CONWAY MATHEWS,
*City Registrar, Armory Building,
Norfolk, Virginia.*

MY DEAR MR. MATHEWS:

In response to your question propounded to me over the telephone a few minutes ago, I beg leave to submit the following. You stated that a party, who is duly qualified to vote in the coming primary on August 4th, will be necessarily absent from the city on that day. He desires, before leaving, to take advantage of the provisions of the absent voters' law. Your question is whether or not he can obtain his ballot from you in person, mark the same as he desires, and then deliver it to you before leaving the city, in order that he may express his choice in the coming primary.

Section 203 of the Code, as amended, provides that the person desiring to take advantage of the absent voters' law must make application in writing for a ballot to the registrar of his precinct not less than five nor more than sixty days prior to the primary or general election in which he desires to vote, if he be within the United States. This section further provides that the application may be handed to the registrar in person, or forwarded to him by mail, and shall contain the necessary postage, or the correct amount in legal tender necessary for registering the ballot to him, and full directions for mailing the same.

Accordingly, I have held that one applying for a ballot may deliver his application to the registrar in person, and that the registrar can then return the ballot to the applicant by registered mail, addressing the voter at his residence, and that when the voter receives the ballot he must comply with the provisions of sec-

tion 208 of the Code, as amended. (Opinions of the Attorney General, 1922-73, p. 155.)

While the law authorizes him to deliver his application to you in person, you are required by law to send the ballot to him by registered mail. On receipt of that ballot, the voter is required to comply with the provisions of section 208 of the Code, as amended, which requires the opening of the sealed envelope containing the ballot in the presence of a notary public or other officer authorized by law to take acknowledgments to deeds, in whose presence the ballot must be marked and refolded as therein provided. As the registrar is not an officer authorized to take acknowledgments to deeds, I do not think that the ballot could be opened in his presence and marked, etc.

You will observe from the last sentence of section 208 of the Code, as amended, that the ballot, after it has been opened and marked, may be returned to the registrar either by registered mail or delivered to him in person.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Appointment of judges

RICHMOND, VA., July 19, 1924.

D. C. SEWELL, JR., ESQ., *Chairman,*
Lee County Electoral Board,
Jonesville, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of July 16th in which you say:

"Section 148 of the Code of the State of Virginia provides that the electoral board of each county shall appoint the judges and clerks of election in May, 1919, and each year thereafter, the terms of said judges to begin on the 1st day of June following their appointment.

"Chapter 427 of the Acts of General Assembly of Virginia for 1924 amends section 148 of the Code of 1919, as follows: 'Whenever the local party authorities of the party casting the next highest number of votes at the last preceding election shall nominate for any voting place five qualified voters who are members of that party and qualified to act as judges of election, it shall be the duty of the electoral board to appoint one of such persons to serve as judge of this election at such voting place for the term prescribed by law; provided, however, that such nominations shall be communicated to the electoral board at least ten days prior to the time prescribed by law for the appointment of judges of election.'

"Now, the time prescribed by law for the appointment of judges is May of each year. During the month of May the amendment above noted was not in effect, and was not in effect until June 16, 1924. No list of five names were furnished the electoral board ten days before the time prescribed by law for the appointment of judges, but was furnished after that date, and if it had been furnished ten days before the time prescribed by law for the appointment of judges, there was no law in effect at that time authorizing such a list, and the judges could have been appointed prior to the date when the act mentioned became effective. What I want to know is, does the electoral board have to appoint a judge from the list of five names submitted after the expiration of the month provided for the ap-

pointment of judges, or not furnished within the time prescribed by statute, although the judges of election were not appointed during the month of May, as required by statute, and are not as yet appointed? We have been advised that since the list was not furnished us ten days prior to the time prescribed by statute for the appointment of judges, the nomination of five men after that date would not be binding upon us whatsoever, and further, that since the act as amended did not become effective until after the date required by law for the filing of names for appointment of judges, the act as amended would not be binding upon our electoral board this year, regardless of the fact that no appointments of judges were actually made during the month of May, as required by statute."

In reply, I would say that if the judges of election had been appointed during the month of May, the appointments would have been made in accordance with the law in effect at that time, and not according to the statute of 1924; but appointments made after June 16, 1924, in my judgment, must be made pursuant to the law in effect at the time the appointments are made.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Ballots

RICHMOND, VA., *October 12, 1923.*

MR. RYLAND GOODE, *Secretary,*
Electoral Board Franklin County,
Rocky Mount, Va.

DEAR SIR:

Acknowledgment is made of your letter addressed to the Attorney General, in which you state that the electoral board of your county has received no notice of candidacy from the Secretary of the Commonwealth, although you are aware of the fact that one member of the Corporation Commission will be elected. You then ask if it will be necessary for separate ballots to be had for the State, county and district offices.

I am of the opinion that only one ballot should be printed for all the officers to be elected at this election for State, county and district. (Section 153, Code 1919, and section 28, Virginia Constitution.)

Yours very truly,

LEON M. BAZILE,

Assistant Attorney General.

ELECTIONS—Ballots for candidate for party committee

RICHMOND, VA., *July 7, 1925.*

HON. WALTER W. ROWELL,
 2310 *West Avenue,*
Newport News, Va.

DEAR MR. ROWELL:

I have been out of the city for several days, and your letter of the 3rd has just been brought to my attention. You say:

"The party plan provides that the party committee shall be reorganized when the representatives to the legislature are nominated. The election law provides that the local committee shall certify to the electoral board a list of all candidates in their city, and the electoral board shall cause their names to be printed on the ballot.

"Please advise me if it is the duty of the electoral board to print the names of the candidates for the Democratic committee on the ballot, or is it not their duty."

In reply, I beg to say that the primary election law in relation to the official ballot makes reference only to printing the names of candidates for offices on the ballot. No mention is made of printing thereon the names of candidates for the Democratic committee.

Therefore, it is my judgment that it is necessary to have a separate ballot printed for the committeemen, which may be used on the same day by the same judges as the primary election ballot.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballots in bond issue elections

RICHMOND, VA., February 6, 1925.

MR. WILLIAM H. DUNCAN, *Clerk,*
Circuit Court of Arlington County,
Clarendon, Va.

MY DEAR MR. DUNCAN:

Acknowledgment is made of your letter of January 29, 1925, in which you say, in part:

"There is a proposal existing in this county to petition the court in connection with a bond issue for the following named purposes:

"Building of fireproof record room.

"Building a new county jail.

"Remodeling old jail for office purposes.

"Building a central heating plant, etc.

"In this connection, will you please favor me with your opinion as to whether or not the four foregoing issues could be voted on separately at the same election, or would it be necessary to condense them in one bulk sum and vote as to all of them under one head; in view of the fact that the committees have been appointed at the request of the board of supervisors to investigate into the needs of this proposal."

I have examined sections 2738, 2739 and 2740 of the Code of 1919, which govern the subject of your inquiry, and, after careful consideration of these sections, it appears to me that all the law requires is that the ballots shall have written or printed thereon "for bond issue," specifying the purpose, which may be stated collectively, and "against bond issue," likewise stating the purpose, which may be stated collectively, the ballots having reference, of course, to the order entered by the judge, as provided for by section 2738 of the Code of 1919. I do not think that it would be at all necessary to have a separate ticket or ballot for each build-

ing or improvement for the erection or addition of which the bond issue money is to be used.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Bets on

RICHMOND, VA., *October 31, 1923.*

MR. S. C. BOWMAN,
Broadway, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 29 in which you ask whether a man can be excluded from voting simply because he bet on the result of the election. He can not.

Of course, betting on the result of the election is an offense, which is punishable under the law, but you can not deprive a man of his vote, if otherwise qualified, simply because he has bet on the result of the election.

With reference to your second question as to the number of ballot boxes to be used in your election, the number of ballot boxes will depend on the number of ballots which are used. Of course, there will have to be a separate box for the bond issue votes.

I do not understand what you mean with reference to the town election being held at the same time that the State and county election is held. It is my understanding that the regular town election is held in the month of June.

As to what you should do about the ballots for your town election, I would suggest that you consult your town attorney.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax

RICHMOND, VA., *November 13, 1923.*

MISS SADIE LUTTRELL,
*418 N. Twenty-third Street,
Richmond, Va.*

DEAR MISS LUTTRELL:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention, in which you ask "whether ladies, married or single, can be forced to pay head tax."

Section 4 of chapter 400 of the Acts of Assembly, 1920, 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."

This act became effective in 1920; therefore, each year every female resident of the State, over twenty-one years of age, must be assessed by the proper assessing officers with a head tax of one dollar and fifty cents.

Yours truly,

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

ELECTIONS—Capitation tax

RICHMOND, VA., May 8, 1924.

HON. EPPA S. COX,
Treasurer of Fauquier County,
Warrenton, Va.

MY DEAR SIR:

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

"If persons pay their capitation tax on May 5th, are they eligible to vote in this fall's election?"

This question must be answered in the negative. Since the Constitution requires the capitation tax to be paid six months before the general election, which this fall will be on the 4th of November, the last day upon which the tax might have been paid to qualify a person to vote was Saturday, May 3rd.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax

RICHMOND, VA., March 25, 1924.

MR. S. F. LANDRETH,
Attorney at Law,
Galax, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 21, 1924, with reference to when the capitation taxes of voters of your town must be paid as prerequisite to their right to vote in the general town election to be held in the month of June.

The election to be held in June in the cities and towns of this State is one of the elections provided for by the Constitution, section 122. The Constitution, section 21, provides that, in order to vote, poll taxes must be paid at least six months prior to the election. Therefore, to entitle one to vote in the regular election to be held in the cities and towns of this State in June, 1924, it is necessary that, unless exempted by section 22 of the Constitution, each person offering to vote shall have paid the capitation taxes assessed or assessable against him for the three years next preceding June, 1924, at least six months prior to the date on which the June, 1924, election is held.

This has been the consistent opinion of this office. (See the Report of the Attorney General for 1919, pp. 69, 73, 76 and 81.)

I do not think that any provision of the town charter could have the effect of relieving one from the constitutional requirements.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax

RICHMOND, VA., May 20, 1924.

MR. CHAS. B. STARK,
West Point, Virginia.

MY DEAR MR. STARK:

I beg leave to acknowledge receipt of yours of the 19th.

In this you state that two parties moved to Virginia in March, 1922. You then desire to know whether they are entitled to register and vote in the June election of 1924, to be held in the town of West Point, the said parties having only paid capitation tax for the year 1923.

Inasmuch as the parties in question did not move to West Point, or Virginia, until March, 1922, no capitation taxes were assessed against them for the year 1922, nor should any have been assessed, as they became residents of the State after February 1st—the time for the assessment of taxes. If the parties in question have paid the capitation taxes for 1923, that is all that is necessary, and they are entitled to register and vote.

You state that the treasurer has left the parties off of his list. Such being the case, they can apply to the judge of the court, either in term time or vacation, under section 110 of the Code of Virginia, 1919, and the judge will place their names on the capitation tax list.

This is the substance of our conversation over the telephone, and I am simply writing it as a confirmation.

With kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax

RICHMOND, VA., October 5, 1923.

MR. C. F. SAUFLEY,
Port Republic, Va.

DEAR SIR:

Acknowledgment is made of your letter, asking when a person becoming of age during this year must have paid his capitation tax six months prior to the election in November in order to vote therein.

The six months' requisite, as to the payment of capitation taxes, only applies

to those taxes assessed or assessable for the three years next preceding that in which the person offers to vote.

A young man becoming of age in 1923 is not assessable with any capitation tax prior to 1924. He can register by paying this at any time up to the closing of the registration books; that is, thirty days before the election.

I am enclosing copy of an opinion I wrote Mr. C. C. Avery several days ago, where this question was fully considered.

Yours truly,

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

ELECTIONS—Capitation tax

RICHMOND, VA., April 15, 1924.

MR. ARCHER L. JONES,
Attorney at Law,
Hopewell, Virginia.

MY DEAR MR. JONES:

Acknowledgment is made of your letter of April 12, 1924, in which you say:

"Mr. William Smith, who was born in England, came to Virginia about six years ago and filed his declaration of intention to become a citizen of the United States, and in the month of February last received his naturalization papers and became a citizen of the United States. He has resided in the State of Virginia for over six years, in the city of Hopewell for over a year, and has paid his poll taxes for this year—in the month of February at the time when he was naturalized.

"He now wishes to register and to vote at the city election to be held on the 10th day of June of this year.

"I am a member of the electoral board of this city, and the registrar has requested advice from me as to whether or not he is entitled so to vote. I am perfectly frank to say that I do not know, and I am, therefore, writing to ask you to give me your opinion on this question."

Section 21 of the Constitution of Virginia provides that a person, unless exempted by section 22 of the Constitution, shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under the Constitution, during the three years next preceding that in which he offers to vote.

The regular municipal election held in cities in June is one of the elections referred to in this section of the Constitution.

Sections 4 and 5 of the tax bill imposes a State poll tax on all male inhabitants of the State. Therefore, Mr. Smith has been assessable with capitation taxes in Virginia for more than the three years next preceding the year 1923, and, unless his capitation taxes for the years 1923, 1922 and 1921 have been paid, at least six months prior to the 10th day of June, 1924, he would not be eligible to vote in the election held on that day.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Capitation tax

RICHMOND, VA., May 18, 1925.

T. CONWAY MATTHEWS, ESQ.,
General Registrar,
Norfolk, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of May 16, 1925, in which you say, in part:

"A young man twenty-eight years of age came into this office and wanted to register, coming here from the District of Columbia. He came into the State of Virginia and established residence January 1, 1923, and has paid his 1924 poll tax.

"I told this party that if he came here prior to February 1, 1923, he was assessable for a poll tax for that year. He told me that he had discussed this situation with a lawyer here and he was told that he was not assessable unless he had been here six months prior to February 1, 1923."

You are correct in your interpretation of the law. If a man became a resident of Virginia prior to February 1, 1923, he was assessable with the capitation tax for that year, and, unless this tax has been paid six months prior to the November, 1925, election, he will not be eligible to vote in that election or the August primary. Capitation taxes are assessed on all inhabitants of the State who are not pensioners of the State for military service, regardless of citizenship, as of the first day of February in each year. See sections 1, 3 and 4 of the tax bill.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax

RICHMOND, VA., July 1, 1924.

MR. E. J. HUNT,
Cape Charles, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of June 28, 1924, with reference to the right of your wife to vote in this State in the November, 1924, election.

The first tax with which your wife was assessed, or assessable, under the facts stated in your letter was for the year 1923, since she did not become a resident of Virginia until April 15, 1922. In order for her to vote in Virginia in November, 1924, it was necessary for her to pay, at least six months prior to the date of the November, 1924, election, her capitation tax for the year 1923. (Virginia Constitution, section 21.)

The capitation tax is imposed upon every inhabitant of the State above the age of twenty-one years. (Virginia tax bill, schedule "A.") Therefore, your wife was assessable with the capitation tax for the year 1923, and if this was not paid at least six months prior to the November election she will not be eligible to vote in that election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Challenges

RICHMOND, VA., October 25, 1923.

CLAUDE F. BEVERLY, ESQ.,

Freeling, Va.

MY DEAR SIR:

Acknowledgment is made of your letters of October 23 and 24, 1923, in which you say, in part:

"Where a voter is challenged election day on the ground that he is not a legal voter for one or many reasons, doesn't the party challenging the right of said person to vote have to prove to the satisfaction of the judges of the election that said person is not qualified to vote? Is a mere allegation that a person is not qualified to vote sufficient to throw the burden of proving that he is qualified to vote on the person challenged? In other words, doesn't the party challenging the right of a person to vote election day have to prove conclusively to the election officers that he, or she, is not qualified to vote before the judges of election can refuse to allow the person to vote?"

Section 174 of the Code of 1919, Virginia election laws, page 38, provides that any elector may, and that it shall be the duty of judges of election to, challenge the vote of any person who may be known or suspected not to be a duly qualified voter. Section 175 of the Code of 1919, Virginia election laws, pages 38-39, governs the matter as to how a challenge shall be tried. This section reads as follows:

"When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him as to the same; and if the person insists that he is qualified, and the challenge is not withdrawn, one of the judges shall tender to him the following oath: 'You do solemnly swear (or affirm) that you are a citizen of the United States, that you are twenty-one years old, that you have resided in this State for two years, in this county, city, or town for one year, and in this district thirty days next preceding this election; and that you are, according to the best of your knowledge, information and belief, not disqualified from voting by the Constitution or laws of this State; that your name is (here insert the name given); that in such name you were duly registered as a voter of this election district; that you are now an actual resident of the same; that you are the identical person you represent yourself to be; and that you have not voted in this election at this or any voting place. So help you God.' If he refuse to take such oath, his vote shall be rejected; if, however, he does take it, his vote shall be received, unless the judges be satisfied, from record or other legal evidence adduced before them, or from their own knowledge that he is not a qualified voter, in which case they may refuse to permit such person to vote. And they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify as to the qualifications of any persons offering to vote. When the vote of any person shall be received, after having taken the oath prescribed in this section, it shall be the duty of the clerks of election to write on the poll books, at the end of the name of such person, the word 'sworn.'"

The procedure outlined by this section is so clear and free from doubt that I do not think I could add to your knowledge by attempting to explain its unambiguous terms.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Declaration of candidacy

RICHMOND, VA., October 18, 1923.

HON. T. RUSSELL CATHER,
Commonwealth's Attorney,
Winchester, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 17, 1923, in which you ask my opinion on the following statement of facts:

"A member of the board of supervisors of Frederick county filed his declaration of candidacy in form prescribed by law before the primary held in August last, and was in all respects duly declared the candidate of the Democratic party for the position. He failed to file a declaration with the clerk, as provided by section 154 of the Code of 1919, thirty days before the election. On the last day before the election, a Republican filed his declaration and claims that the regularly nominated Democratic candidate can not have his name printed on the ballot, despite the fact that he was duly declared the nominee in the primary, and duly certified to the electoral board. The electoral board has ordered the name of the supervisor printed on the ballot, together with the name of the Republican."

It is my opinion that the electoral board was right in ordering the name of the Democratic nominee, mentioned above, printed on the ballot, together with the name of his Republican opponent.

Section 225 of the Code of 1919, Virginia election laws, page 50, provides as follows:

"Any candidate for party nomination to any office who receives a plurality of the votes cast by his party shall be the nominee of his party for such office, and his name shall be printed on the official ballots used in the election for which the primary was held. In case of a tie, the nominee shall be determined by lot in accordance with the election law of the State. But nothing in this section shall prohibit the county or city committee of any political party from holding a primary which requires a majority of the vote cast in the said primary to nominate."

This statute, in my opinion, furnishes the authority for the action of the electoral board referred to in your letter.

In an opinion dated October 19, 1917, given to Mr. Frank Stuart, of Montross, Va. (Report of the Attorney General, 1917, pages 70-71), Hon. John Garland Pollard, then Attorney General, expressed a similar view, basing his opinion on the above section of the primary law, which was then section 5 of the primary act.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Duties of judgesRICHMOND, VA., *November 8, 1923.*

EDWARD A. HITCH, ESQ.,
115 *Maple Avenue, Port Norfolk,*
Portsmouth, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of November 6, 1923, in which you ask to be advised on the following inquiry. Suppose there is more than one candidate for the same office on a ticket, only one of whom can be voted for, and a voter, on being handed his ballot, asked the judges, "How many of these are to be elected, or how many must I scratch?" The judges, in view of section 21 of the Virginia election laws, refused to answer this question.

Section 21 of the Constitution, to which you refer, provides in part that a voter "shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe," except in those cases where he was registered prior to 1904.

To tell a voter how many persons whose names are on the ballot are to be elected, or how many names must be scratched, is not aiding him within the meaning of section 21 of the Constitution. A voter has the right to make the inquiry suggested in your letter, and so long as the judges do not undertake to tell him whose name he must scratch, or whose name must be left on the ticket, there can be no possible impropriety in answering the question.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Duties of judges and clerks ofRICHMOND, VA., *October 31, 1924.*

MR. ALBERT S. J. JAKEMAN,
Room 333 Law Building,
Norfolk, Va.

MY DEAR SIR:

A copy of your letter of October 19, 1924, to Mr. J. M. Wollcott, secretary of the electoral board of Norfolk city, has been referred to me for reply by the Democratic State Central Committee.

In your letter you desire to be advised whether it is legal for the judges and clerks to leave the polling places on election day and go to their homes, or elsewhere, for meals.

I do not think this would be legal. However, I can see no objection to the judges and clerks going one at a time and getting lunch, the other judges and clerks to remain in charge of the polling place; but, in the city, where lunches can be easily obtained, the wisest and best thing to do would be for them to have their meals sent to them at the voting precincts. I am of the opinion that they would have to pay for their meals.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Duty of judge to challenge ineligible voter

RICHMOND, VA., July 30, 1925.

MR. J. D. WINE,
Forestville, Va.

MY DEAR MR. WINE:

Acknowledgment is made of your letter of July 27, 1925, in which you ask me to advise you as to the duty of a judge of election to challenge one who offers to vote in the Democratic primary, who is not qualified to vote therein.

Section 228 of the Code, found on pages 66 and 67 of the Virginia election laws, provides that any person offering to vote at a primary may be challenged as provided by section 174 of the Code. The method of procedure is set out in section 228 of the Code (Virginia election laws, pages 66 and 67).

Section 174 of the Code (Virginia election laws, page 51) provides 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." (Italics supplied.)

This section of the Code, in my opinion, makes it the mandatory duty of the judges of election to challenge any person who is known or suspected by the judges of election not to be a qualified voter.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Duty to support party nominees in election

RICHMOND, VA., October 13, 1923.

MR. JOSEPH MAYO,
Hague, Virginia.

MY DEAR MR. MAYO:

Acknowledgment is made of your request to be advised as to the effect of a person voting in a Democratic primary, so far as sustaining the nominee is concerned.

When a person participates in a primary by voting therein, he is morally obligated at the general election to support all of the nominees elected at such primary.

The purpose of the primary is to select those whom the members of the party holding the primary shall support in the general election, and where such selection has been made, it is the duty of all members of the party to support such selection.

Yours truly,

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

ELECTIONS—Eligibility of candidatesRICHMOND, VA., *May 26, 1924.*

R. R. SLATE, ESQ., *Secretary,*
Halifax County Electoral Board,
South Boston, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of May 22nd, in which you say, in part:

"The town of Clover, in this county, is to have an election on June 10th for mayor and councilmen, and the clerk of the county has just certified the list of names to go on the ballot, but in his certificate he states that the candidates for council are not qualified voters. They are disqualified by not having paid their taxes in time, I think.

"According to my understanding of the election laws, this board does not have the right to put any man's name on a ticket unless he is certified as a qualified voter. And in the case cited above there is nothing for us to do but leave these names off the ballots."

After examining section 28 of the Constitution and sections 154 and 155 of the Virginia election laws, I am of the opinion that the names of these candidates will have to be printed on the ballots if they have complied with the law with reference to announcing their candidacy, even though they are not eligible to hold the office to which they have announced their candidacy if elected.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Eligibility of registrar for officeRICHMOND, VA., *October 18, 1923.*

MR. W. C. STRICKLAND,
Fancy Gap, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of October 16, 1923, in which you say, in part:

"I am a candidate for supervisor and have served as registrar up to September 15, 1923, and have registered voters up to about the above-mentioned date. My successor was appointed and served the last registration day, October 6, 1923. My opponent has raised a point as to whether I can serve as supervisor if elected, and the lawyers here can not construe the section of law to which you refer."

Section 97 of the Code of Virginia, 1919, reads as follows:

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

In the counties there is only one regular election held during the year, namely: the November election. Having acted as registrar after the November, 1922, election, it is my opinion that this section disqualifies you for any office to be filled by election by the people at the November, 1923, election, as that is the election held next after you have so acted as registrar.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Eligibility of voters

RICHMOND, VA., June 16, 1924.

MR. ROY B. BRADLEY,
Richmond Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 16, 1924, in which you ask, with reference to the special bond issue election to be held in Tuckahoe district, Henrico county, on June 17, 1924, the following questions:

"Will you kindly inform me if any of the following three classes of persons are eligible to vote in this election:

"First: Citizens who have moved into the county and who have been transferred on the books of the registrar, but did not vote in the county in the last November election.

"Second: Young men who were not of voting age last November, but have since arrived at the age of twenty-one years.

"Third: Ladies who have paid their poll taxes for the required number of years, but who have to be registered."

In response to your first question, if the citizens referred to are eligible as to residence, and have paid the capitation taxes required by law, they are eligible to vote in this election, even though they did not vote in the November, 1923, election.

Your second question should be answered in the affirmative, and your third question should be answered in the affirmative.

Any person entitled to register and to vote in this election can register on the day of election.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Eligibility to hold office

RICHMOND, VA., February 7, 1924.

HON. W. P. LIPSCOMB,
City Attorney, Suffolk, Va.

DEAR SIR:

Acknowledgment is made of your letter of February 6, 1924, in which you

ask me to advise you whether a member of the electoral board is eligible for appointment as a city school trustee.

The second paragraph of section 786 of the Code of 1919, as amended by the Acts of 1923, provides as follows:

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

From an examination of section 84 of the Code of Virginia, I am of the opinion that the member of a city electoral board is a city officer. You will observe that persons appointed as members of the electoral board are required by this section of the Code to qualify by taking and subscribing the oaths required to be taken by county and city officers.

In *Hartigan v. Board of Regents*, 49 W. Va. 14, 21, 38 S. E. 698, it was held that where an official oath was required by law, it was a sign of office.

Moreover, an examination of the provisions of section 84 of the Code of 1919 shows that to members of the electoral boards has been delegated the same sovereign functions of government to be exercised by such boards for the benefit of the public. Unquestionably, therefore, members of the electoral boards are officers, and, in the case of a city, the electoral board officers of their city. This seems to me clear, from a reading of section 84 of the Code of Virginia, 1919.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Expenses to be included in account of candidates

RICHMOND, VA., June 18, 1925.

MR. S. S. STALLINGS, *Chairman,*
Suffolk Democratic Committee,
Suffolk, Va.

MY DEAR MR. STALLINGS:

Acknowledgment is made of your letter of recent date, in which you submit three questions. First, you ask whether a young man coming of age August 28, 1925, can register and vote in the Democratic primary to be held August 4th, provided he pays his capitation tax and is otherwise qualified. This question should be answered in the affirmative. See sections 26 and 35 of the Virginia Constitution, which sections you will find in the Virginia election laws.

In your second question, you ask me to advise you whether a candidate, in accounting for his campaign expenses, should include his entrance fee. In my opinion, this is an election expense which should be included in the candidate's account of expenses.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Fees of candidates

RICHMOND, VA., May 6, 1925.

HON. B. GRAY TUNSTALL,
City Treasurer,
Norfolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of May 5, 1925, in which you say:

"Will you please be so good as to advise me the amount of money which must be paid as entrance fee in the August primary for the offices of city treasurer, Commonwealth's attorney, commissioner of the revenue, and city sergeant. Please advise if, in figuring the two per cent, whether any salary paid by the city should be taken into consideration.

Please also advise me the last date for filing notice of candidacy with the clerk of the corporation court."

All of the offices referred to in the first paragraph of your letter are paid in whole or in part by fees. It is provided, in part, by section 249 of the Code, as amended by the Acts of 1918, page 96:

"In case of a candidate whose compensation is paid in whole or in part by fees, the amount to be paid by such candidate as his contribution for the payment of the expenses of the primary shall be fixed by the proper committee of the respective parties."

Your second question is answered by section 229 of the Code of Virginia, 1919, as amended by the Acts of 1924, page 415. This section provides that the declaration of candidacy must be filed "at least sixty days before the primary." The election will be held on August 4, 1925 (Code, section 223); therefore, June 4th is the last day on which a declaration of candidacy can be filed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges—Power of electoral board

RICHMOND, VA., October 29, 1923.

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

MY DEAR MR. TURNBULL:

Acknowledgment is made of your letter of October 27, 1923, in which you state that, through an error on the part of the electoral board, a constable was appointed judge of election for one of the precincts in your county. You ask whether the electoral board has the right to remove this officer, who is prohibited from serving as judge by the law, and substitute some one in his place.

If you will examine sections 84 and 149 of the Code of Virginia, 1919, you will see that the law prohibits any person from acting as a judge, or clerk, of any election who is a candidate for, or the deputy or employee of any person who is a candidate for, any office to be filled at such election. Therefore, one who

is a candidate for constable is clearly prohibited from acting as judge of election.

The electoral board should, therefore, in my opinion, notify the candidate in question that under the law he is not eligible to act as judge of election, and appoint some one in his place who is eligible to so act.

Even in the absence of any specific authority, the electoral board would have the right to appoint a judge of election to take the place of one who had been illegally appointed, or one who, under the law, was not authorized to act as such.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Last day capitation tax can be paid

RICHMOND, VA., *April 15, 1924.*

HON. B. GRAY TUNSTALL,
City Treasurer,
Norfolk, Virginia.

MY DEAR MR. TUNSTALL:

Replying to yours of the 12th, asking my advice regarding the last date for the payment of poll taxes in order to qualify for the presidential election in November, I beg to say that Saturday, May the 3rd, is the date.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Meaning of "Majority"

RICHMOND, VA., *June 12, 1923.*

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your request that I advise you as to the following telegram received by you from W. P. Sumner:

"Town manager vote stands 167 for, 144 against. Opponents claim cause lost, proponents claim cause won. Acts of Assembly, page 380, chapter 186, amends Code covering an interpretation. Split is over clause on page 381, reading: 'But if said proposed change is adopted of a majority vote of qualified electors.' Give us opinion Attorney General, as, if cause won, we want benefit of it. Wire reply collect tonight or tomorrow. Court acts on papers day after tomorrow morning."

The act referred to is chapter 186 of the Acts of 1922, amending section 2930, *et al.*, of the Code of Virginia, 1919.

The meaning of the provision contained in said act, "if the said proposed change is adopted by a majority of the qualified electors, the court, or judge thereof, shall enter an order accordingly," has been determined by the Court of Appeals to mean the majority of the qualified electors actually voting, and does

not mean a majority of the persons qualified to vote in said election. *Harrison v. Barksdale*, 127 Va. 180 (1920).

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Method of voting

RICHMOND, VA., *October 7, 1924.*

HON. CLAUDE F. BEVERLY,
Freeling, Va.

DEAR MR. BEVERLY:

I have your letter of the 4th, in which you ask my advice in regard to the following:

“At the general election at this (Mountain) voting precinct last fall, two of the election judges carried a ballot (one of the judges carrying it in his hand) to an invalid voter who resides one-fourth mile from the voting place and out of sight of the voting place, and allowed him to mark ballot in his residence, and one of them carried it back to the voting place and deposited it in the ballot box.

“Was this legal? Will they have a right to repeat the performance this year?”

My answer to both of your questions must be in the negative. All ballots must be prepared in the election booth and must be deposited in the ballot box in his presence by the judge without any opportunity to ascertain the manner in which the ballot has been marked. Any ballot marked and deposited otherwise is invalid.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Naturalization

RICHMOND, VA., *May 7, 1925.*

RICHMOND BLAND, ESQ., *Registrar,*
West Point, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 27th, in which you ask the following questions:

“A number of foreigners have recently been naturalized, according to the Richmond papers. I notice some of them are from this section. In order that I may be properly advised, please advise me as follows:

“Whether or not the wife of a foreigner who has become naturalized since the passage of the amendment giving the women the vote, is automatically made an American citizen when her husband is; or, is she also required to take out naturalization papers?

“Whether I should require a foreigner, who has been naturalized, to wait two years after his naturalization, and during which two years he

must have lived in this State, before I can register him; or, am I required to register him as soon as he has become naturalized, provided he has lived two years in the State and the usual time in the county or town, etc."

In reply to your first question, I will say that, according to the overwhelming weight of authority in this country, the wife of a foreigner who has become naturalized is thereby automatically made an American citizen.

Concerning your second question, I would say that, in my judgment, the wife of a foreigner who has become naturalized, if she has resided in this State for two years, has a right to be registered.

The constitutional provision and the statutes on this subject relate to the period of residence, and not to the length of time one has been a citizen.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Necessity for payment of capitation tax

RICHMOND, VA., May 21, 1924.

HON. I. P. WITTIG, *Mayor,*
Broadway, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of May 16, 1924, in which you ask me whether it is necessary that a voter shall have paid his capitation taxes with which he shall be assessed, or assessable, at least six months prior to June, 1924.

The regular June election held in the municipalities of the State is one of the elections referred to in section 21 of the Constitution. It is, therefore, necessary that the capitation taxes of those offering to vote in that election shall have been paid at least six months prior to that election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Number of tickets permitted

RICHMOND, VA., May 27, 1925.

J. J. HOLZBACH, ESQ., *Secretary,*
City Democratic Committee,
Newport News, Virginia.

MY DEAR MR. HOLZBACH:

Acknowledgment is made of your letters of May 22 and May 25, 1925, the latter being in response to my letter to you of May 23rd.

It appears from your letter that there is to be elected in your city a sheriff, sergeant, high constable, Commonwealth's attorney and treasurer, and that, under the ruling of your committee, the first Tuesday in August, 1925, has been selected as the primary day on which the candidates for these offices are to be nominated. You ask to be advised, first, whether, under the law, your committee would have the right to order two tickets to be printed, one for the officers named and the

other for the State officers to be voted for in the State-wide primary; and, second, if the law did not permit the committee to do so, whether your committee would have the authority to hold a separate primary for the nomination of the officers elected for the city of Newport News on a different day from that on which the general Democratic primary is held, namely: the first Tuesday in August.

As I wrote you on May 23, 1925, the Court of Appeals decided, in *Burch v. Hardwicke*, 30 Gratt. 24, that the sheriff, sergeant, high constable, Commonwealth's attorney, treasurer, etc., are not city officers, but State officers. This being true, it seems to me that your inquiries are necessarily governed by the provisions of section 222 of the Code of Virginia, 1919, as amended, and section 223 thereof.

Section 223 of the Code provides that primaries shall be held as follows:

"* * * (a) A primary for the nomination of candidates to be voted for at the general election shall be held on the first Tuesday in August next preceding such election; * * *"

* Section 222 of the Code, as amended, provides that:

"* * *. The right to provide that a party nomination shall be made by a direct primary or by some other method shall be determined as follows: For a member of the Senate in the Congress of the United States, or for any State office, by the duly constituted authorities of any political party for the State at large; for any district office or member of the House of Representatives of the United States, or for State senator, member of the House of Delegates, or for any city, town, or county office, by the duly constituted authorities of any political party of the district, county, city, town, or other political subdivision of the State in which such office is to be filled. * * *"

You will observe that this section, after providing generally that the nomination of candidates for any State office shall be determined by the duly constituted authorities of any political party for the State at large, except from that classification certain State officers, but not those mentioned in your letter.

I am, therefore, of the opinion that the right to order a primary election for the officers referred to, in view of the fact that they are State officers, belongs to the duly constituted authorities of the political party for the State at large, and not to the local committee; and, therefore, your committee would have no authority to select a different day from the day selected by the committee for the State at large for the holding of such primary. I am further of the opinion that, the officers in question being State officers, their names should go on the regular primary ticket.

I am aware of the provisions of the last paragraph of section 248 of the Code, but, in my opinion, the power there conferred on the subordinate party committees to call a primary at a date other than the date for the general primary, has no application to primaries for nomination of State officers, but is limited in its application to candidates for local offices.

Trusting that this gives you the desired information, and with my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Payment of costs of selecting delegates to party convention

RICHMOND, VA., July 30, 1924.

HON. JAMES M. LOVE, *Chairman,*
Democratic Executive Committee,
Fairfax, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 24, 1924, in which you say:

"When the State Democratic executive committee called a convention at Norfolk, the county committee met and determined to hold conventions in the several districts to select the number of delegates the county was entitled, and issued notice of the time, place and manner of selecting delegates. A question has arisen whether the notice so given—by publication in a county paper and by hand bills—can be paid by the supervisors of the county under that clause of the primary law, 'expense of primary.' The committee held it can be so paid.

"First. It states the present law shall be 'liberally construed.'

"Second. 'Each party shall have the power to make its own rules and regulations, call conventions to proclaim a platform or ratify a nomination, or for any other purpose, and perform all functions inherent in such organization.'

"Third. 'Nothing in this chapter shall be construed to limit or circumscribe the power of any political party to prescribe the rules and regulations for its own government, and to determine its own methods of making nominations for public office,' etc.

"Contrary to the view of the committee, it is held that the primary laws shall apply to the nomination of candidates for such offices as shall be nominated by a *direct primary*, and to no other nomination, etc.

"It is held by county committee that a convention, as ordered by it, was a *direct primary*, but made by an open vote at a convention, instead of a secret ballot.

"There was one question the committee considered of importance: That whereas a primary by a secret ballot would have cost the county some hundreds of dollars, a primary by an open ballot cost very little, namely: The expense of printing the notice of the meetings."

In reply, I would say that I am not able to find any authority in the primary election law, which is chapter 15 of the Code of Virginia, 1919, for the payment upon the order of the board of supervisors of the cost of publishing notices, either in a county paper or by hand bill, in connection with district conventions to select delegates to a State convention. The section of the Code now providing for the expenses of primary elections, which is section 245, provides as follows:

"The necessary expenses incident to holding and conducting primaries, such as the payment of judges and clerks of election, necessary stationery and supplies, rent of polling places, furnishing and distributing ballot boxes and poll books, delivering poll books, printing and providing ballots, and other like expenses, shall be paid as expenses of elections are paid."

By reference to section 221, in which the words of the law are construed, it will appear that the word "primary" applies only to the primary elections provided for by chapter 15. It seems impossible to hold that a district convention, or mass-meeting, could be construed, in any sense, a primary election within the meaning of chapter 15. I am constrained to hold, therefore, that a board of supervisors has no authority to order the payment of such expenses.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Persons entitled to be present at counting of ballotsRICHMOND, VA., *March 31, 1924.*DR. J. FULMER BRIGHT,
Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of March 28, 1924, in which you say:

“Please give me a ruling on the following question:

“Who shall be permitted to enter the precincts on election day during the hours of voting?”

The answer to this question is governed by sections 161, 177 and 248 of the Code of 1919.

Section 161 of the Code, so far as is applicable to the question here under consideration, provides as follows:

*“Except as hereinafter provided for, save the judges of election and clerks, no person other than the elector offering to vote shall be within forty feet of the ballot box. * * *”* (Italics supplied.)

Section 177 of the Code provides for the counting of the ballots in the presence of representatives of each political party represented in the election, if such representatives request the judges of election to allow them to be present; otherwise the ballots are to be counted in the presence of bystanders, as is provided in that section.

Section 248 of the Code, so far as is applicable to the question here under consideration, reads as follows:

“ * * at all primaries held under this chapter, each candidate may have a representative at the polls, except when there are more than two candidates, in which case there shall be only two representatives, one to be appointed by a majority of the candidates and the other by the minority of the candidates. * * *”*

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Power of registrar to erase names of persons registeredRICHMOND, VA., *October 26, 1923.*MR. WILLIAM ELLIS, *Registrar,*
Trevilian, Va.

MY DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you ask to be advised if you, as registrar, have the authority to remove from the registration books the names of persons heretofore registered by you on an insufficient application.

You state that, due to your lack of information on the subject, you registered a number of voters whose applications did not fully comply with the

law, and, at the time you permitted such persons to register you thought that the applications made by these parties complied with the law, but that you have now found out that they were insufficient.

After examining sections 99 and 107 of the Code of 1919 and the case of *Spiliter v. Guy*, 107 Va. 811, I am of the opinion that where once a voter has been registered, even if improperly registered, that the only way by which his name can be removed from the registration list is by means of sections 99 and 107 of the Code of 1919.

I do not think that the registrar, once he has placed a man's name on the registration roll, has any authority, except in the manner especially pointed out by the statutes, to remove that person's name from the list.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Presidential

RICHMOND, VA., *October 30, 1924.*

MR. O. S. MONCURE,
Ruther Glen, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 24, 1924, in which you ask whether it is necessary to scratch presidential electors on the tickets against which you wish to vote.

If you will examine section 157 of the Virginia election laws, you will see that all that is necessary to be done is to scratch the names of the candidates for President and Vice-President on the tickets against which you wish to vote, in the manner provided by section 162 of the Virginia election laws. I am sending you, under separate cover, a copy of the election laws.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Primaries

RICHMOND, VA., *November 1, 1924.*

MR. E. B. HEFLIN,
Broad Run, Va.

MY DEAR SIR:

I am just in receipt of your letter of October 27th. In this you desire to be advised whether a voter who votes the Republican ticket this fall can legally vote in the Democratic primary next year.

In reply, I will state that he can not. Section 228 of the Code of 1919, as amended by the Acts of the last legislature, provides that:

"No person shall be permitted to vote for the candidates of any party in any primary unless such person is a member of such party and in the last preceding general election, in which such person participated, he or she

voted for the nominees of such party; and, upon challenge, such person shall declare on oath that he or she is a member of such party and supported such nominees as hereinbefore required before being permitted to vote."

You can see from this that the judges would have a right to prevent him from voting in the Democratic primary.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Qualification of voters in special elections

RICHMOND, VA., June 25, 1925.

HON. WILLIAM H. DUNCAN,
*Clerk of the Circuit Court,
Clarendon, Va.*

MY DEAR MR. DUNCAN:

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

"The circuit court of this county has ordered a special election to be held in the town of Potomac, this county, on the 28th day of July, 1925, for the purpose of voting on a bond proposal.

"In this connection, will you please advise me at your earliest convenience what capitation list or lists should be certified by this office to the judges of this election; that is to say, if both the lists that applied to the November, 1924, and June, 1925, elections, and the one that applies to the November, 1925, election should be certified as aforesaid. If not all of the said lists, which one or ones should be certified?"

In this connection, I call your attention to section 83 of the Code, in which you will observe that in the cases of special elections held after the second Tuesday in June, any person may vote who will be qualified to vote at the regular November election of this year.

Therefore, it is only necessary to certify a list of those persons so qualified.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registrar can not be candidate in

RICHMOND, VA., November 17, 1923.

C. W. HUGHES, ESQ.,
Abingdon, Virginia.

MY DEAR MR. HUGHES:

Acknowledgment is made of your letter of November 12, 1923, in which you state that you acted as registrar immediately before the November, 1923, election, at which election you were a candidate for the office of justice of the peace, to which you were elected by the voters of your district. You state that your election has been contested, and ask me to advise you whether the circuit court of

your county could legally appoint you now, or after the 1st of January, as a justice of the peace. You further state that your district is entitled to three justices of the peace, and that it has only one.

Section 97 of the Code reads as follows:

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

Therefore, you were ineligible for election to any office by the people at the November, 1923, election.

However, in section 86, so far as is applicable to the question here under consideration, it is provided:

"It shall be the duty of the electoral board of each city and county, prior to the 1st day of April, 1920, and every alternate year thereafter, to appoint a registrar for each electoral district of their respective counties and cities, who shall be a discreet citizen and resident of the election district in and for which he is appointed, and such registrar shall not hold any office, by election or appointment, during his term. Said registrar shall not hold office for two years from the first day of May following his appointment, and until his successor is duly appointed and qualified. The acceptance of any office, either elective or appointive, by such registrar during his term of office shall, *ipso facto*, vacate the office of registrar. The electoral board shall fill any vacancies that may occur in the office of registrar."

It would appear from a reading of this section in connection with section 97 of the Code that, while you were not eligible to election by the people, that if the court felt it proper, you would be eligible to appointment as a justice of the peace; the acceptance of which office would forthwith operate as a vacation of the office as registrar.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registrar eligible to be judge

RICHMOND, VA., July 28, 1925.

GEO. B. MORTON, Esq.,

Cape Charles, Virginia.

DEAR SIR:

Acknowledgment is made of yours of the 27th, in which you say:

"I am registrar for Cape Charles, and the election judges want me to serve as clerk at August 4th primary. Have I a legal right to serve?"

In reply, I beg to say that the appointment of judges of election is regulated by section 31 of the Constitution of Virginia, section 149 of the Code, as to regular elections, and section 224 of the Code as to primary elections. There is no provision prohibiting the appointment of a registrar as judge of a primary election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registrar must be qualified voterRICHMOND, VA., *April 4, 1924.*

MR. W. P. LIPSCOMB,
Attorney at Law,
Suffolk, Virginia.

MY DEAR SIR:

Yours of April 30th received. In this you state that the registrar in the third ward of your city died some weeks ago. The electoral board appointed, as his successor, a young man who is not a qualified voter. You ask to be advised whether one, who is not a qualified voter, is eligible to hold the position as registrar. In my opinion, he is not.

Section 31 of the Constitution provides that registrars must be appointed. Hence, he is a constitutional officer, and, under the provisions of section 32 of the Constitution, which limits the right to hold an office to qualified voters, except as otherwise provided in the Constitution, a person who is not a qualified voter, therefore, in my opinion, is not qualified to hold the office of registrar.

With my kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RegistrationRICHMOND, VA., *May 26, 1924.*

MR. H. B. SHAWEN,
Altavista, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 21st.

It is my opinion that section 2995 of the Code of 1919 means that all persons who have been registered, and whose names appear on the county registration, or poll books, can be placed by the registrar of the town on the town poll books at any time prior to the election, but I do not think, in view of section 98 of the election laws, which is the same as section 98 of the Code of 1919, that a person can be registered on the town books unless he was registered on the county books on or before the third Tuesday in May.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—RegistrationRICHMOND, VA., *May 31, 1924.*

MESSRS. HONAKER & THOMPSON,
Attorneys at Law,
Abingdon, Virginia.

GENTLEMEN:

Acknowledgment is made of your letter of May 29, 1924, with reference to

the closing of registration books in towns prior to the regular municipal elections held in the month of June.

You call attention to sections 98 and 2995 of the Code of Virginia, 1919, and state that the registrar of your town closed his registration books on the third Tuesday in May, and says that no person can register after that date to vote in the June election to be held on June 10th. You ask to be advised whether this is the proper construction to be placed on sections 98 and 2995 of the Code of Virginia, 1919.

In my opinion, these two sections must be read together. I am further of the opinion that no one is entitled to register on the town books who has not first registered on the county books.

I am further of the opinion that any person who registered on the county books prior to the third Tuesday in May, and who is a resident of the town, must be registered by the registrar on the town books, prior to the election, whether such person makes application to the town registrar or not. If he has been registered on the county books, I do not think that he has to apply for registration on the town books. It is the duty of the town registrar to register such voter on the town books, and this can be done under the provisions of section 2995 of the Code at any time up to and including the day of the June election.

I note what you say with reference to section 98 of the Code of 1919 relating only to general elections. You will observe, however, from an examination of section 122 of the Constitution that the election held in June, in the municipalities of the State, is a regular or general election.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registration

RICHMOND, VA., June 3, 1924.

DR. R. C. CRAIG,
Abingdon, Virginia.

DEAR DR. CRAIG:

I am in receipt of your letter of May 28th, in which you state that the question has arisen in your town as to when the time expires for registration in order to vote in your town election, which is to be held on the 10th of June.

In reply to your letter, I beg to call your attention to sections 98 and 2995 of the Code of 1919.

Section 98 provides that on the third Tuesday in May each registrar in towns and cities shall annually proceed to register the names of all qualified voters within his election district not previously registered in the 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 that day.

Section 2995 provides that the electoral board of the county within which such town, or the greater part thereof, is located, shall, not less than fifteen days

before any town election therein, appoint one registrar and three judges of election, who shall 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, and none others.

The conclusion reached from a consideration of these two sections is that up to the day of the time of the election the registrar appointed under section 2995 can register all persons who are residents of the town and who have been previously registered as voters of the county; but where a person is a resident of the town and has not been previously registered as a voter in the county, I do not think that he would be permitted to register after the third Tuesday in May. I trust I have made myself clear in this matter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration

RICHMOND, VA., June 9, 1924.

J. W. ALTICE, ESQ.,
Rocky Mount, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of June 5, 1924, in which you ask the following questions:

"A voter moving from the county to the town over twelve months ago, transfers from his county precinct to Rocky Mount precinct last October, and registers on the corporation books May 19, 1924—is he eligible to vote June the 10th in the municipal election?

"Can residents register in town registration books up to June the 10th, and be eligible to vote in the town election of June the 10th?"

In response to your first question, if the man referred to has been a resident of the State two years, and of your town one year prior to the day on which the election is held, he is eligible to vote, provided he is properly registered and has paid the capitation taxes required by law, and is otherwise qualified.

In response to your second question, section 98 of the Code of Virginia, and of the Virginia election laws, must be read in connection with section 2995 of the Code of Virginia, 1919. Any person eligible to vote who registered on the county books prior to the third Tuesday in May, 1924, can be registered on the town books at any time up to and including the date of the town election, and vote therein.

In my opinion, section 2995 of the Code requires the town registrar to register on the town books all residents of his town registered on the county books prior to the third Tuesday in May, whether such persons make application to the town registrar or not.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration

RICHMOND, VA., May 14, 1924.

MR. R. N. WHITLOW,
Rocky Mount, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of May 12, 1924, in which you say, in part:

"Please advise me if the registration book of a city or town is entitled to stay open up to election day, or shall they be closed thirty days before the election."

In response to your inquiry, I would call your attention to a portion of sections 98 and 2995 of the Code of 1919, which read, respectively, as follows:

"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 the 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. * * *"

"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. * * *"

You will observe from a reading of the portion of section 98, which I have quoted above, that in cities and towns, after the third Tuesday in May until the regular municipal elections have been held, the registration books shall be closed. An exception in the case of towns is provided for by section 2995 of the Code of 1919, which should be read in connection with section 98. Therefore, it is my opinion that no one can be registered on the town books who has not first been registered on the county books; and, second, that only such persons who are inhabitants of the town, and who are registered on the county registration books, can be registered under the provisions of section 2995, and then only such persons as shall have registered on the county registration books prior to and including the third Tuesday in May.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration

RICHMOND, VA., October 15, 1923.

HON. J. REID WILLS, *Treasurer,*
Louisa, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 13, 1923, in which you ask the following questions:

"Can a person be registered after sundown on the last day, thirty days prior to general election?"

"Can a registrar go from this county (Louisa) to Richmond to register a person, or must this person appear personally before the registrar in this county?"

In response to your first question, it is my opinion that one may register any time up to midnight on the registration day prior to the general election.

As to your second question, it is my opinion that the registrar had no jurisdiction outside of his county, and, therefore, it is necessary to apply in person to the registrar within his jurisdiction before one is legally entitled to register.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration

RICHMOND, VA., *October 29, 1923.*

MR. R. C. A. SIEBURG, *Registrar,*
Charlottesville, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of October 26, 1923, in which you ask for an opinion on the following statement of facts:

"A young man who has recently become of age desires to vote in the next presidential election; he is registered in Georgia and has a transfer from there, but has only lived in this State several months. Now, what I desire further light on is, can his name be entered on the registration within one year of the election, or does the law require two years, same as registration?"

Under our law, one cannot register on a transfer from another State.

Under the provisions of sections 18 and 20 of the Constitution of Virginia, it is necessary for one to have been a resident of this State for two years, and of the county, city or town one year, and of the precinct in which he offers to vote thirty days next preceding the election in which he offers to vote. Unless a person can comply with these conditions by the date of the next election, he is not entitled to register.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration

RICHMOND, VA., *October 16, 1923.*

MR. J. REID WILLS, *Treasurer,*
Louisa, Virginia.

MY DEAR MR. WILLS:

Acknowledgment is made of your letter, addressed to the Attorney General, which has been referred to me for attention, in which you ask as follows:

"Can a voter who procured a transfer prior to October 6th present same, and vote, up to and including the day of election?"

"Can a voter who became of age during the present year, who failed to register prior to October 6th, register now and vote on the day of election?"

The law requires the registration books to be closed thirty days before election. Section 98, Code of 1919, provides that thirty days previous to the November election each registrar of this State shall sit one day for the purpose of amending and correcting the list, at which time any qualified voter applying, not previously registered, may be added. And it further provides that the registrar will, at any time previous to the regular day of registration, register any voter entitled to vote at the next election who may apply to him to be registered. It is thus seen that the registration books must close after the day of sitting, above provided for, and are not to open again until after the November election.

Thus, no person who does not register on or before the day that the registrar sits, thirty days before the November election, can register so as to enable him to vote at this election.

Very truly yours,

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

ELECTIONS—Registration

RICHMOND, VA., *April 14, 1925.*

CLAUDE O. THOMAS, ESQ.,
Attorney at Law,
Clarendon, Virginia.

MY DEAR MR. THOMAS:

Acknowledgment is made of your letter of recent date, in which you state that a special bond issue election will be held in Arlington district, Arlington county, on April 20, 1925. You then ask me to advise you, as judge of election, whether a person who is eligible for registration can be permitted to register on that day.

If you will examine section 98 of the Code of Virginia, 1919, you will see that the registration books are closed in municipalities twice during the year, and in the counties only once during the year, namely, after thirty days previous to the regular November election. This section expressly provides that the registrar shall, at any time previous to the regular registration day, and except when the books are closed, register any one entitled to register.

Section 98a of the Virginia election laws, 1924, which is the same as chapter 80 of the Acts of 1923, page 102, has no application to special elections held in counties. Therefore, one entitled to register may register on the same day on which a special election is held in a county, unless that special election be held at a time when the registration books are closed by law. A person so registering is entitled to vote in the special election, provided he possesses the qualifications required of a voter at that election. It does not follow that every person who is entitled to register on that day is entitled to vote in the special bond issue elec-

tion, but any person who is entitled to register may register on that day, and, if qualified to vote in that election, is then entitled so to do.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration books

RICHMOND, VA., *March 3, 1925.*

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

MY DEAR SIR:

Acknowledgment is made of your communication of March 3, 1925, in which you request me to advise you whether you are authorized to furnish registration books, as required by section 94 of the Code of 1919, in loose-leaf form.

It is my opinion that you are not authorized to do so. In my opinion, the law contemplates the use of a permanently bound book for registration purposes, and, in the absence of express statutory provision to the contrary, you have no authority to issue a book other than this for such purpose.

I am returning your file as requested.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., *April 15, 1924.*

MR. L. T. TATE,
Gate City, Va.

MY DEAR SIR:

Acknowledgment is made of your letters of April 7 and 12, 1924, in which you state that you lived in West Virginia until the election day in November, 1922; that you then moved to Scott county, Va., and will have been a bona fide resident of Scott county, Va., for two years on November 4, 1924; and that you did not vote at all in 1923. You then ask me how many years' poll tax will you have to pay in Virginia in order to vote in Virginia on November 4, 1924.

Section 21 of the Constitution of Virginia requires the payment, at least six months prior to the election, of all State poll taxes assessed or assessable against a voter during the three years next preceding that in which he offers to vote.

Under section 1 of the tax bill, taxes are assessed as of the first day of February in each year. As you did not become a resident in Virginia until November, 1922, the first capitation tax with which you were assessed or assessable in Virginia was for the year 1923. As the year 1924 is not one of the three years next preceding the election to be held on November 4, 1924, your capitation tax for

that year would not have to be paid as a prerequisite to the right to vote in the November, 1924, election.

It, therefore, follows that the only year with which you are assessed or assessable with a poll tax, as a prerequisite to your right to vote in the November, 1924, election, is for the year 1923. This tax must have been paid at least six months prior to the November, 1924, election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence

RICHMOND, VA., November 3, 1923.

MR. S. H. SMITH,

Madison, Virginia.

MY DEAR MR. SMITH:

Yours of November 2nd received.

I am of the opinion that where a party moves from one county to another county, he has a right to vote in the coming election in the county from which he moved until he has acquired a residence in the county to which he has moved.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence

RICHMOND, VA., May 9, 1924.

MR. J. W. CROWLEY,

Fort Eustis, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of May 6, 1924, in which you ask a number of questions, as follows:

"Does a man leaving a bona fide legal voting residence within the State forfeit all voting rights by taking up his residence on a military reservation within the State? Can such a man ever regain his right to vote while he continues to live on the reservation without owning or leasing property within the State? Is a nonresident of the State who lives on a military reservation located in a county of Virginia able to acquire the privilege of voting in the same manner as if he were living in the county but not on the reservation?"

In response to your first question, the answer is no. *Williams v. Commonwealth*, 116 Va., page 272.

It would seem that your second question is answered by a negative answer to the first question.

In response to your third question, section 24 of the Virginia Constitution provides as follows:

"No officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence, as to the right of suffrage, in the State, or in any county, city or town thereof, by reason of being stationed therein; nor shall an inmate of any charitable institution or a student in any institution of learning, be regarded as having either gained or lost a residence, as to the right of suffrage, by reason of his location or sojourn in such institution."

In *Bank of Phoebus v. Byrum*, 110 Va., page 708, 67 S. E. 349, the Court of Appeals held that the territory ceded by the State to the Federal government was no longer a part of the State, nor subject to the jurisdiction of its courts, and that persons residing thereon were not residents of Virginia.

I am, therefore, rather inclined to the belief that a nonresident of Virginia can not acquire a residence in this State merely by living on a Federal reservation, which is not a part of the State, so as to enable him to vote in Virginia.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., April 22, 1924.

MR. A. G. HUTCHISON, *Registrar,*
Herndon, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 21, 1924, in which you request me to advise you whether you can register a man on his transfer, who has been a resident of your county only a few months.

If you will examine sections 18 and 20 of the Constitution, you will see that a person must have been a resident of the State two years, and of the county, city or town one year before he is entitled to vote.

If the man in question will have been a resident of your county one year on the day on which the November, 1924, election will be held, he will be entitled to register on his transfer at the present time, and vote in the coming primary, and the succeeding November election. See sections 26 and 35 of the Constitution. If, however, he will not have been a legal resident of your county for one year on or before the day on which the November, 1924, election is held, he will not be entitled to register at the present time and vote. See also section 100 of the Code of Virginia, 1919, which is found on page 18 of the Virginia election laws.

You also state that a person registered on your books who has moved his residence from Fairfax county to some other county, or city, during the past six months, has applied to you for a transfer. You ask to be advised whether you can issue the same to him. Section 100 of the Code of 1919, found on page 18 of the Virginia election laws, authorizes you to issue the transfer on request of the voter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—ResidenceRICHMOND, VA., *October 30, 1924.*

A. W. ASTON, ESQ.,
Meadow View, Va.

DEAR SIR:

I have just returned to my office after an absence of several days, and find your telegram of the 28th, which is as follows:

"New Emery precinct, in Glade Spring district, carved from the two former precincts of Glade Spring and Meadow View, separated the two old precincts. Have voters resident within the new precinct lines legal option to continue voting where heretofore registered, or must their names be transferred to Emery. Refer you also to recent letter from Lee K. Haynes."

In reply, I beg to say that the situation which you describe is governed by section 102 of the Code, which is as follows:

"When a rearrangement of existing election districts is made, the registrars thereof shall make out, certify, and deliver to each other lists of the registered voters in their respective districts whose voting places are changed by the rearrangement; or when a new election district is created out of one or more already existing, the registrar of the old district or districts shall make out, certify, and deliver to the registrar of the new district a list of the registered voters who have been placed by the change in the new district. The registrars to whom said lists are delivered shall forthwith enter the names of the persons contained in said lists in their respective registration books; and the said persons shall at once acquire the right to vote in the districts, respectively, to which they are so transferred. The names thus transferred shall be stricken, by the registrars transferring them, from their registration books; and when a new district is created, as aforesaid, the registrar of the old district shall, after making such transfers, make out new registration books for his district. For such services as may be rendered by the registrars under this section, the board of supervisors of the county or the council of the city, as the case may be, shall make proper allowance."

From this you will note that the law contemplates that all voters living within the boundaries of a new precinct's lines should vote at the new precinct.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—ResidenceRICHMOND, VA., *September 18, 1924.*

HENRY B. GOODLOE, ESQ.,
Greenwood, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of September 16, 1924, in reply to my letter of September 15th, in answer to yours of September 13th.

It appears from the facts furnished me by you that you and your wife are past thirty years of age; that prior to the war you were a resident of this State,

but, due to your service in the army of the United States, you were out of the State until about October 15, 1922, when you returned to Virginia, after an absence of about five years.

Under the law, if, when leaving Virginia, you did not intend to abandon your legal residence here, it will be necessary for you, in order to vote in the November, 1924, election, to have paid your capitation taxes for the years 1921, 1922 and 1923 at least six months prior to the November, 1924, election. If you intended to retain your legal residence in Virginia when you entered the army, as you had a right to do, you remained a citizen of Virginia and subject to the payment of your capitation taxes as a prerequisite to the right to vote. If, on the other hand, when you left Virginia for service in the army, you intended to abandon your residence in Virginia and to gain a legal residence at some other place, you would be assessable with the capitation taxes only from the date you returned to Virginia with the intention of becoming a resident thereof.

If the latter case is true, the only capitation tax which you will be required to pay as a prerequisite to your right to vote in the November, 1924, election would be the capitation tax for the year 1923, since you did not become a resident of Virginia until subsequent to the first day of February, 1922. If your residence in Virginia dates from the 15th day of October, 1922, you will have been a resident of this State for a period of two years on the day on which the November, 1924, election will be held, and, under the provisions of section 26 of the Constitution of Virginia, will be entitled to register at the present time.

Of course, as I have said, the question as to whether you can vote in this State depends upon your intention when you left Virginia. If, at the time you left Virginia, you intended to abandon your legal residence here, then you will be eligible to vote on the facts furnished me in your letter, both as to residence and as to the payment of your capitation taxes, if you are otherwise qualified. If, on the other hand, when you left Virginia you did not intend to abandon your legal residence here, but intended to retain same in Virginia, then you will not be eligible to vote in the November, 1924, election, because you have not paid your capitation taxes for the year 1921, which is one of the three years preceding the year in which the November, 1924, election will be held.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., May 26, 1924.

GEORGE B. MORTON, ESQ., *Registrar,*
Cape Charles, Va.

MY DEAR SIR:

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

"I have an applicant for registration that was born in South Norfolk, Va., in 1899, and was raised there. In 1921 and 1922 he attended school at William and Mary, Williamsburg. When school closed, summer of 1922,

he came to Cape Charles to play baseball. When school opened again, fall of 1922, he returned to school and signed the school register as from South Norfolk, Va. In July, 1923, he moved to Cape Charles.

"In making his application for registration, he affirms that when he came here in 1922 he came with the intention of making this his future home, although when registering on the school register in fall he gave his home as South Norfolk. He has paid the three years' taxes all O. K., but I am holding up his registration pending your decision, for, as I see it, he will not have been here one year until July, 1924, basing my opinion on his signature on the school roll as from South Norfolk."

From the facts stated in your letter, it is my opinion that the residence of the gentleman in question in Cape Charles dates from July, 1923, and not the autumn of 1922, and, therefore, he would not be qualified to participate in the regular town election to be held in the month of June, 1924, in your town. Under the provision of sections 26 and 35 of the Constitution, however, he will have been a resident of your town long enough to vote in the November election, 1924, and the primary to be held in August of this year, if otherwise qualified.

I regret very much that I was unable to answer your letter before this, but it so happened that it came at the time when my whole office force was engaged in the preparation of the briefs in the Commonwealth's cases pending in the Supreme Court of Appeals, and until this work, which is the primary work of my office, was completed, it was impossible to reply to my correspondence.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence

RICHMOND, VA., *October 5, 1923.*

MR. E. W. EARLY,
Hillsville, Va.

DEAR SIR:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention, in which you state that a qualified voter in Carroll county has recently moved his residence to Grayson county, and will have been in Grayson county less than one year at the time of the election in November, 1923. You ask whether, under the circumstances, he can vote in Carroll county.

The laws of Virginia, section 18 of the Constitution, and section 82 of the Code of 1919, provide that a voter must live in a county, city or town one year before he can vote there. Therefore, the gentleman in question can not vote in Grayson county at the November election, 1923, because he will not have been a resident there for one year.

At the same time, it is the policy of our laws not to disfranchise a voter, and I am of the opinion that he does not lose his right to vote in Carroll county because of his removal, but can still vote there until a year has elapsed since his removal therefrom. Obviously, the provision with reference to the removal from one precinct to another of the same county, city or town, does not apply in such case.

The provision in regard to moving from one precinct to another was evidently placed in the law because of the fact that the registration books close thirty days before the election, and where a person moves from one precinct to another within thirty days, he would be unable to secure a transfer, and thus be denied the right to vote.

I would be very glad to give you any further information I can upon the subject.

Yours truly,

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

ELECTIONS—Residence

RICHMOND, VA., October 31, 1923.

HON. J. REID WILLS,
Treasurer of Louisa County,
Louisa, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of October 29, 1923, in which you request my opinion of the following:

"No. 1. We have one, Dr. J. H. Crum and wife, who have been absent from this county for eighteen months; he has been practicing medicine in Rockingham county since then, and has his property here advertised for sale; he and his wife have made application to vote here by mail. Can they vote here by mail?"

"No. 2. We have one, J. L. West and wife, who moved to Ashland, Va., around October 10th, having given up his position here as cashier of Bank of Louisa, to accept a position with the Tobacco Growers Co-operative Association. They own no property here and have moved all household effects. Can they vote here by mail?"

In both cases the question as to the right to vote will depend on whether or not the parties are legal residents of Louisa county. In order for a person to have his legal residence in a place, it is not necessary that he should actually live there. Once a legal residence has been acquired in a place, it can be lost only by the removing of the person from the place of legal residence with the intention of abandoning his legal residence in the first place, and acquiring it in the place to which he has moved. *Williams v. Commonwealth*, 116 Virginia 272.

In both of the cases stated by you there is no reason why the parties in question could not retain their legal residence, for the purpose of voting, in Louisa county, if they so desired. Whether or not they have, in fact, done this I can not say, as that is a fact which must operate upon the particular circumstances of each particular case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—ResidenceRICHMOND, VA., *April 9, 1925.*

MR. R. W. FRANKLIN,
Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 8, 1925, in which you say:

"For some years past I have been a resident of Varina district, Henrico county, but on February 15th last, for business reasons, was compelled to move into the city of Richmond. Both my wife and I are qualified voters of the district mentioned, being duly registered and having previously voted at Eanes' precinct.

"A special election is to be held in Varina district tomorrow, the 9th, in the matter of a school bond issue, and, if consistent, both my wife and I would like the privilege of participating in this election. However, we have learned that, inasmuch as we have left the county of Henrico, there is a probability of our being challenged at the polls.

"Under the circumstances, I will appreciate it if you will advise me whether or not my wife and I should be allowed to vote in the election referred to."

Under the decision of the Court of Appeals in *Williams v. Commonwealth*, 116 Va. 272 (1914), the court held that where a person had once gained a legal residence for the purpose of voting at a particular place, that legal residence could be lost only by the combination of two acts: First, removal from that place; second, with the intention of abandoning the legal residence previously acquired.

If, when you left Henrico county, you intended to retain your legal residence in Henrico county, under the authority of this decision you would have the right to do so. If, however, in moving from Henrico county you intended to change your legal residence when you moved, you no longer have a legal residence in that county for voting.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—ResidenceRICHMOND, VA., *May 11, 1925.*

MR. THOMAS W. BLACKSTONE,
Accomac, Virginia.

MY DEAR MR. BLACKSTONE:

Acknowledgment is made of your letter of May 7, 1925, in which you say, in part:

"Mr. Gardner, who is with me here in bank, has moved to Onley and comes over every morning, returning at night. Is it necessary for him to be transferred to Onley, or can he continue to vote here?"

The question depends upon whether Mr. Gardner, when he moved to Onley, intended to make Onley his place of legal residence, or whether in moving he intended to retain his legal place of residence, for the purpose of voting, at Accomac

Courthouse. If, when he moved, Mr. Gardner intended to retain his legal residence at Accomac Courthouse, he had the right to do so and can continue to vote there. *Williams v. Commonwealth*, 116 Va. 272 (1914). On the other hand, if, when he moved, his intention was to change his place of legal residence to Onley, it will be necessary for him to obtain the proper transfer if Onley is a separate precinct from Accomac Courthouse.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., May 18, 1925.

MR. R. D. MABEN,
Commissioner of the Revenue,
District No. 1, Nottoway County,
Blackstone, Va.

DEAR SIR:

Acknowledgment is made of your letter of May 16, 1925, in which you say:

"We have two army officers in Nottoway county who have resided in the county for some three or four years; have also bought property in the county, and have been assessed and paid their capitation taxes, and now desire to register as voters.

"The registrar is of the opinion that they are not eligible to registration on account of being army officers.

"I would be glad if you would advise me if these people are not eligible to register, as they certainly should have the privilege to exercise the right of suffrage somewhere; the very fact of their having bought property as a home in Nottoway county appears to be sufficient evidence that they are citizens of Nottoway county."

In reply, I beg to say that, though an army officer does not gain a residence merely by reason of being stationed in a county, he may acquire a residence by purchasing property or doing any other act which indicates an intention to reside in the county. Therefore, in my judgment, the officers you mention are entitled to be registered.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., July 24, 1925.

REV. A. L. STEVENSON,
Kenbridge, Virginia.

MY DEAR MR. STEVENSON:

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

"My attention has just been called to a possible element of doubt in my eligibility to vote in the coming primary.

"I am a Methodist preacher, and until October, 1923, had been pastor for a number of years at Orange, during which time I voted there. October 25, 1923, I was stationed as pastor of our church at Appomattox. However, the sickness of the wife of my predecessor prevented my moving until November 9th. But from the day of my appointment my official mail began going to Appomattox, and I was officially the pastor. My predecessor there and I—for we were exchanged, he being sent to Orange and I to Appomattox—preached for each other two Sundays extra in the new conference year and did for each other the necessary pastoral routine, such as performing marriage ceremonies and conducting funerals.

"October 20, 1924, I was moved and sent to Kenbridge. This time I moved on time, leaving Appomattox October 29th or 30th. As my official residence was at Appomattox for a full year, I went ahead and paid all taxes in due time there and have deposited my certificate of transfer with the registrar there, getting it from Orange in May.

"It does seem to me that the necessary absence from Appomattox of these two weeks should not count against my residence there for a year, especially as all along for the full year I was officially pastor there, my official mail was sent there, and my taxes for the year were all paid there.

"Please let me know at your very earliest convenience what the law on this subject is, or what your interpretation of the law is, that I may know what to do."

I assume from your letter that the place where you desire to vote is Appomattox, and not Kenbridge. The question of residence is governed by section 18 of the Virginia Constitution, which authorizes citizens of the United States, twenty-one years of age, who have been residents 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, to vote so far as the residence requirements are concerned.

It appears from the facts stated by you that you actually moved to Appomattox on November 9, 1923, and that you assumed your duties as pastor of Appomattox on October 25, 1923, although you were actually prevented from moving your effects there until November 9th, on account of the sickness of the wife of the pastor you succeeded.

The Court of Appeals held in *Williams v. Commonwealth*, 116 Va. 272, that the meaning of the words "resident or residence" is to be determined from the facts and circumstances taken together in each particular case, and that, for the purpose of voting and holding office, a legal residence once acquired could be lost only by a combination of two acts: First, removal from the place where a legal residence has been acquired; second, with the intention of changing your legal residence to some other place.

It, therefore, follows that when you moved from Appomattox to Kenbridge, if you intended to keep your legal residence at Appomattox and not move it to Kenbridge, you were authorized so to do. If that were your intention, it would be immaterial, as to your right to vote in the coming primary and the succeeding general election, whether your residence at Appomattox began on October 25, 1923, or November 9, 1923, as in any event your legal residence there would have been of more than one year's duration. If, on the other hand, when you moved from Appomattox to Kenbridge you intended to move your legal residence to Kenbridge, you would, if otherwise qualified as to the payment of your capitation

tax, registration, etc., be entitled to vote as a resident of Kenbridge in the approaching primary and the succeeding general election, as section 35 of the Constitution provides that any person qualified to vote at the next succeeding election may vote at any legalized primary election.

As the November, 1925, election, which is the next succeeding election to the August, 1925, primary, will not take place until November 3, 1925, you will have been a legal resident of Kenbridge for the one year prescribed by section 18 of the Constitution when that date arrives; provided, however, when you moved from Appomattox your intention was to abandon the residence acquired there and select Kenbridge as your place of legal residence.

Trusting that this gives you the desired information, I am

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., *April 29, 1925.*

J. B. HAYWOOD, ESQ.,
*Commissioner of Revenue,
Hopewell, Va..*

MY DEAR MR. HAYWOOD:

Acknowledgment is made of your letter of April 28, 1925, in which you say:

"I will thank you very much to advise me whether or not a man is eligible to vote in the coming primary who came to this city during the month of October, 1923, from the State of New York, and has paid poll tax for the year 1924 only."

If otherwise qualified, the man in question will be entitled to register and vote both in the general election to be held in November, 1925, and the August, 1925, primary. If you will examine section 18 of the Constitution, you will see that the residence required of a voter is two years in the State and one year in the city, as of the time of the holding of the election.

The requirement as to the payment of poll taxes, found in section 21 of the Constitution, applies only to poll taxes which are assessed or assessable against such person. Poll taxes, of course, are not assessable against nonresidents of Virginia under the Constitution of this State. By reason of the Virginia tax bill, capitation taxes are assessed or assessable as of the first day of February of each year. As the man referred to was not a resident of Virginia on February 1, 1923, the first capitation tax assessed or assessable against him was for the year 1924, which you state has been paid. The capitation tax assessed or assessable for the year 1925, of course, would not have to be paid as a prerequisite to the right to vote in an election held in 1925.

Under authority of section 26 of the Constitution, the man referred to, if otherwise qualified, would have the right to register and to vote in the general election to be held in 1925, and under authority of section 35 of the Constitution, he would have the right to vote in the August primary.

Of course, it is needless for me to say that the man referred to is not eligible to vote in the regular municipal election to be held in June, nor in the primary that is held for that election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence

RICHMOND, VA., *January 16, 1925.*

MR. R. A. GLADWIN,
*Old Colony Trust Company,
52 Temple Place,
Boston, Massachusetts.*

MY DEAR SIR:

Acknowledgment is made of your letter of January 5, 1925, in which you say:

“Would you kindly advise the writer as to whether, in your opinion, it would be possible under the laws of Virginia for a husband and wife to have separate legal residences, one in Virginia and the other in a different State?”

The common law with reference to this subject is still in force in this State, with this exception.

It is provided by section 1 of the act conferring the right of suffrage on women, Acts of 1920, page 588, as amended by the Acts of 1922, page 462:

“* * * For the purpose of registering and voting, the residence of a married woman shall not be controlled by the residence or domicile of her husband.”

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence of officers

RICHMOND, VA., *February 8, 1924.*

MR. PERCY T. BROCKWELL,
Petersburg, Va.

DEAR SIR:

Acknowledgment is made of your request as to whether you are such a resident of the city of Petersburg that makes you eligible to membership in the city council. You state that you were born in Petersburg, and always lived there, expecting to make it your permanent home, when, about three years ago, you were forced to leave because you were unable to secure a desirable house in which to live as a home. Thereupon, you carried your family to Dinwiddie county, where you have been living since, but, in moving to such county, you did not intend to make it your permanent home, but only temporary, always intending to return to Petersburg as your permanent home, and that now you have made arrangements

by which you will return to Petersburg as your home. You further state that your business is in Petersburg; that your capitation tax has always been paid in Petersburg, and that you have always voted in Petersburg.

All persons eligible to vote in Petersburg are eligible to the position of member of the city council. The question of the right to vote in a certain place where a person is not, at that time, actually living, depends upon whether it is in fact his domicile. Where a person resides in a place with the intention of making it his permanent home, such place, thereupon, becomes his domicile and remains his domicile until he changes his intention and his residence. Such legal residence once acquired by habitation is not lost by temporary absence for pleasure, health or business, or by necessity, but a person holding it as his legal residence has a right to vote there until he forms the intention to change such residence.

In order to lose one's residence for the purpose of voting there must have been a change of habitation coupled with the intention to change such residence. In other words, to effect a change of legal residence so as to affect the right to vote, there must be both act and intention. *Commonwealth v. Williams*, 116 Va. 272.

From the facts above stated, it is obvious that you have not changed your intention of returning to Petersburg and, therefore, as prior to the time of your moving out of the city by necessity, you had fixed that as your domicile, it still remains your domicile, and you still have a right to vote in that city, though you may have been temporarily residing outside of said city.

From this, it follows necessarily that you are eligible to membership in the city council.

Yours truly,

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

ELECTIONS—Split tickets

RICHMOND, VA., October 30, 1924.

BEN GILES, Esq.,
Chairman, Third Congressional Dist. Com.,
Vice-Chairman, Va. State Com.,
106 South Fifth Street,
Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 24, 1924, which I found on my desk on my return to the city, in which you ask me to advise you whether one may vote in Virginia for the presidential electors of a party other than the Democratic electors, and be permitted to participate in the August, 1925, Democratic primary.

In response thereto, I will state that it has been the consistent ruling of this office that one who voted for the presidential electors of any party other than the Democratic presidential electors is not eligible to vote in the Democratic primary to be held in the August succeeding the presidential election. *Report of the Attorney General*, 1921, page 68.

I do not think that section 222 of the Code of 1919 affects this, as the right to vote in a primary election is governed by the provisions of section 228 of the Code of 1919, as amended by chapter 286 of the Acts of the General Assembly, 1924, page 416.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Tax list

RICHMOND, VA., *March 27, 1924.*

HON. RICHMOND T. LACY, JR.,
Assistant City Attorney,
Richmond, Virginia.

MY DEAR MR. LACY:

Acknowledgment is made of your request of March 27, in which you say:

“Kindly advise whose duty it is to furnish list of citizens that have paid taxes; whose duty it is to let contract for printing list, and also kindly state time when this should be ready and accessible to the public.”

This matter is governed by section 38 of the Constitution, and sections 109-112 of the Code of Virginia, 1919.

From an examination of the Constitution, and the above sections of the Code, you will see that the treasurer of each county, or city, is required to file with the clerk of the circuit court of his county, or the corporation court of his city, at least five months before each regular election, a list of all persons in his county, or city, who have paid not later than six months prior to such election the State poll taxes required by the Constitution during the three years next preceding that in which such election is held.

The clerk is required within ten days from the receipt of the list to make and certify a sufficient number of copies thereof, and to deliver one copy for each voting place in his county, or city, to the sheriff of the county, or sergeant of the city, whose duty it is to post one copy, without delay, at each of the voting places, and within ten days from the receipt thereof to make return on oath to the clerk as to the places where, and the dates on which said copies were respectively posted.

Therefore, it is the treasurer's duty to file the original list with the clerk, and the clerk's duty to have prepared the copies to be certified by him for posting in the various precincts of his county, or city.

The Constitution and the statutes also require these lists to be delivered to the sheriff within ten days of the receipt of the list by the clerk, and the sheriff, or sergeant, is required to post these lists without delay, and make return of this fact within ten days from the time the lists are delivered to him by the clerk.

In those cases where the tax list is corrected by order of court, as provided for by section 110 of the Code, it will appear that the clerk is required to correct the list as ordered by the court only at such time as will enable him to deliver

a certified copy of such list to the judges of election at the precinct where such voter is registered, as is provided by section 111 of the Code.

You will see from an examination of section 112 of the Code, that the clerk's fees, and the fees of the sheriff, or sergeant, are to be paid out of the treasury of the county, or city, wherein such lists are made.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Tax list

RICHMOND, VA., *April 15, 1925.*

HON. C. G. AVERY, *Treasurer,*
Holdcroft, Va.

DEAR SIR:

Acknowledgment is made of your letter of April 10, in which you request my opinion as to whether your brother's wife is entitled to register and vote in Charles City county.

Under section 18 of the Constitution, in order to vote one must have been a resident of the State two years, of the county, city or town one year, and of the precinct thirty days before he can vote therein. If this lady meets these requirements, she will be entitled to register and vote in Charles City county, if she possesses the other qualifications.

In response to your second question, it would appear from the decision of the Court of Appeals in *Zigler v. Sprinkle*, 131 Va. 408, 419, 108 S. E. 656, that you should place on the tax list the names of all persons who have paid their capitation taxes, indicating on the tax list the years for which the taxes have been paid. In this way a voter just coming of age, or one who has become a resident of the county within the last year or the last two years, would be able to establish his right to vote. Otherwise, he would be deprived of this right.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—To be by plurality in primaries

RICHMOND, VA., *May 29, 1925.*

MR. G. W. LINEWEAVER,
Norfolk, Va.

MY DEAR MR. LINEWEAVER:

In response to your telephone conversation of this morning, I have examined section 225 of the Code of 1919, referred to by you, and find that this section reads as follows:

"Any candidate for party nomination to any office who receives a plurality of the votes cast by his party shall be the nominee of his party for such office and his name shall be printed on the official ballots used in

the election for which the primary was held. In case of a tie, the nominee shall be determined by lot in accordance with the election law of the State. But nothing in this section shall prohibit the county or city committee of any political party from holding a primary which requires a majority of the vote cast in the said primary to nominate."

It is my opinion that the last sentence of this section has no application to the primary held for the nomination of State officers, but is limited to a primary for the election of county or city officers. In this connection, I call your attention to the case of *Burch v. Hardwicke*, 30 Grat., 34.

With my best wishes, I am,

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Transfer of Voters

RICHMOND, VA., November 30, 1923.

MR. W. L. KERR, *Registrar,*
Route 3, Staunton, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of November 26, 1923, in which you refer to my letter to you of October 31, 1923, with reference to the transfer of voters, and ask me to give you an opinion on section 107 of the Code of 1919, instead of section 100 thereof.

If you will examine my letter again, you will see that I said:

"Having once registered, a person is not entitled to register again, except on a transfer."

The last paragraph of my letter then read as follows:

"Under the plain terms of section 100 of the election laws, the registrar is required to issue a transfer to a voter who, having once registered on the books of his precinct, has moved his residence and asked for a transfer, unless the name of such person was removed from the registration books on account of his conviction for crime."

In my opinion, section 107 of the Code has nothing to do with the matter. A voter having once registered can not register again, except on a transfer.

The law never contemplated that the purging from the registration books of the names of voters who have changed their residence should prevent such voters from obtaining a transfer, as provided by the other sections of the Code relating to the election laws. Of course, if the name of a voter has been removed from the registration books because of his conviction for crime, he would not be entitled to again register on a transfer, nor would one whose name had been removed from the registration books because of the illegality of his residence be entitled to a transfer, since such person has never been legally registered; but, in the case of one who has been once legally registered, and whose name has been removed from the registration books because of his change of residence, he

is, nevertheless, entitled to a transfer from the registrar of the precinct in which he originally registered.

You will see from an examination of section 91 of the Code that it is expressly provided that the old books which are purged, or copied, shall be filed and preserved in the office of the registrar, and shall not be destroyed. This, of course, is for the double purpose of insuring the preservation of the original record of registration, and also for the purpose of enabling the registrar to issue transfers to voters legally registered, whose names have been removed because of their change of residence, for example.

Trusting that I have now made the matter clear, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Transfers

RICHMOND, VA., *October 11, 1923.*

MISS RUTH B. PATTERSON,
Christiansburg, Virginia.

DEAR MADAM:

In the necessary absence of the Attorney General, acknowledgment is made of your letter of October 10th, in which you state that you were formerly a resident of Bedford county, Va., and that two years ago you became a resident of Montgomery county, and recently applied for a transfer from Bedford county so that you could register in Montgomery county. You further state that you misplaced this transfer, and therefore did not have your name transferred on the registration books of your precinct in Montgomery county prior to the closing of the books, as provided for by section 98 of the Code. You now ask if there is not some way to have your name registered on the books on obtaining a new transfer from the registrar of your former precinct in Bedford county.

If you will examine section 100 of the Code of Virginia, 1919, which is found in the Virginia election laws, copy of which your registrar has, you will see that where a voter transfers from one county to another county, that the transfer must be registered prior to or on the regular days of registration. Therefore, it is my opinion that it is now too late for you to register on your transfer.

See also section 173 of the Code of 1919, which you will find in the election laws.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—TransfersRICHMOND, VA., *October 31, 1923.*

MR. W. L. KERR,

R. F. D. 3, Staunton, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of October 29, 1923, in which you ask that I advise you whether a registrar can refuse a voter a transfer simply because the name of the voter has been removed from the registration books on account of his removal from the precinct of original registration. You state that you wish to know whether the voter must register again, or whether he is entitled to a transfer.

If you will examine section 100 of the Code of 1919, Virginia election laws, page 18, you will see that a voter, when he changes his residence, must obtain a transfer before he can be registered again. Having once registered, a person is not entitled to register again, except on a transfer.

Under the plain terms of section 100 of the election laws, the registrar is required to issue a transfer to a voter who, having once registered on the books of his precinct, has moved his residence and asked for a transfer, unless the name of such person was removed from the registration books on account of his conviction for crime.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***ELECTIONS—Various election questions relating to registration of voters**RICHMOND, VA., *July 29, 1925.*MISS JOSEPHINE HOLLAND, *Registrar,**37 D Street, South Norfolk, Virginia.*

MY DEAR MISS HOLLAND:

Acknowledgment is made of your letter of July 27, 1925, in which you submit for my opinion certain questions. Your first question is as follows:

"Can a person who moves into the State, say March 1, 1922, and who would be assessable only for the years 1923 and 1924, has paid said capitation taxes assessable, be entitled to register and vote in the primary election to be held August 4, 1925, provided, of course, that said taxes were paid six months prior to the general election in November, 1925, or would they have to pay for the year 1922, which they would not be assessable for, as a prerequisite to vote?"

In order to vote, one is required to pay only those taxes which were assessed or assessable against him or her during the three years preceding the year in which such person offers to vote. See section 21 of the Virginia Constitution. As no capitation tax was assessed or assessable against the person referred to, he could not be required to pay the same as a prerequisite to his right to vote.

Your second question is as follows:

"Can a person who has paid all the capitation taxes assessable against him register and vote on the day of the primary?"

This question should be answered in the affirmative, except in cities having a population not less than one hundred thousand nor more than one hundred and sixty thousand inhabitants, provided such city has a general registrar. In such cities the books are closed fifteen days next preceding the day of the primary. See section 98a of the Virginia election laws, Acts of 1923, p. 102.

Your third question is as follows:

"Can a person becoming twenty-one years of age on or before the day of the general election—that is to say, between the day of the primary election and general election—pay his poll tax on the day he becomes twenty-one years, even if it be on the day of the election, register and vote on that date, or does such person have to pay said tax six months prior to said general election, which would be before they become twenty-one years of age?"

One who will be twenty-one years of age on the day of the general election may pay his capitation tax before he becomes twenty-one years of age, register and vote in the primary election, if otherwise qualified. See sections 26 and 35 of the Virginia Constitution, found on pages 5 and 7 of the Virginia election laws; see also section 93 of the Virginia election laws. Such person must register before the registration books close for the general election, which is after thirty days previous to that election, as provided by section 93 of the Virginia election laws. The capitation tax in such case, however, is not paid six months in advance, because it is only those taxes assessed or assessable during the three years preceding the year in which the person offers to vote that must be paid six months in advance. The first capitation tax assessed or assessable against a person becoming twenty-one years of age after February 1, 1925, would be for the year 1926. There being no capitation tax assessed or assessable against him for any one of the three years preceding the year 1925, the capitation tax for 1926 could be paid at any time prior to the closing of the registration books, and, if otherwise qualified to vote, such person would be entitled to register and vote.

Your fourth question is as follows:

"Does every person who is foreign, whether male or female, regardless of age when they entered this country, have to take out naturalization papers, or are they exempt from this procedure if they marry an American citizen?"

A male alien can become an American citizen only through naturalization. A female alien may become such by marriage to an American citizen.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Vote required in special elections

RICHMOND, VA., April 22, 1924.

MR. J. R. GREGORY, *Superintendent,*
Martinsville, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of the 18th, in which you ask to be advised whether—

“in a special election, voting to change a town government to a commission or managerial form, it requires a majority of the qualified voters, or merely a majority of those voting.”

The answer to your question is found in the Acts of the Assembly of 1918, page 403, amending section 2930 of the Code of Virginia, 1919, in which it is provided that the requisite vote for a change in the form of town government is “a majority vote of the qualified electors, * * *.”

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voter's disqualification

RICHMOND, VA., October 26, 1923.

MR. CLAUDE F. BEVERLY,
Freeling, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of October 23, 1923, in which you say:

“Please advise me whether or not a person who was convicted in United States court in this district for robbing a postoffice, and sent to the Federal penitentiary, serving sentence, is disqualified from voting by reason of such conviction until his disabilities are removed by the Governor of the State or by some other pardoning power.”

Under the provisions of section 23 of the Constitution, one convicted of felony, either within or without this State, is excluded from registering and voting. Therefore, until the political disabilities of the man in question have been removed by the Governor, he is precluded from registering and voting in this State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voters in special elections

RICHMOND, VA., August 3, 1925.

HON. ROBERT K. BROCK,
Farmville, Virginia.

MY DEAR SENATOR:

Acknowledgment is made of your letter of August 1, 1925, in which you say, in part:

"We are anxious to get your opinion as to who may vote in a special election for the issue of bonds for school purposes. Section 772 of the Code reads as follows:

"Who may vote at such election: All registered voters of any such school district who were qualified by law to vote in the last preceding general election shall be qualified to vote in any such special election."

"What we wish to know is, was it the intention of the legislature to limit those who could vote at such school district election to those who were qualified at the last general election, and thereby excluding all others who might otherwise be qualified?"

You will observe that section 772 of the Code of 1919, while authorizing certain persons to vote in such an election, does not say that no other person shall be qualified to vote therein.

It is, therefore, my opinion, and I have so held (Report of the Attorney General 1922-23, p. 157) that section 83 of the Code of 1919 also applies to such an election, and, in addition to the persons provided for by section 772 of the Code of 1919, the persons authorized to vote in a special election by section 83 of the Code of 1919 may also vote. Section 83 of the Code, so far as is applicable to the subject of your inquiry in this particular case, provides:

"The qualifications of voters at any special election shall be such as are herein prescribed for voters at general elections, but * * * at any such special election held on or after the second Tuesday in June in any year, any person shall be qualified to vote who is or was qualified to vote at the regular election held on the Tuesday after the first Monday in November of that year. * * *"

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Voting list

RICHMOND, VA., January 8, 1924.

HON. A. M. KIRK,

*Treasurer of Grayson County,
Independence, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of January 3, 1924, in which you say:

"I wish you would give me your opinion as to whether or not I will, as treasurer, be required to make up a new poll tax list for the different incorporated towns in Grayson county.

"I wish you would look at page 142, section 6, Acts 1922, and read this before you send me your opinion. It is considered by some of the people living within the incorporated towns that I should make out a new list, while others say I am not required to.

"If I am required to make up a new list, what names should I embrace in the new list, and who would be qualified voters in the town election to be held in June, 1924? I need this information at once, and trust that you can send it to me promptly."

There are two regular elections held in the State of Virginia each year—the

regular State and local elections held in November, and the regular municipal elections in June. (Section 140 of the Code of 1919.)

Section 21 of the Constitution of Virginia expressly provides that unless one is exempted by section 22 thereof, he shall, as a prerequisite to the right to vote after the first day of January, 1904, "personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote."

Section 38 of the Constitution requires the treasurer of each county and city "at least five months before each regular election" to file with the clerk of the circuit court of his county, or the corporation court of his city, "a list of all persons in his county or city, who have paid not later than six months prior to such election, the State poll taxes required by this Constitution during the three years next preceding that in which such election is held."

Section 114 of the Code of Virginia, 1919, expressly provides as follows:

"The treasurer of every county in this Commonwealth in which any incorporated town is located, in which a regular election is to be held on the second Tuesday in June in any year in pursuance of law, shall furnish the clerk of the circuit court of his county with a list of the residents of said incorporated town who have paid the State poll tax provided by law six months prior to the second Tuesday in June. The said lists shall be prepared and posted in all respects as it is provided for in section thirty-eight of the Constitution; and the treasurer shall receive such compensation as is now provided by law for similar services in preparing lists required by section thirty-eight of the Constitution."

Therefore, it is my opinion that you are required to prepare a list of the voters in the incorporated towns in your county who will be qualified to vote in the regular municipal election to be held on the second Tuesday in June. I am further of the opinion that only those persons who have paid their capitation taxes, as required by section 21 of the Constitution, will be eligible to vote in such election, and, therefore, only those persons eligible to vote by reason of the payment of their capitation taxes, as required by the Constitution, can be placed on this list. (Section 38 of the Constitution, and sections 109, 110 and 114 of the Code of 1919.)

I have examined section 6 of chapter 101 of the Acts of 1922 providing for a new charter for the town of Galax, and note that this section provides that the electors at the regular June election to be held in that town shall be actual residents thereof, who are qualified to vote at the preceding county or State election next before the said town election. As the June election is the regular election, I do not see how any act of the General Assembly could have the effect of abolishing or waiving the provisions of sections 21 and 38 of the Constitution should only place thereon as qualified to vote in the regular municipal election the names of those persons who are eligible to vote in the same by reason of the payment of all the capitation taxes with which they were assessed or assessable during the three years next preceding the year 1924, at least six months prior to the said election.

Trusting this gives you the desired information, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voting list forRICHMOND, VA., *March 21, 1925.*

HON. WILLIAM H. DUNCAN,
Clerk of the Circuit Court,
Clarendon, Va.

DEAR SIR:

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

"I will appreciate your advising me at your earliest convenience whether the list of those who paid capitation taxes six months prior to the November, 1924, election or the list of those who paid their capitation taxes six months prior to the June, 1925, election should be certified to the said judges, or if I should certify both of the aforesaid lists."

In reply, I beg to say that section 83 of the Code provides:

"The qualifications of voters at any special election shall be such as are hereinbefore prescribed for voters at general elections, but at any such special election, held before the second Tuesday in June in any year, any person shall be qualified to vote who was so qualified at the last preceding regular November election, or who is otherwise qualified to vote, and has personally paid, at least six months prior to the second Tuesday in June of that year, all State poll taxes assessed or assessable against him during the three years next preceding that in which such special election is held, * * *."

My construction of this section is that the list should include those qualified to vote at the last preceding November election and also those who have paid the necessary capitation taxes six months prior to the second Tuesday in June of the year in which the election is held.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voting list forRICHMOND, VA., *March 14, 1925.*

HON. WM. H. DUNCAN,
Clerk of the Circuit Court,
Clarendon, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 7th, in which you say:

"There has been an order entered by the judge of the circuit court of this county wherein it is ordered that the judges of election of this county, within Arlington magisterial district, open a poll on April 30, 1925, and take the sense of the qualified voters therein whether bonds should be issued for the purpose of constructing roads within the said district.

"In this connection please furnish me with your opinion as to what voting list should be certified by this office to the said judges of election for use in the said election."

In reply I beg to say that, in my judgment, since this is a special election in a magisterial district held "prior to the second Tuesday in June," those persons are qualified to vote who were so qualified at the last preceding November election, or were otherwise qualified to vote and have duly paid their poll taxes assessed or assessable against them during the three years next preceding that in which such special election is held, in accordance with section 83 of the Code of Virginia.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—When young man comes of age

RICHMOND, VA., July 31, 1925.

J. WINSTON READ, ESQ.,
Attorney at Law,
Newport News, Virginia.

MY DEAR MR. READ:

Acknowledgment is made of your letter of July 24, 1925, in which you say, in part:

"My son, J. Winston Read, Jr., was born November 4, 1904, and would like to vote in the approaching primary, as well as the general election to be held November 3, 1925.

"I would be glad if you would give me your opinion as to whether he is entitled to vote in those elections."

The law with reference to this matter, as established by the unanimous decision of every court passing on the question, is thus set out in 31 C. J., page 987:

"One becomes of full age on the day preceding the twenty-first anniversary of his birth, on the first moment of that day. * * *"

The only exception to this rule appears to be in those jurisdictions having statutes which have changed the common law. As early as 1795, Chief Justice Holt stated in the *Anonymous Case*, 1 Salkeld 44:

"* * if one be born the first of February at eleven at night, and the last of January in the twenty-first year of his age, at one of the clock in the morning, he makes his will, of lands, and dies, it is a good will, for he was then of age."

The American cases have followed the common law rule. *Hamlin v. Stevenson*, 4 Dana (Ky.) 597; *Wells v. Wells*, 6 Ind. 447 (1855); *United States v. Wright, et al.*, 197 Fed. 297 (1912); *State v. Clarke*, 3 Harr. (Del.) 557 (1840).

In the last cited case, the accused was presented for illegal voting. The presentment charged that he was born on October 7, 1819, and voted at the election held on October 6, 1840. A motion was made to quash the presentment on the ground that from the face of it the accused was at full age at the time he

voted. Chief Justice Bayard, in holding that the presentment should be quashed, said:

"* * * To ascertain when a man is legally 'of the age of twenty-one years,' we must have reference to the common law, and those legal decisions which from time immemorial have settled this matter, in reference to all the important affairs of life. When can a person make a valid will; when can he execute a deed for land; when make any contract or do any act which a *man* may do, and an *infant*, that is, a person under the age of twenty-one years, cannot do? On this question the law is well settled; it admits of no doubt. A person is 'of the age of twenty-one years' the day *before* the twenty-first anniversary of his birthday. It is not necessary that he shall have entered upon his birthday, or he would be more than twenty-one years old. He is, therefore, of age the day before the anniversary of his birth; and, as the law takes no notice of fractions of a day, he is necessarily of age the whole of the day before his twenty-first birthday; and upon any and every moment of that day may do any act which any man may lawfully do. (1 *Chit. Gen. Prac.* 766.) 'It is to be observed, that a person becomes of age on the first instant of the last day of the twenty-first year *next before* the anniversary of his birth; thus, if a person were born at any hour of the 1st of January, A. D., 1801 (even a few minutes before 12 o'clock of the night of that day), he would be of full age at the first instant of the 31st of December, A. D., 1821, although nearly forty-eight hours before he had actually attained the full age of twenty-one, according to years, days, hours and minutes; because there is not in law in this respect any fraction of a day; and it is the same whether a thing is done, upon one moment of the day or another.'"

I am aware of the fact that Mr. Minor (1 *Minor Insts.*, p. 502) and Mr. Lile (Lile's notes to same, p. 103) have expressed opinions to the contrary. While I have the very highest respect for the opinions of these distinguished teachers and authors, I am forced to conclude that, however weighty the reasons may be in support of the conclusion reached by them, the common law which is in force in this State, except so far as it has been changed by statute, has always been to the contrary.

It is, therefore, my opinion that the law in force in this State with reference to this subject is that one becomes of full age on the day preceding the twenty-first anniversary of his birth. Your son, therefore, will be of age on November 3, 1925, and the fact that he will be of age on that day entitles him to vote in the general election and the August, 1925, primary (Constitution of Virginia, sections 26 and 35).

With my best wishes, I am,

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Where fees of candidates paid

RICHMOND, VA., June 2, 1925.

HON. THOMAS H. WILCOX, JR.,
Commonwealth's Attorney,
Norfolk, Va.

MY DEAR MR. WILCOX:

Your telegram reached the office after I left for the day yesterday and I

did not wire you earlier as I desired to ascertain the views of the Attorney General before expressing an opinion. He was to be in Norfolk at 12 o'clock today and I immediately wired him to communicate with me. Due to some unforeseen cause, I was unable to get in touch with him until 3:30 this afternoon. Immediately after talking with him I wired you as follows:

"Attorney General is of opinion that treasurer and Commonwealth's attorney should pay their fees to the local treasurer and not to Auditor. Letter follows."

If the question presented by your telegram was one of first impression, I am not sure that my opinion would be the same, but ever since the primary law was enacted the officers of this State and those having to do with this law have construed section 249 of the Code and the corresponding section of the primary law, in existence prior to the Code of 1919, to require such officers as the Commonwealth's attorney, treasurer, etc., to pay their primary fees to the treasurer of the county or city in which they reside. This has been the universal rule of construction placed on this statute by all officers in this State for many years, and in view of the decision of the Court of Appeals in *Virginia Blue Ridge Railway Co. v. Kidd, clerk*, 120 Va. 426 (1917) and *Smith v. Bryan*, 100 Va. 199, 204 (1902), I am of the opinion that, in view of the fact that the provisions of section 249 are not free from doubt, the practical construction given to the statute by the public officials of this State and acted upon by the people is in this case decisive of the question.

Trusting that this gives you the desired information, with my best wishes, I am,

Sincerely yours,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Who may vote in Democratic primary

RICHMOND, VA., July 24, 1925.

MR. DABNEY C. HARRISON,
Boyce, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 21, 1925, in which you say, in part:

"Please tell me what is my status in the Democratic primary to be held August 4, next? I have voted the Democratic ticket consistently for many years. I was president of the first Davis and Bryan Club in Virginia, and voted for those two gentlemen. I did not vote for T. W. Harrison, Democrat, for Congress, as I was a candidate myself. My name was printed on the tickets 'Independent Democrat.' I am recorded in the office of B. O. James, Secretary of the State, as 'the farmer's candidate.' At least those were my instructions to him. I will support the nominee, whoever he may be, at the coming Democratic primary."

The subject of your inquiry is governed by section 228 of the Code of 1919, as

amended by the Acts of 1924, page 415. This section, so far as is applicable to the subject of your inquiry, provides as follows:

"No person shall vote for the candidates of more than one party;

"No person shall be permitted to vote for the candidates of any party in any primary unless such person is a member of such party and in the last preceding general election, in which such person participated, he or she voted for the nominees of such party; and, upon challenge, such person shall declare on oath that he or she is a member of such party and supported such nominees as hereinbefore required before being permitted to vote.

"If such person has never voted before, then it shall be necessary only that such person is a member of such party and will support the nominees of such party in the ensuing election."

You will see from the above quoted provision of section 228 of the Code, as amended, that in order for one to vote in the Democratic primary, if he ever voted before, he must have voted in the last preceding general election, in which he participated or voted, for the nominees of such party. This, in my opinion means that the voter must have voted in the last preceding election, if he then voted, for all of the nominees of the Democratic party to be voted for in that election in order to entitle him to participate in the succeeding Democratic primary; or, when he voted, that he did not vote for any opponent of any of the Democratic nominees in that election (Report of the Attorney General, 1921, pp. 66, 67).

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

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Who may vote in primary

RICHMOND, VA., July 23, 1925.

MR. J. D. WINE,
Forestville, Va.

DEAR MR. WINE:

I am just in receipt of your letter of the 21st inst., telling me that you are one of the judges of election in your precinct, and asking the opinion of my office as to who may vote in the August primary and under what conditions, and telling me that you have several classes of voters who are likely to offer to vote and informing me of their classification.

First—Those who vote the Democratic ticket. These I understand have a vote without question.

As to this you are entirely correct.

Second—Those who are Democrats at heart, but who occasionally vote a mixed ticket.

As to this class, an act of the last legislature applies. (Acts 1924, p. 415.) You will see from this act that all persons who voted at the last general election must have voted for all of the candidates of the Democratic party in order to entitle them to vote in the primary.

Third—Straight independents.

The same act applies to this class. If they are independents and voted the straight Democratic ticket at the last general election, they are entitled to vote in the coming primary. If they voted for other candidates than Democrats they are not entitled to vote in the Democratic primary.

Fourth—Ladies who formerly voted the Republican ticket, but since their marriage to a Democrat have refused to vote.

The same act will apply to this class as well as to the two previous classes. If, however, these ladies have not voted in recent primaries I do not believe it was the intention of the legislature to carry the disqualification mentioned in the act very far back. In other words, where the ladies have voted in the last several general elections they must have voted the straight Democratic ticket to entitle them to the right to vote in the August primary, but if they cast only one vote some time ago and refused to vote until the present time and have really through principle or family feeling become Democrats, I think that it would be proper to allow them to vote. As to this the judges of election must necessarily be guided by their own estimates.

Fifth—Republicans who did not vote last November.

Acknowledged Republicans who did not vote at the last November election, but who voted for Republican candidates at the last general election at which they voted are not eligible to vote in the August primary.

Sixth—Republicans who did vote last November.

The same answer as the fifth classification applies to the sixth, but with greater emphasis. Republicans who voted at the last November election for Republican candidates are not entitled to vote in the August primary.

You will understand that it would be difficult to do more than lay down general principles of law to general questions, and that some injustice may be done particular persons who are supposed to be included in a classification to which, in fact, they do not belong, so that I would advise you to consult in reference to the act of the legislature to which I have referred you with attorneys of your county, in whose ability, integrity and unbiased judgment you have confidence.

In your letter you say that it is your opinion that classes 2-5 will have to be sworn to support the ticket. As to this I think you are in error. The law is very plain that no person has a right to vote who has heretofore voted who did not in the last general election in which he voted support the nominees (plural) of the party in whose primary they desire to vote.

The act provides that where a person has never voted before, then it shall be necessary only that such person is a member of such party and will support the nominees of such party in the ensuing election.

You seem to make the distinction as to the necessity or right to swear persons offering to vote between the classes as given in your letter. There is no warrant for this distinction in the law which provides that any person offering to vote may be challenged and *shall* be sworn by one of the judges of the primary, and that if he refuses to be sworn or to answer any question material to his right to vote he shall not be permitted to vote in such primary.

I heartily concur with you that the law which restricts the right of suffrage

should be liberally construed, but when you ask an official opinion of my office, it is necessary that I give it to you as provided for by law.

If there is any other question you would like to ask me, or any matter in your letter which I have not answered as fully as you would wish and you will let me hear from you, I will be very glad to be of any further service.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Who may vote in primary

RICHMOND, VA., July 11, 1925.

MR. WILLIAM H. SHAFER,
Buena Vista, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 10, 1925, in which you say, in part:

"Will the voter be required by law to support the nominee for Governor?

"Should there be other Democratic candidates' names on the ticket who are running for local offices, be they with or without opposition; is the voter required by law to vote or may he scratch all such candidates if he chooses to do so?

"This information is sought in order to set some regular Republican voters right with reference to voting for the candidates for Governor. These Republican voters will pledge themselves to vote for the Democratic nominee for Governor, but will not so pledge themselves for any other Democratic candidate that may be on the ticket."

The question as to who is eligible to vote in a Democratic primary is governed by the provisions of section 228 of the Code, found on pages 66 and 67 of the Virginia election laws. This section, so far as is applicable to the question here under consideration, provides as follows:

"No person shall vote for the candidates of more than one party;

"No person shall be permitted to vote for the candidates of any party in any primary unless such person is a member of such party and in the last preceding general election, in which such person participated, he or she voted for the nominee of such party; and, upon challenge, such person shall declare on oath that he or she is a member of such party and supported such nominees as hereinbefore required before being permitted to vote.

"If such person has never voted before, then it shall be necessary only that such person is a member of such party and will support the nominees of such party in the ensuing election."

You will see from the above quoted portion of section 228 of the Code that no person who has ever voted before is entitled to vote in the Democratic primary unless such person is a member of the Democratic party and in the last preceding general election, in which such person voted, he or she voted for the nominees of the Democratic party, which means, in my opinion, all of the Democratic candi-

dates on the ballot. If in the last preceding general election, in which such person voted, such person did not vote for all of the Democratic nominees on the ballot, such person is not entitled to vote in the Democratic primary to be held on August 4, 1925.

In the case of a person who has never voted before in this State at any time, then, if such person is otherwise qualified to vote, all that is necessary is that he or she declare himself or herself a member of the Democratic party and give his or her pledge to support all of the Democratic nominees voted for in the primary at the ensuing general election.

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

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Who permitted to vote in primary

RICHMOND, VA., June 25, 1925.

MAJOR MARTIN STRINGFELLOW,

Murphy's Hotel,

Richmond, Va.

MY DEAR MARTIN:

I have your letter of yesterday, in which you say:

"I would like very much for you to give me your opinion on the following question: Where a voter has voted for the Congressional nominee of the Democratic party last fall, but voted for LaFollette and Wheeler for President and Vice-President in the same election, will he be entitled to vote in the primary for Governor on the 4th of August? We do not have a primary in the State of Virginia for President, therefore, the only nominee of the parties, so far as the election laws were concerned, was the Congressional nominee. I am under the impression that section 228 would entitle them to vote in the coming election, but I wanted a ruling from your department on the subject."

Referring to section 228 of the Code, I note that it provides as follows:

"* * * No person shall be permitted to vote for the candidates of any party in any primary unless such person is a member of such party and in the last preceding general election, in which such person participated, he or she voted for the nominees of such party; and, upon challenge, such person shall declare on oath that he or she is a member of such party and supported such nominees as hereinbefore required before being permitted to vote. * * *"

This office has always construed the words "nominees of such party" to mean all the nominees of such party. Such is the only construction to be put upon that language; otherwise, a person by voting for a single Democratic candidate for a minor office might vote against all the principal candidates of the party, including the candidate for President, and still claim to be a good Democrat and entitled to participate in the party primaries. It is my opinion that a presidential candidate, nominated by a convention in which the Democratic party

of Virginia was represented by duly accredited delegates is as much a nominee of the party in the State as though he had been nominated by a State or district convention in Virginia.

With best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Young man coming of age

RICHMOND, VA., *October 2, 1923.*

MR. C. C. AVERY,
Holdcroft, Va.

DEAR SIR:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention, in which you ask whether a person who became of age after June 6, 1923, may be assessed with one year's poll tax and register and vote in the general election November 6, 1923.

Section 20 of the Constitution provides that a citizen having the qualifications of age and residence may be entitled to register provided, if he come of age at such time that no poll taxes shall have been assessable against him for the year preceding the year in which he offers to register, he has paid \$1.50 in satisfaction of the first year's poll tax assessable against him.

Section 116 of the Code provides that any person who will be assessable with capitation taxes for the ensuing year, by reason of his becoming of age after the first of February in any year, may apply to the commissioner of revenue for the district of the county or for the city in which he resides, and have himself assessed with such capitation taxes as shall have become assessable against him for the ensuing year, by reason of his becoming of age after the first of February in any year, and it shall be the duty of the commissioner of revenue to assess such person with such capitation tax as will become assessable against him for the ensuing year, by reason of his becoming of age after the first of February in any year, and to give such person a certificate of such assessment, and, thereupon the treasurer of the county or city in which the person so assessed resides, shall receive from such person the capitation tax set out in such certificate.

Section 18 of the Constitution provides that a person otherwise qualified shall be entitled to vote if he has registered and paid his State poll taxes "as hereinafter provided."

Subsection 1 of section 20 of the Constitution provides that in order to register, a person must have paid all the State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register; *or if he comes of age at such time that no poll taxes shall have been assessed against him for the year preceding the year in which he offers to register, has paid \$1.50 in satisfaction of the first year's poll tax assessable against him.*

That portion of the above provision in italics is also contained in section 93 of the Code of Virginia, 1919.

It is manifest that in the case now under consideration, so soon as a young man coming of age after February 1, 1923, has been assessed for the year 1924, and has paid \$1.50 in satisfaction of the poll tax for 1924, he is entitled to register.

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

As there are no poll taxes assessable against the young man to whom you refer for the three years next preceding that in which he proposes to vote, namely, 1923, it is not necessary for him to pay his taxes six months prior to the election.

This is not changed by the statutes, because they only provide for the payment not later than six months prior to the election of the poll taxes required by the Constitution during the three years next preceding that in which the election is held.

I am of the opinion, therefore, that the young man in question, having become of age after the first of February, 1923, may cause himself to be assessed by the commissioner of revenue with the capitation taxes for the year 1924, under section 20 of the Constitution and section 116 of the Code, and pay such capitation tax, amounting to \$1.50, to the treasurer, and by so doing, he becomes entitled to register and vote at the November election in 1923. In other words, such young man is not required to pay the \$1.50 six months before the election in which he offers to vote. He is entitled to be registered at any time after he has paid this tax, provided, of course, it is before the registration books are closed, i. e., thirty days prior to the election, and he is qualified to vote as soon as he is registered.

Yours truly,

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

ELECTIONS—Young man coming of age

RICHMOND, VA., July 31, 1925.

MR. CARTER S. ARTHUR,
Lawyers, Virginia.

MY DEAR SIR:

Acknowledgment is made of your request of July 31, 1925, that I advise you whether one coming of age on May 31, 1925, can pay his capitation tax and register and vote in the August, 1925, primary.

The only capitation taxes which one is required to pay at least six months prior to the date of the election are the capitation taxes which are assessed or assessable against him during the three years next preceding the year in which he offers to vote. One coming of age after February 1, 1925, is assessable with a capitation tax for the first time in 1926.

Therefore, you may have yourself assessed with a capitation tax for the year 1926 by the commissioner of the revenue of your county, pay \$1.50 to the treasurer

in satisfaction of the first year's poll tax assessable against you, and with your tax receipt apply to the registrar for registration under the provisions of section 93 of the Virginia election laws, and, if otherwise qualified, you will be entitled to register and vote in the August, 1925, primary, and the general election to be held in November, 1925.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

EXAMINER OF RECORDS—Compensation of

RICHMOND, VA., March 14, 1925.

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

MY DEAR MR. AUDITOR:

Acknowledgment is made of your communication of recent date and of the enclosed letter from Honorable G. Carlton Jackson, examiner of records for the tenth judicial circuit, with reference to the report to be filed by him as such. It appears that in making report of commissions, etc., for the year ending December 31, 1924, as is required by the West fee bill, Mr. Jackson included in the report commissions paid him in January, 1925, on work done by him in 1924, but omitted from the report commissions paid him in January, 1924, on work done in 1923, which commissions he included in his report for the year ending December 31, 1923.

You ask to be advised whether Mr. Jackson's action in the premises is correct, calling my attention to the opinion of Honorable Leslie C. Garnett, then Assistant Attorney General, filed in the report of the Attorney General in the year 1917, pp. 99-100.

I have examined Mr. Garnett's opinion with care, and am of the opinion that it is sound, but I am further of the opinion that while a fee officer cannot be charged with uncollected fees as a portion of the maximum compensation to be retained by him, as was held by Mr. Garnett, that nevertheless that is for the benefit of the officer, and if he chooses to charge himself with such items, it is not for the Commonwealth to object.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

EXTRADITION—For contempt of decree

RICHMOND, VA., June 13, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I have examined with care the letter written you, under date of June 5,

1924, by D. F. Kennedy, Esquire, attorney at law, Wise, Virginia, with reference to the case of *Elmer Marcum v. May Marcum*, pending in the circuit court of Wise county, in which case that court granted to May Marcum, on her cross-bill, a divorce from Elmer Marcum.

It appears from the copy of the decree sent you by Mr. Kennedy that the circuit court ordered Elmer Marcum to pay to his wife, May Marcum, on the granting of the decree *a mensa et thoro*, the sum of \$50.00 per month until the further order of the court.

It also appears that Elmer Marcum has gone from the Commonwealth of Virginia to the State of California. Mr. Kennedy wishes to know whether your Excellency will make application for the requisition of this man. It is the question as to your right to do this that you have submitted to me for my consideration.

The law is well settled that extradition can be had only for criminal offenses. The failure of this man to pay the alimony decreed to his divorced wife is not a crime, although it may be contempt of court. Section 6, page 6, 13 C. J., title "contempt."

It is, therefore, my opinion that requisition should not be issued in this case.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

EXTRADITION—Necessity for affidavit as prerequisite to issuance of criminal Warrant

RICHMOND, VA., January 29, 1925.

His Excellency, E. LEE TRINKLE,

Governor of Virginia,

Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your communication of January 29, 1925, with which you send me the extradition papers in the case of Roy L. Hughes, for whose arrest a warrant, charging forgery, has been issued in this State.

It appears that the accused, Hughes, is now under arrest in the State of Florida. These papers were forwarded to His Excellency, John W. Martin, Governor of Florida, and have been returned without prejudice by him on the advice of the Attorney General of Florida, who, after examining the papers, wrote His Excellency, the Governor of Florida, as follows:

"I am of the opinion that the requisition is insufficient to authorize the granting of such application, inasmuch as there appears to be no certified or other copy of the affidavit charging the offense.

"It is apparent that such affidavit, if made, was made before one W. C. Tiller, justice of the peace, while the affidavits made before one W. B. Gentry, justice of the peace, are mere recitals of the fact that a warrant for arrest of said Hughes had been sworn out and of the purported evidence in support of the charge.

"I am of the opinion the present application should be denied without prejudice to a further application accompanied by authenticated copy of the original affidavit."

I have examined the copy of the warrant attached to the extradition papers. This warrant is in proper shape, and in accordance with the laws of this State. When the Attorney General of Florida prepared his opinion, he was no doubt unfamiliar with the Virginia statutes, under the authority of which this warrant was issued.

Section 4823 of the Code of Virginia, 1919, provides that a justice "may issue process for the arrest of a person charged with an offense."

Section 4824 of the Code of Virginia, 1919, which provides when a warrant may issue and what it shall recite and require, reads 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: provided, that in cities and towns having a police force, the warrant shall be directed 'To any policeman of said city (or town),' and shall be executed by the policeman into whose hands it shall come or be delivered: and provided further, that in cases of misdemeanor, where the warrant is issued by a justice or other person lawfully authorized to issue the said warrant 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 before whom the said warrant is made returnable shall, in his discretion, remove the trial to some point in another magisterial district of the said county."

While it is true that the person procuring the warrant must be examined on his oath by the justice, the statute does not require the filing of an affidavit or any further proof of this than the recital in the warrant that the person complaining "has this day made complaint and information on oath." It has never been the practice in Virginia to require the filing of an affidavit as a prerequisite to the issuance of a criminal warrant in this State, and it is my opinion that our statute does not require the filing or making of an affidavit as a prerequisite to the issuance of a criminal warrant in Virginia, and no one of this State, so far as I have been able to ascertain, has ever questioned the practice followed here.

With this explanation and our statute before him, I feel sure that the Attorney General of Florida will likewise reach the conclusion that the papers are in proper shape, without the addition of an affidavit in writing, which is never made or required for the purpose of issuing a criminal warrant in this State.

I have examined these papers for the purpose of ascertaining whether there is any other objection to the same, and I would suggest that, before they are returned to the Governor of Florida, the first certificate of Mr. Walter Christian, clerk of the hustings court of the city of Richmond, be amended to show that W. C. Tiller, a justice of the peace, is duly qualified

according to law not only to take and certify affidavits and acknowledgments and other written instruments to be recorded in this State, but to issue criminal warrants.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

EXTRADITION—Nonsupport

RICHMOND, VA., *February 18, 1925.*

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your communication of February 16, 1925, with which you enclose your file in the matter of the requisition papers for one, John Preston Ogletree, against whom a criminal warrant is pending in the city of Norfolk, Virginia, for a violation of section 1 of chapter 485 of the Acts of 1922. With this file you send me a copy of the letter written to you by Hon. Thomas H. Willcox, Jr., Commonwealth's attorney for the city of Norfolk.

It appears from Mr. Willcox's letter that the accused is wanted on a criminal warrant charging the desertion and wilful neglect on his part to provide for his infant child, said child being in destitute and necessitous circumstances.

It further appears that about two years ago the father and mother were divorced *a vinculo matrimonii* in one of the Norfolk courts; that by the decree of divorce the custody of the child was awarded to the mother, and the accused ordered to pay a certain sum for the support of the child. It appears that the accused has failed to comply with the decree of the divorce court, and that he has likewise wilfully neglected and refused to provide for the support of his infant child who is in destitute and necessitous circumstances, the mother being unable to provide adequately for her own maintenance.

There appears to be a conflict in the authorities, but, according to the weight of authority which is supported by reason, a divorced father is not released from his legal duty to support his child by the fact that he is divorced from the mother and the custody of the child awarded to the latter. The Commonwealth, who is the complainant in this case, was not a party to the divorce proceedings, and upon no principle of legal reasoning can it be estopped by that decree from proceeding in its criminal courts to compel the father to perform that duty and thus protect the public from being compelled to support the child as a pauper.

Therefore, so far as the Commonwealth is concerned, I am of the opinion that the divorce decree is not a defense to a prosecution of the father by the State for his failure to take care of his child. *Steele v. People*, 88 Ill. App. 186 (1899); *Territory v. Quini*, 23 Haw. 281 (1916); *People v. Schlott*, 162 Cal. 347 (1912).

In my opinion, when the parties resort to a divorce court, this court acquires the sole and exclusive jurisdiction to adjudicate the rights of the parties not only as to the dissolution of the marriage bonds but as to the right of alimony, support and property rights, and, therefore, the juvenile and domestic relations courts do not possess the jurisdiction in such cases to entertain a prosecution of the husband for his desertion or failure to support the wife, his remedy being limited to such relief as the divorce court may or can afford him.

The children of such union, however, are not parties to the divorce suit, nor is the Commonwealth which may possibly become responsible for the maintenance of such children, if not cared for by their parents, the parties to the divorce proceedings. Therefore, I am of the opinion that the fact that the parents have resorted to a divorce court for the settlement of their difficulties will not relieve the father from the duty to maintain and support his infant child, and that, if he does so neglect his duty, he may be prosecuted for a violation of the same as is provided by section 1 of chapter 485 of the Acts of 1922, which reads as follows:

"Any husband who shall, without just cause, desert or wilfully neglect or refuse or fail to provide for the support and maintenance of his wife, and any parent who shall desert or wilfully neglect or refuse or fail to provide for the support and maintenance of his or her male child under the age of sixteen years, female child under the age of seventeen years, or child of either sex of whatever age who is crippled or otherwise incapacitated for earning a living (such wife, child or children being then and there in destitute or necessitous circumstances), shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not exceeding five hundred dollars, or in the case of a husband or father, be sentenced to the State convict road force at hard labor for a period of not less than ninety days or more than twelve months, or both; or in lieu of such fine being imposed, he or she may be required to suffer a forfeiture of an amount not exceeding the sum of five hundred dollars and said fine or forfeiture may be directed by the court to be paid in whole or in part to the wife or to the guardian, curator, custodian or trustee of said minor child or children, or to some discreet person or responsible organization designated by the court to receive the same."

As you requested me to examine the papers in the instant case, I have done so, and I am of the opinion that, while these papers are in proper shape as required by the laws of this State and the rules governing the extradition of fugitives, they are not in such shape as will meet the approval of the Attorney General of Florida. He has taken the position that, although the Virginia statute does not require an affidavit to be made as a prerequisite to the issuance of a warrant in a criminal case in this State, unless such unauthorized affidavit is made for this purpose the warrant accompanying the application for requisition will be regarded as bad in Florida.

I would, therefore, suggest that these papers be returned to Mr. Willcox with the request that he have a new warrant issued by Judge Dey, and an affidavit made by Mrs. Ogletree at the same time and before the issuance of the warrant in which it is recited that this affidavit is made for the express purpose of having the warrant issued.

You are familiar with the correspondence which passed between your office,

this office and the Governor and the Attorney General of Florida with reference to the application for the extradition of a fugitive from Richmond, and I feel sure that it is impossible to obtain the extradition of any fugitive from Florida unless the instructions contained in the letter from the Attorney General to the Governor of Florida are followed, even though our law affords no authority for following such proceedings.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

EXTRADITION—Violation of town prohibition ordinance

RICHMOND, VA., December 22, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I am returning the papers in the matter of the application for the extradition of Leroy Bates, who is now a fugitive from justice, and is under arrest in the State of New Jersey.

In view of the decision of the Court of Appeals in *Bryan v. Commonwealth*, 126 Va., 749 (1919), I am inclined to the view that the violation of a town prohibition ordinance is an offense against the State, and, therefore, an offense for which extradition may be had.

I call your attention, however, to the last paragraph of section 37 of the Layman prohibition law, which provides as follows:

"All fines imposed under the ordinances of cities and towns and counties for the violation of such ordinances with reference to prohibition, adopted under and pursuant to this section, shall be paid to and be retained by such cities and towns, and counties, the Commonwealth shall not be chargeable with any costs for enforcing the provisions of this section, nor shall any such costs be paid out of the State treasury."

In view of this provision, the requisition should be issued only after the city of Newport News has agreed to bear all of the expense connected with the extradition of this man.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FINES—Disposition of under Code, section 2133

RICHMOND, VA., December 5, 1923.

MR. P. R. WRAY, J. P.,
Martinsville, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of December 3, 1923, in which

you ask me to advise you if the amendment to section 2133 of the Code of 1919 eliminates the \$5.00 fee prescribed by the original section to the officer reporting a violation of this section.

As the section originally stood in the Code of 1919, it provided that one half of the fine should be paid to the informer, if he were not an officer of the Commonwealth; and, if he were such officer, that the sum of \$5.00 should be taxed in favor of the officer.

As amended, this section 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, or shall make or use any false number plate or change any letter or figure on any number plate, with intent to use the same, or shall use such altered number plate, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars, and, in addition thereto, in the discretion of the jury, or court trying the case without a jury, be confined in jail not exceeding one year." (Acts of Assembly 1923, pp. 110, 111.)

The cause of this amendment was to repeal the provision with reference to giving one-half of the fine to the informer who was not an officer, and also to repeal the provision which provided for the taxing of a fee of \$5.00 for the officer.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FINES—In juvenile cases

RICHMOND, VA., *December 4, 1924.*

E. W. OGLE, Esq., *Clerk,*
Hillsville, Va.

DEAR SIR:

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

"The judge of the juvenile court of this county fined Roy Greenwood to the amount of \$100.00 and, owing to the fact that the act of the General Assembly provides that no record shall be made of the proceedings in circuit courts, I am at a loss to know just what disposition should be made of this fine. If I should accept it, there would have to be made a record, which would be in conflict with the act providing for the court. Should I accept this fine?"

In reply, I beg to say that you should accept this fine and a memorandum to that effect, in my judgment, would not be contrary to the act establishing juvenile courts. In this connection I will call your attention to the closing sentence of the first paragraph of section 1951, as amended by Acts of 1922, page 829, which is as follows:

"The records of the court shall be under the control of said special

justice and shall not be removed or examined by any person without his consent, except by persons authorized by law to make such examinations."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FIRES—Liability for

RICHMOND, VA., March 28, 1924.

MR. LOUIS M. McCLURE,
Clover Creek, Virginia.

MY DEAR SIR:

Acknowledgment is made of your communication of March 22, 1924, in which you state that you desire to burn your own land, and ask to be advised as to the law with reference thereto.

This matter is governed by section 545 of the Code of Virginia, 1919, which reads as follows:

"It shall be unlawful for any persons or corporations, as landowner, to set, or procure another to set, fire to any woods, brush, logs, leaves, grass or clearing upon their own land, unless they have previously taken all possible care and precaution against the spread of such fire to other lands not their own, by previously having cut and piled the same, or carefully cleared around the land which is to be burned, so as to prevent the spread of such fire. The setting of fire contrary to the provisions of this section or allowing it to escape to the injury of adjoining lands, shall be *prima facie* proof of wilfulness or neglect, and the landowners from whose land the fire originated shall be liable in a civil action for damages for the injury resulting from such fire, and also for the cost of fighting and extinguishing the same, and shall be fined not less than ten dollars nor more than one hundred dollars, or be confined in jail not less than ten days nor more than thirty days; provided that such fine or imprisonment may, in the discretion of the justice or jury be waived upon payment for the damages resulting from such fire and for the cost of fighting and extinguishing the same."

In addition to this, section 547 of the Code, as amended, makes one failing to take the precautions prescribed by the statute liable to the county or State for all damages sustained by it as a result of such fire.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Black bass

RICHMOND, VA., June 27, 1925.

DR. J. M. PRICHARD,
Olinger, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 25, 1925, in which you say:

"Is it unlawful to take black bass with a seine after the 15th of June? Is there any limit to the length of a seine used in Powell's river after the 15th of June?"

Section 3195 of the Virginia Code, 1924, by the second paragraph thereof, makes it unlawful to shoot, spear, trap or net black bass at any time. It is, therefore, unlawful to take black bass with a seine at any time. It being unlawful to take black bass at any time with a seine, the answers to your second and third questions are immaterial.

So far as the taking of fish generally from Powell's river is concerned, I call your attention to section 3201 of the Virginia Code, 1924, which reads as follows:

"It shall be unlawful for any person, between the first day of March and the fifteenth day of June in any year, to catch, destroy, or take any fish in Powell's river in the county of Lee by means of any seine, net, trap, gig, arrow, or any other means whatsoever, except by rifle, pistol or other gun or angling with hook and line. Any person violating the provisions of this section shall, on conviction thereof, be fined ten dollars for each offense, and the seine or other instrument used in such violation, shall be forfeited to the Commonwealth."

This section, of course, has no application to the taking of black bass with a seine, because that is prohibited by section 3195 of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Bonds of wardens

RICHMOND, VA., *September 8, 1924.*

MR. B. M. MINTER, *Game Warden,*
Bassett, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of September 4, 1924, in which you state that you were appointed a regular game warden for Henry county on May 14, 1922, and that you at that time entered into a bond for \$1,000.00, as required by law. You state that you still hold the office of regular game warden for Henry county. You then ask whether, in view of the amendment to section 3322 of the Code of Virginia, 1919, by the Acts of 1924, it is necessary for you to give an additional bond to the one executed by you at the time you qualified as game warden.

It appears from section 3319 of the Code of Virginia, 1919, as amended by the Acts of 1922, that a game warden holds office during the pleasure of the commissioner appointing him, and until his successor is duly appointed.

It is, therefore, my opinion that the first bond executed by you is sufficient, and that section 3322 of the Code of Virginia, 1919, as amended by the Acts of 1924, does not require you, as regular game warden, to give an additional bond.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Closed season; effect of general statute on local statutesRICHMOND, VA., *April 23, 1924.*

HONORABLE McDONALD LEE,

*Commissioner of Game and Inland Fisheries,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of the letter of your secretary, dated April 15, 1924, in which he says:

"An act to repeal certain sections of the Code and certain acts of the General Assembly in relation to hunting and trapping game and to provide a more uniform season therefor was passed at our last General Assembly, a copy of which we are enclosing.

"This department would like to be advised as to whether local acts heretofore passed, providing for the time of opening and closing the hunting seasons, if said period of time shortens the season provided for in the general law just passed are still in force and effect. The purpose of this act was to bring about uniform hunting seasons over the entire State, both east and west of the Blue Ridge Mountains. You will note the last paragraph of this act provides that all laws and all parts of laws, local, special or general, in conflict with this act are hereby repealed."

I have examined the act referred to, which is designed to amend section 3356 of the Code of 1919, and to repeal certain other sections and statutes, with care. It will be observed that the second subsection of this act reads as follows:

"Closed season.—(Subsection a.) It shall be unlawful for any person to hunt, kill or capture:"

Then follows a list of various game birds and animals, and the dates between which they cannot be killed.

The seventh subsection of the act authorizes the boards of supervisors of the respective counties, on written petition of one hundred licensed resident hunters or landowners of the county, to shorten the open season in their county.

The eighth subsection of the law reads as follows:

"All laws or parts of laws, local, special or general, in conflict with this act, are hereby repealed. Nothing in this section shall be construed as repealing any of the provisions of chapter three hundred and sixty, approved March twenty-eighth, nineteen hundred and fourteen, an act to regulate the shooting and prevent the destruction of wild waterfowl in the waters of Back Bay and its tributaries and the lands adjacent thereto in the county of Princess Anne, except that the season bag limits on migratory game birds shall be as designated in this section."

This is a general statute which applies to the State at large, and legislates upon the whole subject matter with reference to the times when game birds and animals may, and may not be hunted, or captured, and it is my opinion that any special law relating to the closing or opening of the game season has been superseded by section 3356 of the Code of 1919, as amended by the Acts of 1924, since the clear and unmistakable intent of the General Assembly in enacting section 3356 of the Code of 1919, as amended, as disclosed by the terms

of the amended statute, was to legislate upon the entire subject matter as to when game birds and animals could, and could not be hunted, or taken.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Dog law

RICHMOND, VA., July 26, 1924.

HON. CHARLES W. CRUSH,
Commonwealth's Attorney,
Christiansburg, Virginia.

MY DEAR MR. CRUSH:

Acknowledgment is made of your letter of July 24, 1924, in which you call attention to chapter 118 of the Acts of 1923, amending and re-enacting section 11 of the charter of the town of Blacksburg, and ask certain questions with reference to the dog tax apparently authorized by the first section of that act.

The first part of this section authorizes the town council to impose a tax on dogs belonging to persons residing in said town. This language is apparently qualified, however, by the last part of the last sentence of section 11, which reads as follows:

“* * * provided, that nothing contained in any part of this act shall be construed to permit the imposition of license fees or levy of taxes upon any subject of licensing or taxation, in any case where the general laws of the State prohibit cities and towns from imposing such license fees or levying such taxes.”

If this proviso means anything, it would appear to nullify the authorization in the former part of the act to impose a tax on dogs since chapter 413 of the Acts of 1920 provides that the dog license tax imposed by that law 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.” Of course, this provision in the State law would not be sufficient to overcome the authority granted in the first part of section 11 of the amended charter to the town of Blacksburg since that charter was amended subsequent to the passage of the dog law, but it is the above quoted proviso from the amended charter of the town of Blacksburg which would seem to nullify the provision contained in the first part of the amended charter authorizing a dog tax.

However, even granted that section 11 of the charter to the town of Blacksburg, as amended, authorizes the imposition of a dog tax, this tax would not be in lieu of the tax imposed by chapter 413 of the Acts of 1920, but would be in addition to that tax.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Dog lawRICHMOND, VA., *September 9, 1924.*

V. M. GEDDY, ESQ.,
Commonwealth's Attorney,
Williamsburg, Va.

DEAR SIR:

Please pardon the delay in my reply to yours of August 15. I have been sick for quite a while and am just getting well enough to attend to my correspondence.

You ask my opinion on the following matter:

"A, a student of the Williamsburg high school, is engaged in raising rabbits, purebred New Zeal and Reds. For this undertaking he receives a credit from the high school. During the night a stray dog enters his premises and kills sixty rabbits. The rabbits have not been assessed for taxation.

"Is A entitled to compensation out of the fund derived from dog licenses under section 5 of chapter 390 of the Acts of 1918, and the acts amendatory thereof?"

In reply, I beg to say that section 5 of chapter 390 of the Acts of 1918 as amended applies only to assessed property owned by a person or corporation paying taxes. Therefore, it does not apply to the case you mention.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Dog lawRICHMOND, VA., *July 29, 1924.*

H. B. GOODRIDGE, ESQ.,
Bank of Commerce Building,
Norfolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 23, 1924, with which you sent me a copy of a letter written under the same date to Hon. C. Lee Moore, Auditor of Public Accounts. In this letter you ask whether you are required to pay the penalty on the license tax imposed on a dog when you apply for the license after the first of February for a dog which has just become four months of age at the time application is made for the license.

On receipt of your letter, I inquired of the Auditor as to whether any opinion, such as is referred to in your letter, had been issued from his office, and he informed me that he had expressed no such opinion.

Of course, the penalty is imposed for the failure to pay a dog license tax when it is due, and has no application to the payment of the license on a dog which has become four months of age after the first day of February of any year. Therefore, if your application was made for a dog which had just be-

come four months of age, the treasurer should have issued the license to you without exacting the penalty.

I have discussed this matter with the Auditor, and with the officials of the Department of Game and Inland Fisheries, and they both agree with me in the view above expressed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Dog law

RICHMOND, VA., July 3, 1924.

MR. C. G. AVERY,
Holdcroft, Va.

DEAR MR. AVERY:

Yours of the first received. In this you desire to be advised whether, when a person maintains a fox hound kennel, it is necessary to issue a separate license tag for each dog in the kennel, or whether one tag delivered to the owner of the kennel will be sufficient, provided the kennel license is paid.

In reply, will state that, in my opinion, it is necessary that a separate license tag should be issued for each dog in the kennel.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Dog law

RICHMOND, VA., May 24, 1924.

MR. C. L. LEWIS,
Suffolk, Virginia.

MY DEAR SIR:

Your letter of the 17th received, the contents of which I have carefully noted.

I am of the opinion that a dog which is charged with killing chickens cannot be killed. The owner of the dog can be sued for damages, but I do not think there is any authority in the law to have the dog killed for killing chickens.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Dog law; place for payment of tax

RICHMOND, VA., June 16, 1924.

L. W. TYUS, ESQ.,
Supervisor of Game Wardens,
Richmond, Va.

MY DEAR SIR:

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

"Complaint has been made that citizens of Prince George county, residing close to the city of Petersburg, have been purchasing dog tags from the city treasurer. I am also informed that the county treasurer of Dinwiddie county, whose office is at Carson, Va., near the Prince George line, has been selling dog tags to the residents of Prince George county.

Will you please advise me if the treasurer of the city is authorized, by law, to receive dog tax payments from residents of counties, and whether or not the treasurer of one county is authorized by law to receive dog tax payments from citizens who are residents of an adjoining county?

As the dog law provides that 85% of the dog tax collections shall go to the county, city or town, you can readily see that if this practice is indulged in to any considerable extent, the entire purpose of the law would be defeated, inasmuch as it was evidently the intention of the legislature that these funds should be segregated to the communities where the owners of the dogs reside."

Section 2 of chapter 413 of the Acts of 1920, commonly known as the dog law, imposes a tax on every dog above four months of age. This section provides in part that such license tax

"* * * shall be paid to the treasurer of the county, city or town, or to such other officer as is, or shall be, designated by law to collect county, city and town taxes in the county, city or town, such officers to be hereinafter designated for the purpose of this act as 'treasurer,' *wherein the owner of such dog, or such person as may have him under control, may reside.* * * *" (Italics supplied.)

On payment of the tax the statute further provides:

"When such tag is so issued, the treasurer shall record the name of the owner of the dog, or the name of such person as has the dog in custody, with the number of the license tag, and the amount of the license tax paid."

The act then further provides:

"It shall be the duty of the treasurer of each county, city and town to furnish the Commissioner of Game and Inland Fisheries on or be-

fore the first day of May of each year with a list of all persons *in his county, city or town* who have paid license taxes on dogs as herein provided. * * * (Italics supplied.)

It will be seen from the above quoted provisions of section 2 of chapter 413, Acts of 1920, that dog taxes must be paid by residents of the county, city or town to the treasurer or other proper collecting officer of such county, city or town.

The treasurer has no authority to issue a license tag for a dog to a resident of some other county, and if he does so, he or the county or municipality for which he receives such tax is liable to the county or municipality of which the licensee is a resident for the 85% of said tax, which belongs to the locality.

In addition to this, such a practice as outlined in your letter would tend to create confusion and, to a large extent, embarrass your department in the performance of its duties with reference to the enforcement of this law, since the list of persons who have paid their taxes, which the treasurer is required to file with your department, is made the basis of prosecution by your department against persons who have not complied with the law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Fish ladders

RICHMOND, VA., *March 13, 1924.*

MR. J. E. BURWELL,
Commissioner of Accounts,
Floyd C. H., Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 8, 1924, in which you say:

"Will you please read act of the General Assembly of Virginia, approved March 16, 1920, on page 280-281 of the Acts of General Assembly of 1920, and act, approved March 7, 1922, on page 212-213 of Acts of Assembly of Virginia, 1922:

"Please inform me if in your opinion this (Floyd) county comes under the provisions of the latter act or under act 1920, as to erecting fish ladders on Little river, in said county."

Chapter 200 of the Acts of 1920, referred to in your letter above, reads as follows:

"1. Be it enacted by the General Assembly of Virginia that the construction of fish ladders in Floyd county shall be under the supervision and control of the board of supervisors of said county, and the expense of constructing any such fish ladders shall be paid out of the county funds.

"2. All acts or parts of acts inconsistent with this act are to that extent hereby repealed."

The act of 1922, referred to in your letter, is chapter 131 of the acts for that year, and amends section 3192 of the Code of Virginia, 1919:

This section, as amended, reads as follows:

"Any person or corporation owning or having control of any dam or other obstruction in any of the rivers of this State above tidewater, which may interfere with the free passage of fish, shall provide every such dam or other obstruction with a suitable fish ladder so that fish may have free passage up and down said rivers during the months of March, April, May and June of each year, and maintain and keep the same in good repair and restore it in case of destruction, provided, however, that this section shall not apply to the Meherrin river within the county of Brunswick and Greenville, nor to the Meherrin river within or between the counties of Lunenburg and Mecklenburg, Louisa, Buckingham, Halifax, Montgomery, Grayson and Pulaski, nor to that part of any stream that forms a part of the boundary of Halifax county."

The law is well settled, and while repeals by implication are not favored, nevertheless, where a conflict between a latter and prior act cannot be reconciled, the first act must give way to the latest enactment.

In this particular case, chapter 200 of the Acts of 1920 provides that fish ladders in Floyd county shall be constructed at the expense of the county, while section 3192, as amended by the act of 1922, provides that such fish ladders must be provided by the person or corporation owning or having control of any dam or obstruction in any of the rivers above tidewater, provided that such dam or obstruction interferes with the free passage of fish.

This last section applies to the State generally, with the exceptions contained in that act, and, being in conflict with chapter 200 of the Acts of 1920, it is my opinion that chapter 200 of the Acts of 1920 was repealed by section 3192 of the Code of Virginia, 1919, as amended by the act of 1922.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Fish license

RICHMOND, VA., June 9, 1924.

HON. W. McDONALD LEE, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of the letter of C. Walter Surber, game warden for Craig county, referred by you to this office for an opinion as to whether the fishing license required of nonresident fishermen is applicable to Craig county.

In reply, I would say that section 3210 contains this sentence: "The provisions of the four preceding sections shall not apply to the counties of Floyd, Washington, Botetourt, Bland, Giles, Highland, Augusta, Smyth, Craig and Rockbridge." This section has not been amended.

Section 3209 has been amended so as to require fishing licenses of non-residents in all parts of the State above tidewater, but the exception as to the counties named applies to section 3209 as amended just as it applied to that section when the Code was adopted.

I, therefore, hold that fishing licenses cannot be collected from nonresidents in Craig county.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Fox hunting

RICHMOND, VA., December 11, 1924.

HON. L. W. TYUS, *Assistant Secretary,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

It has just come to my attention that Mr. Machen, in preparing the opinion to you of November 17, 1924, overlooked the amendment to section 3338 of the Code of 1919 as amended.

In your letter, in reply to which my opinion of November 17, 1924, was written, you said:

"The department is in receipt of a letter from Perkins & Battle, attorneys, at Charlottesville, Va., in which they raise a point as to the application of the provisions of section 3338 of the Code of Virginia relative to fox hunters, as follows:

"It seems to us, however, that the latter part of section 3338, as amended, places the fox hunter in exactly the same position that other sportsmen occupy if he has been warned by the owner or tenant of any premises not to go thereon, and that the true distinction to be drawn in this section is that fox hunters have the special privilege of going where they please without a special permit, so long as the land upon which they go is not posted, or so long as the fox hunters have not been personally warned not to go upon the land in question.

"If, however, the land is posted (which is, of course, warning to keep off), or if the owner or tenant had given personal warning to the fox hunter not to come upon the land, then it would seem, in view of the latter provision of section 3338, that the fox hunter is without special privilege."

"We will be glad to have your opinion as to this matter."

Section 3338 of the Code of 1919, as amended, reads as follows:

"If any person, without the consent of the owner, or the consent of a tenant who has been granted in writing specific exclusive hunting privileges on said land by the landlord, shoot, hunt, range, fish, trap or fowl on or in the lands, waters, mill ponds or private ponds of another other than uninclosed mountain lands west of the Blue Ridge mountains not used for cultivation, he shall be deemed guilty of a trespass, and upon conviction thereof shall be fined not more than fifty dollars. The above shall not apply to bona fide fox hunters and deer hunters, and in addition thereto any trespasser shall be liable in action for damages; and if any person, after being warned not to do so by the owner or tenant of any premises, shall go upon the lands of said owner or tenant, he shall, in addition to the liabilities imposed under this section, be deemed guilty of a misdemeanor and, upon conviction thereof, punished by a fine not exceeding fifty dollars or imprisoned in the county jail not exceeding sixty days, or both, in the discretion of the justice or jury trying the case."

From an examination of this section, as amended, it is my opinion that Messrs. Perkins & Battle are correct in the construction placed on this section, as above set out. While it is true that a bona fide fox hunter, who has not been warned by the owner or tenant to keep off of the premises, is not subject to the penalty prescribed by this section, the last part of section 3338 of the Code of 1919, as amended, does apply to even bona fide fox hunters, and, if they have been warned by the owner or tenant of any premises, they stand on exactly the same footing as any other hunter who has received similar warning.]

I will thank you to return to me my letter to you of November 17, 1924.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Fox hunting

RICHMOND, VA., January 8, 1925.

H. M. LAND, ESQ., J. P.,
Loncoak, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of December 5, 1924, in which you request me to advise you whether or not the game laws require a non-resident to have a license to fox hunt in this State with hounds.

Of course, if the hunting by the nonresident is confined to land owned by him or his parents, he would not be required to obtain a license to hunt any kind of game. Code, section 3334 Virginia Game Laws, 1924, page 10. However, if such nonresident engages in a fox hunt off of his own lands or the lands of his parents, then, in my opinion, he is required to obtain a

license to hunt even foxes, as required by section 3330 of the Code of 1919, as amended, Virginia Game Laws, 1924, pages 8 and 9.

Section 3329 of the Code of 1919, as amended, Virginia Game Laws, 1924, page 8, which provides that fox hunters who hunt with hounds shall not be required to obtain a license, relates to persons who have been bona fide residents of the State for six months next preceding the date of their application for a license to hunt, and, in my opinion, the explanation contained in that statute with reference to fox hunters is limited to such residents of Virginia and does not apply to nonresidents.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Fox hunting

RICHMOND, VA., September 16, 1924.

HON. C. W. WILLIAMS, *Div. Sec'y.,*
Department of Game and Inland Fisheries,
Blue Ridge Division,
Roanoke, Va.

DEAR MR. WILLIAMS:

I have your letter of August 28th, which has remained unanswered because of an attack of indigestion which laid me up in bed for a week, during which time my correspondence has accumulated.

You say in part:

"I want to call your attention to chapter 100—an act for the protection of foxes in the counties of Henry, Madison, Orange, Tazewell and Pittsylvania, approved March 4, 1924.

There have been violations of this law in Pittsylvania county, violators claiming that they did not kill or capture, but simply chased, and have appealed to the circuit court in each case convicted."

In this connection, I note that chapter 100 of Acts 1924, page 99, approved March 4, 1924, and in force from the date of its approval, provides that "it shall be unlawful for any person to kill or capture, etc., any red or gray fox in the counties of Henry, Madison, Orange, Tazewell and Pittsylvania between the 15th day of March and the 15th day of September in each year."

Apparently, a person who does not actually kill or capture a fox is not guilty of the violation of this section; but, if he attempts to do so, he may be punished under section 4767 of the Code, which provides that attempts to commit offenses shall be punished. Of course, when the case comes up to the circuit court on appeal the warrant may be amended and the parties tried for the attempt.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Game wardens

RICHMOND, VA., May 28, 1924.

COLONEL W. McDONALD LEE, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

I am in receipt of a letter from Honorable W. D. Cardwell, dated May 24, in which he asks whether you have the right to appoint game wardens for Accomac and Northampton counties for the purpose specifically of enforcing the dog license laws.

I note his reference to chapter 413, Acts of 1920, paragraph 8, which especially charges the Game and Inland Fisheries Department with the enforcement of the dog law without making any exception as to counties, and provides that the work shall be done with the funds derived from the various counties, cities and towns throughout the State.

The act also provides for the repeal of acts and parts of acts, legal and general, in conflict with the act. This provision is surplusage, since conflicting acts and parts of acts are repealed by implication without such provision.

As Mr. Cardwell says, the first question to be considered is whether there be a conflict between the provisions of chapter 413, Acts of 1920, and those of section 3347 of the Code. My judgment is that there is no conflict.

The next question is whether the two acts are parallel in authority. Under section 3347 of the Code, the Eastern Shore of Virginia Game Protective Association is granted the power to appoint game wardens and to control them in the counties of Accomac and Northampton. I am bound to hold that this power of appointment and control upon the part of the association is exclusive, and that the Commissioner of Game and Inland Fisheries does not have authority to appoint or control wardens after their appointment in these two counties.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Game wardens

RICHMOND, VA., October 16, 1924.

C. W. WILLIAMS ESQ., *Divisional Secty.,*
Department of Game and Inland Fisheries,
Roanoke, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 14, 1924, in which you say:

"Kindly advise me if a city policeman can hold a regular game warden's position and draw salary for same. I have reference to the section at the bottom of page 554, last Acts of the General Assembly. You may have other acts in view whereby this position can be eliminated, or should be eliminated."

I doubt very much if section 2702 of the Code of 1919, as amended by the Acts of 1924, applies to this case. Section 3323 of the Code of 1919, however, provides as follows:

"All sheriffs, deputy sheriffs, marshals, constables, policemen, members of the Commission of Fisheries, oyster police captains, and oyster police inspectors, or other peace officers of this State shall be ex-officio game wardens."

Under this section it was the obvious intention of the legislature that a policeman, as a part of the duties incident to that office, should be clothed with the power of a game warden and, therefore, by implication the holding of the position of game warden under your department by a policeman is forbidden. See opinions of the Attorney General 1919, page 171.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Hunting license

RICHMOND, VA., *October 2, 1924.*

JAMES M. SETTLE, ESQ., *Clerk,*
Washington, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 1, 1924, in which you request me to advise you whether you can issue a county hunting license to a person who has resided in Virginia and in your county for only two months, but who intends to make the county his permanent residence. You state that you are in some doubt as to the kind of license he should have, as between resident and nonresident license.

It is my opinion that the word "residence," for the purpose of obtaining a hunting license, is not synonymous with the meaning of the word "residence" as used in the election laws. I am, therefore, of the opinion that an actual resident of Virginia, who intends to make Virginia his home, is entitled to obtain a resident license to hunt, even though he has been a resident of this State only two months.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Hunting with dogs

RICHMOND, VA., *October 22, 1924.*

MR. E. L. REED,
Justice of the Peace,
Jordan Mines, Virginia.

MY DEAR SIR:

Mr. Julian Bryant, of Covington, Virginia, has requested me to answer for

you the following question with reference to section 3348 of the Code of 1919, as amended:

"Whether the indicated law prevents the catching with dogs and the shooting with guns of the animals covered by the said act, as well as the trapping, etc."

This section, as amended, reads as follows:

"It shall be unlawful for any person to set or place any trap, snare, net, spring pole, dead fall or other device or to bait the same, upon the land or in the waters of any other person, for the purpose of catching or killing any fur-bearing or hair-bearing animals, between March thirty-first and December first, and then only after such person has obtained a hunting license and the written consent of the owner of the lands to use such devices, for the current season, to catch or to kill fur-bearing animals, which written consent shall be upon the person at the time he may be using or setting above devices, as aforesaid."

This section, of course, does not apply to the catching of game with dogs, and the shooting of same with guns. Your attention is called, however, to section 3338 of the Code of 1919, as amended.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Jurisdiction of prosecutions

RICHMOND, VA., February 2, 1925.

HON. JOSEPH A. BILLINGSLEY,

Commonwealth's Attorney,

King George C. H., Virginia.

MY DEAR MR. BILLINGSLEY:

Acknowledgment is made of your communications of January 22 and 27, 1925.

In response to your letter of January 22, 1925, which reached the office in my absence, my assistant, Mr. Bazile, wired, referring you to certain Code sections affecting the subject of your inquiry. As you requested a reply to your letter, however, I am taking this opportunity of answering the same.

In your letter of January 22, you say:

"I am writing to advise you in regard to a situation with which I am confronted, and ask that you kindly let me have an opinion on same. I would greatly appreciate it if I can get this opinion by Saturday morning, as the matter will be brought up for trial on that day.

"A number of fishermen, citizens of this county, have been fishing in this county, or rather in the Potomac river, opposite this county. The nets which they are using, are claimed to be prohibited by the Virginia law. There is no question as to the fact that they have not fished in waters opposite to or adjacent to Westmoreland county.

"The oyster inspector, stationed at Colonial Beach, in Westmoreland county, has arrested these men, and taken them to Westmoreland county for trial there before a Westmoreland justice of the peace, charging them with using an unlawful net."

You then ask whether these men can be properly tried in Westmoreland county.

When I discussed the matter with you over the telephone, I told you it was my impression that, on the facts narrated in your letter, the proper place for the trial of these men was King George county.

If the offense was an offense other than a violation of the fishing laws, this would have been correct, since section 5958 of the Code of 1919 would have governed the matter, but, as Mr. Bazile wired you, there were other sections of the Code which applied to the subject in controversy, namely, sections 3213 and 3299 of the Code of 1919, the latter as amended by the Acts of 1924.

Sections 3213 of the Code of 1919 provides as follows:

"The circuit courts for the several counties adjacent to the waters in which any offense under this chapter is committed shall have concurrent jurisdiction of every such offense, and the circuit courts for the counties lying on waters bounding the State shall have concurrent jurisdiction of all such offenses committed on said waters, so far as the jurisdiction of this State extends."

In my opinion, this section is broad enough to give jurisdiction to the courts of Westmoreland county of offenses committed in the Potomac river, as was the offense related in your letter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Killing hares and squirrels

RICHMOND, VA., August 18, 1924.

HON. L. W. TYUS,

Assistant Secretary,

Department of Game and Inland Fisheries,

Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of the 18th in which you quote a letter from Mr. Baird H. West, justice of the peace at Waverly, Va., under date of August 16, as to which you ask my opinion, and which is as follows:

"Subsection a, paragraph 'second' of section 3356 of the Code reads in part as follows: 'Squirrels between January 31 and September 1;

"'Provided that residents may kill, or *have killed*, hares (or rabbits) and squirrels on their land at any time.'

"A farmer in Sussex county has invited a citizen of Waverly to come on his land during the present month (August) and kill some squirrels. I have been asked by the citizen of Waverly whether if he accepted this invitation and shot squirrels in August under these circumstances would he be amenable to punishment under the game laws. Under my construction of the language quoted, I do not think he could be punished for shooting squirrels at the time and under the circumstances above stated.

"Will you kindly do me and other citizens of this county the favor to write me whether your construction of this law concurs with mine or not, and oblige."

In reply, I would say that the phrase "kill or have killed" in section 3356 of the Code, in my judgment was intended to give a landowner the right to kill or cause to be killed rabbits and squirrels doing damage to his crops, and should not be construed to allow a landowner to invite others to come on his farm and hunt for sport at a time when the law protects game animals. If landowners generally should open their farms to hunters out of season, the supply of rabbits and squirrels would soon be exhausted.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Per diem and expenses of investigating committee

RICHMOND, VA., *February 19, 1924.*

HON. HOLMAN WILLIS,
*Senate Chamber,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of February 19, 1924, in which you say in part:

"I am directed by the committee appointed for the investigation of the Department of Game and Inland Fisheries to submit to you the following inquiry.

"I enclose herewith a copy of the resolution under which this committee was created and is now acting. You will observe that the last sentence in this resolution reads as follows: 'Any expense incurred by said committee to be paid out of the game protection fund.'

"It may become advisable for this committee to sit in vacation. I should be glad to have you advise me whether in the event this committee does sit in vacation, the Department of Game and Inland Fisheries and the Auditor of Public Accounts could properly pay the per diem and expenses of the members of this committee sitting in vacation, with no further authority than this resolution. I might add that the resolution is a joint resolution, having passed both the Senate and the House."

The last paragraph of the joint resolution referred to in your letter, which is the only paragraph applicable to the question submitted for my consideration, reads as follows:

"In making such investigation, the said committee is authorized to send for persons and papers and call before it officials and employees of the said department and any other persons who can give authentic information on the subject. Any expense incurred by said committee to be paid out of the game protection fund."

It is my opinion that the above quoted provision of the joint resolution is not sufficient to authorize the Department of Game and Inland Fisheries and the Auditor of Public Accounts to pay the per diem of the members of the committee, although I think it sufficiently broad to authorize the payment of the expenses in-

curred by the committee in the investigation of this matter, even though its sessions be held in vacation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Polution of waters

RICHMOND, VA., *August 20, 1924.*

L. W. TYUS, ESQ., *Assistant Secretary,*
Department of Game and Inland Fisheries,
Richmond, Virginia.

MY DEAR SIR:

I have your letter of recent date with reference to a letter received by your department from Mr. T. B. Phillips, of this city, concerning the pollution of a pond.

In response thereto, I call your attention to the fourth paragraph of section 3195 of the Code of Virginia, 1919, which is section 2108 of the Code of 1904, and to section 3196 of the Code of Virginia, 1919, as amended by the Acts of 1924. I also call your attention to the opinion of the Attorney General dated June 14, 1919, found on page 125 of "The Opinions of the Attorney General 1916-1920 relative to the fish, game and inland fish and dog laws" issued by your department.

Whether the oil cast into this stream is a noxious substance, or matter, by which fish in the waters referred to may be destroyed is a question of fact. If, in fact, such oil does destroy the fish, then the placing of same in the stream is a crime, and as such, should be prosecuted.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Powers of Fisheries Commission as to use of nets

RICHMOND, VA., *February 2, 1925.*

HON. McDONALD LEE,
Commissioner of Fisheries,
Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of January 30, 1925, in which you say:

"Concurrent statutes require that citizens of each State shall first conform to the provisions of that State before being allowed to operate in the Potomac.

"Under the broad statute which gave the Virginia Commission the right to prohibit the use of any net that would impede the progress of fish or interfere with other nettings, about two years ago the Commission put a ban on troll or trawl fishing (which are large sweep nets with wings dragging the bottom, a new invention). To reinforce that authority, the last

legislature passed statute section 3171, clause 2, confirming our authority. To still reinforce this the Commission at regular monthly meeting March 26, 1924, renewed its ban on trawls.

"Maryland legislature passed a similar thing, and has been executing it.

"Recently some King George men flagrantly notified Joe Heflin that they were going to use trawls. He took them in, carried them to Westmoreland, and they were remanded to King George. I think this was wrong, because any arrest in Potomac river can be taken before any justice. But King George acquitted the men. Now we expect this nefarious work to break loose on the Potomac, and if it does, we violate our pledge to Maryland, and also turn loose the most nefarious device that sweeps everything from the bottom, little or big, crabs or anything.

"After reviewing the section quoted, and the action of the Commission of Fisheries, and also this letter and attached opinion of Attorney General Armstrong, I would be glad to have your ruling. After studying it, it might be well for us to confer about the matter."

Section 3171 of the Code of Virginia, 1919, as amended by the Acts of 1924, page 583, provides as follows:

"(1) It shall be unlawful for any person to use a pound net, head or pocket or a mullet net (that is under two hundred yards long) having a smaller mesh than two inches, stretched measure, after having been tarred, for the purpose of catching food fish. Nor shall any haul seine or mullet net be longer than five hundred yards in length, unless authorized by the Commission of Fisheries, and if two hundred yards long, or over, shall not have mesh less than three inches stretched measure and no mullet net shall be deeper than forty meshes, but the provisions of section (1) shall not become effective and in force until two years after the passage of this act.

"(2) The Commission of Fisheries shall have the power to deny use of any stake net, troll net or new device when in its judgment the net or location is seriously detrimental to other fishing interests."

You will see from the second paragraph of this section that the Commission of Fisheries is given the power to deny the use, among other things, of any troll net or new device when, in its judgment, the net or location is seriously detrimental to other fishing interests.

This section, in my opinion, applies to the Potomac river as well as to other waters in the State, and any violation of the provisions of this section, or of a proper resolution adopted by the Commission of Fisheries, pursuant to the provisions of the second paragraph of section 3171 of the Code of 1919, as amended, should be punished as provided for by section 3175 of the Code of 1919.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Powers of wardens

RICHMOND, VA., December 29, 1924.

HON. McDONALD LEE,

Commissioner of Game and Inland Fisheries,

Richmond, Virginia.

MY DEAR SIR:

I am in receipt of a communication from Mr. Joseph Bremmer, Special

Game Warden of Goodview, Virginia, in which he requests me to advise him whether a game warden has any authority to arrest persons for violating section 3338 of the Code of 1919, and to prosecute such persons for violating this section.

Section 3320 of the Code of 1919 vests game wardens with the power and authority to arrest any person found in the act of violating any of the provisions of the forest, game, and inland fish laws. Section 3338 of the Code of 1919, known as the trespass statute, is one of the game and inland fish laws. Game wardens are, therefore, authorized to arrest persons violating section 3338 of the Code of 1919, as amended, and are authorized to appear against such persons in prosecutions for violations of this section.

I am enclosing an extra copy of this letter to be sent to Mr. Bremmer.

With kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Public clamming and crabbing grounds

RICHMOND, VA., September 29, 1924.

W. W. ROWELL, ESQ.,

Commission of Fisheries,

Newport News, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of September 26, 1924, in which you call attention to section 3295 of the Code of 1919, and ask me to advise you whether the power conferred on the Commission of Fisheries with reference to the assignment of public clamming or crabbing grounds is discretionary or not.

This section reads as follows:

"Any ground in the waters of this Commonwealth not assigned to any one for planting or bath purposes may be, on application of twenty or more citizens to the oyster inspector of the district in which the land lies, laid off and designated as public clamming or crabbing grounds; or the Commission of Fisheries may do so without such petition if in their judgment it is expedient, *provided in the opinion of the Commission of Fisheries no oyster interests will suffer thereby* and the clams or crabs are of sufficient quantity for a person to realize at least one and one-half dollars per day catching and taking clams or crabs from said ground, and, if laid off, the Commission of Fisheries shall have the metes and bounds of said ground accurately designated by proper and suitable stakes, and also have a plat made of same, to be recorded in the clerk's office of the county wherein the ground lies, all costs of surveying, platting and recording to be paid by the applicants; and said ground shall be set apart and remain as public clamming or crabbing ground for the common use of the citizens of this State *so long as the said commission may deem best*, and shall not be assigned to any one during such period." (Italics supplied.)

You will see from that portion of the above quoted section which I have placed in italics that the power conferred on the Commission of Fisheries with reference to the assignment of such grounds is discretionary.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Rabbits, killing ofRICHMOND, VA., *October 13, 1924.*

MR. D. S. GAULDING,
Keysville, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 8, 1924, in which you say:

"Will you kindly refer to Acts of Assembly 1924, page 756, second, which refers to rabbits being killed on owner's land, which reads: '* * provided that residents may kill or have killed hares (or rabbits) and squirrels on their land at any time; * * *.' The rabbits are giving our gardens and late crops around here a great deal of trouble and I would like to know if it will be lawful for me to have them killed by some other parties, as I haven't time to kill them myself."

Subsection "a" of the second paragraph of section 3356 of the Code of Virginia, 1919, as amended by the Acts of 1924, provides, so far as if applicable to the subject of your inquiry, as follows:

"It shall be unlawful for any person to hunt, kill or capture * * * hares (or rabbits) between January thirty-first and November fifteenth, * * * provided that residents may kill or have killed hares (or rabbits) and squirrels on their land at any time; * *."

It is my opinion that this section authorizes a landowner to employ someone to kill hares or rabbits for him but these rabbits cannot be sold, and the landowner has no authority to permit one to hunt on his land for the purpose of killing these rabbits. The person who kills them must be a *bona fide employee* of the landowner employed for this purpose.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Right of nonresidents to ship gameRICHMOND, VA., *November 18, 1924.*

HON. McDONALD LEE, *Commissioner,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

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

"The question has been raised in this department as to whether the act passed by the last session of the General Assembly amending section 3361 of the Code (see Acts 1924, p. 254) repeals or affects section 10 of the act approved March 24, 1914, known as the Back Bay law, as relating to the right of nonresidents to ship game.

"Game wardens have been instructed not to permit shipments, except in person or as personal baggage. Section 3347 and 3365 seem also to have a bearing on this question."

In reply, I beg to say that, after careful consideration of chapter 139 (p. 254) Acts of 1924, which is a general law relating to the exportation of game, does not repeal or affect section 10 of chapter 360 (p. 716) of the Acts of 1914, which is a special and local act to regulate the shooting and to prevent the destruction of wild water fowl in the waters of Back Bay and its tributaries and the lands adjacent thereto in the county of Princess Anne.

It is evident there is no express repeal and it is equally clear that there is no repeal by implication. Repeal by implication is never favored by the courts and is only presumed where there is a hopeless conflict in statutes, so that it is impossible to enforce all, and the courts, being compelled to choose which they shall enforce, give preference to the most recent enactments as best representing the existing intention of the people as reflected in the action of their representatives.

A number of cases in Virginia and West Virginia hold that a general statute, without negative words, will not repeal by implication, from their repugnancy the provisions of the former one, which is special or local, unless there is something in the general law or in the course of legislation on the subject matter that makes it manifest that the legislature contemplated and intended a repeal. There is nothing in chapter 139 of the Acts of 1924 to indicate any intention to repeal or affect section 10 of chapter 360 of the Acts of 1914, since the amendments made to section 3361 of the Code by chapter 139 of the Acts of 1924 merely made a few changes in regard to bag limits, and indicated no purpose upon the part of the General Assembly to change its policy of regulating the shooting of wild water fowl in Back Bay by means of special and local legislation. *Trehy v. Marye*, 100 Va. 40, 44.

Until the General Assembly does so manifest its purpose and intention, it must be construed that section 10 of chapter 360 of the Acts of 1914 is intended by the General Assembly to remain in full force and effect.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Scallops

RICHMOND, VA., February 6, 1925.

MR. B. B. FITCHETT,
Oyster Inspector District No. 24,
Franktown, Va.

MY DEAR MR. FITCHETT:

Acknowledgment is made of your letter of January 30, 1925, in which you say:

"Kindly advise me if an act regulating the taking of scallops with scrapes, approved March 20, 1923, allows any person to take scallops with scrapes from the public grounds of the Commonwealth without a license, whether they be for home consumption or market.

"Also advise if the license year is from date of issue, or for that part of a year that it is lawful to scrape them—that is from January 1st to June 1st."

This matter is governed by section 3296a of the Virginia Code of 1924 (Acts 1922, p. 887; Acts 1923, p. 156) which reads as follows:

"It shall be lawful for any person to take or catch scallops with scrapes from the public grounds of the Commonwealth between January first and June first of each year, upon the payment to the inspector of the district in which he resides of a license tax of two dollars per year, and an inspector's fee of fifty cents, which shall include the privilege of marketing and shipping scallops so taken or caught. The inspector shall furnish each such licensee with a metal ring having an inside measurement of two inches, and it shall be unlawful for any person to take or catch scallops of a size smaller than two inches, measuring across the widest part thereof."

It is my opinion that this statute requires every person who takes scallops with scrapes to obtain a license so to do, whether they be taken for market or home consumption:

While the act is not very clear as to your second question, it would seem that the license is to be issued for the period from January 1 to June 1 of each year.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Transportation of

RICHMOND, VA., November 26, 1924.

B. G. PORTER, ESQ., *P. M.*,
Virginia Beach, Virginia.

MY DEAR SIR:

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

"In trying to comply with the State law relative to the shipment of wild water fowl within and without the State, I am being confronted with a problem that I cannot explain to the satisfaction of my patrons. Therefore, will you kindly advise me whether, under section 3361 of the Game Law and Acts of the General Assembly, 1922, page 208, chapter 122, offering for shipment these wild water fowl, COOKED and CONCEALED, is in violation of these acts or not? If there is any difference in the law for shipment within the State? Also out of the State?"

The latest enactment of section 3361 is found in chapter 139, page 254, of the Acts of Assembly of 1924. You will observe that all game shipped must be exposed to public view and not concealed. Chapter 122 of the Acts of 1922 provides that the shipments should be "in open packages." If the other provisions are complied with, I do not see that it makes any difference whether the fowls are cooked or not.

If you do not have access to a copy of the Acts of 1924, I shall be very glad to have a copy of chapter 139 made for you.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Transportation of gameRICHMOND, VA., *November 20, 1924.*

ALFRED ANDERSON, ESQ., *Attorney at Law,*
Bank of Commerce Bldg., Norfolk, Va.

DEAR MR. ANDERSON:

I have your letter of the 19th, in which you ask me whether the express companies in Virginia should accept for shipment game killed in North Carolina and brought by private conveyance into Virginia.

In reply, I would say that my answer to your question depends upon the construction of section 3361 of the Code of Virginia, which is as follows:

"It shall be unlawful, except as hereinafter provided, to ship or transport, or to cause to be shipped or transported, from this State, whether alive or dead, wild turkeys, pheasants or grouse, partridges, quail or other game birds, or any deer or venison, killed or captured *within this State*; nor shall the same be killed, captured or possessed with intent to ship or transport from this State." (*Italics supplied.*)

After a careful consideration of this section, I am constrained to hold that the prohibition against the shipment and transportation of game applies only to such as is killed or captured "within this State," and that game killed outside of the State may be shipped and transported as any merchandise.

I am aware that paragraph 4 of the act, which you also quote, is as follows:

"Nothing in this section shall be construed to prevent common carriers from carrying or transporting any of the game herein mentioned in unbroken packages from beyond the confines of this State through the same to some point in another State."

This provision, however, applies only to interstate shipments extending entirely through the State, and has no reference to an intrastate shipment or to a shipment extending from some point in this State to some point in another State.

Therefore, it does not influence my construction of the duty of the express companies in relation to game killed in another State and brought into Virginia for shipment.

I appreciate the desire of the express companies to co-operate with our State departments in the enforcement of the game laws.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND FISH—Warden not entitled to part of fines—exceptionRICHMOND, VA., *February 20, 1925.*

HON. T. C. MATTHEWS,
Clerk of Court,
Martinsville, Va.

DEAR SIR:

Acknowledgment is made of yours of the 14th, in which you say:

"Will you please advise me what fees a game warden receives in prosecutions under the dog law, and if he is entitled to any part of the fine?"

Would also be glad if you would give me his compensation under the fish and game laws, as the wording of the statute under the game laws and that under the fish laws do not have the same wording, and it might be doubtful as to whether the game warden would receive half of the fine under the game laws, but seems to be clear as to the fish laws, and should the \$2.50 fee under the game laws be assessed for the benefit of the game warden and paid to him if the special warden makes the complaint and arrest?"

In reply, I beg to say that in prosecutions under the dog law a game warden is entitled to no part of the fine, but receives the same fees as a sheriff or constable.

Under the fish and game laws, he is not entitled to any part of the fine, unless his name is on the warrant as instigating the prosecution. If his name is upon the warrant, he receives half the fine, if the accused can pay it, and also the \$2.50 fee and \$1.00 for serving the warrant. He will receive nothing in the case of acquittal.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND FISH—Who qualified to hold office of game warden

RICHMOND, VA., April 2, 1925.

ALBERT FLETCHER, ESQ., *Supervisor,*
Warrenton, Va.

Yours of March 17 has been unanswered because the court of appeals, which adjourned only yesterday, has had so much of my attention that my correspondence has accumulated.

I note the letter of Mr. Carl T. Mack, of Washington, D. C., and your question whether a nonresident can legally be appointed a special or regular game warden in Virginia.

I think Mr. Mack's offer is made in a very fine spirit, and he would be an acquisition to your department as a special warden; but I do not think it proper that a nonresident should hold a commission as either a special or regular warden.

These wardens, as you know, under sections 3197 and 3320 of the Code, are clothed with very extensive police powers. It is clear that they are State officers. I do not believe that any State officer can remain a citizen of another State or of the District of Columbia.

With regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAMING—At fairsRICHMOND, VA., *October 17, 1924.*

HON. JOHN W. CARTER, JR.,
Commonwealth's Attorney,
Danville, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of several days ago, in which you request me to advise you whether chapter 307 of the Acts of 1924, amending section 109 of the tax bill, can be construed so as to permit the operation of wheels, games of chance and other gambling devices at fairs.

Section 4676 of the Code of 1919, as amended by chapter 284 of the Acts of 1924, prohibits the operation of wheels, games of chance and other gambling devices, and was expressly amended for the purpose of making this section applicable to fairs.

The purpose of this statute is to render it unlawful for any person to keep or exhibit for the purpose of gaming, any gaming table * * * wheel of fortune or slot machine, etc., and this statute with the object aforesaid is not and cannot be repealed by a statute similar to the provision in chapter 307 of the Acts of 1924. The clause "on each game or wheel of chance where the prize consists of fruit" could only apply to a lawful game, and does not repeal, directly or indirectly, said section 4676.

In my opinion, the above referred to provision of section 109 of the tax bill, although approved subsequent to the amendment to section 4676 of the Code of 1919, cannot be construed so as to permit the operation at fairs of wheels, games of chance and other gambling devices. Even though such wheels, games of chance and other gambling devices may be licensed under section 109 of the tax bill, they, nevertheless, cannot be operated without violating the provisions of section 4676 of the Code of 1919, as amended. See *Elsner Brothers v. Hawkins*, 113 Va. 47 (1912).

Of course, the provision contained in section 109 of the tax bill, as amended, was evidently drafted with reference to the provisions of section 4676 of the Code of 1919, as it was before its last amendment.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAMING—Games of skillRICHMOND, VA., *June 23, 1924.*

HON. WILLIS C. PULLIAM,
Commonwealth's Attorney,
South Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 18, 1924, with which you enclose a letter from H. E. Pressey, Esq., of Richmond, Va., with reference to games which he desires to operate at Forest Hill Park.

It appears that the games are of three classes: the fish pond, the dart game and the cigarette shooting gallery.

I have examined what Mr. Pressey says in his letter about these games. It does not appear that there is any element of chance about the fish pond game. It rather appears to me that it is a game of skill. From the description given of it by Mr. Pressey, and in view of the fact that each fish is numbered and the prize to be given with each fish is correspondingly numbered and placed on a shelf on exhibit before the public, I do not see how it can be said that any chance is involved in this game.

While his description of the dart game and the cigarette shooting gallery is not as complete as his description of the fish pond, it rather appears to me, from the description which he gives of these two games, that they are also games of skill and not of chance. I do not see how the throwing of the dart or the firing of the air rifle could be classed among games of chance, as each of these depend upon the skill of the person who throws or the person who fires. I, therefore, think that you have correctly advised Mr. Pressey.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAMING—Games of skill

RICHMOND, VA., *September 26, 1924.*

ROBERT H. MORTON, ESQ.,

E. C. TROWER, ESQ.,

Baya Grotto Circus Committee,

Norfolk, Va.

GENTLEMEN:

Acknowledgment is made of your letter of September 25, 1924, addressed to the Attorney General, which came to the office in his necessary absence.

In this letter you state that you wish to operate at a Grotto circus certain games where darts will be used for throwing purposes, and also games in which rings are pitched over a nail. You ask to be advised whether such games are prohibited by law in this State.

I understand that the dart game is worked in this way: a board is placed on the wall with figures or objects on it, and the party buying the right to throw the dart stands a certain distance from the board and throws the dart at the board, the object of the game being to stick the dart in the figure or object thereon.

Both of these are clearly games of skill, and not of chance, depending for their success upon the skill of the thrower and not upon chance.

It is, therefore, my opinion that neither of these games are prohibited by our statutes, which are aimed at gambling, and not at games of skill.

Yours very truly,

LEON M. BAZILE.

Assistant Attorney General.

GAMING—On fair groundsRICHMOND, VA., *September 12, 1924.*

HON. J. FULMER BRIGHT, *Mayor,*
Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of September 10, 1924, which is as follows:

"Will you kindly give me an opinion on the use of wheels of fortune, games of chance and devices of like nature at the Virginia State Fair to be held in Richmond next month?"

The answer to your question as to the majority of the gambling devices, referred to in your letter, is found in section 4676 of the Code of Virginia, 1919, as amended by chapter 284 of the Acts of 1924.

This section, as amended, reads as follows:

"If any person keep or exhibit, for the purpose of gaming, any gaming table or bank of any name or description whatever, or any table or bank used for gaming which has no name, wheel of fortune or slot machine, any pigeon-hole table or Jennie Lynn table, whether the game or table be played with cards, dice or otherwise, or be a partner or concerned in interest in the keeping or exhibiting such table or bank, he shall be confined in jail not less than two nor more than twelve months, and fined not less than \$100 nor more than \$1,000. Any such table, bank or wheel of fortune, and all the money, stakes or exhibits to allure persons to bet at such table, bank or wheel, may be seized by order of court, or under warrant of a justice, and the money so seized shall be forfeited, one-half to the person making the seizure and the other half to the Commonwealth, and the table, bank, machine or wheel shall be burned."

As amended by the Acts of 1920, this section contained the following proviso:

"* * * nothing contained herein shall prevent any person from keeping and exhibiting any game or wheel upon any city, county or State fair grounds, benevolent bazaars, carnivals and amusement parks, where the prize consists of fruit, candy, toys or other novelties. * * *"

It will be observed that the amendment of 1924 was for the purpose of striking the above quoted proviso out of this section. The section, therefore, applies to city, county or State fair grounds, etc.

It is my opinion that devices such as punch boards containing a number of blanks are a species of lottery prohibited by section 4693 of the Code of Virginia, 1919. I also call your attention to the fact that a distinction has to be drawn between games of skill and games of chance. The gaming laws of Virginia have no application to games of skill.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAMING—Punch boardsRICHMOND, VA., *January 8, 1925.*PEOPLE'S GROCERY COMPANY,
Orange, Va.

GENTLEMEN:

Acknowledgment is made of your letter of January 6, 1925, in which you ask for the law with reference to punch boards.

Punch boards, as a rule, are lotteries, which are prohibited by section 61 of the Constitution and sections 4693 and 4694 of the Code of 1919.

Sections 4693 of the Code reads as follows:

"If any person set up or promote, or be concerned in managing or drawing a lottery or raffle for money or other thing of value, or knowingly permit such lottery in any house under his control, or knowingly permit money or other property to be raffled for in such house, or to be won therein, by throwing or using dice, or by any other game of chance, or knowingly permit the sale in such house of any chance or ticket in or share of a ticket in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person, or entitle him to a prize or share of, or interest in a prize to be drawn in a lottery, or, for himself or another person, buy, sell or transfer, or have in his possession for the purpose of sale, or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket in or share of a ticket in a lottery, or any such writing, certificate, bill, token or device, he shall be confined in jail not exceeding one year and fined not exceeding \$500."

Yours very truly,

JNO. R. SAUNDERS,
*Attorney General.***GAMING—Slot machines**RICHMOND, VA., *June 17, 1924.*HON. THOMAS H. HOWERTON,
Commonwealth's Attorney,
Waverly, Va.

MY DEAR MR. HOWERTON:

Acknowledgment is made of your letter of June 14, 1924, in which you ask me to advise you as to the legality of operating gum-vending slot machines.

In my opinion, where the machine is used for the sole purpose of vending gum, and no prize whatsoever is given, no objection can be raised as to the legality of the machine, provided it sells what it purports to sell.

I am also of the opinion that all machines which give prizes in which no element of chance whatsoever enters do not violate the law. There seems to be no agreement whatever as to what constitutes an element of chance when it comes to a slot-vending machine.

The Supreme Court of Indiana, in *Ferguson v. State*, 178 Ind. 568, Ann.

Cas. 1915-C, 172, held that even where one of these machines indicates before the coin is deposited exactly what the purchaser will receive in the way of premium checks, that the machine is a gambling device, provided it may indicate a different prize, or number of checks, before the next coin is deposited.

I am frank to say that I know of no legal principle which makes the repetition of a legal act a criminal offense, and it is hard for me to reconcile this case, and other cases in accord with it, with the principles of sound legal reasoning. As no element of chance enters into the transaction when the first coin is deposited, the depositor knowing in advance exactly what he is going to receive, the decision in the case of *Ferguson v. State*, and the other cases taking the same view, is to hold that the repetition of a legal act will constitute a criminal offense. However, a number of courts have taken the same view as that held by the Indiana court, and it is my understanding that the Corporation courts of the cities of Norfolk and Danville have taken the same view.

If, after examining *Ferguson v. State*, *supra*, and the other cases referred to in the note to this case in Ann. Cas. 1915-C, 172, you are of the opinion that prosecution should be instituted, I assure you that, in the event of an appeal, I will see that the matter is properly submitted to the court of appeals for final adjudication in this State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GOVERNOR—Authority to effect temporary loans for State

RICHMOND, VA., June 25, 1925.

COL. JULIEN H. HILL, *President,*
State and City Bank and Trust Company,
Richmond, Va.

MY DEAR COL. HILL:

Hon. John M. Purcell, Treasurer of Virginia, has just referred to me your inquiry in regard to the authority of the Governor to effect temporary loans.

In this connection I beg to call your attention to section 2640 of the Code of Virginia 1919, which is as follows:

"The executive shall have authority to raise from time to time, by temporary loans, so much as may be needed to supply the wants at the treasury, to be refunded by warrants of the Auditor of Public Accounts within twelve months from the time when said loans are made, and the executive is further authorized to effect temporary loans to construct or reconstruct roads in the State highway system, to be refunded by warrants of the Auditor of Public Accounts within twelve months from the time when said loans are made, payable out of the 10-cent tax imposed by law on real and personal property for the construction of roads in the State highway system and from money to be realized from a State tax, if any, imposed upon motor fuel."

You will observe that this section makes it clear that the Governor of

Virginia has a right to borrow such sums from time to time as may be needed to supply the needs of the treasury of Virginia, to be repaid in the manner set forth in that section. Of course, there can be no doubt that the faith, credit and taxing power of the State of Virginia are by this section made responsible for the repayment of such loans.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GOVERNOR—Powers of as to pardons

RICHMOND, VA., February 20, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of February 19, 1924, in which you say:

"Will you please advise me under the law if I have authority as Governor to change a sentence from the penitentiary to a fine? The case I refer to is one of larceny."

Section 73 of the Constitution of Virginia, so far as is applicable to the question under consideration, provides that the Governor

"* * * shall have power * * * except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; * * *."

The powers conferred on the Governor by the Constitution, the court of appeals held in *Lee v. Murphy*, 22 Gratt. (63 Va.) 789 (1872); authorized the Governor to grant a conditional pardon to a prisoner convicted of a felony, and that any condition could be annexed to the pardon so long as the same was not impossible, immoral or illegal, provided, of course, that the prisoner consents to the Governor's grant of pardon by accepting the same.

In that case the accused was sentenced to confinement in the penitentiary. The Governor pardoned him as to the penitentiary sentence, but provided in the conditional grant of pardon that the prisoner should be confined in jail for a specified time. The prisoner accepted this conditional pardon and then sought to obtain his release from the jail by means of a writ of habeas corpus, on the theory that the Governor was without power to change his sentence from confinement in the penitentiary to confinement in jail.

The court of appeals held, however, that the Governor had full power to grant a conditional pardon; that the pardon in the instant case was a conditional pardon, and that the condition annexed being neither impossible, immoral nor illegal, the contention of the prisoner was without merit, as the Governor had full power to grant such a pardon.

Speaking of this power, the court said in part, pp. 797-98:

"If the chief magistrate can be trusted with the power of absolute and unconditional pardon, he is certainly a safe depository of the

qualified power. Cases are constantly arising which call for the exercise of executive clemency in a modified form, by reason of circumstances subsequently occurring, or which could not have been taken into consideration by the courts or juries. Even the public good, which is the ultimate end of all punishment, sometimes requires that some milder form of punishment should be substituted for that which was enforced by the sentence of the law.

"The objection sometimes urged that no man can contract for his own imprisonment is answered by the consideration that the convict, having already forfeited his life or his liberty, surrenders nothing by his contract with the executive. The substituted sentence is his own voluntary choice; and the courts merely execute that choice in the infliction of a milder punishment. A performance of the condition renders the pardon absolute and entitles the felon to his discharge from all the penalties consequent upon the conviction. On the other hand, his failure to perform renders the pardon utterly void, and he may be brought to the bar and remanded, to suffer the punishment to which he was originally sentenced. Bacon Abridg. Pardon E."

After a careful consideration of this case, I am of the opinion that you have the authority to grant a conditional pardon in the instant case, annexing as the condition of the pardon that the prisoner pay the fine mentioned in your letter, the payment of the fine being neither an impossible, immoral nor illegal condition.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

HEALTH—Expense of caring for persons suffering from smallpox

RICHMOND, VA., April 15, 1925.

DR. ENNION G. WILLIAMS,
*State Board of Health,
Richmond, Virginia.*

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of recent date, in which you state that a party of tourists were found in Mecklenburg county infected with smallpox. You state that there was no place in Mecklenburg county where the party could be quarantined, and then say:

"That night Dr. Snead had to bring an emergency surgical case to a hospital in Richmond. I talked to him Sunday morning. He said that no place could be found to quarantine the patient, and he was having him guarded in the automobile on the roadside. I then told Dr. Snead that, in view of the fact that he could not carry out the suggestions or recommendation of the State Board of Health, I, representing the State Board of Health, would take charge of the situation in accordance with section 7 and section 6 of chapter 340, Acts of the Assembly of 1910. As the holding of the patient in the automobile on the roadside and keeping the contacts in the hotel was not carrying out the recommendations of the State Board of Health, and as an emergency existed, I made arrangements with the city authorities to board and take care of the patient and contacts at the smallpox hospital of the city of Richmond. The patient and the four contacts were accordingly brought to Richmond and placed in the smallpox hospital.

"On Monday, March 30, by agreement with the State health officer of Connecticut, we sent three of the contacts in a closed automobile to their home in Torrington, Conn., by continuous travel. The patient and one contact are still quarantined at the smallpox hospital in Richmond.

"I wish to get your advice as to who shall bear the expense of quarantining the case and the contacts.

"The case was first diagnosed at South Hill by the health officer there, who is also a member of the board of health of Mecklenburg county. In accordance with the law, the local authorities were responsible for the quarantine. As soon as the case was reported, the State Board of Health investigated and suggested local quarantine. As they did not carry out the suggestion, the State took charge (section 7, chapter 340, Acts of Assembly 1910). And all expenses incurred by the State Board of Health shall be a charge upon and be paid by the city, town or county (section 6)."

I have examined sections 1496 and 1497 of the Code of Virginia, 1919, with care, and it is my opinion that these sections require the expense referred to to be borne by the locality in which these people were found suffering from smallpox and not by the State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HOTELS—Must provide fire extinguishers

RICHMOND, VA., *November 19, 1923.*

MR. T. E. JOHNSON,
603 South Sycamore Street,
Petersburg, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of November 18, 1923, addressed to the Attorney General and referred to me for attention, in which you ask if there is a law in Virginia requiring hotels and boarding houses to have fire extinguishers, and, if so, to send you a copy of said law.

We have not the law with reference to this matter in pamphlet form, but section 1587 of the Code was amended by the legislature (Acts of the Assembly, 1922, p. 24) so as to provide as follows:

"Every hotel shall provide each floor with one or more fire extinguishers, to be kept in working order at all times. In every hotel having fire escapes, conspicuous notices shall be kept posted at the entrance to each hall, stairway, elevator shaft, and in each bedroom above the ground floor, directions how to reach the fire escapes."

This section is a part of chapter 67 of the Code which defines a hotel within the meaning of this chapter as any inn or public lodging house of more than ten bedrooms where transient guests are fed or lodged for pay in this State.

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

Yours very truly,

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

HOUSES OF ILL FAME—Statutes under which prosecuted

RICHMOND, VA., December 10, 1923.

SAMUEL L. PRICE, Esq.,
Commonwealth's Attorney,
533-34 McBain Building,
Roanoke, Va.

MY DEAR MR. PRICE:

Acknowledgment is made of your letter, addressed to the Attorney General and answered by me in his absence, in which you state that there is a certain person charged with keeping a house of ill fame, and you ask our opinion as to which of the following statutes apply:

- (1) Section 4548 of the Code of Virginia, 1919;
- (2) Acts of 1918, page 436;
- (3) Acts of 1918, page 670.

Each of these acts fixes a different punishment for the crime defined therein, and it is, therefore, necessary to determine to what extent each of these acts is in force.

Section 6568 of the Code of 1919 provides that "the enactment of this Code shall not affect any act passed by the General Assembly, which shall have become a law after the 9th day of January, 1918, and before the 13th day of January, 1920; but every such act shall have full effect, and so far as the same varies from or conflicts with any provision contained in this Code, it shall have effect as a subsequent act, and as repealing any part of this Code inconsistent therewith."

Moreover, each act itself provides that it should be in force from its passage, and all acts or parts of acts in conflict therewith are repealed.

It is manifest, therefore, that in so far as section 4548 is in conflict with the Act of 1918, page 436, it was repealed by that act.

This act was approved on March 16, 1918, and became effective at once, but a subsequent act was passed and approved on March 23, 1918 (Acts of Assembly, 1918, p. 470), providing for the offense in question, a different punishment from that provided by the act of March 16, 1918, which was the law when the act approved on March 23, 1918, went into effect. This latter act was also made an emergency act, and all acts and parts of acts in conflict therewith were thereby repealed.

It is manifest, therefore, that the act of March 23, 1923, takes precedence over section 4558 and over the act of 1918, page 476, so far as the first above act conflicts with the section of the Code and the last above-mentioned act.

I am of the opinion, however, that section 4548 and the act of 1918, page 436, are still in effect, so far as they do not conflict with the act of 1918, page 670.

The result is that, in the case in point, I am of the opinion that the punishment of the crime in question must be fixed by provisions of the act of 1918, page 670, but I am further of the opinion that you may, under section 4548, prove the general character of the house in question, because the introduction of this evidence would not be, in any way in conflict with any provision of the act of 1918, page 436, or the act of 1918, page 670.

As to the right to introduce in evidence the general character of the

house, under section 4548, it is based upon the fact that section 6568 of the Code of 1919 provides that acts passed in 1918 shall only repeal those portions of the Code which are inconsistent with such acts, and the Acts of the Assembly, 1918, page 670, only repeals those parts of acts in conflict with the provisions of the act of 1918, page 670.

There being no conflict so far as evidence is concerned between the section of the Code and the two acts above referred to, I am forced to the opinion that you may still introduce, under section 4548 of the Code, the general character of the house.

It may be interesting to note that the General Assembly has taken a similar view of the matter, as indicated by the last sentence of section 1923 of the Code of 1920, as amended by Acts of Assembly, 1920, page 269.

If it is your purpose to get rid of such undesirable houses, it might be well for you to consider the case of *Bunkley v. Comm.*, 120 Va. 55, as to a proceeding in equity for that purpose.

I especially call your attention to this case, for in such proceedings the court can allow the Commonwealth's attorney an adequate fee, and Mr. Bazile calls my attention to the fact that, in the *Bunkley Case* the trial court allowed a fee of \$300, and I will be delighted to know that you received at least such fee for your service.

Yours truly,

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

IDIOTS—Commitment to State institutions

RICHMOND, VA., June 23, 1924.

DR. G. W. BROWN, *Superintendent,*
Eastern State Hospital,
Williamsburg, Virginia.

DEAR DR. BROWN:

Acknowledgment is made of your letter of the 18th, in which you say that at a meeting of your special board of directors, held June 10, 1924, the following resolution was adopted, as to which my opinion is desired:

"The case of a refusal on the part of one of our sister institutions to accept as an inmate a certain person described in the commitment as an idiot brought under discussion section 1039 of the State law governing such cases, and, on motion of Mr. Cease, seconded and carried, the superintendent was requested to refer this section of the law to the Attorney General, ascertaining his interpretation thereof for the future guidance and direction of this board."

In reply, I beg to say that section 1039, as amended by chapter 81, Acts of 1922, page 120, is as follows:

"Idiots and feeble-minded to be returned. If an idiot or feeble-minded person, not insane, be sent to or received in any hospital for the insane, the superintendent thereof shall notify his committee or legal representative, who shall promptly remove from the said institution and may have him committed to the appropriate colony for the feeble-minded. The cost of transportation of each idiot or feeble-

minded person to, and removal from, the hospital shall be paid by the county or city in which he was committed."

If there is in existence a committee or legal representative of the idiot or feeble-minded person, the superintendent has only to follow the requirements of the statute. In case there is no such committee or legal representative, the circuit court of the county, or the corporation or hustings court of the city, from which the person was sent to the hospital, may appoint such a committee or legal representative at the instance of the superintendent or of any other person. In that case, of course, the superintendent would follow the statute. It is the duty of the attorneys for the Commonwealth of the several counties and cities to co-operate in the selection of the proper person as a committee or legal representative, in the event that the matter is not being properly attended to by relatives of the incompetent; and also to advise regarding the cost of transportation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Can clerk serve as member of Board of Fisheries

RICHMOND, VA., November 27, 1923.

*His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.*

MY DEAR GOVERNOR:

Acknowledgment is made of your letter addressed to the Attorney General, in whose absence I am answering, as you ask for a reply as soon as possible.

You say in part:

"Will you please advise me whether or not a man who is now clerk of a court would be eligible to hold a position on the Board of Fisheries?"

Section 2702 of the Code of Virginia, 1919, as amended by the Acts of Assembly, 1920 (Acts of Assembly, page 221) provides, among other things, that no person holding the office of county clerk shall hold any other office, elective or appointive, at the same time, except that of city attorney, notary public, commissioner in chancery, commissioner of accounts, examiner of records and local registrars of deaths and births.

This section further provides that, if any person shall be elected or appointed to two or more offices, except as herein provided, his qualification in one of them shall be a bar to his right to qualify in any of the offices above enumerated, and if any person, while holding any of such offices, shall be appointed or elected to any other office, his qualification in such office shall thereby vacate any of the above offices he then holds, except as provided as above.

In a note to this section, the revisors of the Code say:

"This section, as revised, prohibits the officers named therein from holding any other office whatever, elective or appointive. Formerly, the section simply prohibited the holding at the same time of more than one of the offices named."

I am of the opinion, therefore, that the qualification of any person to the office of county clerk is a bar to his right to qualify as a member of the Board of Fisheries, and that his appointment to such board and qualification therein would vacate his office as county clerk.

Yours truly,

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

INCOMPATIBILITY OF OFFICE—Can constable be notary public

RICHMOND, VA., April 29, 1924.

MR. FRED H. CUNNINGHAM,
Narrows, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 27, 1924, in which you request me to advise you whether a constable can also be appointed to hold the office of notary public, without forfeiting his office as constable.

I have examined the title to the Code with care, and am unable to find any provision prohibiting the constable from holding the office as notary public.

Section 2702 of the Code of 1919, as amended, prohibits certain county officers from holding other offices, except enumerated State and local offices, but a constable is not one of the officers named in this section.

Section 113 of the Constitution has no reference to the holding of the office of the notary public by a constable.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Can county officer serve as director of Virginia Industrial School for White Boys

RICHMOND, VA., January 22, 1924.

HON. FRANK BANE,
*Commissioner of Public Welfare,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your communication of January 16, 1924, in which you say:

"Section 2 of chapter 76, Acts of 1920, provides that the Governor shall appoint not less than five nor more than nine members of the board to govern the Virginia Industrial School for White Boys. The

statutes dealing with the other industrial schools have similar provisions. I notice that section 2702 of the Code provides that said county officials, such as Commonwealth's attorneys, members of the boards of supervisors, etc., cannot hold other offices to which they are elected or appointed. I wish to know if membership on the board of one of our industrial schools is considered an office, and if so, are county officials, etc., ineligible for appointment?"

Section 2702 of the Code of Virginia, 1919, provides as follows:

"No person holding the office of county treasurer, sheriff, attorney for the Commonwealth, county clerk, commissioner of the revenue, superintendent of the poor, county surveyor or supervisor shall hold any other office, elective or appointive, at the same time, except that of city attorney, notary public, commissioner in chancery, commissioner of accounts, examiners of records and local registrars of deaths and births, and if any person shall be elected or appointed to two or more offices, except as herein provided, his qualification in one of them shall be a bar to his right to qualify in any of the offices above enumerated, and if any person while holding any of such offices shall be appointed or elected to any other office, his qualification in such office shall thereby vacate any of the above offices he then holds, except as provided as above."

The directors of the Virginia Industrial School for White Boys, provided for by section 2 of chapter 76 of the Acts of 1920, are State officers, since they are appointed by the Governor of the Commonwealth and confirmed by the Senate, and the act itself refers to the "term of office" of such directors. I am, therefore, of the opinion that the county officers mentioned in section 2702 of the Code of 1919, as amended, can not hold such offices, and at the same time hold the office of director of the Virginia Industrial School for White Boys.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Can county surveyor be a notary public

RICHMOND, VA., January 3, 1925.

MR. G. M. SAGE,
Dot, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of January 1, 1925, in which you ask me to advise you whether a person who holds the office of county surveyor can also hold the office of notary public, under the act approved March 16, 1920, amending section 2702 of the Code of 1919.

Section 2702 of the Code of 1919 was again amended in 1924, Acts of 1924, page 554. It now provides that a county surveyor may hold the office of notary public.

I presume that it is the last amendment which you wish me to construe, and not the amendment of 1920.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Can judge of juvenile court for a county be member of the council of a town located in that county

RICHMOND, VA., March 3, 1925.

J. C. PARRISH, ESQ.,
Manassas, Va.

DEAR SIR:

Acknowledgment is made of your letter of February 23, in which you say:

"I was appointed by Judge Brent, circuit court judge of this county, juvenile justice for this county, and have functioned since my appointment. Recently I was elected by the town council of Manassas as a member to fill a vacancy. Can I qualify and act while I am judge of the juvenile court for this county? Inasmuch as I have qualified as councilman, what is my status?"

In reply, I beg to say that, in my judgment, this matter is governed by section 2702 of the Code of Virginia, as amended by Act of March 20, 1924 (p. 554). I can find no prohibition against a judge of a juvenile court for a county being at the same time a member of the council of a town located in the county.

Yours very truly,

JNO. R. SAUNDERS,
*Attorney General.***INCOMPATIBILITY OF OFFICE—Can justice of the peace out of corporate limits of a town be town sergeant**

RICHMOND, VA., August 14, 1924.

E. W. OGLE, ESQ., Clerk,
Circuit Court of Carroll County,
Hillsville, Virginia.

MY DEAR MR. OGLE:

Acknowledgment is made of your letter of August 9, 1924, in which you ask me to advise you on the following question:

"Does it affect the validity of a man's office now serving as justice of the peace out of corporate limits of a town to qualify as sergeant of a town?"

Section 3093 of the Code of 1919 provides as follows:

"If any justice, civil and police justice, or police justice, accept or hold the office of clerk of a court, sheriff, sergeant, coroner, or constable, or deputy of either, or any other office incompatible with that of justice, such acceptance or holding shall vacate the office of justice."

After carefully considering the same, I am inclined to the belief that such justice would vacate his office as justice of the peace if he accepted the office of town sergeant and qualified as such.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Can oyster inspector be justice of the peaceRICHMOND, VA., *December 1, 1923.*

MR. B. B. FITCHETT,
Franktown, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of November 29, 1923, in which you call attention to section 2702 of the Code of Virginia, as amended, and then say:

"I am at present oyster inspector for district No. 24, Northampton county. At the November election I was elected justice of the peace for Franktown district.

"There seems to be some question in the mind of the county clerk, as well as some others, as to whether or not I have the right to qualify as justice and at the same time hold the job as inspector."

I have examined section 2702 of the Code with care, and find nothing in this section which refers to a justice of the peace. Therefore, there is nothing in this section which would prevent you while holding the office of oyster inspector from also holding that of justice of the peace.

I have also examined the index to the Code for the purpose of locating any other statute which would prohibit you from holding the office of justice of the peace, but I find nothing in the index to the Code, or its supplements, which would prevent you from holding both offices at the same time.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Can postmaster be county supervisorRICHMOND, VA., *October 23, 1923.*

MR. C. A. HOLLOWAY,
Port Royal, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of October 22, 1923, in which you say in part:

"Will you kindly advise me if a postmaster can serve as a county supervisor? I am at present postmaster at Port Royal, Va., and also a candidate for the office of supervisor for Port Royal district."

This matter appears to be governed by sections 290 and 291 of the Code of 1919, the latter section as amended. You will find both of these sections in the Virginia election laws.

While section 290 prohibits persons holding Federal offices from holding office under the State government, section 291 contains certain exceptions to the general terms of the former section. Among those exceptions is the provision that section 290 shall not be construed to prevent "* * * fourth class or third class postmasters from acting as notaries, school trustees, justices of the peace,

or supervisors, or from holding any district office under the government of any county. * * *

It is true that section 2702 of the Code of Virginia, 1919, as amended by the Acts of 1920, page 281, prohibits one holding the office of supervisor from holding any other office, elective or appointive at the same time, except certain State and local offices enumerated in that section.

I am of the opinion, however, that the prohibition of this section is to be construed as applying only to State, county and district offices, and not to the Federal offices which a supervisor is expressly authorized to fill under the provisions of section 291 of the Code of 1919, which was also amended at the 1920 session of the General Assembly. In this way the two acts can be reconciled without doing violence to either, and it is my opinion that the view expressed above is the proper construction to be placed on these statutes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Registrar and deputy sheriff

RICHMOND, VA., May 22, 1924.

MR. LEWIS E. ROBINETTE,
Blackwater, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of May 19, 1924, in which you say in part:

"I am a member of the Lee county electoral board, and by virtue of said office we are required to appoint registrars and fill vacancies in said office of registrar wherever there is a vacancy. At the Blackwater precinct the present registrar is deputy sheriff under Creed Carter, sheriff of Lee county, and was appointed sometime in January, 1924. His term of office as registrar is not out, and I am writing you to ask if the fact that he is a deputy sheriff disqualifies him from holding the office of registrar."

In my opinion, under the provisions of section 31 of the Constitution and section 86 of the Code of Virginia, 1919, when the gentleman to whom you refer accepted the position of deputy sheriff of Lee county, he vacated the office of registrar, and is not eligible to reappointment to the same so long as he holds the position of deputy sheriff.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INCOMPATIBILITY OF OFFICE—Supervisors

RICHMOND, VA., July 15, 1924.

HON. H. H. KERR,
Commonwealth's Attorney,
Staunton, Va.

DEAR MR. KERR:

Acknowledgment is made of your letter of the 10th, in regard to clause 111 of the charter of Waynesboro, Acts 1924, page 123

In a letter to Mr. G. H. Branaman, town attorney of Waynesboro, on July 3rd, I have ruled upon this identical question, so it is only necessary for me to enclose a copy of my letter to Mr. Branaman.

I will say further, however, that if you will examine section 2702, as amended by chapter 385, Acts 1924, page 554, and compare it with the re-enactment of that section, with amendments by chapter 203, Acts 1920, page 281, you will see that the following words were added by the 1924 amendment:

"* * * and member of any commission or board appointive by the Governor, and a commissioner of the revenue of a county may also be commissioner of the revenue of a town located in said county, also that game wardens may be employees of the Federal forest reserve, and except also a county surveyor may, at the same time, hold the office of oyster inspector,
* * *"

The portion of the section relating to a supervisor is the same in the 1924 enactment as in that of 1920 and in the Code of 1919. There is no conflict between a local statute, such as a town charter, and a general statute dealing with the same subject, unless there has been a change in the matter as to which there is a discrepancy. A mere reenactment, consisting of a repetition of the prior law regarding the point, would not of itself bring about a repeal by implication. Furthermore, the repeated amendment of this section since 1912 clearly indicates a legislative intention to extend the scope of exceptions.

At any rate, if we concede there is no repeal by implication, there is no objection to clause 111 of the charter on the constitutional grounds, as I have explained to Mr. Branaman. The legislature has plenary power to enact local statutes except as to the subjects set forth in section 63 of the Constitution. I have no doubt as to the law governing this matter, but, even if there were a doubt, I would be inclined to resolve it in favor of the principles of local self government. If the county of Augusta and the town of Waynesboro desire the same man to be a member of the board of supervisors and the mayor of the town, then in the absence of an unmistakable inhibition, I think such an arrangement, when provided for in the town charter, should be permitted. I gather from your letter that this is your inclination also.

With regards and best wishes, I am

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INDIANS—Property of tribes exempt from taxation

RICHMOND, VA., May 22, 1924.

*His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.*

MY DEAR GOVERNOR:

Acknowledgment is made of your communication of recent date with which you enclose a letter from the chief of the Mattaponi Indian tribe, in which he asked to be advised whether the personal property belonging to the tribe and located on the reservation is subject to levy by the county officers, and sold under such levy.

It is my opinion that the property on the reservation is not subject to levy. so long as these tribes follow up their pursuits upon the reservation, they are not subject to taxes by the laws of the State of Virginia (Report of the Attorney General, 1917, page 160). These Indians are wards of the State, and, in my opinion, their property located on the reservation is not subject to levy.

Of course, where their property has already been levied, the chief of the tribe should bring the matter to the attention of the proper court, which I am sure will grant the tribe the redress to which it is entitled.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INSANE PATIENTS—Confinement of

RICHMOND, VA., July 3, 1924.

*DR. H. C. HENRY, Supt.,
Central State Hospital,
Petersburg, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of July 1, in which you say:

"At the last meeting of our special board of directors, I was directed to write you and request that you give us your opinion in regard to confining in the building for the criminal insane here a certain class of insane patients who are either dangerous or habitual escapes. We have a number of such patients, who have been committed to the hospital—not court cases, who are dangerous if confined in the wards with the other patients and others who are habitual escapes. The building for the criminal insane is the only building here in which we can properly take care of such cases at the present time.

"We should like to have you give us your opinion as to section 1004 of the Code of Virginia, 1919, in order that we may know whether or not we are within our rights in confining such cases in the building for the criminal insane."

In reply, I would say that after careful consideration of section 1004 of the Code of Virginia, I am of the opinion that you are within your rights in confining such cases in the building for the criminal insane, if in your judgment such

a course is best for the welfare and safe keeping of such patients and for the safety of the other patients in your institution.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INSURANCE—Bonds deposited by companies with State Treasurer

RICHMOND, VA., *April 2, 1924.*

HON. C. A. JOHNSTON,
Treasurer of Virginia,
Richmond, Virginia.

MY DEAR SIR:

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

"Will you kindly advise if section 4211, read in conjunction with 4213 and 4214 of the Code of 1919, would subject securities on deposit by various insurance companies both to its policyholders and creditors?"

Section 4211 of the Code of 1919, as amended, provides that the bonds required by that section to be delivered to the Treasurer by insurance companies, shall be delivered "for the purpose of paying any of the liabilities provided for in this title."

Section 4214 of the Code of 1919 reads as follows:

"The bonds required to be deposited by section forty-two hundred and eleven shall be held as security for liabilities incurred or to be incurred by the companies mentioned in such section, to this State and the political subdivisions thereof, to the citizens and inhabitants of this State, and to other persons, natural and artificial, owning property in this State who may sustain a loss in consequence of the failure of such company to meet its obligations incurred in this State, and they shall have a lien thereon for the amounts due or to become due to them, respectively, in consequence of any failure of such company to discharge its liabilities to them, respectively, and shall be entitled to be paid ratably out of the proceeds of said bonds, if such proceeds be not sufficient to discharge all of such liabilities; and whenever any such company, depositing bonds as aforesaid, shall have become insolvent or bankrupt, or shall have made an assignment for the benefit of its creditors, any person given a lien by this section may file a bill in the circuit court of the city of Richmond for the benefit of himself and all others given a lien by this section to subject said bonds to the payment of the liens thereon. The Treasurer shall be a party to the suit, and the fund shall be distributed by the court."

To this section, the revisors have appended the following note:

"Some change has been made in this section from the phraseology of the act. The object of the change is to prevent a nonresident from acquiring a lien on the bonds in this State except in the single case where the loss was sustained upon property located in the State, which was protected by an obligation incurred in the State. The section also protects against liabilities of all kinds to citizens and inhabitants of the State, whether

arising under policies or not. The result is to change the law as announced in *Shepherd v. Va. State Ins. Co.*, 120 Va. 383, 91 S. E. 140."

You will observe the next to the last sentence of this note. It would, therefore, appear that the Commonwealth of Virginia, its political subdivisions, its citizens and inhabitants, are protected against liabilities of all kinds, whether arising under policies or not, and, therefore, that such bonds are subject to the liabilities of such companies arising other than under policies.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Bond for good behavior

RICHMOND, VA., *March 13, 1925.*

MAJOR R. M. YUELL, *Superintendent,*
The State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YUELL:

Acknowledgment is made of your letter of March 11, 1925, with reference to the case of Benjamin Sydnor, who was convicted of two violations of the prohibition law and given two sentences in jail amounting to twelve months and a fine of \$200.00. From the jail he was transferred to the convict road force. In addition to this imprisonment and fine, you state that the court order directed him to "furnish security in the sum of five hundred dollars for his good behavior for twelve months from this day." The order of the court is dated March 19, 1924.

I have examined this order with care, and, from the wording of same, it is my opinion that the bond was to be furnished as of March 19, 1924, for the good behavior of the accused for twelve months from March 19, 1924, and that if the man failed to give the bond he cannot be detained beyond the 19th of March, 1924, for his failure to give such bond, as the bond provided for would have expired on that day.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Constitutionality of prohibition law

RICHMOND, VA., *March 12, 1924.*

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

In response to your inquiry as to whether or not Senate Bill 276, as passed by the Senate with certain amendments attached when passed by the House of

Delegates, and known as the "prohibition act," is unconstitutional, because at the end of section 73 is found the following language: "This act shall not apply to Bedford county," after a careful consideration of this question, I am of the opinion that this provision does not make the act unconstitutional.

With kindest personal regards, I am

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Conviction in Federal court not a first conviction against Virginia law

RICHMOND, VA., *September 16, 1924.*

HON. J. M. BAUSERMAN,

Woodstock, Va.

DEAR MR. BAUSERMAN:

Your letter of the 24th has been unanswered because of a severe attack of indigestion, which laid me up for about a week, so that I got badly behind in my correspondence.

You say that you have a case in which the accused has been convicted before the Federal court for a violation of the revenue law, and you wish to know whether he can now be tried in our courts for the second offense under our law.

In my judgment, in order to punish a person for the second offense under the Virginia prohibition law, it is necessary that the former offense should have been "committed against a city or town ordinance or State prohibition law passed since November 1, 1916, in accordance with section 6 of the Layman prohibition law."

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Costs of forfeiture proceedings

RICHMOND, VA., *December 29, 1924.*

HON. CHARLES W. CRUSH,

Commonwealth's Attorney,

Christiansburg, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of December 26, 1924, in which you say:

"Copies of your letters in regard to fees in prohibition cases received and highly appreciated, but they failed to cover the question I had in mind when writing you. This is, under section 28 Layman act, 6th paragraph, provides where a lienor is ignorant of the illegal use to which his automobile was put, has his lien duly recorded, the court shall have the right to relieve the lienor from the forfeiture, provided that such lienor shall pay the costs incident to the capture and custody of such automobile or vehicle and to the trial of the cause—what fees are the Commonwealth's

attorney and officers entitled to in this case where information has been filed and cause heard?"

The costs to be paid in such cases are the same costs which would be paid if the forfeiture of the automobile was not relieved against. You will observe that the first paragraph of section 28 of the Layman prohibition law declares that all motor vehicles found in the unlawful transportation of ardent spirits "shall be forfeited to the Commonwealth." The proviso found in the third paragraph from the end of this section merely authorizes the court to relieve against such forfeiture in certain cases on the condition that the lienor or innocent owner "shall pay the costs incident to the capture and custody of such automobile or other vehicle and to the trial of said cause." See *Mason v. Commonwealth*, 137 Va., 819.

I am, therefore, clearly of the opinion that the costs to be paid by such owner or lienor are those which would be paid the officers if the forfeiture was not relieved.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Costs of prosecution

RICHMOND, VA., June 16, 1924.

MESS. PAGE, PAGE & PAGE,
Attorneys at Law,
Norfolk, Va.

GENTLEMEN:

I beg leave to acknowledge receipt of your letter of recent date, which is as follows:

"In re Jack Webb and C. E. Moore, defendants in prohibition prosecution, beg to say that each of these defendants was fined \$100.00 and given sixty days in jail. In taxing the costs each was charged with \$50.00 for the still, the entire item being \$184.00 each, made up as follows:

\$100.00 fine.

\$50.00 for still.

\$25.00 for Commonwealth's attorney.

\$9.00 other incidental costs.

"The question we desire to have answered is whether or not when two defendants are apprehended at a still the \$50.00 is properly chargeable to each of them?"

I am of the opinion that where two defendants are apprehended at a still and they are tried and convicted, only one fee or reward of \$50.00 is taxed or chargeable against them. In other words, the statute provides that where a still is seized, and the parties operating same are tried and convicted, the officer making the arrest and seizure shall be entitled to one fee of \$50.00 for each still seized. Of course, this fee or reward is recoverable against either or both.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Disposition of fines

RICHMOND, VA., January 27, 1925.

HONORABLE JOEL W. FLOOD,
Commonwealth's Attorney,
Appomattox, Va.

MY DEAR MR. FLOOD:

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

"I am writing to get your opinion on a matter which originates in my county. The town council of Pamplin city, which is incorporated and contains about five or six hundred people, has recently passed a resolution adopting the recent prohibition statute passed by the legislature in 1924 as one of the town ordinances. Their contention is that minor violations of the prohibition law, which may be tried by a magistrate, such as drunkenness and operation of a motor vehicle under the influence of liquor, when tried by the mayor of the town, the fines collected should be paid to the treasurer of the town and used by the town and not paid to the State.

"I do not believe that they are correct in the position they take, but, as I find very little law on the subject, I am writing to get your opinion, if you will be so kind. I will appreciate an early reply."

If you will examine the last paragraph of section 37 of the Layman prohibition law, you will see that it is there provided that all fines imposed under the ordinances of cities and towns and counties for the violation of such ordinances with reference to prohibition, shall be paid to and retained by such cities and towns and counties, etc.

In view of the decision of the Court of Appeals in *Bryan v. Commonwealth*, 126 Va., 749, it would seem that this provision of the law is in conflict with section 134 of the Constitution of Virginia, which provides that all property accruing to the State by forfeiture and all fines collected for offenses committed against the State shall be paid into the literary fund.

The effect of the decision of the Court of Appeals in *Bryan v. Commonwealth* seems to hold that prosecutions under city and town ordinances are prosecutions for offenses committed against the State. If this were not so, a conviction under a city or town ordinance would not bar a subsequent prosecution by the State. However, for a number of years the cities and towns which have by their ordinances adopted the provisions of the prohibition law have been collecting these fines and paying them into their treasuries.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Disposition of proceeds from sale of stillsRICHMOND, VA., *February 19, 1925.*

HON. E. J. SUTHERLAND,
Commonwealth's Attorney,
Clintwood, Virginia.

MY DEAR MR. SUTHERLAND:

Acknowledgment is made of your letter of February 13, 1925, in which you say:

"(1) To whom does a juvenile judge account for money—fines—that he collects from defendants?

"(2) To whom does a sheriff account for money received from the sale of mutilated stills, etc.? Is he allowed anything for mutilating them? Supposed case: A constable seizes an illicit still, and delivers it, unmutilated, to the sheriff; the sheriff mutilates it, and later sells the junk copper for \$10.00. Who is entitled to the \$10.00?"

In response to your first question, it is my opinion that the juvenile justice settles for fines, which he collects, in the same manner that a justice of the peace does.

In response to your second question, you will see from an examination of section 90 of the Layman prohibition law (chapter 407 of the Acts of 1924) that stills and still appliances, when seized, are to be mutilated and sold, and that, after paying the costs of transportation, storage and disposal, the net proceeds are to be paid to the treasurer of the State for the benefit of the literary fund.

I do not find where the sheriff is entitled to any compensation for the mutilation and disposal of a still, his compensation apparently being limited by section 20 of the Layman prohibition law to the fee paid for the seizure.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Duties of town attorneyRICHMOND, VA., *July 9, 1924.*

HON. J. D. LOGAN,
Town Attorney,
Salem, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of July 7, 1924, with reference to section 34 of chapter 407 of the Acts of 1924.

You ask whether, in view of this section, you now have, as town attorney, anything to do with the prosecution of cases coming before the mayor of your town. The last paragraph of section 34 of the prohibition law provides as follows:

"In any prosecution before a mayor or police justice, the commissioner of prohibition and the attorney for the Commonwealth of the city or town shall be notified by the said mayor or police justice, in time to attend said trial, and the said attorney for the Commonwealth and the commissioner,

his deputies and inspectors, shall have the same power in respect to such cases that they have in cases before the circuit or corporation court."

In view of this provision, it is my opinion that jurisdiction for the prosecution of prohibition cases under town ordinance is now vested in the attorney for the Commonwealth, and that city and town attorneys no longer have jurisdiction in such cases.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Expense of maintaining city and town prisoners

RICHMOND, VA., *June 27, 1924.*

J. WARREN TOPPING, ESQ.,
Attorney at Law,
Cape Charles, Virginia.

MY DEAR WARREN:

Acknowledgment is made of your letter of June 24, 1924, in which you say in part:

"Will you kindly advise me at whose expense, under the new prohibition law, convicted violators are sent on the road force."

The answer to your question is governed by the provisions of sections 2075 of the Code of 1919, as amended, and section 2077 of the Code of 1919.

The first section provides that persons imprisoned in jail for a violation of an ordinance of any city or town which, by said ordinance, is punishable by confinement in jail or fine, shall be a part of the State convict force.

Section 2077 of the Code of 1919 provides that the costs of maintaining such prisoners shall be paid by the city or town, for a violation of whose ordinance the prisoner is convicted.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of officers

RICHMOND, VA., *April 11, 1924.*

HON. HUGH H. KERR,
Commonwealth's Attorney,
Staunton, Virginia.

MY DEAR MR. KERR:

Acknowledgment is made of your letter of April 10, 1924, in which you state that, some time in November last, certain prohibition officers raided two stills in operation, and, although they recognized the two men who were operating the stills, that these men escaped but were subsequently captured, or

surrendered. You then state that these men, on conviction, paid to the clerk the \$50.00 reward provided by section 21½ of the prohibition law, and that, after the payment of the reward, demand was made on the clerk to return the same, on the ground that such a reward could not be taxed in the case, unless at the moment of seizing the stills the operators were arrested, and that no subsequent arrest would justify the taxing of such a reward, even though the operators of the stills were recognized by the officers at the time the stills were captured.

The fourth paragraph of section 21½ of the prohibition law reads as follows:

"Whenever any still is seized under the provisions of this act and the party owning or operating the same is arrested the officer making the seizure and arrest shall be allowed a fee or reward of fifty dollars and upon conviction of said person, the attorney for the Commonwealth shall receive a fee of ten dollars, which shall be taxed against the defendant and collected as other costs in the manner provided by law. And the fees or rewards herein directed to be paid shall be paid, anything in the charter of the cities and towns in this Commonwealth to the contrary notwithstanding."

This section clearly means that, if the operator of the still is recognized and subsequently arrested, the officer will be entitled to the reward. It does not require the officer to make the arrest at the time he captures the still, provided the operator of the still is identified either then or subsequently and is convicted.

I fully agree with you in your conclusion in the next to the last paragraph of your letter, in which you say:

"Briefly, my opinion is that the fact that the prisoner was not arrested at the time the still was captured but was subsequently convicted would entitle the officer to the reward of \$50.00 even though he did not actually make the arrest at the time the still was seized."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Fees of officers

RICHMOND, VA., August 25, 1924.

HON. M. L. WALTON, JR.,

Town Attorney,

Woodstock, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 7th, in which you ask my opinion on the following questions:

"The town employs a sergeant at a fixed salary and has always turned into the town treasury all license fees and fees in criminal proceedings which have been taxed for the sergeant. It is now claimed that V. C. (1919) section 3511 requires that such fees shall be paid to the officer, and it is especially maintained that fees for arrests in pro-

hibition cases go to the officer in addition to his salary (when collected from the accused). I cannot see how section 3511 has any application to towns, and, although the word 'corporation' used in the body of the act might be construed to refer to towns, I do not believe that the statute would stand as constitutional, since the title to the act refers only to 'cities.'

"Section 46, Acts 1924, page 610, provides that the attorney for the Commonwealth for the county or city shall be notified of the preliminary hearing. Does this apply to incorporated towns? If so, is it necessary to notify the Commonwealth's attorney of the trial by the mayor when the accused pleads guilty?"

In reference to your first question, I would say that section 3511 of the Code, in my judgment, does apply to towns. I see no other way to construe the word "corporation" following the words "such city or." The word "cities" in the title to the section applies only to that portion of the section referring to allowances in lieu of fees for serving processes in criminal cases. Moreover, it has always been my understanding that the subtitles of the Code prepared by the revisors are not parts of the acts and are not subject to the provisions of section 52 of the Constitution. However, the fourth paragraph of section 37 provides that:

"Upon final conviction under any such ordinances, the same fees for services rendered by any of said officers shall be taxed against the defendant as would be taxed upon final conviction in a prosecution had by the Commonwealth for a similar violation of the prohibition laws of this State, anything in the charter or ordinance of any city or town to the contrary notwithstanding."

Answering your second question, I would say that, in my judgment, the second paragraph of section 34 of the Virginia prohibition law requires that the attorney for the Commonwealth for a city or county shall be notified of the preliminary hearing when the case involves a violation of a city or town ordinance, dealing with the enforcement of prohibition.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of attorney for the Commonwealth

RICHMOND, VA., December 26, 1924.

HON. R. I. ROOP,

Attorney at Law,

Christiansburg, Va.

MY DEAR MR. ROOP:

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

"If not asking too much, I would be glad to know what fee you think the law allows a Commonwealth's attorney for appearing before a mayor of a town in a prosecution of a violation of the prohibition law, where the town adopts the State prohibition law.

"I wish to know your opinion in a case where the defendant pleads

guilty, as well as where there is a trial, and also in case an appeal is taken on the warrant to the circuit court and the warrant is tried there before a jury."

If you will examine section 37 of the Layman prohibition law you will see that that section makes it the duty of all officers named in section 46 of that act to enforce all the provisions of local ordinances relating to prohibition and to conduct all prosecutions and proceedings thereunder. This section then provides:

"Upon final conviction under any of such ordinances, the same fees for services rendered by any of said officers shall be taxed against the defendant as would be taxed upon final conviction in a prosecution had by the Commonwealth for a similar violation of the prohibition laws of this State, anything in the charter or ordinances of any city or town to the contrary notwithstanding."

The attorney for the Commonwealth is one of the officers named in section 46 of the Layman prohibition law.

The remaining question of your letter is answered by an opinion which I gave Hon. Thomas H. Wilcox, Jr., Commonwealth's attorney of Norfolk, on July 3, 1924, copy of which I herewith enclose.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of attorney for the Commonwealth

RICHMOND, VA., April 15, 1925.

HON. E. PEYTON TURNER,
Commonwealth's Attorney,
Emporia, Virginia.

MY DEAR MR. TURNER:

Acknowledgment is made of your letter of recent date, in which you ask to be advised what compensation the attorney for the Commonwealth is entitled to be paid out of the State treasury where one accused of violating the prohibition law pleads guilty in the justice court, and final sentence is passed in that court pursuant to section 33 of the Layman prohibition law.

As you no doubt know, section 46 of the Layman prohibition law is very badly worded, and is involved in much confusion. I have construed this section to mean that where one accused of violating the prohibition law pleads guilty in the justice court, pursuant to section 33 of that law, and his punishment fixed by the justice, that that is not a preliminary but a final hearing, and that a fee of \$25.00 must be taxed in favor of the Commonwealth's attorney and paid by the accused. For your further information, I am sending you herewith a copy of an opinion written by me last year to Honorable Thomas H. Wilcox, Jr., Commonwealth's attorney, Norfolk, Virginia, which sets forth my views in this connection.

As to whether the attorney for the Commonwealth is entitled to any fee from the State treasury in such a case where the defendant is insolvent depends upon the wording of section 3505 of the Code of Virginia, 1919, as amended, which fixes the fees of the attorneys for the Commonwealth in felony cases, since section 46 of the Layman prohibition law provides that where the defendant is insolvent the attorney for the Commonwealth shall be paid "as in felony cases." Unless some provision is made in section 3505 of the Code of Virginia, 1919, as amended, there is no authority for paying the attorney for the Commonwealth any fee out of the treasury for a final hearing in a prohibition case before a justice of the peace.

If you will examine section 3505 of the Code of Virginia, 1919, as amended, you will see that the only provision for paying an attorney for the Commonwealth out of the State treasury for a prosecution pending before a justice of the peace is that the attorney for the Commonwealth shall be allowed for each person prosecuted by him "*at a preliminary hearing* upon a charge of felony before any court or justice of his county or city, he shall be paid five dollars."

As the judgment entered by a justice on a plea of guilty in a prohibition case, under authority of section 33 of the Layman prohibition law, is not a preliminary hearing but a final hearing within the meaning of section 46 of the Layman prohibition law, I am of the opinion that no provision has been made by law for the payment of the attorney for the Commonwealth out of the public treasury in such a case, and that his sole right to compensation is limited to the fee of \$25.00 taxed against the accused and should be recovered from him.

I am perfectly aware of the fact that the prohibition law as to this question is involved in much confusion, as I have said, but I do not see how any other construction could be placed on the statute.

Regretting that I am unable to agree with you as to this matter, I am, with my best wishes,

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of officers

RICHMOND, VA., June 19, 1925.

HONORABLE E. J. SUTHERLAND,
Commonwealth's Attorney,
Clintwood, Va.

MY DEAR MR. SUTHERLAND:

Some time ago you requested me to give you my opinion as to the proper construction of section 28 of the Layman prohibition law in regard to the fees that officers are entitled to for the seizure and confiscation of property.

Your letter rightly says "there are apparently conflicting provisions in this section."

The third paragraph in this section provides in part:

"For every information filed under this section there shall be allowed to the attorney for the Commonwealth a fee of \$25.00 and to the officer making the seizure and arrest a fee of \$25.00, which shall be taxed as cost. * * * In the event such seized automobile or other vehicle is not confiscated the fees to the officer making such seizure and the attorney for the Commonwealth, filing such information and conducting the prosecution, shall be one-half of the amounts herein stated, which fees shall be taxed against the Commonwealth, and paid in the manner now provided by law."

In the sixth paragraph of this section it is provided that an innocent lienor or owner shall be entitled to relief from the forfeiture provided for by this section, and that the automobile or other vehicle shall be restored to such innocent owner or lienor, "provided, however, such lienor or innocent owner shall pay the costs incident to the capture and custody of such automobile or other vehicle and to the trial of said cause."

The seventh paragraph of this section reads as follows:

"Whenever any automobile or other vehicle or boat herein mentioned is seized under the provisions of this section, the officer making such seizure shall be allowed a fee or reward of twenty-five dollars, to be taxed against the automobile or other vehicle or boat seized and confiscated. In the event the automobile or other vehicle or boat is not finally confiscated under this section such fee shall be ten dollars, to be taxed against the confiscated vehicle or boat or the defendant, and collected as other costs in the manner provided by law."

This latter paragraph, in my opinion, is absolutely meaningless. The fee or reward of twenty-five dollars to be paid the officer in the case of the forfeiture of the automobile or other vehicle had already been fixed by the third paragraph of this section, and at the most is merely surplusage. This provision "in the event the automobile or other vehicle * * * is not finally confiscated under this section such fee shall be ten dollars, to be taxed against the confiscated vehicle * * * or the defendant and collected as other costs in the manner provided by law," is certainly without force if it is capable of meaning, which I seriously doubt. The automobile or other vehicle certainly cannot be confiscated and not confiscated at the same time, as this sentence would imply; and I know of no authority for the imposition of costs on a defendant who wins his case.

The provision of the sixth paragraph of this section placing the costs on the innocent owner or lienor is because the first paragraph of the section declares a forfeiture of all vehicles found transporting ardent spirits, and the vehicle is returned to such owner or lienor only upon the condition that the costs be paid.

It is, therefore, my conclusion, that where the vehicle is forfeited, the attorney for the Commonwealth and the officer making the seizure and arrest are each entitled to \$25.00 to be taxed as a part of the costs and recovered out of the proceeds of the sale of the vehicle so forfeited, and that in the event the vehicle seized is not confiscated the attorney for the Commonwealth and the officer making the seizure are each entitled to one-half of \$25.00 to be taxed against the Commonwealth and paid as provided by law.

However, where the innocent owner or lienor obtains the restoration of the vehicle which he owns or upon which he has a lien, as provided by the sixth paragraph of section 28 of the Layman prohibition law, I am of the opinion that as a prerequisite to the return of his automobile or other vehicle such innocent owner or lienor must pay the full fees of the attorney for the Commonwealth and the officer making the seizure, namely \$25.00 each, as well as the other costs incident to the capture and custody of such vehicle and the trial of the cause.

In the last paragraph of your letter you refer to a horse seized while being used for the transportation of ardent spirits by the husband of the owner. An examination of section 28 of the prohibition law will show that the forfeiture is limited to "any wagon, boat, buggy, automobile, or other vehicle, whether of like kind or not." In my opinion a horse is not a vehicle, and clearly would not fall within the definition of any of the types of conveyances mentioned in this section, therefore, I do not see how forfeiture proceedings could be maintained against a horse, and, if not capable of being maintained against a horse, I do not think the owner could be required to pay the costs of such forfeiture proceedings.

Trusting this gives you the desired information, I am

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of officers

RICHMOND, VA., February 1, 1924.

HON. H. C. SOUTHWORTH, *Clerk,*
Tappahannock, Virginia.

MY DEAR MR. SOUTHWORTH:

Acknowledgment is made of your letter of January 24, 1924, in which you request me to advise you as to the fees which should be taxed by you in liquor prosecutions where the costs are paid by the accused.

It is my opinion that the following costs should be taxed against the accused, where the costs are paid by him:

To the attorney for the Commonwealth where a still is seized— sections 21½ and 55 of the prohibition law.....	\$25.00
To the attorney for the Commonwealth where no still is seized— section 55 of the prohibition law.....	25.00
To the attorney for the Commonwealth for filing information against vehicle—section 57 of the prohibition law.....	10.00
To the officer making seizure of a still, or seizure of still and arrest of operator or operators—section 21½ of the prohibition law.....	50.00
To the officer making arrest other than where a still is seized—section 55 of the prohibition law.....	10.00
To the officer capturing an automobile and making an arrest against which forfeiture proceeding is instituted.....	35.00
To the officer seizing an automobile for violation of the prohibition law where no arrest is made.....	25.00

I also think that the allowance of a fee of \$1.00 for executing search warrant is correct.

With reference to the first item above, namely, the fee to be taxed for the attorney for the Commonwealth, where the prosecution is conducted under section 21½ of the prohibition law, I think that the fee should be \$25.00 instead of \$10.00, as stated in this section; or \$35.00, if the fee allowed by this section was added to the fee allowed by section 55 of the prohibition law.

The question is not without difficulty, but from an examination of sections 21½ and 55 of the prohibition law, it is my opinion that the fee to be allowed the attorney for the Commonwealth is \$25.00 in all prosecutions in the circuit court for violation of the prohibition law, which would include prosecutions under section 21½ of the act.

You will observe, if you will examine section 21½ of chapter 388 of the Acts of 1918, that the fee of \$10.00 was originally included in chapter 388 of the Acts of 1918. The provision of section 55 found in the amendment to that section in the Acts of 1922, with reference to the fees of the attorneys for the Commonwealth, was not found in the Acts of 1918, and, in amending this latter section, I am inclined to believe that the General Assembly overlooked the apparent conflict with section 21½. I do not know how to explain it otherwise, but I feel sure that the meaning of section 55 of the prohibition law, as amended, is that the Commonwealth's attorney is to receive a fee of \$25.00 for a prosecution in the circuit court for a violation of the liquor law, and that has been the construction which I have heretofore placed on the same.

The fees to be assessed for the clerk, justices of the peace, and witnesses are the same as in felony cases. Section 55 of the prohibition law.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Fees of officers for prosecutions under

RICHMOND, V.A., July 3, 1924.

MR. THOMAS H. WILLCOX, JR.,

Commonwealth's Attorney,

Norfolk, Virginia.

MY DEAR MR. WILLCOX:

Acknowledgment is made of yours of the 18th, to which reply has been delayed because of unavoidable absence from the city.

You say that you have a city ordinance covering drunkenness, which provides a fine of not less than \$5.00 and not more than \$25.00 on conviction, and which does not impose any fees on the person convicted except the magistrate's fee of fifty cents for issuing the warrant and the police justice's fee of fifty cents for trial. Nor does it provide that a convicted person, in default of the payment of the fine and costs, shall be sentenced to the public roads for not less than three months nor more than six months, and you ask whether that ordinance is repealed by the prohibition law.

In reply, I would say that, in my judgment, it is not repealed by the prohibition law. I do not think that the city ordinance referred to is a pro-

hibition ordinance within the meaning of section 37 of the act, and, therefore, do not think that a prosecution under this ordinance would carry with it the fees provided by the prohibition law.

You then say in part:

"If such persons are tried under the prohibition law, it seems to be very clear that the arresting officer gets a fee of \$5.00."

This is provided for by section 46 of the prohibition law, which provides that the fee of an officer for making an arrest for intoxication shall be \$5.00. In my opinion, this fee covers all of the services to be performed by the officer, including his testimony as a witness, and I do not think he is entitled to any additional compensation for his testimony as a witness in such a case.

You then say:

"The most difficult thing to arrive at is the fee of the Commonwealth's attorney. Paragraph 3 of section 46 deals with the subject, but I can not understand it. I do not know whether the Commonwealth's attorney is entitled to a fee of \$10.00 where the accused does not plead guilty, or \$5.00 only where he does, or whether he is entitled to a fee of \$25.00 for each case where there is a final conviction. If there is an acquittal, is he entitled to charge the State a fee of \$10.00? I have waived all fees in such cases up to date, and expect to do so in the ordinary cases, although I have been requested by the police department and the police justice to be present in court during all trials under the Layman act until the new law is thoroughly understood by all the officials."

I fully agree with you that section 46 of the prohibition law could hardly have been more complicated and unintelligible if a deliberate effort had been made to make it so, and it has caused me no end of trouble in an effort to attempt to reach a correct interpretation of what was meant by the General Assembly.

The first paragraph of this section makes it the duty of certain enumerated officers, among them being attorneys for the Commonwealth, to enforce all of the provisions of this act.

The second paragraph of the act then provides that for such services all of the officers named in the first paragraph, including witnesses, shall be entitled to and shall be paid the same fees as are now allowed by law in felony cases.

The third paragraph of this act, which specifically mentions the attorney for the Commonwealth, then provides as follows:

"The Commonwealth's attorney of the county or city in which preliminary hearings are to be had for the violation of this law shall be notified by the trial officer a reasonable time before such hearings, in order that he may attend, and if the Commonwealth's attorney attends such trial, a fee of ten dollars shall be taxed by the trial officer in favor of the attorney for the Commonwealth, to be paid by the defendant; provided, further, that when the defendant pleads guilty to the charge, the fee of the attorney for the Commonwealth shall be \$5.00 wherever he does appear at such preliminary hearing; and in every case where a conviction is had on the final hearing, the attorney for the Commonwealth shall be allowed a fee of \$25.00, to be taxed with the costs and paid for by the defendant, inclusive of the

fee allowed at the preliminary hearing. Where there is no conviction, or the defendant is insolvent, then the fee to be paid the attorney for the Commonwealth shall be as in felony cases."

Unless the second paragraph of section 46, so far as attorneys for the Commonwealth are concerned, is limited in its meaning to fees to be paid out of the public treasury, it is in conflict with the third paragraph of the act, which provides a different scale of compensation for the attorney for the Commonwealth. The only reasonable construction, and the one which was intended, in my opinion, to be placed on the second paragraph of section 46 of the act is that the scale of compensation provided in that part of the act for the Commonwealth's attorney is limited to those cases where his fee is to be paid out of the public treasury, and not by the accused.

The third paragraph of section 46 is by far the most complicated part of the section. It is to be observed that it provides that a fee of \$10.00 is to be taxed for the attorney for the Commonwealth at a preliminary hearing where the preliminary hearing is contested, and a fee of \$5.00 where the defendant pleads guilty at the preliminary hearing, but that on final hearing the attorney for the Commonwealth is to receive a fee of \$25.00, inclusive of the fees at the preliminary hearing, to be paid by the defendant. If there is no preliminary hearing, the attorney for the Commonwealth receives exactly the same fee that he does where he attends the preliminary hearing.

As the words "preliminary hearing" necessarily exclude from their meaning the final hearing, that part of the third paragraph of the section which speaks of a preliminary hearing and fixes the fee therefor, is without meaning, since no hearing can be both preliminary and final, if the English language has any meaning.

It is, therefore, my opinion that so much of the section as attempts to fix fees for the preliminary hearing is without meaning, and serves merely to confuse. The true construction of the act, it seems to me, is that, for practical purposes, the attorney for the Commonwealth is entitled to collect nothing from the accused for the preliminary hearing, but that when the final hearing is had, he is entitled to collect out of the accused a fee of \$25.00, to be taxed as a part of the costs, and this fee includes all services rendered by the Commonwealth's attorney at the preliminary, as well as the final hearing. Of course, where there is no conviction, it is clear that the fee for the attorney for the Commonwealth shall be the same as in felony cases.

Formerly the prohibition law provided, except in the case of persons found drunk in a public place, and under city and town ordinances, that justices of the peace were without jurisdiction to finally dispose of a case involving the violation of the prohibition law. Section 33 of chapter 407 of the Acts of 1924 has changed this, however, and the second paragraph of this act now provides as follows:

"Provided that whenever the charge against any person is a misdemeanor, the accused may, in the presence of the attorney for the Commonwealth, and with his consent, endorsed on the warrant of arrest, enter a plea of guilty to that offense charged in said warrant carrying the maximum punishment for any offense charged therein, the plea of guilty specifying the offense to which the accused pleads, in which event the justice, judge or other officer having criminal jurisdiction before whom the accused is

brought shall have jurisdiction to enter a judgment of guilty and to fix the punishment, but no judge, justice or other officer shall suspend sentence in any case heard under the provisions of this section. In entering such judgments, the trial justice shall tax in the cost against the defendant the same fees and awards in favor of those charged with the enforcement of this act as is elsewhere herein provided for prosecutions in courts of record."

Of course, a judgment of guilty rendered in accordance with the provisions of the second paragraph of section 33 of the prohibition act by a justice of the peace is a final hearing within the meaning of section 46 of the act, and an attorney for the Commonwealth is entitled to the same fees that he would be entitled to receive for his services at a final hearing in a court of record.

It seems inconceivable that the General Assembly should have provided a fee of \$25.00 for the Commonwealth's attorney in a prosecution against a person for being intoxicated in a public place, when no greater fee is paid him for his services rendered in all other and more serious offenses under the prohibition act, including felonies, but it would appear that this is what the General Assembly has done. It appears all the more remarkable that this should be so when the General Assembly has expressly provided that the fee of the arresting officer shall be only \$5.00 in the case of an arrest for intoxication, when his fee is \$10.00 for arrest in other cases, and as high as \$50.00 in at least one other case, namely, where an arrest is made when a still is seized (section 20).

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of sheriff for arrest

RICHMOND, VA., March 6, 1924.

MR. C. D. WALTON, *Deputy Clerk,*
Jonesville, Virginia.

MY DEAR SIR:

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

"In prohibition cases, where the defendant is indicted and the clerk issues a *capias* which is served on defendant by sheriff, should the clerk tax for the sheriff \$10.00 for making the arrest on *capias* if the defendant is convicted and solvent?

"Should we tax the same cost for sheriff in drunkenness cases as in transporting, manufacturing, selling, etc.?"

In reply, I beg leave to quote you the last paragraph under section 55 of the prohibition law, which reads as follows:

"For making an arrest for the violation of any of the provisions of this or other prohibition laws of the State, the officer making such arrest, if the defendant is convicted, shall be paid a fee of ten dollars, to be taxed as a part of the costs against such defendant, and if two or more officers unite in making such arrests, then said fee shall be apportioned among them."

You will see from this provision of the law that the sheriff is entitled to a fee of \$10.00, to be taxed as a part of the costs against the defendant.

He is also entitled to the same fee where the accused is arrested for drunkenness, to be taxed as a part of the costs against the defendant.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Forfeiture of vehicles

RICHMOND, VA., May 24, 1924.

HON. H. H. KERR,
Commonwealth's Attorney,
Staunton, Va.

MY DEAR MR. KERR:

In the necessary absence of the Attorney General from the office, I am taking the liberty of replying to your letter of May 23, 1924, in which you say:

"Last night Mr. Forrest Taylor, prohibition inspector, captured two men near Craigsville, Va., and searched the machine for liquor. They did not find liquor, but found a complete still in the automobile. They seized the automobile and arrested the men. There is no question of their guilt, under clause 24½ of the prohibition law, but the question arises, can we seize the automobile? We have it in possession and are going to hold it until we can hear from your department. In the meantime, I will be glad if you will send me your idea of a proper indictment under this clause. I think I have drawn an indictment under nearly every other clause of the prohibition law, but never before under this one. Our grand jury meets on Monday, the 26th, and if you would let me hear from you on the morning of the 26th I would appreciate it."

I assume that you refer to section 21½ of the prohibition law, as I do not find any section No. 24½.

I do not think that the law authorizes a forfeiture of an automobile for the transportation of a still therein. Section 57 of the prohibition law, as amended by the Acts of 1922, seems to be the only section which provides for the forfeiture of vehicles used in violation of the prohibition law. You will see from an examination of this section that the forfeiture provided for in this section of the law is for the transportation of ardent spirits in a vehicle. I know of no way by which this could be construed so as to embrace a still.

With reference to the indictment, I am sending you, under separate cover, a copy of the record and the Commonwealth's brief in the case of *Gilreath v. Commonwealth*, reported in 136 Va. 709.

It was formerly the opinion of this office that the indictment should charge that the still was unregistered, but you will see that the court has taken the position that it is unnecessary to do this.

The indictment found in that case is found on pages 13 and 14 of the record. It was demurred to, and the demurrer passed on by the Court of Appeals (pp. 712-13 of the report of the court's opinion).

When you have gotten through with the record in the case, please return it to us, as we have need of the same for our files.

With my best wishes, I am

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

**INTOXICATING LIQUORS—Fines for violation of laws concerning—
Disposition of**

RICHMOND, VA., *June 18, 1924.*

J. W. ADAMS, ESQ., *Clerk,*
Corporation Court,
Fredericksburg, Va.

DEAR MR. ADAMS:

Acknowledgment is made of your letter of June 16th, in which you say:

“Under section 30 of prohibition law, clerk is required to report monthly on violations of prohibition law. Practically all of these cases are handled in this jurisdiction by the police justice, acting under prohibition law which has been adopted as the local law.

“Does this section contemplate that fines imposed, payable to the city, are to be reported to your department?”

In reply, I would say that, in my judgment, section 30 of the Virginia prohibition law requires the clerk to report only those cases that are tried “for violations of the provisions of this act,” and not for violation of a city ordinance, even though the ordinance be in the exact language of the State law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Forfeiture of automobiles transporting

RICHMOND, VA., *July 18, 1924.*

HON. H. H. KERR,
Commonwealth's Attorney,
Staunton, Va.

MY DEAR MR. KERR:

I am just in receipt of yours of July 16th, to which I will reply at once.

In this you state that, on the 30th day of June, the Waynesboro Automobile Company sold to one Walter Casey a new Overland car, and on the 3rd day of July Casey was caught by prohibition officers with four and one-half gallons of liquor, which he was transporting in said car, and that at the time of the said sale the Waynesboro Automobile Company took a lien on this car to secure the notes given for the deferred payments on this car, but failed to record this lien prior to July 3rd, the day Casey was caught transporting the liquor in this automobile. You further state that the reason the reservation of title was not recorded

prior to the seizure of the automobile was because the Waynesboro Automobile Company forwarded these notes to the Commercial Credit Company, of Baltimore, Md., which company handles this class of paper, and before this company had time to signify their intention of taking this paper from the Waynesboro Automobile Company the car was captured, and, of course, the lien has never been placed on record.

You further state that Mr. David T. Coiner, who is the manager and one of the principal owners of the Waynesboro Automobile Company, has had a talk with you and Judge Holt and desires to be advised whether or not, under the circumstances, it is necessary to confiscate this car. In this connection, you state that you have known Mr. Coiner well, and that he sold the car in good faith and was entirely ignorant of the use to which this car was put, and in no way connived at it. In this connection, you refer me to section 28 of the prohibition law, which provides for the forfeiture of automobiles and other vehicles used in the unlawful transportation of ardent spirits.

I am frank to say that, after a careful reading of this section, I do not see how any relief can be granted Mr. Coiner under the circumstances. While I admit that this is a case in which the law seems to work harshly, yet it is clear and explicit, and I know of no way by which the plain mandate of law can be obviated, as it provides, among other things:

"* * * that such lienor has, prior to the commission of such offense, duly recorded in the county or corporation in which the debtor resides, the instrument creating such lien, and that said innocent owner has perfected his title to the vehicle, if the same be an automobile * * *."

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Indictments for violation of law concerning

RICHMOND, VA., September 23, 1924.

HON. JOEL W. FLOOD,

Commonwealth's Attorney,

Appomattox, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of September 19, 1924, in which you request a form of an indictment for a felony under the prohibition law.

One of the best indictment forms that I have seen is found in the record of the case of *Gauss v. Commonwealth*, pending in the Court of Appeals at the present time.

The indictment is as follows:

"Commonwealth of Virginia,

City of Norfolk, to-wit:

"In the corporation court of the city of Norfolk, No. 2:

"The grand jurors of the Commonwealth of Virginia, in and for the body of the city of Norfolk, and now attending the said court, at its November term, 1923, upon their oaths, present that on the 20th day of December, in the year 1922, in the corporation court of the said city of Nor-

folk, Henry M. Gauss was convicted of unlawfully transporting ardent spirits, and on the 7th day of March, in the year 1923, in the corporation court of the said city of Norfolk, the said Henry M. Gauss was convicted of unlawfully manufacturing, transporting, selling, offering, keeping, storing and exposing for sale, giving away, dispensing, soliciting, advertising and receiving orders for ardent spirits, and that after said convictions aforesaid, and within one year next prior to the finding of this indictment, the said Henry M. Gauss, in the said city of Norfolk, did feloniously transport ardent spirits, against the peace and dignity of the Commonwealth of Virginia.

"T. H. WILLCOX, JR.,

"Attorney for the Commonwealth."

I would suggest that in indictments under the Layman act, however, that you add after the words "and within one year next prior to the finding of this indictment," the words "and subsequent to the 16th day of June, 1924," until such time as the Layman act has been in force more than a year. Of course, the form prescribed by section 42 is sufficient for a misdemeanor punished under sections 3, 4 and 5 of the Layman act.

You will observe, however, that in view of the decision of the Court of Appeals in *Lane v. Commonwealth*, 122 Va. 916, the omnibus count prescribed by section 42 of the Layman act can not be used for violations of other sections of the prohibition law.

Although the manufacture of ardent spirits is provided for by the indictment in section 42, in view of the fact that the manufacture of distilled spirits is made a felony, I would suggest that you do not use the omnibus count, but that you draw a separate indictment charging the unlawful and felonious manufacturing of ardent spirits in the cases you have against distillers.

If I can give you any further information, or you wish an indictment on any specific section of the prohibition law, let me know and I will do my best to help you.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Forfeiture of automobiles by cities and towns

RICHMOND, VA., November 26, 1924.

HON. H. C. L. RICHMOND,
Commonwealth's Attorney,
Gate City, Va.

MY DEAR MR. RICHMOND,

Acknowledgment is made of your letter of November 24, 1924, in which you say:

"Kindly permit me to refer you to section 37 of the prohibition act of the Acts of Assembly 1924, chapter 407, page 606.

"Will you please give me, at your earliest convenience, your opinion whether an incorporated town (Gate City) can condemn and sell an automobile which was seized within the corporate limits of the town while transporting ardent spirits, proceeds of the sale to be for the town?"

"The mayor of the town claims the legal right to sell, and has been so advised by an attorney. I am unable to agree that the town has such right under the law."

It is my opinion that no town has the authority to forfeit an automobile for a violation of the prohibition law, and I have repeatedly so ruled. See section 134 of the Constitution.

I do not think that the provisions of section 37 of the Layman prohibition law confers the authority contended for on a city or town. Moreover, see section 28 of the Layman prohibition law, which declares that whenever an automobile, or other vehicle, is seized while being used for the unlawful transportation of ardent spirits, it "shall be forfeited to the Commonwealth." If any effort is made by any of the towns in your county to forfeit automobiles, or other vehicles, used in violation of the prohibition law, you will please take the necessary steps to protect the interests of the State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Forfeiture of automobiles transporting

RICHMOND, VA., September 16, 1924.

HON. HUGH H. KERR,
Commonwealth's Attorney,
Staunton, Va.

MY DEAR MR. KERR:

Acknowledgment is made of your letter of August 30, 1924, with reference to the automobile sold by the Waynesboro Automobile Company to Walter Casey, which was subsequently captured by the officers of your county while being used for the transportation of ardent spirits in violation of the law.

I would have answered your letter earlier, but it came to the office when I was absent on account of sickness, and both of my assistants were busily engaged in preparing the Commonwealth's cases pending on the docket of the Court of Appeals at Staunton; hence the delay in my answer.

In your letter you state that the attorney representing the Waynesboro Auto Company has called your attention to a portion of clause 2 of chapter 368 of the Acts of 1924, page 525, which relates to the certificate of title for motor vehicles and provides, in part, as follows:

"Said certificate of title, when issued by the Secretary of the Commonwealth showing a lien or encumbrance, shall be deemed adequate notice to the public that a lien against the motor vehicle exists, and the recording of such reservation of title in the county or city wherein the purchaser resides or elsewhere is not necessary and shall not be required."

You further state that it is insisted that, under this provision of chapter 368 of the Acts of 1924, the automobile can not be forfeited under section 28 of the Layman prohibition law, the vendor of the automobile being an innocent party.

An examination of the first paragraph of section 28 of the Layman prohibi-

tion law shows that the law declares a forfeiture of any automobile or other vehicle used in the illegal transportation of ardent spirits. This forfeiture is absolute, without condition or qualification.

The proviso of the third paragraph from the end of this section, namely:

"Provided, that the forfeiture provided for in this section shall not apply to the transportation in personal baggage of the quantity of ardent spirits permitted by this act. And provided, further, that whenever a quantity of ardent spirits is illegally transported in any automobile or other vehicle and it shall appear to the satisfaction of the court from the evidence that the owner or lienor of such vehicle and team, automobile, boat or other conveyance was ignorant of the illegal use to which the same was put, and that such illegal use was without his connivance or consent, express or implied, and that such lienor has, prior to the commission of such offense, duly recorded in the county or corporation in which the debtor resides, the instrument, creating such lien and that said innocent owner has perfected his title to the vehicle, if the same be an automobile, by proper transfer in the office of the Secretary of the Commonwealth, as provided by law, then such court shall have the right to relieve such owner or lienor from the forfeiture herein provided; provided, however, such lienor or innocent owner shall pay the costs incident to the capture and custody of such automobile or other vehicle and to the trial of said cause."

is an act of grace on the part of the Commonwealth relieving the owner or lienor from the forfeiture, where it appears to the reasonable satisfaction of the trial court that the owner or lienor was ignorant of the illegal use to which the vehicle was put, and that such illegal use was without his connivance or consent, express or implied, and it is only by full compliance with the conditions of this proviso that a vehicle which has been forfeited to the Commonwealth by reason of the first paragraph of section 28 of the Layman prohibition law, can be returned to the innocent owner or lienor; and full compliance with this proviso can be had only by showing, in addition to the innocence and ignorance of the owner or lienor, that prior to the commission of the offense he "duly recorded in the county or corporation in which the debtor resides, the instrument creating such lien, and that said innocent owner has perfected his title to the vehicle, if the same be an automobile, by proper transfer in the office of the Secretary of the Commonwealth, as provided by law.

No matter how innocent the owner or lienor may be, unless he can comply with all of the conditions of this proviso, he is not entitled to relief from the forfeiture. In addition to this, it seems perfectly clear that the General Assembly contemplated that, in the case of an automobile, the lienor must not only have perfected his title to the vehicle by proper transfer in the office of the Secretary of the Commonwealth, but that, in addition to this, he must have duly recorded his lien in the county or corporation in which the debtor resides.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Jurisdiction of justice of the peace to punish for intoxicationRICHMOND, VA., *December 14, 1923.*

R. M. COLTRANE, ESQ.,
Justice of the Peace,
Ivanhoe, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of December 7, 1923, in which you say:

"I want your opinion as to how the third paragraph of section 41 of the prohibition law should be construed as to the powers of a justice of the peace.

"I was trying a man of intemperate habits under section 37½ and demanded of him that he disclose the name of the party from whom he bought his ardent spirits. His lawyer claims that a justice has no power to enforce this paragraph. The paragraph in question says that, in any proceeding under this act, the person of intemperate habits shall be compellable to disclose from whom he receives ardent spirits, and shall be guilty of contempt if he refuse.

"Please let me know as soon as possible. If I have the right to enforce this clause I can handle the situation much more easily and efficiently."

Under the provisions of section 37½ of the Virginia prohibition law, a justice of the peace has jurisdiction to try and punish any person found in an intoxicated condition in any public place in Virginia.

It is my opinion that the third paragraph of section 41 of the Virginia prohibition law, which reads as follows:

"Any person of intemperate habits or addicted to the use of any narcotic drug, found to be intoxicated or under the influence of ardent spirits or any narcotic drug, shall be compellable in any proceedings had under this act to disclose from whom he has received such ardent spirits or drug. For a failure or refusal to make such disclosure, he shall be guilty of contempt and shall be fined not less than five dollars nor more than fifty dollars and be committed to the jail for a period not exceeding thirty days, unless such person shall sooner disclose from whom he has received such ardent spirits or drugs."

applies to a prosecution under section 37½ of the prohibition law, and that you have the power to enforce the provisions of the third paragraph of section 41 where the party on trial for being found in an intoxicated condition in a public place, and being of intemperate habits, or addicted to the use of any narcotic drug, refuses to disclose the name of the person, or persons, from whom he received the ardent spirits. (See also the opinion of the Attorney General to Hon. A. D. Watkins, Farmville, Va., dated March 30, 1921—Report of the Attorney General, 1921, page 130.)

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Jurisdiction of towns

RICHMOND, VA., *December 29, 1924.*

HON. CHARLES W. CRUSH,
Commonwealth's Attorney,
Christiansburg, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of December 26, 1924, in which you state that you have a case which arose under these circumstances. The town of Cambria adjoins the town of Christiansburg on the north, the northern boundary line of Christiansburg being the southern boundary line of Cambria. You state that a person was arrested to the east of these towns for a violation of the prohibition law; that the point was a quarter of a mile from the corporate lines of Cambria, and less than fifty yards from the corporate lines of Christiansburg. You ask me to advise you which town has jurisdiction to prosecute under a town ordinance for violation of the prohibition law.

The second sentence of section 34 of the Layman prohibition law reads as follows:

"For the enforcement of such ordinances, the mayor or police justice shall have jurisdiction over the territory contiguous to the city or town within three miles of the city or town 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 only to one-half the distance between said cities and towns."

I would say that the jurisdiction of the towns depended on the question as to whether the offense was committed at a point to the east north of the northern boundary line of Christiansburg, or at a point to the east south of the southern boundary line of Cambria. If it was committed north of the northern boundary line of Christiansburg, and within three miles of the town of Cambria, that town would have jurisdiction. If, on the other hand, it was committed south of the southern boundary line of Cambria, and within three miles to the east of the town of Christiansburg, the latter town would have jurisdiction.

Allow me to suggest that all question of jurisdiction would be obviated by proceeding against the man for a violation of the State prohibition law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Municipal ordinancesRICHMOND, VA., *July 10, 1924.*

THOMAS E. FRANK, ESQ.,
Acting Mayor,
Warrenton, Virginia.

MY DEAR MR. FRANK:

Acknowledgment is made of your letter of the 7th, in which you ask me for the following information:

"Can the costs of arrest (\$10.00) against an ordinary drunk—that is, a man arrested on the streets in a drunken condition, not having intoxicating liquor on his person, be assessed against such a person under the law that became effective June 16th, or under the prior law, which Warrenton adopted?"

In reply, I would say that section 46 of the Virginia prohibition law provides:

"For making an arrest for the violation of any of the provisions of this or other prohibition laws of the State, the officer making such arrest, if the defendant is convicted, shall be paid a fee of ten dollars, to be taxed as a part of the costs against such defendant, and if two or more officers unite in making such arrests, then provided the fee for arrest for intoxication shall be five dollars, said fee shall be apportioned among them."

It is my judgment that the ordinance of the town of Warrenton, which was identical with the Mapp law, has been repealed by implication by the Layman law. The municipalities can only adopt such ordinances as have the same penalties as the existing State prohibition law. Therefore, in my judgment, costs of arrests can not be allowed under the ordinance.

It is my judgment also that, for any arrest made on or after June 16th for being drunk in a public place, a man may be assessed only \$5.00 for the benefit of the officer making the arrest, if the defendant is convicted.

With kindest personal regards, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Notice of prosecution under—To whom givenRICHMOND, VA., *July 8, 1924.*

HON. R. W. KIME, *Mayor,*
Salem, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of July 7, 1924, with reference to section 34 of chapter 407 of the Acts of 1924 of the prohibition law, in which you ask whether you are now required to notify the Commissioner of Prohibition and the attorney for the Commonwealth of all prohibition cases arising under ordinance in your court, in time for them to attend the trial. The last paragraph of section 34 of the prohibition law, which reads as follows:

"In any prosecution before a mayor or police justice, the Commissioner of Prohibition and the attorney for the Commonwealth of the city or town shall be notified by the said mayor or police justice in time to attend said trial, and the said attorney for the Commonwealth and the commissioner, his deputies and inspectors, shall have the same power in respect to such cases that they have in cases before the circuit and corporation court."

clearly requires you to do this, and I do not know of any authority which would permit you to dispense with compliance with this provision of the prohibition law. In view of the above quoted provision of section 34 of the prohibition law, I do not think that notice to the town attorney would be a compliance with the law, as he no longer has jurisdiction in these cases, same having been vested by this section in the attorney for the Commonwealth.

You also ask what fee is to be paid an officer where a person is arrested for being intoxicated in a public place. The last paragraph of section 46 of the prohibition law, which governs this matter, provides as follows:

"For making an arrest for the violation of any of the provisions of this or other prohibition laws of the State, the officer making such arrest, if the defendant is convicted, shall be paid a fee of \$10.00, to be taxed as a part of the costs against such defendant, and if two or more officers unite in making such arrests, then provided the fee for arrest for intoxication shall be five dollars, said fee shall be apportioned among them."

Like many other provisions in the prohibition law, this is very badly worded; but it is my opinion that the intention of the law was to provide a fee of only \$5.00 for an officer when an arrest is made for intoxication, and that the fee shall be \$10.00 in all other cases.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Physicians prescriptions for

RICHMOND, VA., July 7, 1924.

HON. ROLAND D. COCK,
Commonwealth's Attorney,
Hampton, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 5th, in which you say:

"It appears that the prescription blanks furnished physicians by the government under the Federal prohibition law have not blanks on them sufficient to write in the data demanded under our law. The position has been taken that sections 71 and 85 of the Layman act which were evidently passed to prevent a useless duplication of records, do away with the necessity of the physicians following strictly the Layman act or the druggists following strictly the provision of the act where they have complied with the provisions of the Federal law.

"What I wish to know is what effect, in your opinion, these two sections have on section 60 of the Layman act, which touches on the sale of ardent spirits by druggists."

In reply, I beg to say that, in my judgment, under the authority of the proviso of section 85 of the prohibition law, no prescriptions or affidavits required by this act need be issued or filed whenever the prescriptions have been issued and filed in accordance with the provisions of the national prohibition act and the regulations issued in pursuance thereof. The proviso makes unnecessary the prescriptions and affidavits mentioned in this section, *i. e.*, section 85; but the prescriptions and affidavits mentioned in section 85 are all prescriptions and affidavits required by the Virginia prohibition law. Therefore, if the provisions of the national prohibition law have been complied with as to sales mentioned in section 60, then prescriptions and affidavits required by section 60 need not be made. This amendment to the Virginia prohibition law was made for the purpose of relieving druggists and their dealers from the necessity of duplicating records and reports, which duplication has proven an unnecessary burden upon legitimate business of this character. The national prohibition act is just as strict as the State law in these respects, and as long as the national law and regulations continue to be so, similar provisions of the State law need not be invoked. If, however, the Federal law should ever be weakened so as not to require the necessary prescriptions and affidavits, druggists and other dealers would, in that event, be required to comply with the provisions of the State law, as heretofore.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Prosecution of persons at still

RICHMOND, VA., July 3, 1924.

WILSON M. FARR, ESQ.,
Attorney at Law,
Fairfax, Virginia.

MY DEAR MR. FARR:

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

"A recent raid was made by Mr. Williams of your department in this county in which he arrested one white man and two colored men and seized quite a large still and other appliances. At the time of the raid the still was in operation, and there does not seem to be any question but that the two colored men had been employed as laborers to work at the still. As I understand the new prohibition law, a plea of guilty can be entered in a misdemeanor charge with the consent of the Commonwealth's attorney, and final disposition can be made by the justice of the peace. The question arises, however, as to whether or not, in view of the provisions of section 5, making the manufacture of liquor a felony, a plea of guilty on a misdemeanor can be entered. After the specific statement in this section that manufacture of liquor constitutes a felony, it is further provided that any person "who shall act as the agent or employee of such manufacturer or such seller, or person in so keeping, storing, offering or exposing for sale such ardent spirits, or act as the agent or employee of the purchaser in purchasing such ardent spirits," is guilty of a misdemeanor for the first offense, and I am in doubt as to the construction of this language; as to whether the construction is to be limited solely to the agents or employees of the seller and to the agents of the purchasers buying ardent spirits."

In reply, I would say that, in my judgment, persons at a still while in operation, assisting in the manufacture of ardent spirits, are punished under section 4 of the prohibition act, if the persons present were aiding and abetting in the manufacture, the same as if the defendant were solely guilty of the manufacture. Therefore, the evidence is a felony, and there can be no plea of guilty before a justice of the peace. I hold that the terms agent and employee do not include accessories.

Of course, the men in question may plead guilty in the circuit court, and the jury, under the authority of section 6, might fix punishment at confinement in jail for not less than six months nor more than twelve months, or by a fine not exceeding \$500, which they would do, no doubt, upon your recommendation if you should deem a penitentiary sentence too severe in this instance.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Sale of alcohol by druggists—License required

RICHMOND, VA., April 28, 1925.

MESSRS. CASKIE & CASKIE,
Attorneys at Law,
Lynchburg, Va.

GENTLEMEN:

Yours of the 15th has remained unanswered because I have recently been obliged to be out of my office and out of the city. You say:

"For some years here, the druggists of the town have been each year getting the State license under the prohibition act for the purpose of selling 'pure grain ethyl and fruit alcohol' for scientific, pharmaceutical and mechanical purposes, etc.

"My client, the Strother Drug Company, is a wholesale druggist. As I see it, this license is required under Code section 4675, subsection 73, but I do not see anything in that section which requires a new license each year. It simply provides that a license must be procured before these products can be sold. On the contrary, it seems to me that the statute contemplates merely one license, which shall be good until revoked, because the section provides that any license granted under that section 'may be revoked at any time by the court granting the same for cause, and after two years from date of issue, upon the petition provided for in this section, * * *.' This provision seems to contemplate that no annual licenses are required.

"The provisions above are found in the third paragraph of the section, which apparently deals with retail druggists, while the fourth paragraph deals with wholesale druggists. This last section simply provides that a license may be granted in the discretion of the court, and there is nothing in it, so far as we can find, that requires an annual license.

"As stated, it has been the custom of the druggists here to renew the licenses annually. So far as our client, the wholesale drug house, is concerned, we do not see that any annual renewal is required, though the impression seemed to be very general to the contrary."

In reply, I beg to say that this office has always held that wholesale druggists, as well as retail druggists, should take out a State license each year. The

same ruling, I understand, prevailed before the office of Commissioner of Prohibition was annexed to the office of the Attorney General.

The language of subsection 73 of section 4675 of the Code, to which you refer, viz: "Any license granted under this section may be revoked at any time by the court granting the same for cause, and after two years from the date of issue upon the petition provided for in this section" appears to be an amendment made in 1924. The two year limitation seems to apply to revocation on petition, and I construe it to mean that such a revocation can not take place until license has been exercised for two years. This provision is a counterpart to that which does not permit application for a license which has been refused to be renewed until the expiration of two years.

As you know, all of the license provisions of the prohibition law were, to some extent, modeled upon similar provisions in the old liquor law, all of which applied to the annual license.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Search of automobiles—Obstruction of roads

RICHMOND, VA., *September 12, 1924.*

HON. HERBERT B. GREGORY,
Roanoke, Va.

MY DEAR JUDGE GREGORY:

Absence from my office on account of sickness has delayed my replying to your letter of August 30th, which is as follows:

"I would be very much interested to have your opinion on two questions of considerable importance in my circuit.

"First. Does the Layman act permit the promiscuous search of automobiles without a warrant for the transportation of ardent spirits unlawfully?

"Second. Does an officer have the right to barricade highways with telephone poles, ropes and chains, both day and night, for the purpose of stopping motor vehicles, in order that he may conduct a search without a warrant?

"It has been my uniform holding that the Layman prohibition act permits an officer to search any vehicle on the highway if he has a reasonable belief that ardent spirits are being transported unlawfully, but I have never held that this act permitted an officer to search any other automobile other than the particular one which he believes is transporting the ardent spirits.

"I am also of the opinion that an officer is not justified in blocking a road, as I have described, for the purpose of searching any automobile.

"I may be wrong in my views on this subject, and if I am I will appreciate it very much if you will correct me. Your opinion and answer to this letter will govern my future holdings in such matters."

After a careful reading of your letter, I am of the opinion that you are clearly correct in your interpretation of the law.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Suspension of jail sentenceRICHMOND, VA., *March 9, 1925.*

HON. J. POWELL ROYALL,
Commonwealth's Attorney,
Tazewell, Va.

MY DEAR MR. ROYALL:

Acknowledgment is made of your letter of March 5, 1925, in which you request me to advise you whether a mayor of a town, which has adopted a prohibition ordinance as authorized by the Layman prohibition law, has the authority to suspend a jail sentence imposed for a violation of the town prohibition ordinance.

If you will examine section 37 of the Layman prohibition law you will see that it is there expressly provided that:

"No mayor, police justice or other person having jurisdiction to try offenses against such ordinances shall have power to suspend the sentence of any person convicted of the violation of said city or town ordinances; provided that nothing herein contained shall be construed to prevent mayor, police justice or other persons having jurisdiction to try offenses against such ordinances from suspending the jail sentences in cases of transportation and possession of ardent spirits where the quantity does not exceed one pint."

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Transportation thereof in personal baggageRICHMOND, VA., *September 6, 1924.*

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

MY DEAR MR. LIPSCOMB:

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

"In redrafting the city ordinance to conform to the Layman act, I discovered that under the present law the carrying of as much as a quart of ardent spirits in one's personal baggage is not permitted. This happened by inadvertence, I suppose.

"Section 39 of the Mapp act of 1922 permitted it, but there is no corresponding section in the Layman act. The subject is mentioned also in section 57 of the Mapp act, with reference to the search of vehicles, etc. Section 28 of the Layman act is similar to section 57 of the Mapp act. The sixth paragraph of section 28 of the Layman act reads, in part, as follows: 'Provided, that the forfeiture provided for in this section shall not apply to the transportation in personal baggage of the quantity of ardent spirits permitted by this act.' But as there is no section of the act permitting the transportation of any quantity, it seems to me necessarily to follow that the proviso just quoted means nothing, and that, as above stated, it is now illegal to carry any quantity in one's personal baggage.

"Please be good enough, at your leisure, to let me have your views on the question."

It is my opinion that the conclusion reached by you is correct. As there is no provision in the Layman prohibition law authorizing the transportation of any quantity of whiskey in one's personal baggage, I know of no law by which intoxicating liquor can now be legally transported in this State in one's personal baggage.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Allowance for good behavior

RICHMOND, VA., March 19, 1925.

HON. WM. B. SANDERS,

Commonwealth's Attorney,

White Stone, Virginia.

MY DEAR MR. SANDERS:

I acknowledge receipt of your letter of March 17th, to which I will reply at once. In this you ask for construction of section 2680 of the Code of 1919, which section deals with the records to be kept by jailors, etc., and which reads as follows:

"The jailor shall keep a record describing each person committed to jail, the terms of confinement, for what offense or cause he was committed, and when received into the jail. The jailor shall also keep a record of each convict, and for every month that any convict appears, by such record, to have faithfully observed the rules and requirement of the jail while confined therein, and not to have been subject to discipline for violation of same, there shall, with the consent of the judge, be deducted from the term of confinement of such convict four days. The time so deducted shall be allowed to each convict for such time as he is confined in jail, and for each violation of said rules prescribed as herein provided the time so deducted shall be added until it equals the full sentence imposed upon such convict by the court."

Since receiving your letter I have discussed this matter with several of the judges of circuit courts who happened to be here last night attending a meeting of the Virginia State Bar Association. All of the judges with whom I discussed the matter stated that they construed the statute to mean that any person who is serving sentence in jail and who has faithfully observed the rules, etc., is entitled to have four days deducted in each month.

While the statute is not entirely clear on account of the first sentence in the section, yet inasmuch as it is a remedial statute, I think it should be liberally construed, and I am, therefore, inclined to the opinion that it is right and proper that the four days should be deducted for all persons whose record is good, etc.

It is always my custom to give written opinions when requested, in order that the records may be kept straight and clear.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Allowance for good behaviorRICHMOND, VA., *April 29, 1925.*

MAJOR R. M. YOEUELL, *Superintendent,*
Virginia State Penitentiary,
Richmond, Va.

MY DEAR MAJOR YOEUELL:

I acknowledge receipt of your letter of April 23, 1925, which reads as follows:

"Section 2094 of the Code of Virginia allows all men sentenced to the State convict road force ten days' credit per month on their sentences for good conduct. This section is similar to section 5017a of the Code, which allows those sentenced to the penitentiary the same credit.

"The purpose of this letter is to ask you for a written opinion as to whether men sentenced by the juvenile and domestic relations courts of this State to the State convict road force are subject to the same credit on their sentences or whether they get no credit for good conduct, but serve the entire sentence imposed by the court. I refer particularly to those sentenced for nonsupport and for which the State Highway Commission has to pay so much per day to their dependents.

"A prompt reply to this letter will be appreciated, as we have quite a number of these cases."

In reply thereto, I am of opinion that the provisions contained in the sections of the Code referred to by you are applicable to persons convicted in the juvenile and domestic relations courts of the State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Allowance for good behaviorRICHMOND, VA., *March 28, 1924.*

B. C. NELSON, ESQ.,
Sheriff of Accomac,
Accomac, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of March 25, 1924, in which you state that you have a man confined in your jail who was examined for the road force, but rejected on the ground that he was physically unable to work on the roads. You state that the man has been a model prisoner, and ask me to advise you what credit he is entitled to for good behavior.

If the man was sentenced to confinement in jail, he would be entitled to a credit of four days per month, with the consent of the judge of the circuit court, for good behavior. Section 2860, Code of Virginia, 1919.

If, on the other hand, the man was sentenced to the convict road force, under the provisions of section 2094 of the Code of 1919, he would be entitled to credit for good behavior to the same extent, and upon the same terms, as provided for convicts in the penitentiary.

The credit for convicts in the penitentiary is fixed by chapter 301 of the Acts of 1918, which provides that one confined in the penitentiary shall be entitled to a credit of ten days out of every calendar month.

I would suggest that you examine the commitment of this man, and see if he was sentenced to confinement in jail or whether he was sentenced to work on the public roads, or in the public quarries, in lieu of the jail sentence.

If sentenced to work on the public roads, or in the public quarries, he would be entitled to a credit of ten days per month for good behavior, even though he was not placed on the public roads, or in the public quarries, on account of disability.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Board of prisoners

RICHMOND, VA., March 2, 1925.

H. NOEL GARNER, ESQ.,

Attorney at Law,

138 South Fairfax Street,

Alexandria, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of February 25, 1925, *in re* James A. Haire, who was arrested on July 19, 1924, on a charge of grand larceny in the county of Rockingham, Va., and tried on November 3, 1924, at which time he was sentenced to six months in jail and ordered to pay a fine of \$25.00.

Among the items of costs assessed against him is \$45.00 for board during the time he was confined in jail awaiting his trial. You ask to be advised whether there is authority for making this charge.

The authority is *Anglea's Case*, 10 Gratt. 705, and section 4964 of the Code of Virginia, 1919, a copy of which you will find enclosed with the Auditor's instructions as to the same.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Capias pro fine

RICHMOND, VA., January 20, 1925.

MR. W. F. LAWSON, Sheriff,

Jeffs, Va.

DEAR SIR:

Some days ago you wrote me the following letter:

"Please inform me the following questions which I would like to have explained. When a court issues a *capias pro fine*, whose hands should it go in after the clerk's? Who is the man to release prisoners and notify the penitentiary when a prisoner is directed there?"

In response thereto, I call your attention to section 2561 of the Code of 1919, which answers your question:

"Any writ of *feri facias* or *capias pro fine* on a judgment for a fine may be directed to the sheriff, sergeant, or a constable of any county or city, who shall be entitled to a commission of five per cent on the amount collected to be paid by the defendant as other costs are paid."

Replying to your second question, I beg to say that it is answered by section 4948 of the Code of 1919:

"Every person sentenced by a court to confinement in the penitentiary shall, as soon as may be, be conveyed to the penitentiary in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Superintendent of the Penitentiary a copy of the judgment, and if he fail to do so, he shall forfeit one hundred dollars. Upon receiving such copy, the Superintendent of the Penitentiary shall dispatch a guard to the county or corporation with a warrant directed to the sheriff authorizing him to deliver the convict, whose duty it shall be to take charge of the said person and convey him to the penitentiary. If, because of the number of persons to be conveyed to the penitentiary or because there is reason to apprehend an attempt to rescue, the superintendent shall deem it necessary he may dispatch more than one guard and make provision for the employment by the guard of persons to assist him in the performance of his duty. The superintendent shall be entitled to receive from the State Corporation Commission such certificates of transportation as he may require in executing the provisions of this section, and other expenses incurred by him in the execution thereof he shall pay, the same to be allowed him in the settlement of his accounts; provided that the superintendent may, in any proper case, require the sheriff of any county or the sergeant of any corporation to deliver such convict at a railway station designated by the superintendent, to be there delivered to his authorized agent, and for such services the court of such county or corporation shall allow the said sheriff a reasonable compensation, to be paid out of the public treasury."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—City prisoners

RICHMOND, VA., April 18, 1924.

HON. JOHN W. CARTER,
Commonwealth's Attorney.
Danville, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of April 1, 1924, in which you request me to advise you whether there is any authority under the law for sending prisoners to the State convict road force who have been convicted in a prosecution had by the city of Danville for a violation of one of its ordinances, and, if such authority exists, you further request me to advise you as to who shall pay the costs of the maintenance of such prisoner.

The answer to your question is governed by the provisions of section 2075 of the Code of 1919, as amended, and section 2077 of the Code of 1919.

The first section provides that persons imprisoned in jail for a violation of an ordinance of any city or town which, by said ordinance, is punishable by confinement in jail or fine, shall be a part of the State convict force.

Section 2077 of the Code of 1919 provides that the costs of maintaining such prisoners shall be paid by the city or town, for a violation of whose ordinance the prisoner is convicted.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Concurrent sentences

RICHMOND, VA., June 9, 1925.

MAJOR R. M. YOEELL, *Superintendent,*
State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YOEELL:

Acknowledgment is made of your letter of June 8, 1925, in which you say:

"I am in receipt of five court orders from the corporation court of the city of Roanoke, *Commonwealth of Virginia v. R. G. Smith, alias H. M. Cash*. In the first case he was given two years' sentence, and in the second case he was given a two years' sentence, to be served at the expiration of his first sentence. On cases three, four and five he was given two years each, and the court order in each case of the last three cases states that the sentences are to be served concurrently with the first and second sentences. The charge in each case is forgery and uttering as true a forged instrument. This is the first court order received since I have been superintendent where a sentence is to be served concurrently, and I write to ask if I must simply have this man serve a four year sentence."

From the statements contained in your letter, it is my opinion that the man in question would be required to serve only four years, less good behavior, since the orders in the other cases show that the sentences imposed are to run concurrently with the first and second sentences.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Confinement in penitentiary for failure to pay fine or give bondRICHMOND, VA., *December 5, 1924.*

MAJOR R. M. YUELL, *Superintendent,*
The Penitentiary,
Richmond, Virginia.

DEAR MAJOR YUELL:

I have your recent letters, in which you ask me the following questions:

"First. Whether, after a prisoner has been committed to the penitentiary for the violation of the prohibition law and given a fine of \$100 or more, you should retain him after the expiration of his sentence because of the nonpayment of the fine.

"Second. If, when a prisoner has been committed to the penitentiary for a violation of the prohibition law and has been required by the court to give a bond to refrain from such violations for one year, you should hold him after the expiration of his sentence until notified that the bond had been given."

After careful consideration of all the statutes relating to these questions I am constrained to answer both questions in the negative. I find no authority for detaining a prisoner in the penitentiary for the nonpayment of a fine; neither do I find any for his detention in the penitentiary because of his failure to give a bond. In such cases, the law provides for detention in jail. There seems to be no statute authorizing the Superintendent of the Penitentiary to return a prisoner to jail after serving a term in the penitentiary.

Therefore, I see no course for you to pursue except to release the prisoners upon the expiration of their terms. Of course, they might be arrested later and committed to jail for failure to pay the fine or give the bond.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Cost of medical attention to prisonerRICHMOND, VA., *March 3, 1925.*

MAJOR R. M. YUELL, *Superintendent,*
The State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YUELL:

Acknowledgment is made of your letter of February 3, 1925, in which you say:

"I enclose herewith copy of a letter written by Mr. Lloyd Robinette, attorney at law, Jonesville, Va. On March 25, 1923, Mr. A. M. Johnston, in charge of camp No. 31, in Lee county, wired me that Frank Clarke, a jail man, had appendicitis and must have an operation immediately, and that he was returning him to jail. This man was returned to jail on the date mentioned above, and the jail authorities sent him to the Norton hospital, as explained in Mr. Robinette's letter.

"When we have a convict that has to have hospital attention, we, of course, return him to the penitentiary and place him in the hospital here or

in the Mémorial Hospital. However, we have always, when a jail prisoner in a road camp was declared by the camp physician unfit for work on the roads for any reason, returned him to the jail from which he was received, and this was the course followed in this particular case. I brought this matter to the attention of the board of directors at their meeting yesterday afternoon and they were of the opinion that the jail authorities of Lee county should stand the expenses of this bill, but instructed me to request you for an opinion on this subject. I would be glad if you would let me have your opinion on this subject in order that I may reply to Mr. Robinette's letter."

It appears from your letter that this man was delivered by the road authorities to you in good condition, and worked as a member of the convict road force until he was taken ill with appendicitis, thereupon you returned him to jail, where the expenses referred to were incurred.

It is my opinion that the expense of caring for this man is properly chargeable against the State, and not the county, as this man was at the time he was taken ill a member of the convict road force, and not a local prisoner.

If the man had been suffering with this trouble when delivered to you, I do not think that the item would have been properly chargeable against the State, but where a man has been delivered to the convict road force in good condition, and while a member of that force is taken ill, I think the expense of his care is properly chargeable to the State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Federal prisoners in penitentiary

RICHMOND, VA., October 9, 1924.

MAJOR R. M. YUELL, *Superintendent,*
The Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR:

I am in receipt of your letter of October 7, 1924, in which you state that recently the Attorney General of the United States sent a representative to the penitentiary to inquire whether or not that institution would accept women Federal prisoners. You then state that the Federal government will pay so much per day for keeping the prisoners and agree that the said prisoners should work and be handled in the same manner as State prisoners are now handled at the penitentiary.

You then desire to be advised whether an arrangement of this kind could be legally carried out with the Federal government.

I presume you have a copy of the Code of 1919. If so, if you will read section 4994 you will see that this arrangement can be made under the conditions prescribed by that section.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Jurisdiction of Richmond over penitentiaryRICHMOND, VA., *November 21, 1924.*

MAJOR R. M. YOEUELL, *Superintendent,*
The Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YOEUELL:

Acknowledgment is made of your letter of November 15, 1924, in which you say:

"Recently there was a convict killed at the penitentiary by one of the guards. There seemed to be some question as to whether the circuit court or the hustings court had jurisdiction over the case, and I would appreciate an opinion from you on this subject. The city detectives arrested the guard and the hustings court handled the case, although Judge Ingram said he was not positive whether his court had any jurisdiction or not.

"The reason I desire an opinion on this question is that often other city officials—for example, building inspector, electric inspector, etc.—desire to make inspections of the State property here. While I have no objection to any of these inspections, I simply want to know whether they have a legal right to make such."

I have examined sections 5353 and 5913 of the Code of 1919 with care, and I am inclined to the view that the hustings court of the city of Richmond would have jurisdiction for the trial of any person accused of crime committed on the penitentiary property, except a convict, exclusive jurisdiction for the trial of convicts being fixed by section 5053 of the Code of 1919 in the circuit court of the city of Richmond.

With reference to the last paragraph of your letter, while you would have the right, as a matter of courtesy to them, to permit the building inspector and the electric inspector of the city of Richmond to inspect your property, this right could be extended to these officials only as a matter of courtesy on the part of the State, since they have no right, as a matter of law, to inspect your buildings, or any control over them whatsoever, the same being located on State property, and not subject to the control or jurisdiction of the city of Richmond. This question was twice determined in favor of the State in a controversy between the State, acting through its military board, and the city of Richmond, the first time in the hustings court of the city of Richmond, and the second time in the law and equity court of the city of Richmond. *Kentucky Institute for the Blind v. Louisville*, 8 L. R. A. (N. S.) 553 (1906); *Milwaukee v. McGregor, et al.*, 140 Wis. 35.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Juvenile delinquents—Costs in such caseRICHMOND, VA., *September 3, 1924.*

HON. JAMES M. BARKER,
Commonwealth's Attorney,
Abingdon, Va.

DEAR SIR:

Acknowledgment is made of your letter of August 28th, to which reply has been delayed by unavoidable absence from the office. You ask me the following questions:

"First. Certain children committed by the juvenile court to the State Board of Public Welfare were taken to Roanoke by one of the deputy sheriffs in the county, transportation of course is furnished by the State, but no provision is made for the payment of the officer's fees in taking these children to the detention home in Roanoke. I find no provision in the statutes requiring the board of supervisors to pay such fees. Bill covering these fees was sent to the Auditor of Public Accounts and payment was refused by him.

"Second. Pending the transmission of these children from Washington county to the detention home in Roanoke, I find no provision in the statutes requiring the board of supervisors to care for these children further than the board of supervisors to provide a detention home and making arrangements for boarding these children.

"Third. The question has also been raised as to the board of supervisors of the county paying the judge of the juvenile court a salary in lieu of fees."

Replying to your first question, I would say that section 1916 of the Code seems to govern the matter of extra compensation so far as the State is concerned. The board of supervisors, however, may pay the officer "such compensation as they may deem to be reasonable."

Replying to your second question, I hold that section 1914 of the Code controls that situation. The last paragraph of that section says: "The same fees or allowance shall be paid by the State for children boarded out or held in detention homes as are now paid for prisoners confined in jail." I am informed by officers of the State Board of Public Welfare that, as a matter of practice, the State is paying for all the detention work at the jail rates, in accordance with this provision.

Your third question is answered by section 3 of chapter 483 of Acts of Assembly, 1922, which is as follows:

"Every special justice appointed under this act shall receive the fees prescribed by law for justices of the peace, or in lieu thereof, he shall receive out of the treasury of the city or county for which he is appointed such salary as the council or other governing body of the city or the board of supervisors of such county may prescribe, in which latter event all such fees, when collected, shall be accounted for and paid by him into the treasury of said city or county, as the case may be, on or before the tenth day of each month."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Release of prisoners

RICHMOND, VA., January 30, 1924.

HON. THOMAS H. WILLCOX, JR.,
Commonwealth's Attorney,
Norfolk, Va.

MY DEAR MR. WILLCOX:

His Excellency, Governor E. Lee Trinkle, has referred to me for attention the last paragraph of your letter to him of January 11, 1924, which reads as follows:

"I would like to be enlightened on one subject. A prisoner confined in jail in default of a fine may be discharged without the payment of the fine and costs by the judge of the corporation court after certain steps are taken. Will a prisoner who is sent to the roads in default of such a fine have an opportunity to take advantage of this provision in the Code?"

Section 4952 of the Code of Virginia, 1919, which covers this question, reads as follows:

"When a person is confined in jail by order of any court or justice until he pay a fine and the costs of prosecution, or the costs where there is no fine, or under a *capias pro fine*, on application to the circuit court of the county or corporation court of the city where confined, or to the judge thereof in vacation, such court, or judge in vacation, as the case may be, if to such court or judge it shall appear proper, may order the person to be released from imprisonment without the payment of the fine and costs, or costs where there is no fine, and he shall not thereafter be imprisoned for failure to pay the fine and costs or costs in that case; but the attorney for the Commonwealth of said county or city shall have five days' notice of such application."

You will observe that this section appears to be limited to persons confined in jail.

In view of sections 2075 and 2095 of the Code of Virginia, 1919, I am of the opinion that this statute is not broad enough to permit the granting of the relief provided for therein to a jail prisoner who has been transferred to the roads.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Term of confinement

RICHMOND, VA., June 29, 1925.

THOMAS J. CHRISTIAN, ESQ.,
Attorney at Law,
Newport News, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of June 27, 1925, *in re* Leroy Bates.

I have not the papers before me which were shown me by Major Youell. My recollection of the matter, however, is that this man was convicted in his absence during the year 1921 for a violation of the prohibition ordinance of the city of Newport News, and sentenced to six months' confinement in jail and a

fine of \$500.00. Some years later he was arrested outside of the State and brought back to Virginia to serve his sentence. Subsequent to his return to Virginia, he was, under the provisions of section 2075 of the Code, as amended, transferred to the State convict road force. When this was done, in my opinion, he became subject to the provisions of section 2095 of the Code of 1919, which prescribes the method by which the fine and costs shall be worked out by the members of the State convict road force. See the case of *May v. Dillard*, 134 Va. 707, 114 S. E. 593.

It is further my opinion that section 4953 of the Code is limited to persons who serve their time in jail, and has no application to members of the State convict road force.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Term of confinement

RICHMOND, VA., November 14, 1924.

MAJOR R. M. YOUELL, *Superintendent,*
State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YOUELL:

Captain Winfrey and Mr. Hughes, on yesterday, left with me the enclosed letter written by Sergeant R. J. Garnett to you from Blackwood, Va., on November 10, 1924, in which Sergeant Garnett says, in part:

"Mr. R. R. Roberts gave me the attached transcript of the court order in the case of Hobert Masters, who plead guilty on August 11, 1924, to the charge of selling ardent spirits, and was given a fine of fifty dollars and thirty days in jail. As he did not pay the fine before the adjournment of that term of court, he was given an additional sentence of ninety days.

"It appears that if a fine is not paid before the adjournment of the term of court in which the fine was imposed, that the court must give the prisoner an additional sentence of from ninety days to six months, and that the prisoner must serve the sentence, irrespective as to whether the fine is paid or not. The law is found in the 1924 statutes of the prohibition act, section 8, page 595.

"Hon. V. B. Tate called Hon. H. A. W. Skeen, judge of the circuit court of Wise county, Va., and explained to him that the prisoner's fine was paid November 1, 1924, and asked if the prisoner could be released under the law. The judge refused to having Masters released, and explained that he did not have the power to do it under the law.

"The Commonwealth's attorney made it plain to me that, under the law, Masters must serve ninety days, less good time off, for not having paid his fine before the term of court in which he was sentenced had expired. The payment of the fine does not affect the ninety day sentence."

Section 8 of the Layman prohibition law is in the same words as section 5¼ of the Mapp prohibition law construed by the Court of Appeals in *Gilreath v. Commonwealth*, 136 Va. 709 (1923). In this case the court said (p. 715):

"The method of enforcing the collection of such fines is now made more simple and expeditious. The actual punishment, however, is the fine, so that its payment, with the costs, relieves the defendant and discharges his obligation. * * * This is all that is intended or accomplished by the new act. * * *"

As I understand this language of the Court of Appeals, it means that no matter when the fine and costs are paid, the accused is to be automatically discharged, and that the prisoner is to be detained for the additional time only when he fails to pay the fine and costs assessed against him.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Transportation of prisoners, cost of

RICHMOND, VA., July 10, 1924.

MR. J. T. ST. CLAIR,
Justice of the Peace,
Moneta, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of the 9th, in which you ask whether a person furnishing an automobile or other vehicle for the purpose of conveying a patient from his home to the county jail, in accordance with section 1021 of the Code, should receive pay for the use of said vehicle.

My opinion in this matter is entirely in accord with yours; that the cost of transportation by said vehicle is a part of the expense, the same as though it had been transportation by a railroad, and should be paid for as any other expense.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Working of convicts sentenced to death

RICHMOND, VA., January 14, 1925.

MAJOR R. M. YQUELL, *Superintendent,*
Virginia State Penitentiary,
Richmond, Va.

MY DEAR MAJOR YQUELL:

Acknowledgment is made of your letter of January 7, 1925, in which you say, in part:

"I enclose herewith a statement showing the date James Patterson was sentenced to be electrocuted, and also other dates, which indicates when his sentence was respited or writ of error issued. This man has been in the death cell a little more than two and one-half years, and his case is now being appealed to the Supreme Court of the United States, which court issued a supersedeas September 11, 1924, and from all I can find out it will probably be as much as a year before a decision is rendered in this case.

"The board of directors and myself feel that this long time spent in the death cell in idleness by this man is having a bad effect upon his health, and the purpose of this letter is to inquire of your office if the Superintendent of the Penitentiary can legally remove this man from the death cell and place him at work in one of the shops within the walls of the penitentiary where other long term convicts are worked."

I have examined the statutes with reference to this matter, and find no valid reason why this man can not be put to work pending the decision of his case by the Supreme Court of the United States (see Code, section 5009).

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Writ of habeas corpus ad testificandum

RICHMOND, VA., January 23, 1925.

HON. WILLIAM AMOROSO,
Commonwealth's Attorney,
Hopewell, Va.

DEAR MR. AMOROSO:

Acknowledgment is made of your request that I advise you in the following matter:

It appears that some time ago a deputy sheriff of Prince George county arrested on the outskirts of Hopewell one Harry Greneger, a notorious bandit, while engaged in the act of robbing a service station in that city. It appears that this man has been involved, either as principal or as accessory, in numerous robberies committed throughout the United States. It further appears that at his arrest he made some disclosures, as a result of which a number of notorious and desperate criminals have been arrested and indicted in the district court of the United States for the southern district of California, southern division, and that the testimony of this man, Greneger, is necessary to enable the government to successfully prosecute its case against the postoffice robbers under indictment in that court. It also appears that, because this man is needed as a witness in that court, the district court of the United States for the southern district of California, southern division, has issued a writ of *habeas corpus ad testificandum* to the sheriff of Prince George county, Va., requiring him to produce the body of the said Harry Greneger at the United States courtroom, in the Federal building, in the city of Los Angeles, Calif., on the 3rd day of February, 1925, at 10 o'clock A. M., in order that the said Harry Greneger may then and there respond and answer, as a witness, to such questions as may be asked him in the course of a trial of the case of the *United States v. Herbert Wilson, et al.*, No. 6024-B, criminal.

You further state that this man has pleaded guilty to the crime of robbery in your city, but has not as yet been sentenced, and that he has been committed by the corporation court of your city to the jail of Prince George county and is, therefore, in the custody of the sheriff of Prince George county.

You have asked me to advise you whether, in my opinion, the district court of the United States for the southern district of California, southern division,

has the authority to issue this writ, and, second, whether, if this writ is obeyed, any risk will be incurred of losing this man by means of *habeas corpus* proceedings instituted in California, or elsewhere outside of the borders of Virginia, while he is being transported to California and back to Virginia. Section 1239 of the U. S. Compiled Statutes (Judicial Code, section 262) provides as follows:

"The Supreme Court and the district courts shall have power to issue writs of *scire facias*. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

In *Ex Parte Dorr*, 3 Howard 104, 11 U. S. (L. Ed.) 514, the Supreme Court of the United States said:

"Neither this nor any other court of the United States, or judge thereof, can issue a *habeas corpus* to bring up a prisoner, who is in custody under a sentence or execution of a State court, for any other purpose than to be used as a *witness*, and it is immaterial whether the imprisonment be under civil or criminal process."

In *re Thaw*, Annotated Cases 1915-D, 1025, 1027, the circuit court of appeals for the third circuit, speaking of the writ of *habeas corpus ad testificandum*, said:

"That writ was not the high prerogative writ of *habeas corpus*, the great object of which is deliverance from unlawful imprisonment, and which either a court, a justice, or a judge may grant and adjudicate, but was merely the ancient common law precept to bring a prisoner into court to testify, and it was none the less the process of the court from which it issued because the order for its issuance emanated from a judge at chambers. It was granted and issued to bring a prisoner before the United States district court at Pittsburgh, in order that his testimony might there be taken, and it was directed to the custodian of his person, not that an 'inquiry into the cause of restraint of liberty' might be made, but with an object analogous to that sought to be attained by directing a *subpoena duces tecum* to the custodian of an evidential document, who, of course, upon cause shown, may subsequently be excused from producing it. 'If the desired witness is confined in jail (or in a State hospital for the criminal insane) a *subpoena* would be of no avail, since he could not obey it and his custodian would still lack authority to bring him. Accordingly, a writ to the custodian is necessary, ordering the prisoner to be brought to give testimony. This writ of *habeas corpus ad testificandum*, grantable in discretion at common law, is now usually authorized by statute as a matter of course.'"

I am, therefore, of the opinion that the district court of the United States for the southern district of California, southern division, has the authority to issue the writ directing the sheriff of Prince George county, Va., to produce this man as a witness before that court in Los Angeles, Calif.; and, further, that the sheriff of Prince George county, Va., and his deputies would be protected by this writ from any proceeding instituted while going to California, or returning therefrom, seeking the release of the prisoner.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JUDGES—Salaries of

RICHMOND, VA., May 31, 1924.

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

MY DEAR SIR:

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

"The General Assembly of Virginia by act approved February 1, 1924, increased the salaries of judges of the circuit, corporation and city courts to \$3,600 per annum. The terms of office of some of the judges commenced on February 1, 1924. It is very evident the General Assembly was endeavoring to increase the salaries of those judges to avoid any constitutional inhibition which might deprive them of the increased salary.

"Please advise me if, in your opinion, in view of section 102 of the Constitution of Virginia, as the date of the approval of the act increasing the salaries of these judges is simultaneous with that on which their term of office commences, am I authorized to pay the increased salary to such judges during the term of office commencing February 1, 1924."

A certain number of the judges were elected, whose terms of office began February 1, 1924. Inasmuch as the increase in salaries of these judges was made by the legislature simultaneously with the beginning of their terms of office, I am of the opinion that this increase applies to the salaries of these judges, and this act is not in conflict with section 102 of the Constitution of Virginia. You are, therefore, authorized to pay the increased salaries to such judges.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JURIES—Exemption of members of National Guard from service on

RICHMOND, VA., April 14, 1925.

GENERAL W. W. SALE,
Adjutant General,
Richmond, Va.

MY DEAR GENERAL SALE:

Acknowledgment is made of your request of today that you be furnished a statement as to the law exempting contributing members of Virginia military organizations from jury service.

This question is settled by section 312 of the Code of Virginia, 1904, as amended by the Acts of 1912, page 622, which was continued in force by section 2673 of the Code of Virginia, 1919. See appendix to Pollard's (1922) Supplement to the Virginia Code, pages 1200, 1201.

This section, so far as is applicable to the subject of your inquiry, provides as follows:

"Every such contributing member shall be furnished by the proper officer of the volunteers with a certificate in the nature of a receipt for the amount paid by him under the provisions of this section, and in no case

shall such contributing member be required to answer any summons as a juror if exempt from jury service under the law of the State, provided the said certificate or other evidence of his exemption is produced to the officer serving said summons, nor shall such summons be served upon such contributing member if known to be exempt from such service. Upon the production of proper evidence by such contributing member that he is exempt from such service, the officer serving the said summons shall make a return showing the fact of the exemption of said contributing member which return shall relieve said contributing member of all obligation to answer the said summons."

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

JURIES—Exemption of members of National Guard from service on

RICHMOND, VA., June 9, 1924.

GENERAL W. W. SALE,
Adjutant General,
Richmond, Va.

MY DEAR GENERAL:

Acknowledgment is made of yours of May 26th, referring to me letter of John C. Boggs, captain 183rd Infantry, Company F, which is as follows:

"(1) Request that I be advised as to whether an officer or enlisted man of the National Guard is subject to call for duty as member of grand or petty jury.

"(2) An officer of this organization has been summoned for the next term of circuit court, this county, and his service as such would, I am afraid, seriously interfere with his attendance at the preliminary camp of instructions.

"(3) Request that this information be furnished at the earliest possible date."

In reply, I beg to say: (1) That by section 5985 of the Code, all active non-commissioned officers and active members of the Virginia Volunteers, as well as contributing members giving as much as \$25.00 annually, are exempt from jury service of all kinds, provided the clerk of the circuit court of the county or the corporation court of the corporation wherein any company of said volunteers are located, shall have been furnished by the captain or chief officer of the company, on the 1st day of May, a list containing the name of each active officer and each active and contributing member of the company. If such notification has not been sent to the clerk, there is no such exemption. (2) In case any officer of such a company, even though not exempt as aforesaid, should be summoned for jury service, the proper course for him to pursue is to communicate with the judge of the court and ask to be excused from attendance at the court, if such attendance would interfere with his military duties.

Since the Virginia Volunteers and the National Guard are one and the same, I hold that the law applying to the Virginia Volunteers also applies to officers and men of the National Guard.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JURIES—When members of to be kept together

RICHMOND, VA., JANUARY 5, 1925.

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

MY DEAR SIR:

I have before me the account of C. P. Fleming, sheriff of Dickenson county, approved by Judge William E. Burns. A number of items on this account consists of board and lodging for nineteen jurymen in two cases. It is explained that a panel of twenty could not be had from the jurors summoned and in attendance upon the court, and that, pending the summoning of additional veniremen those jurors already selected were committed to the hands of the sheriff. You ask me to advise you whether the board and lodging of jurors in such a case should be paid.

The law is well settled that it is not necessary that jurors, who have been selected and sworn, shall be committed to the custody of the sheriff until the whole panel is completed, even where several days are taken up in completing the panel in a trial for a felony punishable by death. *Epes' Case*, 5 Gratt. (46 Va.) 676, 681 (1848); *Toocl's Case*, 11 Leigh (38 Va.) 749, 752 (1841).

There being no necessity for the keeping of jurymen together between the time of their selection and the time the jury is sworn, it is my opinion that these items are not properly chargeable against the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Can a justice of the peace exact a fee as a prerequisite to the issuance of a criminal warrant

RICHMOND, VA., February 5, 1924.

HON. R. T. W. DUKE, JR.,
Commonwealth's Attorney,
Charlottesville, Virginia.

MY DEAR JUDGE DUKE:

Acknowledgment is made of your letter of January 31, 1924, in which you ask me to advise you as to whether one who sees a misdemeanor committed is required to pay the fee of the justice of the peace as a prerequisite to the issuance of a criminal warrant.

I have examined the index of the Code, and sections 3502, 3507 and 3495 of the Code, which relate to this matter, and it is my opinion that no justice can exact a fee as a prerequisite to the issuance of a criminal warrant. The service is not performed by the justice for the individual, but for the Commonwealth, the Commonwealth being the party complainant, and therefore section 3502 of the Code of 1919 has no application to such a case.

It is well settled that the Commonwealth pays its officers no fees for services rendered for her, except as provided by law. There is certainly no law which requires the Commonwealth to pay a justice any fee prior to the time he renders his service in the matter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Fees of

RICHMOND, VA., April 28, 1924.

R. I. BARNES, ESQ.,

*Justice of the Peace,
Warsaw, Virginia.*

MY DEAR MR. BARNES:

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

“Kindly give me your opinion of the proper amount in fees a justice of the peace should charge the county in a case of issuing warrant, acknowledgment of affidavit and serving on commission to try the case of an insane person. Am I not entitled to fifty cents for issuing warrant and twenty-five cents for acknowledgment of affidavit in addition to the \$2.00 for serving on the commission?”

Inasmuch as section 1021 of the Code of 1919, as amended, provides that none of the fees of a justice in a lunacy case shall be paid out of the treasury of the Commonwealth, but shall be paid by the county or city from which the patient is sent, except where the patient belongs to some other county or city, I feel that you should submit your inquiry to the Commonwealth's attorney of your county, and be guided by his opinion in the matter.

As a matter of courtesy to you, however, I will say that, in the case of an insane person, section 1017 of the Code of 1919 provides that, on written complaint and information of any respectable citizen, the justice shall issue his warrant, ordering such person to be brought before him for examination into his sanity.

Section 1021 of the Code of 1919 provides that “the justice of the peace shall receive a fee of two dollars for his services,” and that the justice, in addition to this, shall receive such mileage as is allowed witnesses summoned to testify before grand juries.

It is true that section 3507 of the Code of 1919, as amended, provides that the justice of the peace shall receive a fee of one dollar for issuing a warrant of arrest, but I am inclined to the belief, in view of the above quoted provision of section 1021 of the Code of 1919, that the only fee to which the justice is entitled for his services, with reference to the commission of lunacy, is the two dollars and mileage provided for by that section. Of course, where a party swears to the petition before you, you would be entitled to charge the party swearing to the petition twenty-five cents for certifying the oath. You will observe, however, that section 1017 of the Code of 1919 does not require a complaint in a lunacy case to

be under oath. It is only section 1078 of the Code of 1919 relating to commissions in the case of feeble-minded persons that requires a petition to be sworn to.

Your authority for charging twenty-five cents for certifying an affidavit or oath is section 3481 of the Code of 1919, as amended, paragraph 2.

As I have said, this is a matter which should be submitted to the Commonwealth's attorney of your county, as the county is required by law to pay the fees connected with the commission of lunacy, and what I have said here is merely out of courtesy to you for your information and not with the view to meddle in an opinion heretofore or hereafter expressed by the Commonwealth's attorney of your county, under whose jurisdiction the matter properly falls.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JUSTICE OF THE PEACE—Fees of

RICHMOND, VA., *April 28, 1924.*

HON. JOHN P. LEE,

Commonwealth's Attorney.

Rocky Mount, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 26, 1924, with reference to the fees to which you are entitled for prosecuting prohibition cases.

We have always construed section 55 of the prohibition law to mean that the attorney for the Commonwealth was to receive a fee of \$25.00, to be taxed as part of the costs against the defendant, where he secured a conviction in the circuit court in a prosecution for a violation of the prohibition law, including those cases where a still is seized as well as other cases, and this has been the ruling in the other circuit courts, so far as I am advised.

Some question has been raised as to what fee should be taxed for the Commonwealth's attorney where he prosecuted a case in which a still had been seized, due to an apparent conflict of section 21½ with section 55 of the prohibition law. It is true that there is an apparent conflict between these sections, and the question is not without difficulty, but I finally concluded that the proper fee to be taxed in such cases was \$25.00.

For your information, I am sending herewith a copy of the letter written by me, on February 1, 1924, to Hon. H. C. Southworth, clerk of the circuit court of Essex county, with reference to this subject.

We have, however, expressed a similar opinion, as early as May 31, 1923, to Hon. J. E. Parrott, Commonwealth's attorney of Green county.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JUSTICE OF THE PEACE—Fees of

RICHMOND, VA., May 31, 1924.

MR. S. D. ESTEP,
Justice of the Peace,
Millwood, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of May 27, 1924, in which you ask to be advised what is the proper clerk's fees to be collected by you in Commonwealth cases which are tried by you.

The clerk's fee to be collected by you in all cases where you impose a fine is \$1.25 (Code, sections 2552, 2553 and 2566).

You are required by section 6030 of the Code of 1919 to return to the clerk's office an abstract of the judgment in each civil case tried by you, together with all the papers in the case. The clerk's fee for his service in filing and docketing these papers is twenty cents, provided for by section 6030 of the Code of 1919. This fee should be taxed as a part of the costs, and collected as such. See sections 6030 and 6031 of the Code of 1919.

With reference to your third question, you, as a justice of the peace, have jurisdiction to try any violations of the traffic laws on the highways of your county. Of course, you would have no authority to try any case in which you appear as the complaining witness. In such case, it would be necessary for you to have some other justice of the peace try the case, as a justice can not act as both prosecutor and justice.

Your second question has been referred to the Prohibition Department for attention.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—State officer

RICHMOND, VA., September 26, 1924.

HON. WALTER M. NANCE,
Commonwealth's Attorney,
Charles City, Virginia.

MY DEAR SIR:

Acknowledgment is made of your communication of September 26, 1924, in which you request me to advise you whether a justice of the peace is such a county officer as is referred to in regulation "k," found on page 37 of the Virginia school laws.

This regulation reads as follows:

"No division superintendent of schools, district school trustee, county treasurer or deputy treasurer or other county officer shall teach a public school."

It will be observed that all of the officials designated by name in this regulation are officials whose duties, in connection with the school system of the

State, would make it incompatible for any one of them to be a teacher in the public school system, and, in accordance with the rule of *ejusdem generis* in the construction of statutes, I would say that meant, if the regulation was a statute, with the phrase "or other county officer," other county officers whose duties as such were incompatible with their acting as teachers in the public schools.

However, the law is well settled that a justice of the peace is not a county officer, but a State officer. *Burch v. Hardwicke*, 30 Gratt. (71 Va.) 24, 34 (1878). It, therefore, appears that, there being nothing incompatible between the duties of a justice of the peace and a teacher in the public schools, this rule or regulation does not apply to a justice of the peace.

Of course, in the absence of such a rule or regulation, State officers whose duties as such are incompatible with their acting as teachers in the public schools, such as would be the case of the Commonwealth's attorney, who is made a member of the electoral board, would be disqualified from becoming a teacher in the public schools.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

JUSTICES OF THE PEACE—Jurisdiction of

RICHMOND, VA., January 2, 1924.

W. M. MINTER, Esq.,

Mathews, Virginia.

MY DEAR MR. MINTER:

Acknowledgment is made of your letter in which you ask that I advise you whether, in my opinion, a police justice of a city in one part of the State has a right to issue a warrant directing the sheriff of a county outside of the one in which said city is located to arrest a party accused of committing an offense in the county of said sheriff, and in which the offense was committed, and to deliver him before the said justice in said city.

All crimes are local and must be tried in the court which has jurisdiction over the locality where they are committed. *Anderson v. Commonwealth*, 100 Va. 864.

I am, therefore, of the opinion that a police justice or magistrate of a city has no legal right to issue a warrant to bring before him a person who is beyond his jurisdiction, and is charged in the warrant with having committed an offense outside of his jurisdiction. Of course, though the crime was committed beyond the jurisdiction of the justice, if the offender is within the jurisdiction of the justice, he may, under section 4827 of the Code, be arrested and brought before such justice in order that the latter may commit the offender to an officer who shall carry him to the county or corporation in which the trial should be, and take him before a justice thereof.

As to the question asked by you with reference to bail, section 4837 provides that a person charged with a misdemeanor and to be carried to another county or corporation shall, if he request it in the county or corporation wherein he was arrested, be brought before a court, judge or justice thereof, and such judge or

justice may let him to bail upon taking a recognizance for his appearance before the court or justice having cognizance of the case; the fact of taking which shall be certified by the court or officer taking it upon the warrant under which such person was arrested, and the warrant and recognizance shall be returned forthwith to the clerk of the court or to the justice before whom the accused is to be brought.

With kindest regards, and extending you the greeting of the season, I remain, as ever,

Yours truly,

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

JUSTICES OF THE PEACE—Jurisdiction of in Henrico County

RICHMOND, VA., August 11, 1924.

T. J. PURYEAR, ESQ.,
*Henrico Courthouse,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your request of recent date, in which you ask me to advise you whether you are prohibited, by section 8 of chapter 272 of the Acts of 1924, from issuing warrants in civil cases returnable before the trial justice for Henrico county.

Section 8 of chapter 272 of the Acts of 1924 reads as follows:

"When such clerk so appointed shall have qualified as hereinafter provided, he shall be a justice of the peace of the county for which he is appointed and vested with all the powers and authority and subject to all the duties and liabilities of a justice of the peace, except where inconsistent herewith.

"Such clerk shall issue all warrants and other civil process returnable before such trial justice *under section two hundred and twenty-three and section two hundred and fifty of the Code of Virginia*, and all warrants for violation of the ordinances or by-laws of such county and all subpoenas for witnesses or other process in connection with the violation of such ordinances or by-laws, and no such warrants, subpoenas or other process above mentioned shall be hereafter issued by any other officer, except that where the plaintiff in a civil warrant is a resident of such county but neither resides nor has an office or regular place of business within ten miles of the county seat, such civil warrant and subpoenas for witnesses thereunder may be issued by one of the other justices of the peace of such county. The said clerk shall have concurrent jurisdiction with the other justices of the peace of his county to issue warrants in criminal cases and subpoenas for witnesses in such cases, and to admit to bail persons charged with criminal offenses or violations of such ordinances or by-laws." (Italics supplied.)

I have no doubt but what it was the intention of the draftsmen of the act to exclude the justices of Henrico county from issuing warrants in civil cases, but, due to an error, it is my opinion that this law does not restrain the justices of Henrico county from issuing warrants in civil cases returnable before the trial justice of Henrico county for trial.

You will observe that the act prescribes that the "clerk shall issue all warrants and other civil process returnable before such trial justice under section 223 and section 250 of the Code of Virginia." Neither of these Code sections has anything to do with justices of the peace, and I know of no civil warrant that a justice could issue under either of these sections.

The thought in the minds of the draftsmen of this act was evidently to use the word "chapter" instead of the word "section," thereby making the law applicable to unlawful detainer warrants and warrants for small claims, but, by the use of the word "section" instead of the word "chapter," the object sought has been defeated.

It is, therefore, my opinion that there is nothing in section 8 of chapter 272 of the Acts of 1924 which would prohibit you from issuing civil warrants to be tried before the trial justice of Henrico county.

You will observe, however, that you are prohibited from issuing warrants for violation of the ordinances or by-laws of the county.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

JUVENILE COURTS—Jurisdiction of

RICHMOND, VA., June 30, 1924.

W. A. LAND, ESQ.,
Blackstone, Va.

MY DEAR MR. LAND:

Acknowledgment is made of your letter of recent date, in which you ask the question:

"Has the justice of the juvenile and domestic relations court of any county the same jurisdiction as other justices of the peace in matters other than juvenile and domestic relations?"

I have examined chapter 483 of the Acts of 1922 with care, and it is my conclusion after reading this act that, except as conservators of the peace, juvenile and domestic relations justices have no jurisdiction other than that conferred upon them by this act, and that while for such cases such justices possess the jurisdiction and exercise all of the powers conferred upon justices of the peace and police justices, that these powers are limited to the cases over which he is given express jurisdiction by the Acts of 1922.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUVENILE COURTS—Jurisdiction of

RICHMOND, VA., May 28, 1924.

JUDGE M. L. WALTON, JR.,
Juvenile and Domestic Relations Court,
Woodstock, Va.

MY DEAR SIR:

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

"I wish to ask your opinion as to the jurisdiction of my court in the case of the commission of a felony by an infant under eighteen years of age. The particular case is that of a boy breaking in a safe and stealing about \$75.00.

"If jurisdiction in such a felony case of a juvenile delinquent is proper, it may be that the infant will not enter a plea of guilty and may demand a jury trial. Does the juvenile and domestic relations court have the power to empanel a jury? Or, on the other hand, should he plead guilty, may the juvenile court then assume jurisdiction?"

I have examined chapter 78 of the Code of 1919, as amended, and it is my conclusion, after reading the sections embraced in this chapter, that your court has exclusive original jurisdiction of the trial of this case, unless, in accordance with the provisions of section 1918 of the Code of 1919, as amended, you certify, after an investigation, that the accused child can not be properly disciplined under the provisions of this chapter of the Code.

Of course, you have no authority to empanel a jury. If the accused wishes a jury trial, his remedy is by appeal. Having jurisdiction to proceed in the case without a plea of guilty, you, of course, have the jurisdiction to proceed with the case if a plea of guilty is entered.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***LAND GRANTS—Only waste and unappropriated land can be granted**

RICHMOND, VA., July 29, 1924.

J. B. BELLINGER, ESQ.,
Acting Quartermaster General,
Norfolk, Va.

MY DEAR SIR:

Your letter QM 601.1 K-RN, Norfolk, of July 17, 1924, has been referred to this office for attention by the Secretary of the Commonwealth.

No authority exists in law for a grant by the State of any property lawfully belonging to the Federal government. Our Code authorizes grants by the land office of waste and unappropriated lands (see Code of Virginia 1919, chapter 27, especially section 418).

Of course, where the land office has been induced to issue a grant of property belonging to the Federal government on the representation of the grantee that the same is waste and unappropriated land, such grant would be void, as the

State has no authority to make grants of property belonging to the Federal government.

Of course, I know nothing as to the validity of the title of the Federal government to the land in question. What I have said is based on the assumption that the title of the Federal government to the same is valid.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LAND OFFICE—Funds of

RICHMOND, VA., December 29, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of December 24, 1924, in which you say:

"I enclose you letter which I have received from John T. Sale, acting Auditor of Public Accounts, under date of December 22, 1924, dealing with chapter 386, page 555, Acts of 1924, relative to the cessation of the office of the Register of the Land Office. If you will turn to the Acts of 1924, pages 188 and 233, you will find the funds of the land office set out.

"My interpretation of the statute is that the balance of the fund for the year 1924 remaining yet unpaid of \$4,615 out of which is paid the salary of the Register of the Land Office and the clerk, and the same thing for 1925, is to be transferred to the Secretary of the Commonwealth, he to pay the salary of the clerk of that department and, of course, the salary that was paid Colonel Richardson ceases. All the rest of the fund under this department should go to the credit of the Superintendent of Public Grounds to be used in accordance with the appropriation bill or in accordance with such instructions as might come from my office as I am authorized to make under the law.

"I would be glad if you would give me your opinion, so I may report to Mr. Sale, and will ask you also to please return this correspondence with your reply.

"Of course, the Secretary of the Commonwealth should notify the Auditor as to the salary to be paid the clerk and the Superintendent of Grounds will do the same thing as to the salaries to be paid the men in his department."

I have examined chapter 386 of the Acts of 1924, and the provisions of the general appropriation bill referred to in your letter, and I fully concur in the opinion expressed by you.

I also discussed the matter with the Auditor of Public Accounts, and he asked me to state to you that you had expressed his views about the matter also.

As requested by you, I am returning Mr. Sale's letter herewith.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LAND OFFICE—Funds ofRICHMOND, VA., *December 26, 1924.*

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

MY DEAR COLONEL JAMES:

Acknowledgment is made of your request that I advise you as to the disposition to be made of certain checks issued to the Register of the Land Office pursuant to the provisions of chapter 100 of the Code of 1919. Some of these checks are made payable to the Register of the Land Office, others are made payable to John W. Richardson, Register of the Land Office, and still others to John W. Richardson, register, and, in addition, some few to John W. Richardson.

All of these checks, you inform me, are for fees provided for by section 2505 of the Code of 1919, and are payable into the treasury at stated intervals, as provided by section 2507 of the Code of 1919, and, therefore, are the property of the Commonwealth.

Under the provisions of chapter 386 of the Acts of 1924, on a vacancy occurring in the office of the Register of Land Office, it is declared that this office shall be abolished, "and the powers exercised by, and the duties required of, him shall be performed by the Secretary of the Commonwealth." Colonel John W. Richardson, the Register of the Land Office, died on December 18, 1924, and the vacancy in that office has, of course, occurred, the duties of the same now having passed to you as Secretary of the Commonwealth.

The checks which are payable to the Register of the Land Office should be endorsed for deposit by you as Secretary of the Commonwealth, and as such, Register of the Land Office. The same endorsement should be made on those checks which are payable to John W. Richardson, Register of the Land Office, or John W. Richardson, register.

As to the checks which are payable to Colonel Richardson personally, but which are for the fees provided by section 2505 of the Code of 1919, and, therefore, belong to the State, I would suggest that you write the drawers and request them to make out new checks.

Trusting that this gives you the desired information, I am

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

LICENSE—AttorneysRICHMOND, VA., *May 14, 1925.*

HON. WILLIAM T. GRAYBEAL,
*Commonwealth's Attorney,
Buena Vista, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of May 13, 1925, in which you say:

"There is a question about the way section 116 of our State tax bill should be construed, and the officers here are not agreed and I am not sure how it should be interpreted.

"It says that 'every attorney at law who has been licensed for less than five years shall pay fifteen dollars.' I take that to mean licensed in this State, regardless of how long he may have practiced in some other State, even when he is admitted to the bar on certificate that he has practiced in some other State three years. I would construe it this way for the reason that he is given this grace in order to build up a practice, and, if he comes in from another State he has to build up a practice about the same as if he had never practiced. I should like to know if I am not looking at this correctly."

Section 116 of the tax bill provides as follows:

"Every attorney at law who has been licensed for less than five years shall pay fifteen dollars; and on attorneys who have been licensed and practiced for five years and more, twenty-five dollars; provided, that no attorney at law shall be required to pay more than fifteen dollars whose receipts are less than five hundred dollars per annum."

It is my opinion that this section imposes a license tax of \$25.00 only on those attorneys who have been licensed and practiced law for five years or more in this State, and has no application to one who has been licensed and practiced law in some other State. It is, therefore, my opinion that you have construed this section of the tax bill correctly.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSES—Infants not required to pay capitation tax to obtain

RICHMOND, VA., April 15, 1925.

HON. A. C. JOYNER, *Treasurer,*

Amherst, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 14, 1925, with reference to requirement of capitation tax certificate in the case of an infant applying for a dog tag.

If you will examine chapter 276 of the Acts of 1924, the law requiring the capitation tax certificate, you will see that it is provided by section 2 thereof as follows:

"The requirements of this act shall be in addition to the requirements of existing law, but shall not be applicable to any person who, under the laws of this State, was not legally assessable with a State capitation tax for the preceding tax year, as aforesaid."

It follows from this that such certificate can not be required of an infant, or of any other person who was not legally assessable with a State capitation tax.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSE—Interstate commerceRICHMOND, VA., *April 4, 1925.*

MR. T. Q. THOMSON,
Culpeper, Virginia.

DEAR SIR:

Acknowledgment is made of your unsigned letter of April 3, 1925, in which you say:

"There is a firm of Washington, D. C., who sends a man to Culpeper occasionally, stopping at the hotel with samples of shoes, sending out notices to the people of the town that he is there and ready for orders. He takes these orders, goes back to Washington, and mails his shoes to his customers."

You then ask whether a tax can be imposed on this man. In my opinion, the transactions referred to constitute interstate commerce, which cannot be taxed by either the State or one of its municipalities.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—MerchantsRICHMOND, VA., *August 4, 1924.*

MR. P. S. FAHRNEY, *Clerk,*
Strasburg, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of August 1st, in which you say:

"Mr. A has a general merchandise store; his license reads, 'Smith building, south Main street, Strasburg, Va.' Can Mr. A send his clerk out in the town from his store, which license reads his place of business, and take orders for which he names the *price* to the purchaser at his purchaser's residence; then return, get the order filled at A's store, deliver and call at purchaser's house under the above named license, or what license must A have to send this clerk out to get trade."

In reply, I beg to say that, in my judgment, the merchant's license of Mr. A is sufficient to enable him to send his clerk out to get trade in the manner indicated.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Payment of capitation tax as prerequisite to issuance ofRICHMOND, VA., *October 16, 1924.*

HON. LEWIS W. TYUS, *Assistant Secretary,*
Department of Game and Inland Fisheries,
Richmond, Va.

DEAR SIR:

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

"Chapter 64, Acts of Assembly, approved September 9, 1919, authorizes the Department of Game and Inland Fisheries to issue permits in writing to persons, firms and corporations for the sale, storage and possession of black bass caught from the waters of Back Bay, fresh pond and salt pond, Princess Anne county, Va., from the 25th day of October to the 31st day of March each year.

"Please advise this department if it is necessary for the shippers and retailers of black bass, as aforesaid, to certify that their poll tax for 1922 has been paid before such permit can be issued. If so, does this extend to the individual members of firms not incorporated?"

In reply, I beg to say that, after careful consideration of chapter 276 of the Acts of Assembly for 1924, I am constrained to answer both of the foregoing questions in the affirmative.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Newspaper solicitorsRICHMOND, VA., *March 6, 1925.*

MR. K. W. HICKMAN, *Circulation Manager,*
Southern Planter,
Richmond, Virginia.

MY DEAR MR. HICKMAN:

Acknowledgment is made of your request that this office advise you as to whether any license is required of a person to solicit subscriptions to the Southern Planter. You further ask to be advised whether any violation of the law is committed by giving a premium with each subscription.

In response to your inquiry, I call your attention to the letter written Mr. H. P. Coffey, field agent of the Southern Planter, by Hon. C. Lee Moore, Auditor of Public Accounts, on October 27, 1917, in which he decided that no license tax was required of one soliciting subscriptions to the Southern Planter. There has been no change in the law since this letter was written, and it correctly construes the section of the tax bill referred to.

I am further of the opinion that the giving of a premium with a subscription to the Southern Planter, or other newspaper, does not violate any law of this State.

Of course, if the giving of a premium with a subscription is not prohibited by law, the agent who gives the premium with the subscription on behalf of the publisher does not violate the law.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

LICENSES—Payment of capitation tax as prerequisite to issuance of

RICHMOND, VA., July 22, 1924.

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

MY DEAR MR. MOORE:

Acknowledgment is made of your communication of July 22nd, with which you send me a letter received by you from Hon. H. J. Tate, treasurer of Russell county, in which he asks whether he would be authorized to issue a dog license to a person who had failed to file the certificate required by chapter 276 of the Acts of 1924, where he, the treasurer, personally ascertained the fact that the required capitation tax had been paid by an examination of the records in his office.

An examination of chapter 276 of the Acts of 1924 shows that it is there provided that no officer authorized to issue a license shall issue the same "unless and until such person shall file with such officer his certificate in writing, setting forth that the capitation tax assessed or assessable against such person for the tax year immediately preceding the last preceding tax year has been paid."

In view of this provision, I do not think that the treasurer would be authorized to issue a dog license unless and until the certificate required by chapter 276 of the Acts of 1924 has been made and filed with him. I realize that this is a hardship, but I know of no way by which the plain mandate of the law can be disregarded.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Payment of capitation tax as prerequisite to issuance of

RICHMOND, VA., November 24, 1924.

JESSE HARGRAVE, ESQ., *Clerk,*
Circuit Court of Sussex County,
Sussex Courthouse, Virginia.

MY DEAR MR. HARGRAVE:

Acknowledgment is made of your letter of November 19, 1924, in which you state that a Confederate veteran has applied to you for a hunting license. You ask whether you can issue this license to him without his filing with you a certificate that he has paid his capitation taxes as required by chapter 276 of the Acts of 1924.

If you will examine schedule A, sections 4 and 5, of the Virginia tax bill, found in the appendix to the Code of 1919, you will see that all white and colored male inhabitants of the State who have attained the age of twenty-one years, except those pensioned by this State for military services, are classified for capitation taxation, and that by section 5 of the tax bill upon every male person classified in schedule A, a tax of \$1.50 is imposed.

Therefore, unless the Confederate veteran in question is pensioned by the State for military services, although he does not have to pay his capitation tax as a prerequisite to the right to vote by reason of section 22 of the Constitution, he must, nevertheless, under the provisions of chapter 276 of the Acts of 1924, pay the same as a prerequisite to obtaining a license to hunt, since he is assessable with the same. If, on the other hand, he is pensioned by the State for military services, then chapter 276 of the Acts of 1924 would not apply to him, since those male inhabitants of the State who are pensioned by the State for military services are not classified for taxation by schedule A of the tax bill, and, therefore, are not assessable with capitation taxes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Payment of capitation tax as prerequisite to issuance of

RICHMOND, VA., *September 17, 1924.*

REV. T. M. SWANN,

Christiansburg, Va.

MY DEAR MR. SWANN:

I am just in receipt of your letter of the 16th, to which I will reply at once. It gives me very great pleasure to give you the information which you request.

You state that you moved to Virginia from West Virginia in April, 1923. You then state that you paid your capitation taxes for the years 1922 and 1923 in West Virginia, and you now desire to be advised whether you can obtain a license to hunt, and a license to operate your automobile until you have paid your capitation taxes in Virginia.

In reply, I will state that if you will examine chapter 276 of the Acts of 1924, found on page 408, you will see that it provides that no license, permit or authority shall be issued to any person until such person shall file with the officer his certificate in writing, setting forth that the capitation tax assessed or assessable against such person for the tax year immediately preceding the last preceding tax year; has been paid. This, of course, means the capitation tax for the year 1922, but you will observe the law states that it is the tax assessed or assessable against such person. Inasmuch as you resided in the State of West Virginia for the year 1922, of course, no capitation tax could have been assessed, or was there any assessable, against you for that year, hence you are not required to pay any capitation in order to obtain a license either to hunt or operate your automobile.

I recall with pleasure meeting you in Christiansburg last June, and I hope I may have this pleasure again in the near future.

With kindest regards, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Peddlers

RICHMOND, VA., *February 17, 1925*

MR. W. M. J. HOSIER,
431 *Williams Street,*
Norfolk, Virginia.

MY DEAR MR. HOSIER:

I am in receipt of your letter of the 16th, the second paragraph of which reads as follows:

"My client is engaged in the business of traveling from place to place in the State exhibiting samples of cutlery and taking orders for future delivery of the goods; the orders are sent to the manufacturer, who ships the goods to the agent to be delivered by him to the purchaser; collections of purchase price are made by the agent and remitted to manufacturer after deducting commissions."

The Auditor has held, and correctly so in my judgment, that a party engaged in the business described in your letter is not required to pay a State peddler's license, as is provided for in sections 50 and 51 of the tax law. I would add this, however, that in the event the purchaser of any goods from your client should decline to accept the same when the time for delivery comes, and then your client should sell them to another purchaser and deliver them, he would then have to pay the license.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Peddlers

RICHMOND, VA., *June 22, 1925.*

HON. JOHN P. LEE,
Commonwealth's Attorney,
Rocky Mount, Virginia.

MY DEAR JUDGE LEE:

Acknowledgment is made of your letter of May 21, 1925, in which you say in part:

"Under section 46 of the tax laws of Virginia, it is provided that no license shall be required of a person who may canvass in any county or corporation to buy lambs, pigs, calves, fowls, eggs, butter, and such like matter or subsistence designed as food for man. We have some persons in Franklin county who would like to do this and dispose of the same by sale of the whole lot to some merchant.

"It has been insisted that before a person canvassing, as above stated, could sell such articles to one person, he would be required to pay the \$25.00 peddler license required under section 51. We understand that it is so ruled in the city of Roanoke and also in the city of Danville, but it does not seem that a sale to one person of a load in bulk would be peddling."

If the man in question sells the articles purchased only to butchers or other merchants, and not to consumers, I do not think that he would be required to obtain a peddler's license. See *Standard Oil Company v. Commonwealth*, 107 Ky 606, at page 610, and *State v. Fetterer*, 32 Atl. 394 (Opinion of the State Tax Board, Bulletin No. 12, p. 28). If, however, this man attempts to sell the articles referred to in your letter to the consumer, it is my opinion that a peddler's license would be required.

With my best wishes, I am

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Phrenology

RICHMOND, VA., January 6, 1925.

MR. JOHN ZACH,
116 Cotton Avenue,
Americus, Georgia.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date in which you ask to be advised whether this State requires any license as a prerequisite to the practice of phrenology therein.

I have examined the index to the tax laws with care, and find no statute which requires a license for the practice of phrenology. I have also conferred with the Auditor, and he agrees with the above statement.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Sale of coal

RICHMOND, VA., June 19, 1924.

HON. WILLIAM C. GLOTH,
Commonwealth's Attorney,
Rosslyn, Va.

DEAR JUDGE GLOTH:

Acknowledgment is made of your letter of the 13th, in which you say:

"The Blue Stark Coal Company has opened a place of business in Rosslyn. This company mines its own coal and the coal is mined at Raleigh, W. Va.

"Section 45 of the tax laws of the State of Virginia provides: 'Every person, firm, company or corporation engaged in the business of a merchant shall pay a license tax for the privilege of doing business in this

State, to be graduated by the amount of purchases made by him during the period for which the license is granted, and all goods, wares and merchandise manufactured by such merchants and sold or offered for sale in this State as merchandise, shall be considered as purchases within the meaning of this section; provided, that this section shall not be construed as applying to manufacturers taxed on capital by this State, who offer for sale at the place of manufacture goods, wares and merchandise manufactured by them.'

"Mr. Green, the commissioner of revenue, has demanded that this company pay its license tax, and it objects on the ground that it is selling its own product and no other product.

"It is my opinion that this company is liable for this tax because this company is not offering for sale its product at the place of manufacture, which, in this case, means the mine."

If this company has a coal yard in Arlington county, at which it makes sales of coal, and from which it makes deliveries to purchasers, it should be assessed with a license tax as a merchant. The fact that the merchandise offered for sale is a product of its own mine does not affect its classification.

In this connection, I call your attention to the case of *Armour & Co. v. Commonwealth of Virginia*, reported in 118 Va. 242, and affirmed by the Supreme Court of the United States in case of the same title, 246 U. S. Rep. 1, in which this section was construed and upheld.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Surveyors

RICHMOND, VA., May 27, 1925.

J. D. MORTON, ESQ.,
*Charlotte County Surveyor,
Drakes Branch, Virginia.*

DEAR SIR:

Your letter of the 15th, addressed to Mr. C. Lee Moore, Auditor of Public Accounts, has been referred by him to this office.

In this letter you say:

"I am writing to know if I am subject to the tax laws (sec. 89, p. 214, 1924), and if I should pay a license to do land surveying—that only. My work is confined entirely to land surveying; that is, to farm surveys, boundaries, etc.

"I never do any grade, level, road or railroad engineering, or anything that comes strictly under the head of civil engineering.

"I am a certified land surveyor, as required under a law enacted about five years ago, and am keeping my certificate renewed.

"Strictly speaking, I am not a civil engineer; therefore I want your legal opinion as to whether I should be made to pay a license to the county treasurer."

In reply, I beg to say that, in my judgment, section 89, page 214, of the Acts of 1924, does not require a State license of a surveyor who is not also a civil,

mining, mechanical or electrical engineer. I feel sure that, if it had been the intention of the legislature to require a license of surveyors they would have been specifically included.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LITERARY FUNDS, Loans from

RICHMOND, VA., *October 21, 1924.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR MR. HART:

I have your letter of October 17, 1924, with reference to an additional loan of \$5,000 from the Literary Fund on the Louisa high school.

You state that the application was not signed by one member of the board because he was sick, and that another refused to sign it because he was opposed to the application, the request having been made by a majority of the members of the school board.

In my opinion, the Literary Fund should not be loaned where the application is not signed by all of the members of the school board, and I do not feel that I, as Attorney General, should approve the application for a loan of any part of the Literary Fund where there is any possibility of litigation resulting over the same, certainly where part of those who would be the borrowers do not wish to borrow. The State should not take the position of forcing a loan of a trust fund.

I am returning the enclosures which accompanied your letter of October 17th.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LITERARY FUND—Loans from—Title to property

RICHMOND, VA., *February 25, 1924.*

MR. RAYMOND V. LONG, *Supervisor,
School Building Construction,
State Board of Education,
Richmond, Va.*

MY DEAR MR. LONG:

Acknowledgment is made of your letter of February 14, 1924, in which you say, in part:

"I visited Parksley, in Accomac county, several days ago, and they were undecided about the school building site. They contemplate erecting a school building that will cost in the neighborhood of \$65,000 or \$70,000 in addition to the cost of the land, and are contemplating the use of one of the plans prepared by this department.

"It seems that the school board last year purchased a piece of ground in addition to the property on which the school building was located which burned last fall; but the deed to the property contains a revertible clause to the effect that if the property is not used for school building purposes it reverts to the original owners at the cost paid by the present owner, or the school board."

You then ask me to advise you if the conditions referred to in the above mentioned deed would prevent a loan from the Literary Fund being made on a building erected on this piece of ground.

I am of the opinion that it would. Section 762 of the Code of 1919 provides that, before the State Board of Education shall make a loan of any part of the Literary Fund, it must be satisfied that the school district or board borrowing the fund "has a good and sufficient title in fee to the real estate on which the proposed building is to be erected, or that the same has been leased by the local school authorities for a period of twenty years, or more, upon such terms that there is no liability of the loss of any money that may be loaned under the provisions of this chapter, * * *."

I note from the contents of your letter that the piece of ground in question appears to be an addition to the lot on which the destroyed school building formerly stood. Of course, if the school was put on a lot to which the school board had proper title, the loan would not be turned down on account of the fact that part of the school grounds, on which no part of the school building stood, were not owned in fee or leased as provided by the statute, but in order to approve such loan, it would have to affirmatively appear that the school building itself was erected on a lot which was owned in fee or leased, as provided by the above statute.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LITERARY FUND—Disbursement of interest

RICHMOND, VA., *March 27, 1924.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of March 20, 1924, enclosing a copy of a letter from Hon. John Crosby, Auditor, to you, dated March 14, 1924, in which he says, in part:

"Under the provisions of the appropriation bill for 1924-25 and 1925-26, the interest from investments of the Literary Fund shall be placed to the credit of the school funds, and for the salaries and operating expenses of the Department of Public Instruction there was appropriated from the general fund \$163,700 for the first biennium, and \$163,165 for the second biennium.

"There was also appropriated from the general fund, together with other appropriations for schools, \$3,000 for libraries."

He then asks whether this fund should be disbursed by the Auditor of Public Accounts or by the Second Auditor, the officer who has heretofore disbursed the funds of the State Board of Education.

I have examined sections 616, 2177, 2181, 2182 and 2192 of the Code of 1919, and after a careful consideration of these sections, I am of the opinion that the law requires the funds mentioned above to be disbursed through the Second Auditor, and not the Auditor of Public Accounts.

It is my opinion that the appropriation bill, passed by the General Assembly for the year 1924, did not intend to, and does not, affect the general statutes relating to the disbursement of the funds appropriated for schools, and that these funds should be disbursed as heretofore.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

MAD-DOGS—Cost of treatment for bite of

RICHMOND, VA., October 22, 1923.

HON. E. PEYTON TURNER,
Commonwealth's Attorney,
Emporia, Va.

MY DEAR MR. TURNER:

Acknowledgment is made of your letter of October 19, 1923, in which you say, in part:

"If a child is bitten by a mad-dog owned by the child's father, do you think the county liable under this act?

"If one is bitten by a mad-dog owned by him, is the county liable?"

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."

A year or so ago I expressed an opinion that one who had his fowls or stock killed by a dog owned by him was not entitled to compensation therefor under the provisions of this section of chapter 413 of the Acts of 1920.

It may be of interest to you to know that the Commonwealth's attorney of Nansemond county took the view in the case of Mr. J. H. Wright, of Windsor, Va., whose child was bitten by a mad-dog owned by him, that he was not entitled to compensation from the county because of the fact that the father of the child was the owner of the dog. Mr. Wright appealed to the director of the laboratory of the Board of Health, who referred the matter to me.

I declined to express an opinion on the subject for the reason that the matter affected the disposition of a county fund, and this being so, the State had no interest in the matter as the Commonwealth's attorney was made the legal advisor of the board of supervisors. I suggested, however, in my letter to the director of the laboratory that if Mr. Wright was not satisfied with the action of the board of supervisors, the law afforded him a remedy for testing the matter in the courts. I do not know whether he acted on this suggestion or not.

As you have requested my advice in the matter, I will say that I think the instant case is somewhat different from the cases where one's domestic fowls or animals are killed by a dog owned by him.

In the case where one is bitten by a mad-dog, the public is interested in saving the life of the individual, and in curbing the awful malady that results from the bite of a mad-dog. Of course, the public has no such interest in the case where a dog belonging to the owner of a fowl kills such fowl.

I think, therefore, that you would be within your rights in advising the board to pay the claim in the instant case, if you felt inclined to do so. However, I do not think that you will be subject to criticism if you reach an opposite conclusion, and leave the matter to be determined by the courts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MAD-DOGS—Payment for dogs killed because mad

RICHMOND, VA., *February 11, 1924.*

HON. S. B. WHITEHEAD,
*Commonwealth's Attorney,
Lovington, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of February 7, 1924, in which you say, in part:

"At the meeting of the board of supervisors to be held on the 13th of this month, there will be presented to it a claim for the value of two dogs killed upon the following circumstances by their owner. These dogs were bitten by a mad-dog, and the owner killed them because he was afraid they would go mad; he is now asking the board of supervisors to pay him for them.

"The board wants my opinion as to whether or not the law requires them to do so, and I would be very much obliged to you for yours."

I have examined section 2319 of the Code, to which you call my attention, and while I am inclined to the belief that this section has been superseded by section 5 of chapter 413 of the Acts of 1920, commonly known as the dog law, even if it still be in force, I do not think that it applies, as a dog, in my opinion, is not stock. You will notice that this section refers to sheep, lambs, or other stock. "Other stock," in my opinion, means other stock of a similar character to sheep and lambs.

Section 5 of chapter 413 of the Acts of 1920, is somewhat broader in its language, as this section authorizes payment for any stock or fowl killed or injured by a dog. Again, I do not think that this section applies for the reason that a dog is not stock within the meaning of this law. *Selma Street and Suburban Ry. Co. v. Martin*, 2 Ala. App. 537, 56 So. 601, 602 (1911). In this case, the court held that under a statute reading "when any person or stock is killed or injured, or other property destroyed or damaged," etc., that a dog was not stock, but that it was included in the terms "or other property" as used in that section.

I have also examined Code, section 1553 of the Code of 1919, and am of the opinion that this section relates only to persons who have been bitten by a mad-dog, and not to animals.

I am also of the opinion that the last part of section 5 of chapter 413 of the Acts of 1920, relating to the payment for treatment of persons bitten by mad-dogs, is limited to persons, and does not apply to dogs. I know of no other law relating to this subject, and, therefore, of no authority existing for the payment of a claim of the character suggested in your letter.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MAYORS OF CITIES AND TOWNS—Jurisdiction of

RICHMOND, VA., *April 16, 1925.*

HON. W. L. LANCASTER,
Mayor of Blacksburg,
Blacksburg, Virginia.

MY DEAR MR. MAYOR:

Acknowledgment is made of your letter of April 15, 1925, in which you request me to advise you as to your jurisdiction to try criminal offenses outside the corporate limits of your town.

Prior to the amendment of section 3011 of the Code of 1919, a mayor had jurisdiction to try both criminal and civil cases outside the county in which his town was located. The effect of the amendment to section 3011 of the Code of 1919 (chapter 271, Acts 1924) was to limit this jurisdiction in both civil and criminal matters to cases arising within his town; therefore, except in offenses against the prohibition law, your jurisdiction in both civil and criminal matters is limited to cases arising within the corporate limits of your town.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILITIA—Arrest of members A. W. O. L.

RICHMOND, VA., July 17, 1924.

GENERAL W. W. SALE, *Adjutant General,*
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your communication of the 15th, with which you enclosed the following telegram from General Walker, commanding the ninety-first brigade of the Virginia militia, now in camp at the State rifle range, Virginia Beach, under orders for a period of fifteen days, from July 13th to 27th:

"Request authority for regimental commanders to wire civil authorities to arrest men absent without leave. Also authority to send guards to return them to camp."

The only authority that I know of by which a civil officer can be required to arrest members of the militia for offenses against the military laws is provided for by section 374 of the military laws, as amended by the Acts of 1916, page 870, Pollard's 1922 Supplement to the Code, pages 1217-18. You will see from an examination of this section of the military laws that civil officers may be required to arrest offenders against the military law when ordered to do so by a properly constituted military court.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

MILITIA—Compensation of members of

RICHMOND, VA., May 17, 1924.

GENERAL WILLIAM W. SALE,
Adjutant General of Virginia,
Richmond, Va.

DEAR GENERAL SALE:

Acknowledgment is made of your letter of the 15th, enclosing inquiry addressed to you by Charles T. Hamlin, captain, commanding, armory, regimental headquarters company, 116th infantry, Virginia National Guard, Surry, Va., which, among other things, says:

"It is requested that you advise if a member of the National Guard can legally receive pay for his services and also receive pay from the State of Virginia, or a county thereof, as a county or State official."

The reply to this question may be found in section 291 of the Code of Virginia, as amended by Acts of Assembly, 1920, page 81. This section qualifies the preceding section, which is a general prohibition against any person holding any office or post of honor, profit or trust under the Constitution of Virginia. Section 291, as amended, provides:

"that the preceding section shall not be construed * * * to exclude from such office or post officers or soldiers on account of the recompense they may

receive from the United States when called out in actual duty; or to prevent any person holding an office or post of profit, trust or emolument, civil, legislative, executive or judicial under the government of the United States, from being a member of the militia, or holding office therein."

It will be observed from these two extracts from section 291 that the legislature has relaxed the rule of exclusion from office in favor of the Federal officials becoming members of the State militia, as well as of State officers receiving compensation from the United States when called out in actual duty.

I, therefore, hold that members of the National Guard may legally receive pay for their services while on actual duty, and may also receive pay from the State of Virginia, or any political subdivision thereof.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MOTION PICTURES—Powers of board of censors

RICHMOND, VA., June 2, 1924.

HON. EVAN R. CHESTERMAN, *Chairman,*
State Board of Censors,
Richmond, Va.

MY DEAR SIR:

Your letter of May 2nd has not been answered because of pressure of work incidental to the approaching term of the Supreme Court of Appeals, at Wytheville.

You cite a regulation of the State Board of Censors, made pursuant to section 14 of the censorship act (1922, page 434), as follows:

"If any elimination or disapproval of a film or reel is ordered by the board, the applicant submitting such film or reel for examination shall receive immediate notice of such elimination or disapproval, and if appealed from, such film, reel or view shall be promptly re-examined in the presence of such applicant by all members of the board, and the same finally approved or disapproved promptly after such re-examination, with the right of appeal from the decision of the board to the circuit court of Richmond city."

You also ask the following questions:

(1) "Would the Board of Censors have the authority, without formal notice to the distributors or producers, to direct the police to tear down or suppress such advertising matter as appears to come within the inhibition of the act? Such action, when necessary, is ineffective unless taken promptly, and if delayed even a day or two its purpose would be defeated."

(2) "Would the board have the further authority to direct its voluntary inspectors in various cities and towns of the State to order the removal or suppression of objectionable advertising matter? This interrogatory, as well as No. 1, applies to cases where no advertising matter has been sent the board for inspection, or where the board's orders as to the elimination of certain advertising features have been ignored."

You also say:

(3) "Both section 13 and section 16 of the act prescribe penalties for violations of the law, but neither of these appears to touch the point here raised, and each seems to involve a certain amount of delay. As matters now stand, the exchanges and other distributors do not appear to stand in much awe of these parts of the act, though we have been officially informed by one of their representatives that they are perfectly willing for us to order the removal of such posters, banners, etc., as we find objectionable, no matter in what parts of the State they appear."

Upon a careful consideration, I hold that the State Board of Censors had authority to make regulation 11, quoted above.

Replying to your two questions, I find no authority for the State Board of Censors to take the action indicated in these questions.

I hold the board, upon information furnished by the police, the voluntary inspectors and others, may revoke the permits for any films advertised in any illegal manner; that is, which have not been approved by the board, and may institute prosecutions against managers, producers and exhibitors responsible for improper posters, etc., in accordance with section 16 of the censorship act.

By making an example of a few of these refractory exhibitors, I feel sure you would inspire all of them with a wholesome respect for these parts of the acts.

In this connection, attention is called to section 4549 of the Code, which is as follows:

"Publishing, selling, distributing, etc., obscene books, etc., how punished.—If any person import, print, publish, sell or distribute any book or other thing containing obscene language or any print, picture, figure, or description, manifestly tending to corrupt the morals of youth; or introduce into any family or place of education, or buy, or have in his possession, any such thing for the purpose of sale, exhibition, or circulation, or with intent to introduce it into any family or place of education, he shall be guilty of a misdemeanor."

"Revisor's Note.—For punishment of misdemeanors, where no other is provided by statute, see section 4782. As this section stood before the revision, the punishment was by confinement in jail not exceeding one year and by a fine of not exceeding two hundred dollars."

Persons guilty of putting up posters with pictures of the kind described in this section may be prosecuted at the instance of any citizen, including members of the State Board of Censors.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MOTION PICTURES—Made for State—Ownership of negatives

RICHMOND, VA., February 9, 1924.

HON. McDONALD LEE,
Commissioner of Game and Inland Fisheries,
Richmond, Virginia.

MY DEAR MR. LEE:

You state that, for educational purposes, you, as Commissioner of Game and Inland Fisheries, representing the State of Virginia, entered into an agreement with a photographer to take films of certain phases of the work of your department at a cost to the Commonwealth of 50 cents per foot, the Commonwealth paying for all staging and all traveling expenses of the photographer. You further state that the photographer was fully advised that these films were not to be used for commercial purposes, but by the State in a purely educational capacity.

You ask, under these circumstances, what title the State has in the negatives, and what right it has to possession of the same.

It is well settled that, where a photographer is employed to take a picture, he has no right to use the negative to produce any copies other than those ordered by the customer, unless with the customer's consent, and any attempt so to do can be enjoined.

This fact would naturally carry with it the right of the customer to the negative, because to allow the photographer the right of possession of the negatives without the right to use it, and the customer the sole right to make use of the negative without the right of possession, would be an anomaly, and the courts have so considered it.

In the case of *Press Pub. Co. v. Falk*, 59 Fed. 324, the court said:

"When a person has a negative taken and photographs made, for pay, in the usual course, the work is done for the person so procuring it to be done, and *the negative*, so far as it is a picture, or capable of producing pictures, of that person, and all photographs so made from it, *belong to that person*; and neither the artist nor any one else has any right to make pictures from the negative, or to copy the photographs, if not otherwise published, for any one else. *Pollard v. Photographic Co.*, 40 Ch. Div. 345; *Moore v. Rugg*, 44 Minn. 28, 46 N. W. 141." (Italics supplied.)

It is thus seen that the negative of photographs is the property of the person having the work done. This being true, in the case where a person employs a photographer to make a photograph in the ordinary course of business, it is much more true in the case at bar, for where a person employs a photographer to take his photograph, it is generally in the usual course of the photographer's business, taken at the photographer's studio, and all expense attending the taking of the picture is borne by the photographer; but here the case is different. The photographer, which you employed, was employed for a special purpose, all expenses of which were paid by the State, and the work was done for a special purpose, namely: to enable the State to use the films so taken for educational purposes, and the principles above enunciated more forcibly apply to the case at bar than to a case in which a photographer takes photographs at his studio in the usual course of business.

There is another ground upon which it must be concluded that the Commonwealth has the title and right to the negatives in question. In the case at bar, the photographer was employed for a special work, which was done at the expense of the Commonwealth, and obviously he became the agent, or employee, of the Commonwealth for a special purpose, and under such circumstances it is manifest that any property created during such employment is the property of which the Commonwealth is the sole owner.

I am, therefore, of the opinion that the title to the negatives in question rests in the Commonwealth of Virginia, and that the Commonwealth has the right to the possession of these negatives.

Yours truly,

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

MOTOR VEHICLE COMMISSIONER—Power to appoint deputies

RICHMOND, VA., *September 25, 1924.*

HON. JAMES M. HAYES, JR.,
Motor Vehicle Commissioner,
Richmond, Va.

MY DEAR MR. HAYES:

Acknowledgment is made of your letter of September 24, 1924, in which you say:

"I have your letter of the 17th, acknowledging receipt of my letter of recent date, requesting your opinion as to my authority to appoint traffic officers.

"In my letter I stated that these men were to be appointed to curb reckless and dangerous driving of automobiles over the roads of the State. I enclosed an opinion given me by Mr. Morrissett at the request of the Governor.

"This letter was written hurriedly after a conference with the Governor and Mr. Morrissett, and failed to express the question I wished you to pass on.

"What I wished to know was what authority I have to appoint deputies for the enforcement of chapter 368 of the Acts of 1924, and, when appointed, what authority these deputies have to enforce the other laws relating to automobiles?

"With this explanation, I will appreciate your prompt attention to this."

In response thereto, I call your attention to section 16 of chapter 368 of the Acts of 1924, which was quoted at length in my letter to you of September 17, 1924, written in reply to your former letter. This section of chapter 368 of the Acts of 1924 authorizes you, by virtue of the powers conferred on you by chapter 99 of the Acts of 1924, "to appoint all necessary deputies, in addition to the present officers of the law, to carry out the provisions of this act," namely, chapter 368 of the Acts of 1924.

The provisions of this act are covered by its title, which reads as follows:

"An act to protect the title of motor vehicles within this State; to provide for the issuance of certificates of title and evidence of registration thereof; to regulate purchase and sale or other transfer of ownership; to provide that registration of certificates of title shall be notice to subsequent

purchasers; to facilitate the recovery of motor vehicles stolen or otherwise unlawfully taken; to provide for the regulation and licensing of certain dealers in used and second-hand vehicles as herein defined; to prescribe the powers and duties of the Secretary of the Commonwealth hereunder; and to provide penalties for violations of the provisions hereof; and to repeal an act entitled an act to provide for the recordation of titles to motor vehicles and the identification of same; to regulate the purchase, sale, storage and repair of motor vehicles; declaring the theft of motor vehicles to be a felony and to prescribe penalties for violations of the act and repealing act approved September 9, 1919, and all other acts or parts of acts in conflict herewith."

You, therefore, have the authority to appoint all deputies which are necessary to enable you to carry out the provisions of this act.

As I said in my letter of September 17, 1924, these deputies, when appointed, automatically are vested with the powers conferred by virtue of the provisions of chapter 99 of the Acts of 1924.

While you have the discretion to determine what deputies are necessary to enable you to enforce chapter 368 of the Acts of 1924, you have no authority under the guise of appointing deputies for the enforcement of the provisions of this act, to appoint deputies whose sole or principal duty will be the enforcement of other laws relating to motor vehicles. In other words, the discretion conferred on you by law is a reasonable discretion which can be exercised only where the service of such deputy, or deputies, is required for the purpose of carrying out the objects of chapter 368 of the Acts of 1924.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MOTOR VEHICLE COMMISSIONER—Power to appoint deputies

RICHMOND, VA., September 17, 1924.

HON. JAMES M. HAYES, JR.,
Motor Vehicle Commissioner,
Richmond, Va.

MY DEAR MR. HAYES:

Acknowledgment is made of your letter of recent date, in which you refer to chapter 368 of the Acts of 1924, commonly known as the motor vehicle registration act, and request me to advise you as to your authority to appoint "traffic men in an effort to curb dangerous and reckless driving of automobiles over the roads of the State."

Section 2 of chapter 99 of the Acts of 1924 provides as follows:

"All the powers heretofore conferred, and all the duties imposed, upon the Secretary of the Commonwealth by the laws concerning motor vehicles and the taxes on motor vehicle fuels, are hereby vested in, and imposed upon, the Commissioner of Motor Vehicles, and such powers shall hereafter be exercised, and such duties shall hereafter be performed by the said commissioner. Wherever the words 'Secretary of the Commonwealth,' or other words denoting that officer, appear in any such laws, they shall be construed to mean the Motor Vehicle Commissioner."

Section 4 of the same act provides as follows:

"The Commissioner of Motor Vehicles and his assistants severally are hereby vested with the powers of a sheriff for the purpose of enforcing the laws of this State concerning motor vehicles and the taxes on motor vehicle fuels, and it shall be the duty of such officer and his assistants to use their best efforts to enforce the same; but nothing in this section shall be construed as relieving any sheriff, constable, commissioner of the revenue or police officer from the duty of aiding and assisting in the enforcement of such laws."

It, therefore, appears that, where the name of the Secretary of the Commonwealth is mentioned in the laws concerning motor vehicles and the taxes on motor vehicle fuels, the powers conferred, and the duties imposed on that official have been transferred to the Commissioner of Motor Vehicles.

Section 16 of chapter 368 of the Acts of 1924, commonly known as the motor vehicle title registration act, provides as follows:

"The Secretary of the Commonwealth is hereby given power to appoint all necessary deputies, in addition to the present officers of the law, to carry out the provisions of *this act*, and to incur any additional expense in the enforcement of *this act*, and the Secretary of the Commonwealth, together with such deputies, employees and the existing officers of the law, are hereby given police power and authority throughout the State to arrest without writ, rule, order or process, any person in the act of violating or attempting to violate in his presence any of the provisions of *this act*, and are hereby made peace officers of this State for that purpose. With the permission and consent of the sheriff of any county, or the chief of police of any city, the Secretary of the Commonwealth is hereby authorized to employ temporarily and deputize any deputy sheriff or police officer to investigate any auto theft matters or other violations of *this act*, and any such officers so employed or deputized shall have all the authority of peace officers as heretofore provided. Any officer, or deputy of the Secretary of the Commonwealth shall have the authority, and is hereby required, to use reasonable diligence in ascertaining whether the owners and operators of motor vehicles are complying with the provisions of *this act*. All expenditures under the provisions of *this section* shall be paid from the fund hereafter designated as the 'auto-theft fund.'" (Italics supplied.)

Section 17 of the same act reads as follows:

"All moneys received by the Secretary of the Commonwealth under the provisions of *this act* shall be set aside and shall be known as the 'auto theft fund' and shall be held and retained in the State treasury as a separate fund and shall be used first to meet the necessary additional expenses incurred by the Secretary of the Commonwealth in the performance of duties required by *this act*, and in the enforcement of the motor vehicle and traffic laws of this State. All expenses which may be incurred by the Secretary of the Commonwealth in printing this act and in the preparation and printing of the prescribed forms, together with the cost of postage and mailing and the necessary clerical assistance, shall be paid, in the first instance, out of the fund accruing from motor vehicle license fees, and as soon as sufficient funds are available from the fees and collections provided for in this act, the license fund shall be reimbursed for the amount so paid." (Italics supplied.)

I have given the subject of your inquiry and the statutes above referred to my most careful consideration, and it is my conclusion that neither the provisions

of sections 16 nor 17 of chapter 368 of the Acts of 1924 furnishes you any authority to appoint traffic men for the purpose of curbing dangerous or reckless driving of automobiles over the roads of this State.

The only authority conferred on you by section 16, of chapter 368 of the Acts of 1924, is the power "to appoint all necessary deputies, in addition to the present officers of the law, to carry out the provisions of this act," which, of course, means chapter 368 of the Acts of 1924. When the deputies necessary to carry out the provisions of chapter 368 of the Acts of 1924 have been appointed, they automatically become vested with the power to enforce all the laws of this State concerning motor vehicles and the taxes on motor vehicle fuels by virtue of the provisions of section 4 of chapter 99 of the Acts of 1924, but, as I have said before, I find nothing in chapter 368 of the Acts of 1924 which authorizes you to appoint traffic men for the purpose of enforcing laws with reference to dangerous or reckless driving of motor vehicles. Your sole power to appoint such deputies is limited to the appointment of the deputies necessary for you to carry out the objects of chapter 368 of the Acts of 1924.

I have examined section 17 of chapter 368 of the Acts of 1924 with the greatest care, knowing that it is upon this section that you have rested your claim to appoint traffic officers. It will be observed, when this section is carefully read, that it neither provides for nor authorizes the appointment of deputies or officers by the Secretary of the Commonwealth which now means the Motor Vehicle Commissioner. All that this section provides for is the disposition of the "auto-theft fund," which is to be used to meet the necessary additional expenses incurred in the performance of duties required by this act (chapter 368 of the Acts of 1924), and in the enforcement of the motor vehicle and traffic laws of this State.

It is my opinion that the authorization contained in section 17, of chapter 368 of the Acts of 1924, of the expenditure of the "auto-theft fund" for the necessary additional expenses incurred in the performance of duties required by this act, and "in the enforcement of the motor vehicle and traffic laws of this State" does not furnish you with any authority to appoint deputies or traffic officers since your power to appoint deputies is limited to section 16 of chapter 368 of the Acts of 1924, and the above quoted provision of section 17 of chapter 368 of the Acts of 1924 refers to the necessary additional expenses incurred by reason of the powers conferred, and the duties imposed upon you, and your deputies by reason of section 4 of chapter 99 of the Acts of 1924, and is not for the purpose of enabling you to appoint deputies to enforce the traffic laws.

While it is true section 17 of chapter 368 of the Acts of 1924 authorizes you to use the auto theft fund in part in the enforcement of the motor vehicle and traffic laws of this State, this, as I have said, has reference to the powers conferred by and imposed on you and your deputies by chapter 99 of the Acts of 1924, and is not one of the purposes or objects of chapter 368 of the Acts of 1924. In other words, this section, while authorizing you to use the auto theft fund in the performance of duties imposed on you and your deputies by chapter 99 of the Acts of 1924, does not in itself confer any authority on you or your deputies to enforce the general motor vehicle and traffic laws of this State other than those contained in chapter 368 of the

Acts of 1924. The authority possessed by you and your deputies to enforce the motor vehicle and traffic laws of this State other than those embraced in chapter 368 of the Acts of 1924 is derived from another and unrelated statute.

The above quoted provision of section 17 of chapter 368 of the Acts of 1924 is, therefore, not one of the provisions of that act within the meaning of section 16 thereof and, therefore, can furnish you no authority for appointing traffic officers for the purpose of enforcing the laws against speeding and dangerous and reckless driving.

It is needless for me to say that there is no conflict between the provisions of chapter 38 of the Acts of 1924 and the provisions of the general appropriation bill authorizing you to appoint inspectors, but the deputies authorized to be appointed by section 16 of chapter 368 of the Acts of 1924 are in addition to the inspectors provided for by the general appropriation bill.

I have read Hon. C. H. Morrisett's letter to you of September 2, 1924, with care, and regret very much that I am forced to differ with him as to the construction to be placed on sections 16 and 17 of chapter 368 of the Acts of 1924. Mr. Morrisett is a lawyer of great ability and I know of no one whose opinion I more highly respect than his, but I am forced to the conclusion that section 17 of chapter 368 of the Acts of 1924 was not intended by the General Assembly to give you the authority, in connection with section 16 of this act, to appoint deputies for the sole purpose of curbing dangerous or reckless driving of automobiles over the highways of Virginia.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MOTOR VEHICLE LAWS—Enforcement of

RICHMOND, VA., July 23, 1924.

MR. S. A. MARKEL,
*Chairman, Legislative Committee,
Motor Bus Association of Virginia,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of July 16, 1924, in which you refer to violations of chapter 222 of the Acts of 1924, amending certain sections of chapter 161 of the Acts of 1923. You then say:

"The purpose of our inquiry is to ascertain who, if anybody, is charged with the responsibility of bringing such violations to the attention of the proper officials for prosecution. We have been advised by several of these Commonwealth's attorneys that they can only handle the matter when officially brought to their attention, and it is this phase of the matter that we desire to have clear in order that we may advise our membership as to the proper official charged with this responsibility."

As you are aware, section 8 of chapter 222 of the Acts of 1924, makes a violation of that statute a misdemeanor, punishable by a fine. The duty to

enforce this law rests equally upon all of the enforcement officers of the State, and it is their duty to see that violations of this law are prosecuted.

However, section 4 of chapter 99 of the Acts of 1924 provides as follows:

"The commissioner of motor vehicles and his assistants severally are hereby vested with the powers of a sheriff for the purpose of enforcing the laws of this State concerning motor vehicles and the taxes on motor vehicle fuels, and it shall be the duty of such officer and his assistants to use their best efforts to enforce the same; but nothing in this section shall be construed as relieving any sheriff, constable, commissioner of the revenue or police officer from the duty of aiding and assisting in the enforcement of such laws."

This statute places a special responsibility on the Motor Vehicle Commissioner, and his assistants, to use his, and their "best efforts to enforce the same."

Your attention is also called to section 2144 of the Code of 1919, as amended by the Acts of 1923, which provides as follows:

"The chairman of the State Highway Commission and the Secretary of the Commonwealth and their assistants are severally vested with the powers of a sheriff for the purpose of enforcing the provisions of this chapter and all other laws of this State concerning motor vehicles, and it shall be the duty of said officers and their assistants, and of every sheriff, constable, commissioner of the revenue, and police officer of the State to aid and assist in enforcing the same."

Of course, the duties imposed on the Secretary of the Commonwealth by the above quoted section have, by chapter 99 of the Acts of 1924, been transferred to the Motor Vehicle Commissioner.

It would, therefore, follow that while the Motor Vehicle Commissioner, and his assistants, are primarily required by chapter 99 of the Acts of 1924 to use "their best efforts" to enforce the laws of this State concerning motor vehicles, it is also the duty of the Chairman of the State Highway Commission, and his assistants, and of every sheriff, constable, commissioner of the revenue and police officer of this State "to aid and assist in enforcing" the provisions of chapter 90 of the Code of 1919 relating to motor vehicles generally, "and all other laws of the State concerning motor vehicles."

Replying, therefore, specifically to your inquiry as to "who, if anybody, is charged with the responsibility of bringing such violations to the attention of the proper officials for prosecution," it is my opinion that the following officers under the above quoted statutes are specifically charged with the responsibility of bringing violations of the motor vehicle law to the attention of the proper officials for prosecution, namely:

the Commissioner of Motor Vehicles, and his assistants, (chapter 99, Acts of 1924); the Chairman of the State Highway Commission, and his assistants, and every sheriff, constable, commissioner of the revenue and police officer of the State, (section 2144, Code of 1919, as amended.)

For your information, I call your attention to the fact that the last part of section 8 of chapter 222 of the Acts of 1924, which provides that one-half of the fine shall be paid to the credit of the State highway system, and one-half to

the credit of the highway system of the county in which the offense occurs, is void, since section 134 of the Constitution provides that all fines collected for offenses against the laws of the State shall be paid into the Literary Fund. This does not affect, however, the right to prosecute persons for violating this law, or the right to impose the fine prescribed for a violation thereof. It merely affects the disposition of the fine after it has been imposed and collected.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MOTOR VEHICLE LAW—Inspectors, uniforms of

RICHMOND, VA., *December 23, 1924.*

HON. JAMES M. HAYES, JR.,
Motor Vehicle Commissioner,
Richmond, Va.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letters of recent date relative to two warrants drawn on the Auditor of Public Accounts by you in payment for uniforms for the inspectors and motorcycle men appointed by you in pursuance of the provisions of the motor vehicle law passed by the legislature at its last session.

You state in your letter that these men are State policemen, in charge of the enforcement of automobile laws, and it is very essential that they should wear uniforms, both as a protection to them, and that the public may know that they are officers of the law. You further state that these uniforms are not given to the men, but remain the property of the State, and are returned to your department in the event you discontinue the services of any or all of these officers.

One account is for \$567, charged against the State highway maintenance and construction fund, also known as the automobile fund; the other bill is for \$402, which is charged against the theft fund.

I have given this matter my most careful consideration, and have discussed it with the Governor. The Governor stated that he thought these men should be provided with uniforms by the State for the reasons indicated in your letters and above set out, and stated that, so far as he could do so, he approved the object for which the expenditure was made.

It is my opinion, after examination of the law, that the bill for \$402 may properly be paid as being a necessary and additional expense incurred in the enforcement of chapter 368 of the Acts of 1924, the payment for which is authorized by section 16 thereof out of the automobile theft fund provided for by section 17 of the same act. I am accordingly advising the Auditor of Public Accounts that the bill for \$402, chargeable to the automobile theft fund, should be paid.

As to the bill for \$567, charged against the State highway maintenance and construction fund, it is my opinion that there is no authority in law for the payment of this bill. The Constitution expressly provides that no money shall be paid out of the treasury except pursuant to appropriations made by law.

The general appropriation bill for the years 1924-1925, Acts of 1924, pages 155-156, which makes the appropriation for your department out of the State highway maintenance and construction fund, contains nothing which could possibly be construed to authorize an expenditure such as this. This bill, after expressly limiting the salary of one inspector to the maximum of \$1,800, and fourteen inspectors to the maximum salary of \$1,500 each, then provides:

"It is hereby provided that all fees and licenses collected by the Secretary of the Commonwealth for licensing and registering titles to automotive vehicles and for recording titles thereto, and all taxes on motor vehicle fuels, after the close of business on February 29, 1924, together with any funds previously collected for these purposes and still unexpended in the hands of the Secretary of the Commonwealth as of said date, shall be paid direct and promptly into the State Treasury to the credit of the State highway maintenance and construction fund without deductions of any kind being made therefrom; and it is further provided that the funds appropriated for licensing and registering automotive vehicles and recording titles thereto, and for collecting the taxes on motor vehicle fuels, as provided in this act shall be paid out of the State highway maintenance and construction fund by warrants drawn on the Auditor of Public Accounts by the Secretary of the Commonwealth."

I have, therefore, been compelled to reach the conclusion that no authority in law exists for the payment of the claim of \$567 expended for the purpose of furnishing uniforms to the fifteen inspectors appointed pursuant to the provisions of the general appropriation bill, Acts of 1924, pages 155-156, and, therefore, the expenditure being unauthorized, can not be paid out of the treasury.

With kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MOTOR VEHICLES—Florida temporary license

RICHMOND, VA., July 8, 1924.

HON. LEROY HODGES, *Managing Director,*
Virginia State Chamber of Commerce,
Grace-American Building, Richmond, Va.

MY DEAR COLONEL HODGES:

Acknowledgment is made of your letter of recent date, with which you sent me a copy of letter received by you from A. A. Coult, Esq., general secretary of the Florida Chamber of Commerce, in which he says:

"Will you kindly advise on what grounds the police arrested drivers of automobiles carrying temporary Florida licenses, so we may be fully informed in the matter? This is not any criticism of the police for having taken such action, but we want to know the causes, so that proper steps can be taken before next session to avoid continuation of the trouble."

Section 2137 of the Code of 1919, as amended, provides as follows:

"Exemption of nonresident owners: The provisions of the foregoing sections relative to registration and display of registration numbers shall

not apply to a motor vehicle owned by a nonresident of this State, other than a foreign corporation doing business in this State, provided that the owner thereof shall have complied with the provisions of the laws of the foreign country, State, Territory or Federal District of his residence relative to registration of motor vehicles, and the display of registration numbers thereon, and shall conspicuously display his registration numbers as required thereby. The provisions of this section, however, shall be operative as to a motor vehicle owned by a nonresident of this State only to the extent that under the laws of the foreign country, State, Territory or Federal District of his residence like exemption and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this State."

This section has application to regular licenses issued by the State of Florida, as are provided for by section 1009 of the Revised General Statutes of Florida, as amended by chapter 8410 of the General Laws of 1921, and has no application to temporary license tags which are issued under the provisions of section 1015 of the Revised General Statutes of Florida, as amended by chapter 8410 of the General Laws of 1921. This latter section, as amended, provides as follows:

"Time allowed purchaser to procure license: The State comptroller shall issue license tags with the letters 'TEM' and numbered consecutively; these licenses to be issued on cardboard and supplied to dealers at twenty-five cents each, to be used upon motor vehicles, trailers, semitrailers and motorcycle sidecars when sold in lieu of new owner not having a license tag; provided that, at the time of issuing said temporary license, the dealer shall be required to stamp or write in ink the date such license was issued, and giving it a number and enter the same on a book kept for that purpose, giving the name of the person temporary license was issued to, to fill in the proper blank giving the information the comptroller may desire, enclosing same by mail to the comptroller with application for a regular license with fee for same, provided that the vendee shall be allowed to operate same upon the highways and streets of this State for a period of, not more than fifteen days after taking possession thereof, with such temporary license tag attached, and fill in the proper blanks, giving the information that the comptroller may desire and enclosing that by mail to the comptroller with application for a regular license with fee for same. Provided that the vendee shall be allowed to operate same upon the highways and streets of this State for a period of not more than fifteen days after taking possession thereof, with such temporary cardboard license tag attached."

It will be seen from the reading of the above quoted statute of Florida that these cardboard tags are mere temporary tags, and not licenses, and are not such licenses as are contemplated by section 2137 of the Code of Virginia, 1919, as amended. For this reason, the reciprocity provisions of section 2137 do not extend to these temporary licenses.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

NOTARIES PUBLIC—Date of expiration of commissionRICHMOND, VA., *June 18, 1925.*

HON. E. GRIFFITH DODSON,
*The Citizens Bank of Norfolk,
Norfolk, Virginia.*

MY DEAR MR. DODSON:

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

"Does a notary commission, for instance given on the 2nd of May, 1925, expire on May 2, 1929, or May 1, 1929? I shall thank you for this information."

In my opinion, the commission in this case would expire on May 1, 1929. This opinion concurs in the ruling heretofore established by the Secretary of the Commonwealth.

Trusting that this gives you the desired information, and with my best wishes, I am

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—Incompatibility of officeRICHMOND, VA., *April 2, 1924.*

HON. KYLE M. WEEKS,
Floyd, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of March 26, 1924, in which you say:

"Please advise me whether, in your opinion, my office of notary public was vacated by my election to the House of Delegates, and oblige."

Section 44 of the Constitution, which governs the matter, provides, so far as is applicable to the question here under consideration, as follows:

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

The office of notary public is not a salaried office under the State government, and, therefore, I am of the opinion that your office as such was not vacated by your election and qualification as a member of the House of Delegates.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—Residence

RICHMOND, VA., January 26, 1924.

MR. A. C. HOPWOOD, *Attorney at Law*,
Mountain Trust Building, Roanoke, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of January 26, 1924, *in re* notaries public. Referring to my former correspondence with Senator Andrews, you say, in part:

"In writing you, however, he failed to state this point, which has not arisen. A young man, who is a resident of Salem and who is in business in Roanoke, has been appointed a notary public for the city of Roanoke, not having been appointed a notary for Roanoke county, and the question has been raised by some attorneys as to his right to take acknowledgments in Roanoke city and they apparently point to section 2850 of the Code of Virginia, providing for the removal of a notary from the county or city in which said notary resided when appointed, unless removal, etc.; and construed this as meaning that the notary should be appointed first in the jurisdiction in which he resides, or he should have a joint appointment for the jurisdiction in which he resides and for adjoining jurisdictions.

"I am anxious to uphold the acknowledgments of this young man, as he has taken a large number of acknowledgments to deeds of trust involving large amounts, and I would appreciate your advising me what your construction of section 2850 is with reference to this young man's being appointed a notary for the city without having first qualified in the county where he lives."

In 1907 Hon. Leslie C. Garnett, then Assistant Attorney General, considered this question, section 2850 of the Code of 1919, then being section 923 of the Code of 1904, as amended, and in an opinion given J. D. Hank, Esq. (Report of the Attorney General 1917, p. 207), Mr. Garnett said, in part:

"This section authorizes the Governor to appoint in and for the separate counties and cities of the State as many notaries as may to him seem proper. It also provides that the Governor may appoint the same persons to serve for two or more counties and cities, provided that notaries in cities or counties in which cities or parts thereof are located shall have authority to act as such in each of said localities or for one county and city. This section further provides that the notary shall give bond in the circuit court of the county, or corporation or hustings court of the city, for which he is appointed or before the judge of such court in vacation or before the clerk thereof. The section then provides, that the 'removal of a notary from the county or corporation in which said notary resides when appointed, unless said removal be to another county or city for which said notary may have been appointed, shall be construed as a vacation of said office, and the clerk of said county or city shall at once inform the Governor of the fact, as well as of all deaths of notaries that may occur.'

"In the absence of this latter provision, it seems to me clear that the Governor would have the authority to appoint a notary for a county or city, regardless of his place of residence. It does not seem to me that the above quoted provision of the act, in reference to the removal of a notary from the county or corporation in which he resides, was intended as a qualification of the power of appointment conferred on the Governor, but operates merely as a limitation upon the term of the notary. If this were not true

then, the provision permitting the Governor to appoint the same person to serve for two or more counties or cities would be nullified."

I fully concur in the view expressed by Mr. Garnett.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—Residence

RICHMOND, VA., January 17, 1924.

MR. W. L. ANDREWS,
Shenandoah Life Insurance Company,
Roanoke, Virginia

MY DEAR SIR:

Acknowledgment is made of your letter of January 16, 1924, in which you ask me to advise you, first, whether a notary appointed for the city of Roanoke has authority, by reason of that appointment and without any further commission, to take acknowledgments in the county of Roanoke; and, second, whether the removal of the residence of a notary for the city of Roanoke to the county of Roanoke would have the effect to vacate his commission as a notary for the city of Roanoke.

Under the express provisions of section 2850 of the Code of 1919, notaries for cities and for counties in which cities or parts thereof are located, have authority to act as such in each of said localities. Therefore, a notary for the city of Roanoke has authority to act as a notary for the county of Roanoke, and a notary for the county of Roanoke has authority to act as a notary for the city of Roanoke.

In response to your second question, it is provided by section 2850 of the Code of 1919, so far as is applicable to the subject of your inquiry, as follows:

"The removal of a notary from the county or city in which said notary resided when appointed, unless said removal be into another county or city for which said notary may have been appointed, shall be construed as a vacation of said office, and the clerk of the circuit court of said county or corporation court of said city shall at once inform the Governor of the fact, * * *."

In my opinion, this provision means the removal to a county or city in which such notary has no authority to act as such, and not to such a change of residence as occurs where a notary for the city of Roanoke, who has authority to act as such for the county of Roanoke, removes his residence to the county.

Trusting that this gives you the desired information, and with my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS—Duty to consult Attorney General—Payment of counsel fees out of the treasury

RICHMOND, VA., August 28, 1924.

HON. McDONALD LEE,

*Commissioner of Fisheries, and Commissioner of Game and Inland Fisheries,
Richmond, Virginia.*

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of recent date, in which you say:

"It has been suggested that possibly your office could lend the Department of Game and Inland Fisheries all the legal assistance it needs in the way of interpreting laws, advice, and the appearance of counsel in cases arising over the State. Am writing to know if this can be done by the Attorney General's office.

"Although the budget allows \$2,500 for the employment of attorneys, I do not wish to spend any portion of it if it is possible for your office to handle my legal matters."

Section 375 of the Code of Virginia, 1919, provides as follows:

"The Attorney General shall give his opinion and advice, in writing, when required to do so by the Governor, or by the State Corporation Commission, or by any of the public boards and officers at the seat of government."

Your departments, therefore, have the right to call on the Attorney General for the interpretation of any law pertaining to your departments, and, under the statute, he is required to give you his opinion in writing.

Section 376 of the Code of 1919, which relates to the Attorney General, provides as follows:

"He shall appear as counsel for the State in all cases in which the Commonwealth is interested, depending in the Supreme Court of Appeals, the Supreme Court of the United States, the circuit court of appeals of the United States for the fourth circuit, the district courts of the United States for the State of Virginia, and the circuit court of the city of Richmond; and shall also, when requested by the State Corporation Commission, appear as counsel in any matter or proceeding pending before the said commission as a court of record; and he shall discharge such other duties as may be imposed by the General Assembly."

There is nothing which requires the Attorney General to appear in other courts than those mentioned in this section, and his duties are such as to preclude him, and members of his office, from traveling over the State to appear in small matters arising in the various local courts.

However, the attorneys for the Commonwealth in their respective counties and cities of the State represent the interests of the State, and prosecute violations of all penal laws—section 4864 of the Code of 1919. They also represent the Commonwealth in forfeiture proceedings—section 3366 of the Code of Virginia, 1919. There are also certain cases which the attorneys for the Commonwealth are required to prosecute before justices of the peace (see section 3505 of the Code of 1919, as amended).

Responding to the second paragraph of your letter in which you State that, although the budget allows \$2,500 for the employment of attorneys, you do not wish to spend any portion of it if it is possible for this office to handle your legal matters, of course, it would be impossible for me to answer your question definitely until I am advised as to the nature and character of the legal matters to which you refer. I would, therefore, suggest that you submit to this office any legal matters as to which you desire advice, or assistance, and I assure you that we are ready and willing to render you and your department assistance to the utmost extent of our ability.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS—Who State officers

RICHMOND, VA., March 20, 1924.

MR. WILLIAM H. WYATT, JR.,
*High Constable, City Hall,
Richmond, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of March 11, 1924, in which you say:

"I am a charter officer of the city of Richmond and have always understood that I am a State officer. Recently it has been stated verbally and in print that I am a city officer. I applied to Assistant City Attorney Lacy for an opinion, and he referred me to you, stating that the 1918 Acts of Assembly should be read in connection with the charter."

While it is true that your office is provided for by sections 102 and 103 of the charter of the city of Richmond, as amended by chapter 107 of the Acts of 1918, page 204, the law is well settled that the high constable of the city is a State officer, and not a city officer. *Burch v. Hardwicke*, 30 Gratt. (71 Va.) 24, 33-34, 1878.

In that case, Judge Staples, speaking for the court, discussed at length the distinction between city and State officers, saying, in part (pp. 33-34):

"On the other hand, there are many officers, such as city judge, sergeant, clerk, Commonwealth's attorney, treasurer, sheriff, high constable, and the like, some of whom are recognized by the Constitution, while others are not. All these are generally mentioned as city officers, and they are even so designated in the Constitution; but no one has ever contended that either of them is in any manner subject to the control and removal of the mayor. The reason is that, while they are elected or appointed for the city, and while their jurisdiction is confined to the local limits, their duties and functions, in a measure, concern the whole State. They are State agencies or instrumentalities operating, to some extent, through the medium of city charters in the preservation of the public peace and good government. However elected or appointed, however paid, they are as much State officers as constables, justices of the peace and Commonwealth's attorneys, whose jurisdiction is confined to particular counties."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PASSES—Constitutional provision not applicable to employees of State

RICHMOND, VA., July 16, 1924.

HON. J. J. OWEN,
State Office Building,
Richmond, Virginia.

MY DEAR MR. OWEN:

I beg leave to acknowledge receipt of your letter of July 15th, in which you make the following statement:

"The subcommittee on agriculture of the general committee on the great Southern Exposition to be held in New York City January 19 to 31, 1925, is composed of the following: John J. Owen, Assistant Commissioner of Agriculture, chairman; John R. Hutcheson, director of agricultural extension work, Blacksburg, Va.; T. C. Johnson, director of Virginia truck experiment station, Norfolk, Va.; T. Gilbert Wood, agricultural agent N. & W. Railway, Roanoke, Va."

You state that, as chairman of this committee, it will be your duty to select and assemble certain materials in the State of Virginia for this exhibit. You further state that this duty will entail upon you a great deal of travel over the railroads in order to obtain this exhibit. You then desire to be advised if the railroads over which it will be necessary for you to travel would be within their rights to extend you a pass, which pass, of course, is to be used by you solely in connection with your work as chairman of this committee.

You then desire to be advised whether or not your connection with the Department of Agriculture prevents you from accepting this pass from the railroads by virtue of the provisions of section 161 of the Constitution of Virginia. That portion of this section which is applicable to your inquiry reads as follows:

"No transportation or transmission company doing business in this State shall grant to any member of the General Assembly, or to any State, county, district or municipal officer, except to members and officers of the State Corporation Commission for their personal use while in office, any frank, free pass, free transportation, or any rebate or reduction in the rates charged by such company to the general public for like services. * * *"

You will observe from this provision that a pass cannot be granted to any State, county, district or municipal officer.

The sole question to be considered, then, is whether or not your connection with the Department of Agriculture places you among the class of officers mentioned in this section of the Constitution. I am advised by you that the position which you hold with the Department of Agriculture is that of assistant commissioner; that your appointment is made by the Commissioner of Agriculture, pursuant to section 1106 of the Code of 1919, which appointment is to continue at his pleasure. You further state that you have taken, or subscribed, to no oath of office, but that you can be removed at any time the Commissioner of Agriculture sees fit.

I am of the opinion, from a statement of these facts, that you are neither a State, county, district or municipal officer, but merely an employee of the Department of Agriculture, and it, therefore, follows that, should the railroads over

which it will become necessary for you to travel in connection with your duties as chairman of this committee see fit to grant you a pass, you are not prohibited from accepting the same by virtue of this provision of the Constitution.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PENSIONS—Negroes

RICHMOND, VA., July 21, 1924.

HON. D. M. PATTIE,
Madison, Virginia.

MY DEAR MR. PATTIE:

Acknowledgment is made of your letter of July 20th, in which you say that two colored men have made application, under section 6 of the Confederate pension law, for an annual pension of \$25.00.

The provisions of this paragraph are as follows:

"Under the provisions of this act, any person who actually accompanied a soldier in the service and remained faithful and loyal as the body-servant of such soldier, or who served as cook, hostler or teamster, or who worked on breastworks under any command of the army and thereby rendered service to the Confederacy, shall be entitled to receive an annual pension of twenty-five dollars, proof of service and right to be enrolled to be prescribed by Auditor of Public Accounts."

You will see from a reading of this paragraph that it does not include either a blacksmith or a laborer in iron works. The evident intention of this amendment to the pension law was to make provision for those few faithful old colored men who risked their lives in behalf of the Confederacy. In my judgment, it does not apply to those who occupied positions of safety and did such ordinary work as horseshoeing and laboring around iron furnaces.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PENSIONS—Residence

RICHMOND, VA., April 15, 1924.

MR. JOHN A. JOHNSON,
*Pension Clerk, Auditor's Office,
Richmond, Virginia.*

MY DEAR MR. JOHNSON:

Acknowledgment is made of your letter of this date, requesting a ruling as to whether or not any Confederate soldier who entered Lee Camp Home of this State as a resident of West Virginia is entitled to the benefit pension law of Virginia, if he has been in that home two years or more, and chooses to leave the home and make application for a pension. In other words, does the fact that he

has been in the Soldiers' Home two years make him a legal resident of Virginia?

I would answer this question in the affirmative, provided he declares himself a resident of Virginia. Domicile, coupled with an intention to reside in Virginia, will constitute him a resident within the meaning of the pension law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PHYSICIANS AND SURGEONS—Allowance for post mortem examinations in homicide cases

RICHMOND, VA., June 10, 1925.

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

MY DEAR MR. AUDITOR:

Acknowledgment is made of your communication of recent date, with which you sent me the file, *in re* the accounts allowed Drs. Harrison and Pratt for making post mortem examination of the body of Dr. R. L. Powell.

It appears from this file that the accounts were allowed these doctors under authority of section 4815 of the Code of Virginia, 1919. As this section has reference only to those cases where the dead person is a stranger, I do not think that allowances made under authority of this section would be properly chargeable against the Commonwealth in this particular case, as Dr. Powell was not a stranger, but a resident of Spotsylvania county.

I am advised, however, that the attorney for the Commonwealth is of the opinion that these claims can be allowed under section 4960 of the Code of Virginia, 1919. I have examined this section of the Code, and it is my opinion that the section is broad enough to authorize the payment of these claims, if allowed by the court, under authority of that statute. Of course, I do not know whether the facts in this case would justify the allowance of these claims under that statute. That, however, is a matter for the determination of the circuit court of Spotsylvania county, and if that court be of the opinion that these allowances should be made under authority of that section, you would be authorized to pay the same from the public treasury.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PHYSICIANS AND SURGEONS—Chiropractors

RICHMOND, VA., December 13, 1924.

DR. J. W. PRESTON, *Secretary,*
State Board of Medical Examiners,
Roanoke, Virginia.

MY DEAR DR. PRESTON:

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

"In view of the fact as set out in section 1615-A of the statute, an applicant to be admitted to examination must be twenty-one years of age, the Board of Medical Examiners instructs me to request your opinion if the same rule applies to an applicant applying for registration by verification on account of practice done prior to date set out respectively as applying to the different branches of medicine.

The object of the board in obtaining this information is due to the following case which has come before us.

"Prior to January 1, 1923, a party who claims to have been engaged in the practice of chiropractic in one of the cities in this State, and at which time he claims to have occupied office space with his father, who was regularly engaged in the practice of chiropractic. But this party in question at that time was a minor, and the question, therefore, presents itself to the board whether or not he being a minor prior to January 1, 1913, comes within the meaning or purview of section 1613, which deals with a verification license.

"In the event the rule above mentioned does not apply, the board would thank you to advise as to the minimum age applying to a minor."

After careful consideration of your letter, I am of the opinion that the party in question does not come within the provision of section 1613 of the Code of 1919 (which deals with a verification license, etc.), and that before your board should grant this party a certificate to practice he should be required to pass a satisfactory examination.

With kind regards, I am,

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

PHYSICIANS AND SURGEONS—Fees of jail physician

RICHMOND, VA., January 6, 1925.

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

MY DEAR MR. AUDITOR:

I have before me the account of Hon. T. S. Hening for \$3.00 for mileage and the service rendered by him as a physician in making a physical examination of one George Allen, who was committed to the Board of Public Welfare.

It appears that the Board of Public Welfare, pursuant to the provisions of section 1543a of the Virginia Code, 1924, declined to receive George Allen until a certificate of his freedom from venereal disease had been made. Accordingly, Dr. Hening examined George Allen for this purpose, making a trip of fourteen miles to the jail in order to do so.

The only statute which I have been able to find, which furnishes any authority for the payment of such service out of the public treasury, is section 4956 of the Code of 1919, which provides, in part, as follows:

"A court may appoint a physician to attend prisoners in its jail, and make him a reasonable allowance, not exceeding seventy-five cents per day for each day he attends a patient. * * *"

It seems to me, therefore, that you only have the authority to pay Dr. Hening an allowance not exceeding seventy-five cents for his services. As the statute makes no allowance for mileage, I find no authority for your paying for such.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PHYSICIANS AND SURGEONS—Infants cannot be licensed as such

RICHMOND, VA., *March 11, 1925.*

DR. CLARENCE B. TROWER,
1612 *Brambleton Avenue,*
Norfolk, Va.

DEAR DR. TROWER:

Upon receipt of your letter of February 4 I wrote to Dr. J. W. Preston, Secretary-Treasurer of the Virginia State Board of Medical Examiners, in regard to your case and received a reply, of which I enclose copy. I had supposed that I had sent you a copy of this letter, but it is evident that I failed to do so.

My opinion is that the board has properly interpreted sections 1618 and 1622 of the Code of Virginia, as applicable to your situation. It has never been the custom in this State to license a minor to exercise the privilege of practicing any profession.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PHYSICIANS AND SURGEONS—Poropraftors

RICHMOND, VA., *April 30, 1924.*

DR. J. W. PRESTON, *Secretary-Treasurer,*
Virginia State Board of Medical Examiners,
Roanoke, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, with reference to the Poropathic Act, being chapter 212 of the Acts of 1918, in which letter you ask the following questions:

"(1) Whether or not an affidavit upon the part of an applicant that he has practiced poropathy in the State two years, such practice having been done as an alleged apprentice, fulfills the requirement of the law as to qualification, and if so whether other affidavits than that of party to whom applicant were apprenticed be necessary?

"(2) Does license to practice poropathy entitle applicant to register under the Harrison narcotic law and thereby obtain and use opium, cocaine, and their derivatives ad libitum?

"(3) Does the license of a poropath nullify section 1622 relating to the definition of practice of medicine, thereby entitling the holder to diagnose and treat all diseases, deformities and etc. without violation of the law?

This act, so far is applicable to the question under consideration, reads as follows:

"Be it enacted by the General Assembly of Virginia, that the system and practice of poropathy and manipulative surgery is hereby defined to be a new branch of therapeutics, and is the use and employment of medical manipulation and absorption through the pores of the skin and the mucus membrane, without medicine taken through the stomach or the use of the knife, and the use and employment of healing and curative agencies and lotions.

"That any person who shall apply to, and present and submit to a commissioner of the revenue in any city or county of this State, who is authorized to issue licenses, a certificate in writing, sustained by affidavit or affidavits showing that he is of good character and that he is versed in the practice of poropathy and manipulative surgery, and has been practicing the same for a period of two years, shall receive from the said officer a license issued by him, which shall entitle the holder thereof to practice poropathy and manipulative surgery, and as above defined in this State for a period of twelve (12) months from the date of such license, provided, that no person licensed under this act shall use, or advertise himself as having, the title of doctor."

In my opinion, this act means that, in order to qualify, one must have practiced what is defined by the act to be poropathy for a period of two years, prior to the application for the license provided for by the second section of the act. You will observe that the statute does not require the applicant to have practiced poropathy in this State for a period of two years, but that the applicant shall have "been practicing the same for a period of two years."

In my opinion, the work done by such an applicant, as an apprentice with a poropathist in this State, is not sufficient to authorize the granting of a license. Before a license can be granted, it is necessary that it be made to appear that the applicant has practiced poropathy for a period of two years, that is, as a practitioner.

With reference to your second question, it is my opinion that a poropractor as defined by section 1638a, General Laws of Virginia, 1923, is neither a doctor, physician or surgeon within the meaning of the Virginia laws.

It is my undertaking of the Harrison narcotic law that only doctors, physicians and surgeons are entitled to register under the same. If this be the proper construction of the law, a poropractor is not entitled to register.

With reference to your third question, you will see that the term of section 1638a of the General Laws of Virginia, 1923, Acts of 1918, page 361, are very broad, and I am inclined to the belief that, as long as a poropractor confines his operations to the employment of medical manipulation and absorption through the pores of the skin and the mucus membrane, and the use and employment of healing and curative agencies and lotions, for such purpose it is exempted from the provisions of section 1622 of the Code of Virginia, but you will observe that the act expressly prohibits him from using the title of doctor, or advertising himself as such.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

POOL ROOMS—InfantsRICHMOND, VA., *January 2, 1924.*

MR. E. R. LOGWOOD,

Big Island, Virginia.

MY DEAR SIR:

I am just in receipt of yours of January 1; to which I will reply at once.

In this you ask me to quote you the statute regulating pool rooms in villages not incorporated, and the ages of boys who are permitted to play pool in the same.

In response to your inquiry, I would call your attention to chapter 357 of the Acts of 1918, which is found on page 536.

This act provides:

“* * That no minor shall frequent, play in or loiter in any public pool rooms or billiard room, or be permitted by the proprietor thereof or his agent, to frequent, play in or loiter in any such public pool room or billiard room located outside of the corporate limits of towns and cities.”

The act further provides that any person who violates this act shall be guilty of a misdemeanor, and punished by a fine or by imprisonment, or by both.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

RACE SEGREGATION—Unconstitutionality of such lawsRICHMOND, VA., *October 29, 1923.*HONORABLE JAMES ALLAN, *Mayor,**Vienna, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of October 26, 1923, in which you ask whether your town has the authority to pass a negro segregation ordinance such as is contemplated by sections 3043-3053 of the Code of 1919.

These sections, the revisors state, were revised and printed in the Code prior to the decision of the Supreme Court of the United States in *Buchanan v. Warley*, 245 U. S. 60.

As I understand this decision, cities and towns have no authority to pass ordinances segregating the races, and it would appear that these sections of the Code are in conflict with the Federal Constitution.

I would, therefore, suggest that your town refrain from adopting such an ordinance, as I feel very sure that on the first test of the same, it would be declared invalid.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

RACIAL INTEGRITY ACT—Registrations underRICHMOND, VA., *April 28, 1924.*

DR. W. A. PLECKER, *State Registrar,*
Bureau of Vital Statistics,
Richmond, Va.

DEAR DR. PLECKER:

Acknowledgment is made of yours of the 22nd, in which you ask:

"Does this recent law (act to preserve racial integrity) justify the State Registrar in retaining for the expenses of his office not only fees for registration and transcripts under the new law of all persons born before July 14, 1912, and not previously registered under the old 1853-1896 law, or does it also permit him to retain for the expenses of his office all fees for transcripts of marriage records, and the old 1853-1896 birth and death records?"

After careful consideration of the recent act to preserve racial integrity, I am constrained to hold that this law affects only registrations made pursuant to the law. Fees for registrations made pursuant to other laws are governed by the terms of those other laws.

This answer, of course, disposes of your second question: whether the new act authorizes the State Registrar to retain for the expenses of his office fees collected under the 1912 act.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

RACIAL INTEGRITY LAWRICHMOND, VA., *June 18, 1924.*

DR. W. A. PLECKER, *State Registrar,*
Bureau of Vital Statistics,
Richmond, Virginia.

DEAR DR. PLECKER:

Acknowledgment is made of your letter of June 14, 1924, in which you say in part:

"The new racial integrity law will become effective June 16.

"We received yesterday a certificate for the birth of a child whose parents are married, the father being a white man, his wife a mulatto.

"We have in many other places, families the result of mixed marriages of that sort, some of which may have been married legally under the old law which permitted persons with one-sixteenth colored blood to pass as white. Some of these have been married in other States and have removed into Virginia.

"Will you please advise us as to the status of these marriages under the new law? What does it become the duty of the Commonwealth attorney to do in such cases when advised by us? Should these families be permitted to live-together in marriage relations?

"Are those who were legally married as white before this law was passed, still legally married?"

I have examined with care chapter 371 of the Acts of 1924, being entitled "an act to preserve racial integrity." This act, so far as it attempts to prohibit marriages between certain classes of people, applies only to marriages contracted after the act goes into effect. It does not affect the validity of marriages legally contracted in this State prior to the enactment of this statute.

However, prior to the enactment of this statute, marriages between white persons and negroes were prohibited by law, and if solemnized in Virginia, or, if prior to the marriage the parties were domiciled in this State and went out of the State for the purpose of evading our statutes, and then after contracting the marriage returned into Virginia, they have violated the law, and should be prosecuted. See sections 4540, 4546, 5087 and 5089 of the Code of 1919.

Where a marriage has been contracted between persons in a State where it may be lawfully contracted between persons who are residents of that State, and who afterwards become residents of Virginia, there is some doubt as to whether they can be prosecuted under our law, even though they may belong to classes prohibited from contracting the marriage relationship by the laws of this State; since our statute only prohibits the marriage of persons who are domiciled in this State belonging to prohibited races, either within the State or without the State, if contracted with the intention of returning to Virginia after the marriage has been solemnized where it may be lawfully performed, and does not attempt to prohibit the cohabitation of parties in this State who were legal residents of some other State at the time the marriage was lawfully contracted. See *State v. Ross*, 76 N. C., 242, 22 Amer. Rep. 678.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

RACIAL INTEGRITY LAW—Duties of clerks

RICHMOND, VA., July 2, 1924.

A. T. SHIELDS, ESQ., *Clerk,*
Lexington, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 28, in which you say:

"I am writing you for your opinion in regard to the law passed by the General Assembly of Virginia session 1924, approved March 20, 1924, chap. 371, p. 534, entitled an 'act to preserve racial integrity.' Section 4 of said act reads as follows: 'No marriage license shall be granted until the clerk or deputy clerk has reasonable assurance that the statements as to color of both man and woman are correct.' What is meant by reasonable assurance that the statements as to color of both man and woman are correct? Do you understand the clerk or deputy clerk should under this law require from the applicant himself for a marriage license an affidavit that he himself and the woman he intends marrying are both white, or an affidavit of some other reputable person that both the contracting parties are white?"

"Section 4 further states: 'If there is reasonable cause to disbelieve that applicants are of pure white race, when that fact is stated, the clerk or deputy clerk shall withhold the granting of the license until satisfactory proof is produced that both applicants are 'white persons' as provided for in this act.' What proof is necessary for the satisfaction of the clerk to com-

ply with this section? It may occur I will be called upon to issue marriage licenses to persons who are considered not white—as in times past this question has come up in school matters. In case such applications come before me, I will appreciate it if you will give me your opinion for my guidance.”

In reply, I will refer you to section 5074 of the Code of Virginia, which provides that a party obtaining a marriage license shall state the race of the parties. In the absence of any circumstances or report to the contrary, I believe that the clerk would consider such a statement a reasonable assurance as to the color of the contracting parties. I do not consider that the law requires affidavits from any persons unless there should be a reasonable doubt upon the part of the clerk as to the correctness of the statement. Should there be a “reasonable cause to disbelieve that the applicants are of pure white race when that fact is stated,” I hold that the clerk or deputy clerk before issuing the license should require such proof as will satisfy his own mind upon the point. The law makes the officer issuing the license the judge of the question, and he may require such evidence, either written or oral, as he may deem necessary.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

REAL ESTATE COMMISSION—Funds of

RICHMOND, VA., *December 11, 1924.*

W. B. RUDD, ESQ., *Secretary.*
Virginia Real Estate Commission,
Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of December 10, 1924, in which you say in part:

“The Virginia Real Estate Commission is informed that the framers and supporters of Senate Bill No. 155 passed at the last session of the legislature known as the regulatory real estate license act, believed under the act, the commission would make disbursements for the necessary expenditures of the commission and pay any residue into the State treasury. Since the passage of the act chapter 461—1924 act of the General Assembly, the commission upon considering the contents of the act, find on page 693 of the Acts, the following language:

“All fees and charges collected by the Commission under the provisions of this act shall be paid into the (general) fund in the (State Treasury); it being expressly provided, however, that the total expense for every purpose incurred shall not exceed the total fees and charges collected and paid into the Commission.”

“For this reason we ask your opinion as to whether or not all funds collected shall be paid to the Treasurer and the Commission draw upon the Auditor of Public Accounts for vouchers for disbursements.”

After examining chapter 461 of the Acts of 1924, it is my opinion that all funds collected under authority of that act must be paid into the Treasury of Virginia, and checked out in the manner prescribed by law.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

REAL ESTATE COMMISSION—License issued by

RICHMOND, VA., *February 16, 1925.*

CHAS. C. BOWE, ESQ., *Chairman,*
Virginia Real Estate Commission,
Richmond Trust Building,
Richmond, Va.

DEAR SIR:

Acknowledgment is made of your letter of the 9th, enclosing affidavit of Thos. J. Sanderlin in relation to G. M. Thompson, an applicant for license under the regulatory real estate law. You say:

"The Commission is confronted with the legal question as to whether it can hear charges for actions committed prior to the operation of the law, to wit: January 1, 1925, and respectfully ask your opinion on the matter. We are being confronted almost daily now with questions, the answers to which hinge upon your opinion."

In reply, I beg to say that this matter is governed by section 4 of the Acts of 1924, p. 693, which is as follows:

"A license shall be granted only to persons who bear a good reputation for honesty, truthfulness and fair dealings and are competent to transact the business of a real estate broker or a real estate salesman in such manner as to safeguard the interests of the public."

It is evident that, in order to ascertain the good reputation for honesty, truthfulness and fair dealings, as well as competency, of any applicant, it is necessary to investigate matters which arose prior to the enactment of the law.

The first and last paragraphs of section 5 also deal with the good reputation for honesty, truthfulness, fair dealings and competency of the applicant.

Section 9, dealing with the hearing of charges, says:

"The Commission shall, before denying an application for license, or before suspending or revoking any license, set the matter down for a hearing, and at least ten days prior to the date set for the hearing, it shall notify in writing the applicant, or licensee, of any charges made, and shall afford said applicant, or licensee, an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant, or licensee, or by mailing same by registered mail to the last known business address of such applicant, or licensee, if said applicant or licensee be a salesman, the Commission shall also notify the broker employing him, or in whose employ he is about to enter, by mailing notice by registered mail to the broker's last known address. The hearing on such charges shall be at such time and place as the Commission

shall prescribe. The Commission shall have the power to subpoena and bring before it any person in this State, or take testimony of any such person by deposition with the same fees and mileage in the same manner as prescribed by law in judicial procedure in courts of this State in civil cases. Any party to any hearing before the Commission shall have the right to the attendance of witnesses in his behalf at such hearing, upon making request therefor to the Commission and designating the person or persons sought to be subpoenaed. If the Commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the Commission shall determine that any licensee is guilty of a violation of any of the provisions of this act, his or its license shall be suspended or revoked. The findings of fact made by the Commission, acting within its powers shall in the absence of fraud be conclusive, but the Supreme Court shall have the power to review questions of law involved in any final decision or determination of the Commission; provided, that application is made by the aggrieved party within thirty days after such determination, by certiorari, mandamus, or by any other method permissible under the rules and practices of said court, or the laws of this State, and said court may make such further orders in respect thereto as justice may require."

There is nothing in this section which limits the hearing to matters arising after the act became effective—January 1, 1925.

If this were a criminal statute, it could not deal with offenses committed before it became effective, as this would be contrary to constitutional provisions prohibiting their enactment of *ex post facto* laws; but this is not a criminal statute, but a remedial statute, enacted for the benefit of the public to protect them from dishonest and incompetent brokers. It is evident that the Commission should be free to inquire into the reputation and the past conduct of every applicant for a license.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

RESERVATION OF TITLE CONTRACTS—Release of through power of attorney

RICHMOND, VA., February 15, 1924.

DAYTON SCALE COMPANY,

Dayton, Ohio.

GENTLEMEN:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention. You state that you executed a power of attorney to Robert H. Oldham, deputy clerk of the county of Accomac, Virginia, to release on the margin conditional sales contracts, docketed in the office of the clerk of said county, and that you have been advised that the power of attorney must be recorded before the contracts can be released, and you ask your rights in the matter.

Prior to the Code of 1919, the laws of Virginia required a clerk of court to mark satisfied such liens "upon the written notice by the vendor, his duly authorized agent or attorney," but the Code of 1919 changed the law and omitted the provision imposing any such duty upon the clerk, and provided that such a

contract could be marked satisfied upon the margin of the page in the book upon which it is recorded by the vendor, his agent or attorney and attested by the clerk.

The revisors call attention to the fact that the omitted provision opened the door for forged written directions, and did not conform to the language used in other sections (such as sections 6456 and 6466) for making similar releases.

The same may be said of a blanket power of attorney to make such releases on the margin where the power is not recorded. Furthermore, recordation gives to any person interested in the question as to the validity of the releases, the most feasible method of determining whether the releases were authorized.

Though you may have appointed the deputy clerk your agent, he has a right to refuse to act as such, or to act only upon such conditions as he may deem proper to protect himself.

We are of the opinion that the refusal to act, unless the power of attorney is recorded, is not an unreasonable condition to his acting as such, because, in case the power of attorney was lost by him, there would still be the record in the clerk's office to conclusively prove his authority to act under such releases.

Yours truly,

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

RESERVATION OF TITLE CONTRACTS—What documents are not

RICHMOND, VA., March 21, 1924.

MR. T. E. BARTENSTEIN,
*Clerk's Office Fauquier Circuit Court,
Warrenton, Virginia.*

DEAR SIR:

I am writing to acknowledge receipt of your favor of the 15th instant with enclosures as stated therein.

You request an opinion as to whether the trust receipt on the form used by Royal Sales Company and the Industrial Finance Corporation, a sample of which you enclosed, indicating the receipt of an automobile subject to the conditions mentioned in the receipt, is a conditional sale which may be docketed according to the provisions of code section 5189, as amended by chapter 159 of the Acts of Assembly 1923, page 193. In my opinion, the trust receipt which you indicate is not such a reservation of title to or lien upon goods and chattels sold as is contemplated by the section in question, and therefore, I do not think that this receipt could be docketed under that section.

The trust receipt in question is simply an acknowledgment by the Lee Highway Motor Company of the receipt from the Royal Sales Company for the Industrial Finance Corporation of a Studebaker motor vehicle, with an agreement that this automobile will be held by the Lee Highway Motor Company as trustee in trust for the Industrial Finance Corporation or the holder of the trade acceptance evidencing the deferred purchase price. It is true that the receipt contains certain conflicting statements describing the automobile as the property of the Industrial Finance Corporation, but I think that the definite provision empowering the Lee Highway Motor Company to sell the automobile and give a clear title thereto is demonstrative evidence of the fact that the legal title to the automobile

is not retained by the Industrial Finance Corporation. All that this receipt does is to set up an equitable title in the Industrial Finance Corporation, and in my opinion, Code section 5189 applies only in cases where the legal title is reserved in the vendor.

I am of the opinion, therefore, that the trust receipt is in effect, a deed of trust or a declaration of trust with respect to personal property, and that if recordation is desired, it should be recorded in the property book and in order to comply with the recordation law, the writing, of course, would have to be acknowledged.

I am returning herewith, in accordance with your request, the enclosures which you sent to me.

With assurances of my kindest personal regards and best wishes, I beg to remain,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—County regulations

RICHMOND, VA., *June 13, 1924.*

MR. J. DONALD RICHARDS,
Attorney at Law,

Warrenton, Virginia.

MY DEAR MR. RICHARDS:

Acknowledgment is made of your letter of June 12, 1924, in which you refer to chapter 426 of the Acts of 1924, which act, so far as is applicable to the subject of your inquiry, reads as follows:

"Be it enacted by the General Assembly of Virginia, that the board of supervisors of the several counties are authorized and empowered to enact such special and local legislation in their respective counties not in conflict with general law regulating the speed of automobiles or other motor vehicles over the roads of the Commonwealth or with regulations promulgated pursuant to law, as they may deem expedient to protect the public roads, ways and bridges of the said counties from encroachment or obstruction, or from any improper, unusual or injurious use. Any violation of such local legislation shall be deemed an offense against the county whose board of supervisors enacted the same, and shall be punished by a fine of not less than two dollars and fifty cents nor more than one hundred dollars, payable to the county, or by imprisonment in jail not more than thirty days, or by both such fine and imprisonment."

You then say:

"What I wish to know is, that if Fauquier county appoints special officers to enforce any rules or regulations adopted under this act, would these officers have any jurisdiction to make arrests on the roads embraced within the State highway system?"

In my opinion, this act authorizes the board of supervisors of the respective counties to legislate with reference to all public roads in such counties, including those public roads embraced within the State highway system, with the exception

that such local legislation must not be in conflict with general law regulating the speed of automobiles or other vehicles over the roads of the Commonwealth, or with regulations promulgated pursuant to law.

As a matter of fact, none of the roads in a county, strictly speaking, belong to the county, but all of them are the property of the Commonwealth.

N. & W. R. Co. v. Supervisors, 110 Va. 95 (1909);

Norfolk City v. Chamberlaine, 24 Gratt. (70 Va.) 534, 538 (1877);

Yates v. Town of Warrenton, 84 Va. 337 (1888);

Fry v. County of Albemarle, 86 Va. 195 (1890);

Richmond v. Smith, 101 Va. 161, 166 (1903), (*Report of the Attorney General*, 1922-1923, page 49).

With my best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ROADS AND HIGHWAYS—Gas tax

RICHMOND, VA., November 24, 1923.

HONORABLE JOSEPH F. HALL,

1110 Travelers Building,

Richmond, Virginia.

MY DEAR MR. HALL:

Acknowledgment is made of your letter of recent date, in which you call my attention to chapter 426 of the Acts of 1918, commonly known as the State money aid law for roads, and chapter 107 of the Acts of 1923, known as motor vehicle fuel tax law.

You then state that you have advised the Highway Department that the revenue from the 1-cent tax per gallon, levied on gasoline by chapter 107 of the Acts of 1923, can be devoted only to the construction of roads in the county highway systems, and not to the maintenance thereof, and ask if I agree with this view. So much of section 4, of chapter 107 of the Acts of 1923, as is applicable to this matter reads:

"The revenue from the said additional one cent tax per gallon levied, as aforesaid, is on and after July first, nineteen hundred and twenty-three, appropriated for the construction of roads and bridges embraced in the several county highway systems of this State, and shall be distributed among the several counties of this State, in the same manner, for the same purposes, and upon the same conditions as State money aid is now distributed to said counties, except that the counties shall not be required to match the said sums herein appropriated to them or any part thereof."

From an examination of this provision of the law, I am of the opinion that you are right in your opinion, and that no part of the money derived from the one-cent tax on gasoline, and paid by the State to the counties, can be used for any purpose other than the construction of roads and bridges embraced in the several county highway systems. Any other use of the money would violate the plain and unmistakable terms of the above quoted portion of section 4 of chapter 107 of the Acts of 1923.

With reference to chapter 426 of the Acts of 1918, you state that question has been raised by some of the counties as to whether or not they can use the funds accruing under section 4, of chapter 107 of the Acts of 1923, to match the State aid funds appropriated by the legislature in the general appropriation bill, and distributed in accordance with the provisions of the State aid law, chapter 426 of the Acts of 1918.

From an examination of this statute, especially section 3 thereof, it is my opinion that the money received by the counties under the provisions of chapter 107 of the Acts of 1923, being the one cent tax on gasoline, cannot be used by the counties for the purpose of matching the State aid funds appropriated for the use of such county. The one cent gasoline tax is a State tax levied and collected by the State, and appropriated by the State to the counties for a specific purpose. The object of the State money aid law was to induce or compel the counties to appropriate county money to aid the State in the construction of the roads contemplated by the law. The General Assembly never intended that State funds donated to the several counties for road building purposes could be used by the counties to obtain additional money from the State, which the law expressly provides can be obtained only by the county, or its subdivisions, raising fifty per cent of the money donated by the State under the money aid law.

I am, therefore, of the opinion that only those counties are entitled to obtain money aid for road purposes under the provisions of chapter 426 of the Acts of 1918, which match the State fund, as required by law, with local funds.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ROADS AND HIGHWAYS—Gas tax fund

RICHMOND, VA., June 6, 1924.

HON. A. STUART ROBERTSON,
*Commonwealth's Attorney,
Orange, Virginia.*

MY DEAR MR. ROBERTSON:

Acknowledgment is made of your letter of June 5, 1924, in which you say:

"The board of supervisors of Orange county has requested me to ask your opinion as to whether the gasoline tax, after July 1, coming to Orange county, can be used for the purchase of machinery for use on the county road system. The act provides that the one-cent tax shall be used for the construction, reconstruction, maintenance or repair of roads in the county system, and I have advised the board that I doubt very seriously whether they would have the right to purchase equipment with the gasoline money."

As you say in your letter, section 4 of the gasoline tax law, as amended by chapter 466 of the Acts of 1924, provides that the part of the gas tax fund appropriated to counties shall be expended "for the construction, reconstruction, repair and maintenance of the roads and bridges embraced in said county road systems."

This language, in my opinion, prohibits the expenditure of such funds for the purchase of machinery.

With my best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ROADS AND HIGHWAYS—Local regulation of

RICHMOND, VA., January 15, 1924.

FRANK P. MONCURE, ESQ.,
Commonwealth's Attorney,
Stafford, Virginia.

MY DEAR MR. MONCURE:

Senator Smith is in my office, and has shown me your letter enclosing a copy of a resolution adopted by your board of supervisors, January 7, 1924, with reference to securing the passage of an act authorizing them to pass such regulations as they deem necessary for the protection of county roads in your county, and requests that I write you my views in regard to the same.

I agree with you in the opinion that your board of supervisors already has that authority under section 2013 of the Code of 1919. As stated in the revisors' note to that section, the law as enacted in 1912 with reference to the authority to pass such local legislation is followed, save that the clause in the act of 1912 forbidding enactment by the board of supervisors of a law fixing the width of tires without submitting the question to a vote of the people, is omitted.

The General Assembly, however, in 1918, by chapter 282, Acts of 1918, in passing an act giving power to the several counties to enact such special and local legislation as they deem expedient to protect the public ways, roads and bridges of said county from any improper, or exceptionally injurious use thereof, re-enacted that portion of the old law which forbids a board of supervisors from enacting a law fixing the width of tires to be used on vehicles until after the question shall have been submitted to the qualified voters of the county at a general or special election.

Under this section of the Code, and the 1918 act, therefore, I am of the opinion that your board of supervisors has very wide power to enact special legislation to protect your county roads, save that legislation involving the width of tires cannot be legally enacted until the same is submitted to the qualified voters of the county at a general or special election.

I further call your attention, however, to chapter 112 of the Acts of Assembly 1923 (page 135), which gives the boards of supervisors of all counties having less than 15,000 inhabitants, and joining a city of the first class, the power to enact such special and local legislation in their respective counties, not in conflict with the general laws of the Commonwealth nor with any regulations promulgated by the State Highway Commission, as they may deem expedient to protect the public roads, ways, or bridges therein from improper, or exceptionally injurious use thereof; and to regulate the traffic on such roads for the protection of the lives and property of persons using the same. If your county comes within this class, it is obvious that you can even pass a law regulating the width of tires without sub-

mitting the question to the people. If Stafford county has more than 15,000 inhabitants, I imagine it would come within this class. I understand that Fredericksburg is a city of the first class, having 10,000 inhabitants, or more. (Constitution of Virginia, section 98).

Senator Smith asked me to tell you that he is ready to introduce any bill that you desire in regard to this matter, and, if after reading these chapters, you think that any further legislation is necessary in order to carry out the wishes of the board of supervisors, Senator Smith is ready to introduce such a bill, and it goes without saying that it will give me great pleasure to assist him in framing the bill, if he so desires. You might talk with the board of supervisors about this matter, and read them this letter, and then if they wish anything done, Senator Smith and myself are at their disposal to carry out their wishes.

With kindest personal regards, I remain,

Yours truly,

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

ROADS AND HIGHWAYS—Tractors with cleats

RICHMOND, VA., April 7, 1924.

J. T. SANFORD, ESQ.,
Zacata, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 4, 1924, in which you ask whether it is a violation of the law to operate tractors, with cleats on their wheels, on improved State highways.

This question is governed by section 4091 of the Code of 1919, as amended, which reads as follows:

"It shall be unlawful for the owner or driver of any traction engine, tractor, or motor truck to drive or cause to be driven, without the consent of the proper authorities, any such traction engine, tractor or motor truck or other motor vehicle, except as herein provided, the wheels of which said traction engine, traction motor truck or other motor vehicle are equipped with cleats or other devices that penetrate or which cause unreasonable injury to the surface of said road, on or over any section of the State highway system of the Commonwealth of Virginia, which has been treated with bituminous or other artificial binder, or which has had placed on it any other improved surface.

"The provisions of this act shall not be construed to apply to traction engines or tractors drawing their own weight, together with threshing machines, haybalers or other farm machinery, excepting wagons used for transportation, if the said traction engine or tractor is of less than twenty-five thousand (25,000) pounds gross weight, and one hundred and ten (110) inches in width over all, and if such traction engines or tractors shall be equipped with metal cleats on the driving wheels thereof of a width not less than two and one-half ($2\frac{1}{2}$) inches, and so placed and kept on the driver that not less than two cleats shall touch the ground at all times, or if the drivers are equipped with smooth tires, and also that such traction engines or tractors shall be so equipped as to have and maintain on the front wheels a guide tire not less than two (2) inches in width on all traction engines or tractors up to and including eighteen (18) horsepower; on all traction engines or tractors up to and including twenty-five (25) horse-

power, said guide tire to be two and one-half ($2\frac{1}{2}$) inches in width, and on all traction engines or tractors up to and including thirty (30) horsepower, or over, the said guide tire to be at least three (3) inches.

"Any violation of this act shall be deemed a misdemeanor, and shall be punishable by a fine of not less than ten dollars (\$10.00) or more than one hundred dollars (\$100.00) for each offense."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Age for admission to

RICHMOND, VA., *September 15, 1924.*

GEORGE G. McCANN, ESQ.,

Franklin, Va.

MY DEAR SIR:

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

"It is the understanding of the Southampton county school board that the school laws provide that a child must be admitted to the public free schools upon reaching the age of seven; and that school board may, in their discretion, lower the minimum age requirement to six years. Our board has fixed six as the minimum age. Our county and town schools opened on September 12 this year. The board also authorized the admittance of all children on the opening date that will be six years old on October 1st.

"Will you please write me just what the law says or means when it speaks of a child six years of age? Does it say or mean that the child must be six years old on or before the opening date of the entire session? Or does it contemplate that the child's age must be figured from its nearest birthday? For instance, a child born on March 11, 1919, would be five years, six months and one day old on our opening date, September 12, 1924. Does the law contemplate that this child shall be considered as being six years old? And has the child's parent the right to demand that the child be admitted to school?

"Has our board the right under the law to fix October 1, 1924, as the controlling date? If it has that right, would it not be equally lawful for the board to fix November 1 or January 1, or any other date?"

In reply, I would say that under our laws, when age is a prerequisite for exercising any privilege, such as attending school, voting, holding office, getting married, etc., it is the latest anniversary of birth which controls and not the nearest anniversary. Therefore, the child must have completed the necessary number of years required by law before being admitted to a school.

It is my judgment that the board can fix any date as the controlling date, and I feel sure that they should adopt such date as to give general satisfaction to the patrons of the school.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Agricultural high school, right to attendRICHMOND, VA., *February 8, 1924.*

MR. JAMES G. HENING,
Box 444,
Richmond, Va.

MY DEAR MR. HENING:

Acknowledgment is made of your letter in which you state that there have been established courses in agriculture and home demonstration work in the high school at Chester, in Chesterfield county, and that, from the general treasury of the county of Chesterfield, certain sums of money are appropriated for their maintenance. You then ask the right to require children attending this school from other school districts in Chesterfield county to pay tuition.

As the special courses mentioned are maintained from the funds in the general treasury of the county, it is obvious that any child living in the county, regardless of the district in which he lives, has a right to take these special courses, or any one of them, without the payment of tuition.

I am further of the opinion that, if a child from another school district takes any of these courses, he would also have a right to take the regular academic course prescribed for that high school without the payment of tuition.

This conclusion becomes irresistible for the following reasons: If such child was allowed to take only the agricultural or home demonstration course at Chester, without the payment of tuition, it would force him to take the regular academic course in the high school of his own district, thus compelling him, in order to secure an academic education and, at the same time, the benefit of the special training in agriculture or home demonstration work, to attend two high schools at one and the same time which would, manifestly, not be feasible. Such a construction of the law would practically exclude from the benefit of the course in question all pupils not living in the school district in which Chester is located, which, clearly, cannot be the intent of the law.

If, on the other hand, a child from another district attends the Chester high school, but does not take the special course above mentioned, I am of the opinion that he could be required to pay tuition, as provided for under sections 719 and 720 of the Code of 1919.

I shall be very glad to give you any further information I can on the subject.
With kindest personal regards, I remain,

Yours truly,

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

SCHOOLS—Appropriation of bank stock tax by towns toRICHMOND, VA., *October 24, 1923.*

W. R. WRIGGLESWORTH, ESQ.,
Superintendent of Schools,
Blackstone, Virginia.

MY DEAR MR. WRIGGLESWORTH:

Acknowledgment is made of your letter of recent date in which you ask me to advise you whether or not incorporated towns in Nottoway county, which do not

constitute school districts, are required to appropriate at least fifty per cent of the fund derived from taxes on the stockholders of banks to be used for school purposes in the school district in which the towns are located.

Section 18 of the Virginia tax bill, as amended by chapter 476 of the Acts of 1922, which provides for the assessment of stockholders in banks so far is applicable to the question above under consideration, provides as follows:

"And it shall be the duty of the commissioners of the revenue or other assessing officers of the several incorporated towns in which such bank or banks are located to assess upon stockholder, a tax to be levied by the council or other governing body thereof, of not exceeding sixty-five cents on every one hundred dollars of actual value thereof for town purposes. Provided that such board of supervisors and council of towns or other governing bodies may, in their discretion, direct such commissioners of the revenue to deduct from the value of such shares of stock of such bank for purposes of local taxation only, the value of any county or town bonds of said county or town, held by such banks, provided that any incorporated town which does not constitute a separate school district shall appropriate not less than fifty per centum of the fund derived from said taxes, and may appropriate the whole thereof to be used for school purposes in the school district in which said town is located. The said tax shall be in lieu of all other taxes whatsoever for State, county or local purposes upon the said shares of stock."

You will see from the above quotation that any incorporated town which does not constitute a separate school district is required to appropriate not less than fifty per centum of the fund derived from such taxes for school purposes in the district in which the town is located.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Appropriation by cities to, extent of

RICHMOND, VA., April 27, 1925.

HONORABLE G. L. H. JOHNSON,
Superintendent of Schools,
Staunton, Virginia.

MY DEAR MR. JOHNSON:

Acknowledgment is made of your letter of April 22, 1925, in which you call attention to section 781 of the Code of Virginia of 1919, and request me to advise you whether the council of a city making an appropriation for school purposes in lieu of the levy authorized by that section can exceed in appropriation the maximum sum which would be raised by the levy if made. This section reads as follows:

"The council of each city shall have the power, and it shall be its duty, on or before the fourth Monday in July in each year, or as soon thereafter as practicable, to levy a tax upon the real and personal property in the city of not to exceed fifty cents on the one hundred dollars of its assessed value, or the council may, in its discretion, make an appropriation in lieu of such levy."

It is my opinion that the purpose of the limitation in the Constitution and in the statutes is to protect taxpayers against excessive levies. When the council has fixed the total tax rate of a city, the amount appropriated for schools is discretionary with council, and, whether large or small, would not serve to change the fixed rate of taxation.

I am, therefore, of the opinion that while a council is limited in its levies for school purposes to a maximum of one dollar for operation and maintenance and twenty-five cents for interest and sinking fund on bond issues, yet, if the council under its general levy makes an appropriation for school purposes, that appropriation is limited only by the discretion of council.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Bonds

RICHMOND, VA., January 15, 1925.

HON. C. B. GREEN,
*Superintendent of Schools,
Boydton, Virginia.*

MY DEAR MR. GREEN:

Acknowledgment is made of your letter of January 14, 1925, in which you say:

"Please advise on what date we can hold another election for floating school bonds in the Clarksville district in view of the election we held on July 14, 1924.

"The above election was ordered by the last legislature, but since same was voted down by a small majority we are contemplating a second vote by the people and want to know what time must elapse before we can put on this second election."

The act to which you refer is chapter 347 of the Acts of 1924, authorizing the county school board of Mecklenburg county to issue bonds to be used for "the purpose of discharging outstanding obligations of Clarksville school district of said county incurred for public school purposes."

In the third paragraph of the act, it is provided, in part, as follows:

"But the foregoing provisions of this act are subject to the following qualification, that no bonds shall be issued under this act unless and until at a special election to be held in the said district on such date as may be fixed by the judge of the circuit court of the said county on application by the county school board, a majority of the qualified voters of the said school district voting in the said election shall vote in favor of the issuance of such bonds. * * *

This is the only provision that I find in the act with reference to the holding of an election for the purpose of determining the question as to whether or not the bonds can be issued. Certainly the provisions of section 765 of the Code have no application to the issuance of bonds for the purposes contemplated by chapter 347 of the Acts of 1924.

It would, therefore, seem to me that, in view of the above quoted provisions of chapter 347 of the Acts of 1924, the matter is one which presents itself for the determination of the judge of the circuit court of your county.

It appears to me that, if another election can be held under authority of this act, the time of the holding of the same, in view of the fact that one election has already been held, is a matter within the sound discretion of the judge of the circuit court of your county, and that he alone has the authority to determine this question.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Bond issues

RICHMOND, VA., *February 29, 1924.*

MR. J. G. HENING,

Box 444,

Richmond, Va.

MY DEAR MR. HENING:

You advise me that, under chapter 59 of the Acts of Assembly 1923, Chesterfield county is about to issue \$30,000 worth of school bonds for Midlothian district. You ask whether they are subject to State and county taxes.

Chapter 44 of the Acts of 1923, page 51, provides as follows:

"Bonds of the several counties, cities, towns and other political subdivisions of this Commonwealth, whether heretofore or hereafter issued, are hereby segregated and made subject to State taxation only, and shall not be subject to taxation by any of the counties, cities, towns, school districts or other political subdivisions of this Commonwealth."

The bonds to which you refer, therefore, are subject to State taxation, but not to county taxation.

Yours truly,

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

SCHOOLS—Bond issues

RICHMOND, VA., *July 8, 1924.*

HON. R. N. ANDERSON,

Lebanon, Virginia.

MY DEAR MR. ANDERSON:

I beg leave to acknowledge receipt of your letter of recent date, which is as follows:

"A question has come up in our bond issue election in New Garden district of Virginia in Russell county, to issue bonds for building school houses in said district, as to what vote of the district is necessary to authorize the issue of bonds; we are writing you to ask you to give us your construction

of the statute on the question. Section 768 of the Code is the statute on the question. Does it take a majority of all the voters legally qualified or does it take a majority of those voting, or does it take a majority of the majority of the legal voters voting in said district to decide the question?"

In reply, I will state that the statute means a majority of the qualified voters actually voting in the said election, and not a majority of the qualified voters of the school district. This question was decided by the Supreme Court of Virginia in the case of *Harrison v. Barksdale*, which is reported in 127 Va., page 180

With my kindest personal regards and best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Book contracts

RICHMOND, VA., December 11, 1924.

HONORABLE HARRIS HART,

*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your communication of recent date in which you enclose copy of contract between the State Board of Education, party of the first part, and Johnson Publishing Company, party of the second part, to be executed.

You call my attention to the fourth clause of said contract, and state that the question has been raised by one of the publishers that such clause is in conflict with section 132, subsection 4, of the Constitution.

The fourth clause in the contract is as follows:

"It is agreed between the parties of this contract that in free book territory local school boards may adopt for use in such territory, subject to the approval of the State Board of Education, any book or books in language which their discretion may dictate without restricting the contractual rights of the publisher under this contract."

Section 132 of the Constitution provides, so far as is applicable to the question under consideration, as follows:

"The duties and powers of the State Board of Education shall be as follows:

* * * * *

"Fourth. It shall select textbooks and educational appliances for use in the schools of the State, exercising such discretion as it may see fit in the selection of books suitable for the schools in the cities and counties respectively."

You will observe that the fourth clause of the contract above quoted does not delegate to the local school boards referred to the power to select the textbooks for use in their respective territories, but merely authorizes such local school boards to select textbooks "*subject to the approval of the State Board of Education.*"

Therefore, while the contract does provide for the recommendation of textbooks by the local school boards, the selection of such textbooks remains vested in the State Board of Education, since the approval of the State Board of Education is required before the selection of the local board becomes operative.

I am, therefore, of opinion that the fourth clause of the contract referred to does not conflict with fourth subsection of section 132 of the Constitution.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Collection of tuition fees

RICHMOND, VA., September 8, 1924.

HON. HARRIS HART,
*Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.*

MY DEAR MR. HART:

I beg leave to acknowledge receipt of your letter of September 5, which is as follows:

"A very interesting question has just come up relating to public high school tuition.

"Under the general law, these tuitions when collected by principals or clerks of school boards are turned over to the county treasurer. Such money then becomes a part of the local fund upon which he, in accordance with our law and practice in Virginia, collects his commissions. At least one school board desires to know that if the treasurer must have commissions on tuitions paid by children going to the high schools, then cannot the school board require the treasurer to collect these tuitions? Will you be good enough to look into this matter and give me your opinion?"

In reply, I will state that inasmuch as the treasurer collects commissions on these tuitions, in my judgment, I see no reason why the school board cannot require him to collect these tuitions.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Compulsory education—Duties of Commonwealth's attorney

RICHMOND, VA., November 14, 1923.

MR. J. H. CHILES, *Superintendent,
Spotsylvania County Schools,
Fredericksburg, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of November 9, 1923, referred to me for attention by the Attorney General, in which you say, in part:

"Kindly let me know if under the compulsory attendance law which makes the Commonwealth's attorney the prosecutor in all cases brought to his attention for prosecution by the attendance officer whether it is the duty of the attendance officer or the attorney to fix up the warrant and have the party cited to trial."

Section 4, of chapter 381 of the Acts of 1922, makes it the duty of the attorney for the Commonwealth to prosecute all cases arising under this act, which provides for the compulsory education of children between the ages of eight and fourteen years.

This does not require the attorney for the Commonwealth, however, to prepare and issue the warrant. If you will examine section 6 of the above act, you will see that it is made the duty of the division superintendent, or of the attendance officer, to make complaint in the name of the Commonwealth before a justice of the peace and procure the warrant. Therefore, it is the duty of the attendance officer to have the warrant issued. If he makes the proper complaint before a justice of the peace, the justice will prepare the warrant for him.

The only duty imposed by the act on the attorney for the Commonwealth is that it requires him to prosecute the cases arising under the act.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

SCHOOLS—Eligibility to hold office of trustee

RICHMOND, VA., *April 24, 1924.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.*

MY DEAR MR. HART:

Acknowledgment is made of your communication of the 23rd in which you send me a letter dated April 21st received by you from James G. Johnson, Esq., superintendent of public schools, Charlottesville, Virginia, and a copy of your reply to him dated April 23, 1924.

In his letter to you, Superintendent Johnson requests you to advise him whether Dr. Watson, the State geologist, is a State officer, and, as such, ineligible to serve on the school board, of the city of Charlottesville, by reason of the provision contained in section 12 of chapter 423 of the Acts of 1922, prohibiting Federal, State and county officers and the deputies of such officers from being allowed to act as members of the county school board.

I note that you have taken the position that the State geologist is a State officer, and, therefore, ineligible to serve on the school board. I, of course, entertain the highest respect for your opinions, and, therefore, regret to state that I cannot concur in your opinion as to this matter.

Section 828 of the Code of 1919 provides for a State geological survey under the direction of a commission, known as a State Geological Commission, who are unquestionably State officers. Section 829 of the Code of 1919 gives to the

commission general charge of the survey and then provides that the commission "shall appoint as director a geologist of established reputation, who may, with the approval of the commission, appoint such assistants and employees as may be necessary to enable him to carry out successfully and speedily the work of the survey. The director appointed under the provision of this section and the assistants and employees appointed by him, shall receive such compensation as may be determined by the commission."

In my opinion, the State geologist is an employee and not an officer of the State within the meaning of section 12 of chapter 423 of the Acts of 1922. He occupies a similar position to a professor in the University of Virginia. Such professors are not public officers, but employees. *Hartigan v. Board of Regents*, 49 W. Va. 14, 19. Neither is he a deputy of the State Geological Commission, since a deputy is one authorized by an officer to exercise the office or right which the officer possesses, for and in the place of the latter. 1 *Bouvier's Law Dictionary*, Rawle's third revision, page 851, title "deputy."

Therefore, it is my conclusion that the State geologist is an employee of the State Geological Commission and not an officer or the deputy of such commission, and, therefore, he is not ineligible to serve as a member of a school board, either because of the provisions of chapter 423 of the Acts of 1922 or section 828 of the Code of 1919, as amended.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Warrants, endorsement of

RICHMOND, VA., February 14, 1924.

MR. EIVENS TILLER, *Treasurer,*
Clintwood, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of February 12, 1924, with reference to the payment of school warrants by you without the endorsement by the person, or persons, to whom the warrant is made payable.

I think you are clearly right in requiring the endorsement of the person, or persons, to whom the warrant is made payable, as a prerequisite to the payment of the same by you. I have no doubt as to the solvency of the bank in question, but the proper conduct of your office requires you to have all warrants paid by you properly endorsed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Free admission toRICHMOND, VA., *March 20, 1925.*HON. E. A. HICKS,
Evington, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of the 12th, in regard to charges for children attending high school. In reply, I beg to say that the closing paragraph of section 703 of the Code of Virginia provides as follows:

"The district school boards are authorized to charge, under regulations to be prescribed by the State Board of Education, tuition for pupils attending high schools, said tuition in no case to exceed the actual per capita cost for instruction and maintenance in the high school department." (Acts 1920, p. 59).

Your division superintendent has a copy of the regulations of the State Board of Education in regard to this matter, which he would no doubt be glad to show you.

Yours very truly,

JNO. R. SAUNDERS,
*Attorney General.***SCHOOLS—Free admission to**RICHMOND, VA., *September 20, 1924.*HON. R. C. BOWTON,
*Superintendent of Schools,
Alexandria, Virginia.*

MY DEAR MR. BOWTON:

I thank you very much for your prompt reply to my letter of September 18.

In your letter you state that "the law has been here in Alexandria that unless the parent or guardian paid a tithe of fifty cents together with his personal taxes he could not obtain permits for his children to enter school." I cannot imagine upon what authority in law the school board bases this rule.

Section 129 of the Constitution provides that the General Assembly shall establish and maintain an efficient system of public free schools throughout the State. Section 719 of the Code of Virginia, which, of course, is an act of the legislature passed in pursuance to the Constitution, provides that the public free schools shall be open to all persons between the ages of seven and twenty years residing within the school district, etc.

I am, therefore, of the opinion that the school board of any county or city cannot require parents to pay the taxes on their personal property before their children can be admitted to the public free schools.

I note you also state in your letter that at the last meeting of your school board you were instructed to admit the children of Mr. Thomas, the party who made this complaint to me, whether he had paid his personal taxes or not.

I think this is correct, and I hope the town council will see fit in the near future to repeal this ordinance.

With my kindest personal regards, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Funds of

RICHMOND, VA., June 21, 1924.

HON. W. F. SMYTH, *State Accountant,*
Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of the 11th instant, in which you say:

"I am enclosing you a letter from Mr. James M. Lewis, Commonwealth's attorney for Essex county, in which he asks to be relieved from delinquent taxes arising from assessments made for schools.

"I have held that an assessment made for the benefit of schools that the schools should only be credited with the amount realized from such assessment. They insist that the board of supervisors by agreement with the county superintendent of schools may charge the county fund with such delinquents and pass to the credit of the schools the amount of the local assessment instead of the net amount realized.

"In order to keep an equitable account with the various funds, and to charge each fund with operating cost, I have charged back to them the delinquents and insolvents and have not allowed them to be charged to the county fund. As this is very often occurring in county audits, I will thank you to direct me as to the law in the case."

In reply, I would say that, in my judgment, the law requires that the delinquent taxes should be credited to the same funds to which the taxes themselves had been charged. Otherwise, there would be hopeless confusion among the various funds.

I am returning the letter of Hon. James M. Lewis, Commonwealth's attorney of Essex county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Funds of cannot be used for advertising

RICHMOND, VA., June 6, 1924.

HON. HARRIS HART,
Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.

MY DEAR MR. HART:

Acknowledgment is made of your letter of June 4, 1924, with which you enclose me a letter from Mr. Henry C. Ficklen, of Danville, Virginia, to you, and a copy of your reply to Mr. Ficklen.

It appears from this correspondence that Mr. Ficklen states that the school board of the city of Danville has appropriated the sum of \$500.00 to be used for the purpose of furthering an advertising campaign in the interest of the issuance of school bonds in that city.

So far as State funds are concerned, it is my opinion that a school board has no authority in law to spend this sum for such purpose. Constitution of Virginia, section 188.

With reference to funds appropriated to the school board by the city of Danville, I express no opinion, as that matter should be submitted to the attorney for the city of Danville for his opinion.

With my best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOL PROPERTY—Insurance on

RICHMOND, VA., June 5, 1924.

OVERBEY, LACY & WEBB, INC.,
South Boston, Va.

GENTLEMEN:

I have just returned from Wytheville where I have been attending a session of the Supreme Court of Appeals, and found your letter of May 31, in which you say:

"The county school board of Halifax county has under consideration a plan to carry their own insurance on county school property. They are considering dropping all old line written fire insurance on school buildings valued under \$5,000.00 each."

Later you say:

"The county school board of Halifax county wants all the information they can secure on this matter and we would appreciate it if you will write us concerning the law and the practice in other counties of this State."

In compliance with this request, I can only say that there is no law which permits a county school board to carry their own insurance on county school property. From time to time bills have been introduced in the legislature giving them such power, but they have failed of passage.

If the insurance companies are losing money on this class of insurance, as they have stated to you, there seems to be no way to meet the situation except to deal with such property as they would with any other property that might be classified in a similar manner as to risks.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—LeviesRICHMOND, VA., *October 29, 1923.*

MR. T. C. WILLIAMS, *Division Superintendent,*
Chesterfield County Schools,
Chester, Virginia.

MY DEAR MR. WILLIAMS:

Acknowledgment is made of your letter asking whether it is obligatory for the county school board to abolish the old system of levying taxes for school purposes by districts, and adopt a school levy for the entire county designed to take care of all expenses for the schools of the county, the proceeds from which to be placed in a common fund for use by the entire county, and called the "school fund."

Chapter 423 of the Acts of Assembly of 1922, page 737, abolished district school boards, and established a county school board in lieu thereof, but section 4 of this act specifically provides:

"Nothing in this act shall be construed to affect the present plan of levying district as well as county school taxes, nor to affect the obligations of any district for bond issues for school purposes or other debts peculiar to that district."

Section 6 provides that the county school board, with the advice of the division superintendent, shall make an estimate of the amount of money needful during the next scholastic year for the support of the public schools of the county, and section 7 provides that the board shall request the board of supervisors to fix such a school levy as will net the amount of money necessary for the operation of the schools.

I am, therefore, of the opinion that the system hitherto existing in Virginia in reference to the levying of school taxes has not been abrogated, but that, as district school boards have been abolished, it is a matter in the discretion of the school board of the county as to the amount to be segregated from the general county school fund for use only in a specific district.

From this, it would seem that the school board should request a general levy, the proceeds of which would constitute a common fund for the school purposes of the whole county, and in addition, a district levy in order to pay the interest and sinking fund on any school bonds that might hitherto have been issued for a specific district, and also to meet any peculiar needs of the district.

In a word, the new law does not change the system of levy for school purposes, but only changes the method of handling the proceeds of such levy.

I will be very glad to talk with you further about this matter at any time that you will do me the honor of calling.

With kindest personal regards, I am,

Yours very truly,

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

SCHOOLS—Levies

RICHMOND, VA., April 10, 1924.

MR. V. M. GEDDY,
*Commonwealth's Attorney,
Williamsburg, Virginia.*

MY DEAR MR. GEDDY:

I am in receipt of your letter of April 9, to which I will reply at once. In this, you state that the local school board of James City county owes a debt of about \$1,700.00 to one of the local banks, which is evidenced by promissory notes executed by the school board. This debt, you state, was created in establishing and maintaining the schools of the county.

You further state that, at the last meeting of the board of supervisors of James City county, they were requested to levy, in addition to the tax of \$1.00, a tax not exceeding twenty-five cents on the hundred, to provide for the interest and sinking fund of this debt now owed by the school board, but an objection was made on the ground that the additional tax could not be levied except for bonded indebtedness.

I have carefully examined chapter 398 of the Acts of 1920, and there is no doubt in my mind that this objection is not a valid one, as section 2 of this act clearly provides that the twenty-five cents on the one hundred dollars levied by the board can be used to provide for the interest and sinking fund of any loans negotiated or bonds issued for such purposes.

I, therefore, concur in your construction of this statute.

With kindest regards, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Levies

RICHMOND, VA., April 9, 1925.

MR. H. S. DUFFEY,
*Superintendent of Schools,
Winchester, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of recent date and your letter of yesterday, with reference to the levies to be laid by the councils in cities for school purposes.

It is true that chapter 398 of the Acts of 1920, which is section 740a, *et seq.*, of the Virginia Code, 1924, does authorize cities and towns, as well as counties, to raise sums by tax on property for local school purposes. This act, however, did not attempt to repeal section 781 of the Code of 1919, which authorizes the council of each city to levy a tax for school purposes, and then provides in lieu thereof, "the council may, in its discretion, make an appropriation in lieu of such levy."

The act creating county school boards, chapter 423 of the Acts of 1922, authorizes the county school board to request the board of supervisors to lay

a levy sufficient to provide the funds needed during the next scholastic year, and section 7 of the act provides that when the board of supervisors refuse to do this the county school board may appeal to the judge, who may order a special election for the purpose of having the voters determine whether levies shall be increased or not. This statute, however, has no application to a city, that provision being limited to county school boards.

What has been said with reference to this would necessarily apply to your third question, as well as to your first.

In response to your second question, the property referred to in section 781 of the Code of Virginia, 1919, and chapter 398 of the Acts of 1920, refers to tangible property and not to intangibles.

I regret that there has been a delay in answering your letter. It came at a time, however, when I was engaged in the Court of Appeals and, of course, it was impossible to give your inquiry any consideration at that time.

As the subject of your inquiry is primarily one between the school board of your city and its council, I would suggest that the matter is one for settlement between the school board and the council by amicable adjustment, especially in view of the fact that the law does not appear to provide a remedy by which you can make the council increase its appropriation, or lay a levy in excess of fifty cents, as a levy in excess of fifty cents, even under chapter 398 of the Acts of 1920, is entirely discretionary with the taxing body.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Loans—Taxation for repayment of

RICHMOND, VA., *February 20, 1924.*

HON. R. J. NOELL,
Senate Chamber,
Richmond, Virginia.

MY DEAR SENATOR:

Acknowledgment is made of your letter of February 20, 1924, in which you quote from a letter received by you from Hon. Charles Crush, Commonwealth's attorney of Montgomery county, in which he says:

"I wish you would look into the countywide report that the school board can tie the supervisors up to any amount of debt they may feel inclined to and the supervisors must pay by levy on the taxpayers; I cannot find any such law except in regard to loans from the literary fund; but have heard Hagan say that to the board myself and know that it is his present opinion, and want to disabuse his mind of such nonsense. Please ask Mr. Saunders and let me know."

You then ask me to advise you in reference to this matter.

The only law that I know of which requires the board of supervisors to levy a tax for the school board against its wishes is for the payment of a loan from the literary fund, provided for by chapter 34 of the Code of 1919. The law does not require that the school board first get the consent of the board

of supervisors or of the public for such a loan, which is made for the purpose of erecting or enlarging a school building which presumably adds to the value of the public property.

It is true that under section 765 of the Code of 1919 bonds may be issued by the school board for certain purposes, but these bonds cannot be issued until an election has been held for the purpose of approving the issuance of the same, at which election, of course, the bond issue may be rejected.

The school taxes that may be imposed for other purposes are provided for by sections 6 and 7 of chapter 423 of the Acts of 1922. This act requires the school board to present its budget to the board of supervisors, with its request for the school levies. The board of supervisors have the authority to reject the request of the school board, if desired, and the only remedy of the school board is to apply to the judge of the circuit court for an election by the people as to whether the board of supervisors or the school board shall have its way in the matter.

It will, therefore, be seen that the school board has no authority to incur obligations for which the board of supervisors must provide for the payment, except in the case of loans from the literary fund for the erection of, or additions to school buildings.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Pensions

RICHMOND, VA., *March 26, 1924.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of March 22, 1924, in which you request me to advise you if it is legal for the State Board of Education to retain on the pension list, on account of physical disability, a retired female teacher, being a class "A" pensioner who is capable of doing the work as clerk of a city school board.

If you will examine section 787 of the Code of 1919, you will see that class "A" pensioners include teachers who "by reason of physical or mental infirmity or old age are incapable of rendering efficient service *as a teacher.*" (Italics supplied.)

It seems to me that one who, by reason of physical infirmity or old age, is incapable of rendering efficient service as a teacher, nevertheless may be capable of performing the work required of the clerk of a city school board. However, the determination of this question is one of fact. Sections 801-803 of the Code of 1919.

If, in fact, such person is capable of rendering efficient service as a teacher, she should not be retained on the pension list as a class "A" pensioner.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Short-term loansRICHMOND, VA., *April 7, 1924.*

HON. HARRIS HART,
*Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.*

MY DEAR MR. HART:

Acknowledgment is made of your letter of April 2, 1924, in which you enclose a copy of your letter to Superintendent Joseph H. Saunders, of Newport News, Virginia, also dated April 2, 1924, relating to the right of a city to make a short-term loan, as provided by chapter 352 of the Acts of 1918, section 773b, General Laws of Virginia, 1923.

I have read your letter to Mr. Saunders and fully agree with you in the opinion expressed in your letter.

You will observe that this section specifically authorizes the several district or city school boards of the State to make short-term loans. In the case of district school boards, now county school boards, the act expressly provides that the loan shall not exceed the amount of the district levy, now the aggregate of district levies in the case of county school boards, for the year in which the loan is negotiated, but no limit appears to have been fixed with reference to loans made by city school boards.

It is very clear, however, that, such a loan once having been made, no other loan can be made until such temporary loan has been paid, and I do not think that the act contemplates the making of a second loan for the purpose of paying the first loan.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Short-term loansRICHMOND, VA., *February 7, 1924.*

M. D. HALL, ESQ.,
*Division Superintendent of Schools,
Fairfax, Va.*

MY DEAR SIR:

Acknowledgment is made of your letter of February 5, 1924, in which you call my attention to chapter 352 of the Acts of 1918, which gives to district school boards the authority to borrow money in excess of the district levies for the year in which the loan is negotiated. You then call attention to my ruling in which I held that the power vested by this act in district school boards has passed to the county school board under the county unit act of 1922, and then ask whether the county school board cannot borrow for the use of any school district a sum in excess of that authorized by chapter 352 of the Acts of 1918.

I am of the opinion that it cannot. While the power given to the district school board by chapter 352 of the Acts of 1918 passed to the county school board, created by chapter 423 of the Acts of 1922, the power which passed to

the county school board is exactly the same power which was vested in the district school board prior to the abolition of that board and the substitution therefor of the county school board.

Chapter 352 of the Acts of 1918 expressly provides that a loan for the school district shall not exceed the amount of the district levy for the year in which the loan is negotiated. Therefore, the basis for such a loan by the county school board is the amount of the district levy for the district in which the loan is to be used.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Short-term loans

RICHMOND, VA., November 20, 1924.

HON. W. E. NEBLETT,
Commonwealth's Attorney,
Lunenburg, Virginia.

MY DEAR MR. NEBLETT:

Acknowledgment is made of your letter of November 19, 1924, in which you call attention to a previous letter written by you with reference to the power of a county school board to borrow money under section 773b, General Laws of Virginia, 1923, Acts of 1918, page 533. Your first letter came while we were in the midst of preparing the briefs in the Commonwealth's cases pending on the docket of the Court of Appeals, and, in some way, was put aside and overlooked. I regret this very much.

You state that you have reached the conclusion that the powers vested in the district school board by section 773b, General Laws of Virginia, 1923, were by reason of the Acts of 1922, page 738, transferred to the county school board. I think that you have reached the proper construction of the act. It is my opinion that the same powers which were formerly vested in the district board have, by reason of the act of 1922, become vested in the county school board, and that the short-term loans authorized by section 773b, General Laws of Virginia, 1923, may be now made by the county school board upon the same terms and conditions under which such loans were authorized to be made by the district school board.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Short-term loans—Taxation ofRICHMOND, VA., *January 9, 1925.*

HONORABLE JOHN L. HURT,
Altavista, Va.

MY DEAR MR. HURT:

Several days ago Mr. Moore showed me your several letters to him relative to your making a loan to the school board for \$30,000.00. The law authorizing district or city school boards to borrow money on short-time loans is found in the Acts of Assembly 1918, chapter 352, which reads 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."

Bonds held by an individual given for a loan of this nature, in my judgment, are not exempt from taxation by the State of Virginia, but the county, of course, would not tax them. The form of the bond is prescribed by the county school board, and it is not necessary for the boards of supervisors to pass upon them. As you know, the Commonwealth's attorney is the legal adviser of the school boards, and before this loan is made, if I were in your place, I would request him to see that the bonds are properly executed. I am very glad to give you this information.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—TeachersRICHMOND, VA., *June 27, 1925.*

HON. WILLIAM M. SMITH,
Commonwealth's Attorney,
Cumberland, Virginia.

MY DEAR MR. SMITH:

Acknowledgment is made of your letter of June 22, 1925, in which you say:

"I wish you to be so kind as to give me your construction of the following quotation taken from section 12 of the bulletin of State Board of Education: 'The county board shall employ teachers and place them in appropriate schools on recommendation of the division superintendent * * *.' Has the school board, under this authority, power to appoint some one as teacher without recommendation by the division superintendent?"

In my opinion, this regulation of the State Board of Education requires the school board to employ, as teachers, only those persons who have been recom-

mended as such by the division superintendent. I do not think that the division superintendent could compel the school board to employ any particular person, but the appointment must be made from a list of eligibles prepared or furnished by the division superintendent.

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

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Temporary loans

RICHMOND, VA., *December 23, 1924.*

ROBERT T. WINSTON, ESQ.,

*Member Hanover County School Board,
Travelers' Building,
Richmond, Va.*

DEAR SIR:

Acknowledgment is made of your letter of December 12, 1924, in which you say:

"As you, of course, know the State Accountant reported a deficit of about \$44,000 in the schools of Hanover county, as of June 30, 1924, this deficit having been caused by operating the schools upon a scale beyond their revenues for some years past, and is represented by notes held by various banks of the county and by outstanding and unpaid school board warrants. Speaking in terms of magisterial districts, this deficit can, roughly speaking, be said to be as follows: Beaver Dam district \$25,000.00. Henry district \$16,000.00 and Ashland district (exclusive of town of Ashland) \$3,000.00.

"The school board decided to fund this deficit so far as it could be done, by borrowing the money and turning the same over to the treasurer so that the warrants could be honored and so they could pay the notes aforementioned.

"With this end in view we called for bids for the purchase of the school board obligations, to be paid back in equal installments at 1, 2, 3, 4, and 5 years, and interest to be paid semi-annually, and received an offer of 101¼ which the board accepted. We propose to make this loan under the Act of 1918, to be found in Acts of 1918, page 533. As some doubt has been expressed as to the right of the county school board to borrow money under this act, I, as a member of the school board, and also speaking in behalf of the whole board, would be glad if you would give us your opinion as to our right to borrow money under the act in question."

I have examined the provisions of chapter 352 of the Acts of 1918 with care, and it is my opinion that a county school board, by reason of the provisions of chapter 423 of the Acts of 1922, has the power and authority to borrow money for the purposes outlined in your letter, subject, of course, to the conditions and limitations imposed by chapter 352 of the Acts of 1918.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Title to property ofRICHMOND, VA., *December 31, 1924.*

HON. ROBERT WHITEHEAD,
Attorney at Law,
Livingston, Virginia.

MY DEAR MR. WHITEHEAD:

Sometime ago you wrote me with reference to the transfer of title to certain school property in your county. At the time your letter was received I was extremely busy preparing for the approaching session of the Court of Appeals, and was compelled to delay answering it. In some way it became mixed with other papers, and I regret that I did not find it until today. In your letter you say in part:

"Some years ago the Greenfield district school board of this county acquired title to what is now the school property at Schuyler, Virginia. It is now desired to make an exchange of part of that property for lands of another, in other words, an exchange. I would like to know: (1) if the proceedings for the exchange should be in the name of the 'county school board of Nelson county,' or in some other name; (2) if the court approves the exchange, should the deed from the county be executed (a) 'The county school board of Nelson county, by..... (officer),' or (b) 'A. B. C., and D., trustees constituting the county school board of Nelson county.' Otherwise expressed, should the deed be executed just as if it were the deed of any other corporation, or in the names of the trustees as constituting the county school board.

"As stated above, the property to be exchanged was acquired some years ago by the district school board. Have the recent acts of the General Assembly, by operation of law, vested the title to the property in the county school board? Also, should the deed to the school board be (a) to 'the county school board of Nelson county, or (b) to 'A, B, C and D trustees, constituting the county school board of Nelson county?'"

Section 644b of the Virginia Code of 1924 expressly provides that the county school board "is hereby declared to be a body corporate under the style of the county school board of..... county, and may in its corporate capacity sue and be sued, contract and be contracted with, and purchase, lease, take, hold and convey property." (Acts of 1922, page 737).

In *Stewart v. Thornton*, 75 Va., 215, it was held that the county school boards having been construed by act of Assembly a corporation, any suit to recover a fund belonging to the corporation must be brought in the corporate name, and that a suit by persons styling themselves the directors of the county school board of their county could not be maintained. See also *Smith v. School Board*, 1 Va. Law Reg. (N. S.) 674, 675.

It is, therefore, my opinion that the proceedings should be brought in the name of the county school board, and that the deed should be executed by the county school board like the deed of any other corporation.

Responding to the questions asked in the second paragraph of your letter, I call your attention to section 644h of the Code of Virginia, 1924, and to section 648 of the Code of 1919, as amended. This latter section provides in part:

"* * * the lots and school buildings and all the real and personal property acquired for the use of county or district schools, or for the maintenance thereof, shall, by operation of law, be vested in the county school boards of the said counties, respectively, created by an act approved March twenty-fourth, nineteen hundred and twenty-two, unless inconsistent with the grant or devise, upon such terms and conditions for the security of the same as the circuit court of said county shall prescribe.
* * *

Any deed made to a county school board should, therefore, be made to the county school board in its corporate capacity, and not to the trustees.

Trusting that this gives you the desired information, I am, with my best wishes,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Title to real estate

RICHMOND, VA., May 7, 1925.

HONORABLE R. E. L. WATKINS,

*Commonwealth's Attorney for Southampton County,
Franklin, Virginia.*

MY DEAR MR. WATKINS:

Since writing you I have had a conference with the Superintendent of Public Instruction, the Second Auditor, and my assistants in regard to the question which you asked me in your letter of April 8, which was as follows:

"The town of Franklin is a separate school district, but the trustees are also members of the county school board with one vote. The property of Franklin town district is held in the name of the trustees of Franklin town school district. The question which the trustees have asked my opinion is this: 'does the property of Franklin town school district pass by operation of law to the county school board of Southampton county?'"

After fully considering this question, I am constrained to hold that title to the property of Franklin town school district does not pass by operation of law to the county school board of Southampton county. It is my understanding that the title to school property in towns is vested in the councils of the towns which cannot be divested of the title by operation of law.

I note what you say in regard to section 1, Acts 1922, p. 737, in which it is provided:

"But nothing in this act shall be construed as affecting the administration of the public school system in any city or in any town now constituting, or which may hereafter be constituted, a separate school division in pursuance of law."

Evidently, the word "division" in this section was inadvertently used for the word "district," since, so far as I know, no town has ever constituted a separate school division. Viewing the act of 1922 as a whole, I think it is apparent that the property rights of cities and towns in their public schools are not in-

tended to be disturbed. The arguments from convenience in the handling of such school property are very strongly in favor of this view, in which I may add the Superintendent of Public Instruction and the Second Auditor concur.

With best wishes, I am,

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Transfer of title of school property; procedure

RICHMOND, VA., *October 4, 1923.*

MR. C. EDWIN MICHAEL,
Box 925,
Roanoke, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you state that the city school board of Roanoke, has recently been requested by the city council to make a transfer of all school property the title to which is now vested in the city, which request you state is made under the provisions of section 777 of the Code. You then state that the school board desires to know if, after the title is transferred to the city of Roanoke and it should thereafter be deemed advisable to sell or exchange school property, whether or not that section of the law providing that application to the court must be made through the school board, is still operative; or whether the city council could sell or exchange school property without such action on the part of the school board in making application to the court having jurisdiction.

I am of the opinion that the transfer of the title of the school property to the city, does not relieve the school board and the city from complying with section 649 of the Code of 1919.

The city merely holds this property as trustee, for the benefit of the school board, and the school board is, in fact, the equitable owner of the same. In order to make any sale or exchange of this property, it will be necessary to proceed in the manner described in section 649.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Trustees

RICHMOND, VA., *June 22, 1925.*

HON. THOMAS H. HOWERTON,
Commonwealth's Attorney,
Waverly, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 20, 1925, in which you refer to section 631 of the Code of 1919 and say:

"The point that bothers me is, when can a school trustee electoral board appoint a trustee for the county."

This section, so far as is applicable to the question here under consideration, provides that:

"The school trustees in office when this Code takes effect shall continue in office until their respective terms expire, and thirty days before the first day of September of each year, the school trustee electoral board shall appoint one trustee for each school district to fill the vacancy then occurring. * * *"

This section of the Code, which was continued in force by virtue of section 1 of chapter 423 of the Acts of 1922, creating county school boards, was section 1454 of the Code of 1904. As this section stood in that Code, it was provided that the electoral boards should choose the successors to the school trustees of the several districts "not more than thirty days nor less than ten days before the expiration of their regular terms." Such a change in the law must have been with a purpose, and, in my opinion, the meaning of the section as it now stands is, that the appointment must be made at least and not exactly thirty days before the first day of September. I, therefore, think that you have properly construed this section.

With my best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Trustees

RICHMOND, VA., *August 27, 1924.*

HON. W. E. DUKE,
Charlottesville, Va.

MY DEAR MR. DUKE:

Yours of the 26th received.

In this you state that, due to the absence of one of the members of the school trustee electoral board, no meeting of the board has been held to elect the two members of the county school board, whose terms expire on the first day of September.

You then desire to be advised whether, under these existing circumstances, the school trustee electoral board can now elect these two members, or must they be appointed by the judge of the circuit court.

In my opinion, inasmuch as section 631 of the Code requires that the school trustee electoral board shall elect thirty days before the first of September, and having failed to do so, these two members must now be named by the judge of the court.

However, I would suggest, if it is desirable, and your school trustee electoral board should desire so to do, they could meet and recommend to the court the two members the board desires to be appointed.

With kindest personal regards and best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Trustees of

RICHMOND, VA., *September 17, 1924.*

J. TOOMER GARROW, ESQ.,
Chairman of School Board,
Hopewell, Virginia.

MY DEAR MR. GARROW:

With reference to your letter of September 3, 1924, and your letter written a few days before that, and my reply of September 5, 1924, I have just discovered the provisions of the last sentence of section 2933 of the Code of 1919, as amended. Since reading this section, I am of the opinion that the conclusion stated in my letter to you of September 5, 1924, is erroneous, and I take this my first opportunity of correcting the same.

It appears from section 780 of the Code of Virginia, 1919, as amended, that the school trustees in a city are elected or appointed by the council of such city. In my opinion, there can be no question about the fact that a school trustee is an officer within the meaning of section 2933 of the Code of 1919, as amended.

Section 780 of the Code of 1919, as amended, refers to "the office of trustee," and the Court of Appeals, in *Childrey v. Rady, et al.*, 77 Va. 518 (1883), held that school trustees are officers. I, therefore, think that there can be no question about the fact that section 2933 of the Code of 1919, as amended, applies to city school trustees.

This section provides that, in cities where either the plan of government as set out in section 2938 and described as "modified commission plan," or the plan set out in section 2942 and described as "city manager plan," is adopted, the terms of all the members of the old council of such cities and the term of the mayor shall cease and be determined on the first day of September following such elections.

This section then provides:

"* * * And the term of office of all officers and employees theretofore appointed or elected by the old council shall in like manner cease and determine on said first day of September."

The members of the city school board being officers that are appointed or elected by the city council, therefore, come within this provision of section 2933 of the Code of 1919, as amended, and it is my opinion that the terms of office of all the members of the city school board terminated on the first day of September, 1924, the "city manager plan" of government, as provided for by section 2942 of the Code of 1919, as amended, having been adopted by that city in May, 1924.

I am familiar with the provisions of section 2945 of the Code of 1919, as amended, which prohibits the council of a city which has adopted the "city manager plan" from abolishing the school board. This section, however, has no application to the question hereunder consideration, as the action of the council in electing or appointing the members of the school board to fill the vacancies in that board, created by the provisions of section 2933 of the Code of 1919, as amended, does not constitute an abolishment of the school board.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Trustees; eligibility of

RICHMOND, VA., April 21, 1925.

C. B. GREEN, ESQUIRE,
*Superintendent of Schools,
Boynton, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of April 16, 1925, in which you request me to advise you whether a referee in bankruptcy is eligible to serve as a member of the county school board.

He is not. Section 12, chapter 423, Acts of 1922.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Trustees of can not contract with school board

RICHMOND, VA., March 7, 1924.

MR. POSIE J. HUNDLEY,
*Attorney at Law,
Chatham, Virginia.*

MY DEAR HUNDLEY:

Acknowledgment is made of your letter of March 6, 1924, in which you say:

"Please read sections 682 and 683, Code of Virginia, 1919, and let me know if in your opinion a school trustee can lawfully insure the school property in his district. In other words can a school trustee, who is also an insurance agent, insure the school property in his district."

It is my opinion that sections 682 and 683 of the Code of 1919 prohibits an insurance agent, who is also a school trustee, from insuring school property not only in his own district, but, since the law has been changed creating county school boards, I think that a member of the county school board is prohibited from insuring any school property in his county.

This opinion accords with similar opinions given by other Attorneys General.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Trustees; interest in 'contracts with school board

RICHMOND, VA., April 12, 1924.

HON. FRANK T. WEST,

*Superintendent of Schools,**Louisa, Virginia.*

MY DEAR MR. WEST:

Yours of April 8, in which you enclose a letter from the Jarman Book Company, of Charlottesville, Virginia, duly received.

You state in your letter that Mr. D. E. Bumpass, who is chairman of the Louisa county school board, is engaged in the merchandise business at Mineral, Louisa county. You then ask to be advised whether he, as chairman of the board, can be designated as a distributing agent for the Jarman Book Company.

Presuming, of course, that Mr. Bumpass would necessarily have to obtain a small profit for the handling of these books, he cannot, under the law, do so, as the statute prohibits any member of the school board from becoming interested, directly or indirectly, in any contract made by the school board.

With my kindest personal regards, and best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Warrants

RICHMOND, VA., May 11, 1925.

MR. CLARENCE JENNINGS,

*Superintendent of Schools,**Toano, Virginia.*

MY DEAR SIR:

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

"I am writing you for an opinion in regard to handling school finances. In your opinion, is it permissible for school boards to check out money from the school funds without putting on the warrant the fund from which this amount is paid?"

"The situation is this: We keep, of course, a separate account of receipts as county, State, and other, but, when we disburse we find it much more convenient in Charles City and James City counties not to have to say which fund the amount is to be paid from but simply from school funds for session 1924-25, while in New Kent county we keep the same account of receipts, State, other, and county, and on the warrants when we disburse, we stamp the fund from which the bill is to be paid."

On receipt of your letter, I took the matter up with Hon. Harris Hart, Superintendent of Public Instruction, and he and I are both of the opinion that the school boards in checking out money for school funds should indicate on the warrant the fund from which the amount is to be paid.

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

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Who may attend—Negroes

RICHMOND, VA., February 16, 1925.

HON. ROBT. M. NEWTON,
Division Superintendent of Schools,
Hampton, Va.

DEAR MR. NEWTON:

Acknowledgment is made of your letter of February 12, 1925, in which you sent me copy of letter written you by the Registrar of Vital Statistics, with reference to the new racial integrity law. You say in your letter to me:

"After reading this letter, please advise me just what I shall do about this matter."

Section 719 of the Code of Virginia, 1919, as amended by Acts of 1920, page 58, provides:

"White and colored persons shall not be taught in the same school, but shall be taught in separate schools under the same general regulations as to management, usefulness and efficiency."

You will find a similar provision in section 9, page 8, of the Virginia school law. I know of no other law which would seem to bear on the question.

It is well settled that a colored person, within the meaning of statutes using this phrase in the Southern States, is a negro or one classified as such. Examination of the racial integrity law, chapter 371 of the Acts of 1924, fails to show that an Indian or an Indian mixed with negro blood has been declared to be a negro by this act. Therefore, while neither an Indian, a Chinese, nor people belonging to races other than the white race, are white, within the meaning of chapter 371, they are, nevertheless, not negroes or colored within the meaning of our school laws.

In the case of a Chinaman who applied for admission as a pupil in the schools of Newport News, I expressed the opinion that, as a Chinaman was neither a white nor a colored person, the matter should be settled by the local school board.

As an Indian is neither white nor colored unless he has one-sixteenth or more of negro blood, I would likewise suggest that the matter is one within the discretion of the local school authorities, and should be settled as such.

If you will examine section 67 of the Code of Virginia, you will see that it is there provided:

"Every person having one-sixteenth or more of negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more of Indian blood shall be deemed an Indian."

There is nothing in the racial integrity law which repeals this section of the Code, and certainly no justification for classifying an Indian, as defined by the Code, as a negro.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SEARCH AND SEIZURE—Of automobiles

RICHMOND, VA., July 3, 1924.

HON. R. T. HUBARD,
Commonwealth's Attorney,
Salem, Va.

MY DEAR SIR:

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

"Chapter 345 of Acts 1920, section 4, after certain provisions in regard to seizure and search without warrant, uses the following language: 'Provided, however, any officer empowered to enforce the game laws and the laws with reference to intoxicating liquors may, without a search warrant, enter, for the 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; but nothing in this proviso contained shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat or of any baggage, bag, trunk, box or other closed container without a search warrant.'

"*Quivers v. Commonwealth*, 135 Va., page 671, quoting a part from page 674, 'Section 4 of chapter 345 of the Acts of 1920 (Acts 1920, page 517), expressly provides that any officer empowered to enforce the laws with reference to intoxicating liquors may enter any vehicle of travel without a search warrant for the purpose of police inspection.'

"I am asking you, first, is the above referred to provision of section 4, chapter 345, Acts 1920, still in force? Second, is the ruling in *Quivers v. Commonwealth*, above referred to, still the law of Virginia? and, third, may the sheriff or other officer charged with the enforcement of the prohibition law stop an automobile on the highway of this county and enter the same for police inspection without first having information or reasonable grounds to believe that that particular automobile was actually then engaged in violating the prohibition law?"

In reply, I beg to say that, in my judgment, chapter 345 of the Acts of 1920 has been, in part, repealed by chapter 345 of the Acts of 1922 and by chapter 407 of the Acts of 1924, the present prohibition law of Virginia, so far as the authority and enforcement of officers to inspect, enter and search automobiles.

I construe the case of *Quivers v. Commonwealth*, 135 Va. 671, as authority for any officer empowered to enforce the laws in reference to intoxicating liquors to enter any vehicle of travel without a search warrant for the purpose of police inspection. I hold that an officer should not enter and search an automobile except "where there is reason to believe that the law relating to ardent spirits is being violated." This is a matter for the sound discretion of the officer. I believe, however, that when an officer has information that a car containing intoxicating liquor is likely to travel a certain road at a certain time, he would be entirely within his rights to stop cars traveling that road at that time, in order to identify the car transporting the liquor. If cars driven by innocent persons are stopped for this purpose in a courteous manner, no good citizen should object, since, as you say, if cars can not be stopped for identification, it would be impossible for the transportation of liquor in automobiles at night to be broken up. Since the

greatest menace to the safety of persons traveling our highways in automobiles is the use of such highways by drunken drivers, travelers should gladly co-operate in preventing the transportation of intoxicating liquor.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATE EMPLOYEES—Employment by more than one department

RICHMOND, VA., May 13, 1924.

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

DEAR DR. WILLIAMS:

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

"I am requested by a committee of the State Board of Health to find out from you whether or not it would be lawful for an employee or official of the State Board of Health to receive a supplement to his salary from another department of the State government.

"To be specific, the medical director of Blue Ridge Sanatorium has been asked to be instructor in tuberculosis in the medical department of the University of Virginia. Would it be lawful for him, in addition to the salary that he receives from the State Board of Health as medical director of the Blue Ridge Sanatorium, to receive also compensation from the University of Virginia for services rendered as instructor of tuberculosis in its medical department?"

I am not aware of any statute or constitutional provision that would prevent the medical director of Blue Ridge Sanatorium from being an instructor in tuberculosis in the medical department of the University of Virginia, and receiving a salary as such instructor in addition to the salary that he receives from the State Board of Health as medical director of Blue Ridge Sanatorium, if, in the judgment of the State Board of Health, his employment as such instructor would not interfere with his duties as medical director.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STERILIZATION

RICHMOND, VA., June 16, 1924.

ARTHUR W. JAMES, ESQ., *State Agent,
State Board of Public Welfare,
Library Building, Richmond, Va.*

DEAR MR. JAMES:

Acknowledgment is made of your letter of the 14th, enclosing copy of letter of Dr. A. S. Priddy, Superintendent of the State Colony of Epileptics and Feeble-minded, addressed to Rev. J. T. Mastin, Commissioner of the State Board of Public Welfare, with request that I give you a decision in regard to the question he asks.

Dr. Priddy's letter, in part, is as follows:

"The sterilization law will go into effect on the 17th of June, and as a committee or guardian for Daphne Simpson will have to be appointed for this specific purpose as provided for in the law, I am writing to know if she does not stand on your register as committed to the State Board of Public Welfare, and if the function of the board is not that of a guardian under the law."

In your letter you say:

"In this case, the child is a ward of this board. Dr. Priddy wants to know if, because of that, we can name such guardian."

In reply to this question, I would say that the sterilization law (chapter 394, Acts 1924, page 569) does not provide for the appointment of a guardian by the State Board of Public Welfare. However, section 1910 of the Code, as amended by chapter 481 of the Acts of 1922, page 819, provides that:

"All delinquent children intended to be placed in a State institution shall be committed to the State Board of Public Welfare, it being the purpose of this chapter to make said board the sole agency for the guardianship of delinquent children committed to the State."

Therefore, I hold that the board itself is the guardian of every child committed to the board, and in a proceeding under the sterilization law, the commissioner of the board should be served with notice in accordance with section 2 of the law.

The law also provides that:

"If the said inmate be an infant having a living parent or parents, whose names and addresses are known to the State superintendent, they or either of them, as the case may be, shall be served likewise with a copy of the said petition and notice."

I construe this requirement to be in addition to that of the service of notice upon the guardian.

It is my opinion, furthermore, that all of the provisions of this act should be followed strictly.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—Constitutionality of

RICHMOND, VA., February 4, 1924.

SENATOR E. B. WHITE,

Senate Chamber, Richmond, Va.

MY DEAR SENATOR:

Acknowledgment is made of your letter of February 1, 1924, with which you send me a copy of a bill entitled "A bill to authorize the boards of supervisors of Rappahannock, Fauquier and Loudoun counties to make appropriations for the expenses of the judge of the Twenty-sixth Judicial Circuit."

This bill provides that the boards of supervisors of these counties shall be authorized to make the following annual allowance, respectively, for the expenses of the judge: Rappahannock county, not exceeding \$200; Fauquier county, not exceeding \$400; Loudoun county, not exceeding \$400. You then ask me to advise you as to the constitutionality of this bill.

In this connection, I beg leave to call your attention to chapter 65 of the Acts of Assembly, 1919 (extra session), page 101, which provides that the Auditor of Public Accounts be, and he is hereby, authorized and directed to pay the actual traveling expenses and hotel bills of all the circuit judges while holding courts in their circuits, including the courts of the counties in which the judges reside, provided the judges do not reside at the county seat of the county in which they reside, etc.

You will see from the language of this statute that the Auditor of Public Accounts is authorized by law to pay the expenses of the judges, and which the Auditor has been doing since an act of the legislature passed at its regular session in 1918. Formerly, the law provided that the judges should receive mileage, but that was repealed, as it did not cover the expenses, and the law above mentioned was enacted.

I would further call your attention to paragraph 10 of section 63 of the Constitution of Virginia which prohibits the legislature from enacting a special law granting from the treasury of the State, or granting or authorizing to be granted from the treasury, or any political subdivision thereof, any extra compensation to any judge, officer, servant, agent or contractor by special law.

As the expenses of the circuit judges are provided for already by a general law for the counties in the circuit of a judge to undertake to make an allowance for his expenses in addition, would be equivalent to an increase in his compensation or salary, and, therefore, would be unconstitutional.

With kindest regards,

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—Constitutionality of—Code, section 3171

RICHMOND, VA., February 2, 1925.

HON. JOSEPH A. BILLINGSLEY,
Commonwealth's Attorney,
King George C. H., Va.

MY DEAR MR. BILLINGSLEY:

Acknowledgment is made of your letter of January 27, 1925, in which you refer to section 3171 of the Code of Virginia, 1919, as amended by the Acts of 1924.

You then ask the following questions with reference to this act:

"1. Is this delegation of authority to the commission to pass a law making a certain thing a crime, within the power of the legislature?"

"2. Is this section, as amended, in proper form, or does it embrace two subjects, thereby becoming unconstitutional?"

"3. Does the caption of the section properly set out the purpose of the act?"

"4. Has the act been properly published so as to become a law, since it has not been published in any of the commission's pamphlets, so far as their resolution is concerned?"

In my opinion, the delegation of authority conferred on the commission by the second section of section 3171 of the Code of 1919, as amended, is a valid delegation of power conferred by the General Assembly. *Stuart's Executors v. The Board of Sinking Fund Commissioners*, 123 Va. 224 (1918).

In response to your second and third questions, I am of the opinion that this section of the Code, as amended, is valid. If you will examine the cases of *Bertram v. Commonwealth*, 108 Va. 902 (1908), and *Kelly v. Gwathkin and Others*, 108 Va. 6 (1908), you will see that section 52 of the Constitution has no application to amendments of Code sections.

Certainly I do not think that it can be said that this section of the Code, as amended, embraces more than one object, and, as I have said in my opinion, the act is constitutional. I am not advised as to what publication has been made of the resolution of the Commission of Fisheries, and, therefore, am not in a position to advise you as to your fourth question. I will say, however, that I understand from your letter this resolution was relied on as the basis for prosecuting the fishermen in your county when they were tried last week. I do not see how it could be successfully argued, after the matter has thus become public, that there was not sufficient notice of this resolution, at least as to any offense committed after the trial of the cases referred to.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**STATUTES—Does chapter 327 of the Acts of 1920 repeal
chapter 233 of Acts of 1918?**

RICHMON, VA., February 11, 1924.

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

MY DEAR SIR:

Acknowledgment is made of your letter of February 11, 1924, in which you call my attention to chapter 327 of the Acts of 1920, and chapter 233 of the Acts of 1918, and ask me to advise you whether the latter act has been repealed by the former act.

I have examined both of these statutes with care, and you will observe that it is stated in the title of chapter 327 of the Acts of 1920 that one of the purposes of this act is to repeal the act of March 15, 1918, which is chapter 233 of the Acts for that year. From a comparison and careful analysis of the two acts, it appears that chapter 327 of the Acts of 1920 covers the whole subject of chapter 233 of the Acts of 1918, and embraces new provisions and plainly shows that it was intended, not only as a substitute for chapter 233 of the Acts of 1918, but to cover the whole subject to which this act relates, and to prescribe the only rules in respect thereto.

It is, therefore, my opinion that chapter 233 of the Acts of 1918 has been repealed by chapter 327 of the Acts of 1920, although a clause expressly repealing the former act was omitted from the latter act. (36 Cyc. 1077-78, Note 43.)

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATUTES—Repeals by implication

RICHMOND, VA., July 3, 1924.

G. H. BRANAMAN, ESQ.,
Town Attorney,
Waynesboro, Va.

MY DEAR MR. BRANAMAN:

Acknowledgment is made of your letter of June 24th, to which answer has been delayed by reason of my absence in New York. In your letter you say:

"The charter of the town of Waynesboro was amended and re-enacted by the 1924 legislature, and has a provision (section 111, found on page 123, session Acts, 1924) providing that a person may hold an office in the town and one in the county of Augusta, so long as they are similar and the person is a resident of the town, which provision would repeal, so far as we are locally concerned, section 2702 of the Code, as amended by session Acts, 1920, page 281.

"I discovered today in examining the Acts of the General Assembly of 1924 session, page 554, section 2702, above mentioned, has again been amended and re-enacted, and, although the town charter provision became a law on the 6th of March last, the amendment above mentioned became a law subsequently thereto on June 16th, and I am apprehensive that the general law has, by implication, probably repealed the charter provision, so that now it would be doubtful if J. Frank Harper, who is now, and has been for a number of years past, a member of the board of supervisors from South River district of Augusta county, and as such is chairman of that body, can hold this office, and at the same time hold the office of mayor of the town of Waynesboro."

In reply, I beg to say that, in my judgment, the amendment to section 2702, Acts 1920, page 281, does not repeal by implication section 111 of the Acts of 1924, page 123, amending the charter of the town of Waynesboro. The language in the amended section relating to city and town officers is the same as that in previous enactments of this section. Moreover, a repeal by implication would occur only in a case of conflict, and there is no conflict between the general law and the local act, unless such conflict specifically appears. The only question at issue is whether the legislature has power to pass a local law at variance with the general law in relation to the subject treated in section 111 of the charter. I hold that it may do so in accordance with provisions of section 117 of the Constitution. As to matters set forth in section 63 of the Constitution, the General Assembly can not pass local laws, even in the form of charters.

You also ask whether the council, when it organizes in September, may fill vacancies under section 42 of the charter. After a careful consideration of that

section of the charter and of the general law relating to cities and towns, I am clearly of the opinion that the council has the power to fill vacancies.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURERS—Compensation of

RICHMOND, VA., *June 18, 1925.*

HON. W. F. SMYTH,
State Accountant,
Richmond, Virginia.

MY DEAR MR. SMYTH:

Acknowledgment is made of your letter of June 17, 1925, in which you ask me to advise you whether a county treasurer succeeding himself in office is entitled to the commissions on funds in his hands at the time his term expires.

You refer to the last paragraph of section 2431 of the Code of 1919 as amended by the Acts of 1922, found on page 759 thereof. This paragraph of section 2431 of the Code as amended, so far as is applicable to the question here involved, reads as follows:

"Compensation of incoming treasurer for receiving and disbursing funds turned over to him by outgoing treasurer.—For receiving and disbursing the money turned over to him by an outgoing treasurer, the treasurer shall receive as compensation for his services two per centum of the amount of such money turned over to him, and for collecting the tax tickets turned over to him and disbursing the proceeds thereof, he shall receive three and one-half per centum, * * *."

This section applies only in the case where a new treasurer qualifies, and not where the same treasurer succeeds himself in office. I do not see how any question could be raised about this matter, as this is so plainly the meaning of the statute that no other construction could be placed on it.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURERS—Compensation of

RICHMOND, VA., *December 10, 1923.*

MR. S. R. CURTIS,
Treasurer Warwick County,
Lee Hall, Va.

MY DEAR MR. CURTIS:

Acknowledgment is made of your letter in which you ask whether the board of supervisors of Warwick county can allow you, in addition to the compensation allowed by section 2431 of the Code of Virginia, as amended by the Acts of 1922, page 737, any compensation for disbursing all funds remaining in your hands to be disbursed on the first day of July of each year.

Section 613 of the Code of 1887 provided for the compensation of treasurers for receiving and turning over revenues of the State, and section 614 of the same Code provided that the county treasurer should be allowed for his services, in receiving and disbursing the county and school levies, including all moneys collected by the order of the county authorities for any purpose, the same rate of compensation allowed by section 613 for receiving and paying over the revenue of the State.

By an act of the Assembly, approved March 5, 1900 (Acts of Assembly, 1900, page 678), the board of supervisors of Warwick county were authorized, in their discretion, to allow the county treasurer, in addition to the compensation provided for by section 613 of the Code of Virginia, 1887, to receive a commission for disbursing all funds remaining in his hands to be disbursed on the first day of July of each year, provided that, "upon all sums so disbursed not exceeding five thousand dollars, he shall receive two per centum, and upon all sums exceeding five thousand dollars he shall receive one per centum for disbursing the same."

Section 613 of the Code of 1887 was referred to here because, while this section pertains only to the compensation for collecting the State revenues, and section 614 provides for the compensation for collecting county revenues, at the same time, section 614 refers to section 613 as fixing the basis upon which county treasurers shall be allowed compensation for collecting county revenues.

It is manifest, therefore, that the act approved March 5, 1900, above referred to, is as if it read that the supervisors of Warwick county may allow, in addition to the compensation provided for by sections 613 and 614 of the Code of 1887, the compensation provided for by the act of March 5, 1900.

In the Code of 1919, sections 2430 and 2431 take the place of sections 613 and 614 of the Code of 1887, but nothing therein precludes a board of supervisors from allowing extra compensation, not provided for in section 2431, to a county treasurer.

Section 6567 of the Code of 1919 provides that all acts, or parts of acts, of a general nature, in force at the time of the adoption of that Code, should be repealed from and after the 13th day of January, 1920. I find nothing in that Code, nor in any subsequent legislation, which repeals the special act, with reference to the treasurer of Warwick county, under consideration.

Thus, the act of March 5, 1900, still gives authority to the board of supervisors of Warwick county to compensate the county treasurer of that county in addition to the compensation provided by section 2431.

I am, therefore, of the opinion that the board of supervisors of your county, in its discretion, may, by virtue of the act of March 5, 1900, allow to you, as county treasurer of your county, in addition to the compensation provided for by section 2431 of the Code of 1919, as amended, a commission for disbursing all funds remaining in your hands to be disbursed on the first day of July of each year. If allowed, then, on all sums so disbursed not exceeding five thousand dollars, you should receive two per cent, and, on all sums exceeding five thousand dollars, you should receive one per cent for disbursing the same.

Yours truly,

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

TREASURERS—Insurers of public funds

RICHMOND, VA., March 16, 1925.

MR. WILLIAM J. MARTIN, *Superintendent,*
Public Official Division Bonding Department,
Commercial Casualty Insurance Company,
Newark, New Jersey.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, with reference to the liability of treasurers and other public officers where they have deposited public funds in depositories which have failed.

In response thereto, I call your attention to the case of *Mecklenburg v. Beales*, 111 Va. 691, 697 (1911). The Special Court of Appeals of this State, about two weeks ago, in the case of *Camp, et al., v. Birchett*, reaffirmed the doctrine of *Mecklenburg v. Beales*, *supra*, and held the treasurer to be an insurer, although he had deposited the money in the depository at the direction of the city council.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURERS—Sale of delinquent lands

RICHMOND, VA., March 12, 1924.

MR. FRANK M. GARRETT,
Vienna, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of February 29, 1924, in which you ask me to advise you whether the treasurer, in selling delinquent lands, is authorized to promise a certain lot or tract of delinquent land to a friend, prior to the day of sale, so that on the day of sale such tract of land is sold, subject to the condition that the purchaser shall have the same in the event that the person to whom it has been promised does not want the land.

I have examined sections 2461-2468 of the Code of 1919, and it is my opinion that the treasurer is required to sell delinquent lands at public auction on the first Monday of January between the hours specified in the Code, in front of the courthouse, and that it is illegal for the treasurer to sell such lands privately.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURERS—Settlement of accountsRICHMOND, VA., *September 20, 1924.*

MR. CHARLES E. STUART,
Stratford, Virginia.

MY DEAR MR. STUART:

I beg leave to acknowledge receipt of your letter of September 17th, in which you submit the following for an opinion:

"I would particularly like to know if it is sufficient for the treasurer to show receipts and disbursements and the balance due the county, or should he show receipts and disbursements with evidence of actual cash balance on hand. The point I am trying to make clear is, should the board concern itself whether the balance shown is represented by uncollected tax tickets or cash on hand."

In reply, I will state that the treasurer, in making his settlement before the board of supervisors, should show his receipts and disbursements, and also the amount of actual cash balance on hand. This balance should also show whether it consists of uncollected tax tickets or actual cash in hand. If I mistake not, it is the usual custom with the board of supervisors for the treasurer to show a statement from the bank in which he deposits his money, showing his actual balance as treasurer at the time of settlement.

With best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SUNDAY—Drug storesRICHMOND, VA., *June 30, 1925.*

MR. D. E. WILSON,
Chairman of Town Council,
Damascus, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of June 28, 1925, with reference to the keeping open of a drug store on Sunday.

This matter is governed by section 4570 of the Code of 1919, prohibiting working or transacting business on Sunday. Exceptions are made for works of necessity or charity. I would think that the selling of drugs and the filling of prescriptions was a work of necessity or charity. In this connection, see the case of *Pirkey Brothers v. Commonwealth*, 134 Va. 715, 114 S. E. 764, and the case of *Lakeside Inn Corporation v. Commonwealth*, 134 Va. 696, 114 S. E. 769. It has been held by our court, however, that the sale of soft drinks on Sunday violates a town ordinance almost in the same words as the Virginia statute. *Ellis v. Covington*, 122 Va. 821, 94 S. E. 154.

In response to your second question, I call your attention to section 1682 of the Code of Virginia, 1919, as amended by the Acts of 1924, page 702. I am also referring your letter to the secretary of the State Board of Pharmacy, with the request that he write you further as to the last paragraph of your letter, as this is a matter which primarily concerns that board.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SUNDAY—Sale of gasoline on

RICHMOND, VA., *April 6, 1925.*

HON. EDWARD MEEKS,
Commonwealth's Attorney,
Amherst, Va.

MY DEAR MR. MEEKS:

Acknowledgment is made of your letter of April 4, 1925, in which you request me to advise you whether it is a violation of the Sunday law for the proprietor of a gasoline station, or his servants, to sell gasoline to motorists on Sunday.

So far as I have been able to find, there is no reported case involving this precise question. At least, I can find no such case in either the American Digest System or the encyclopedias. It is a fact that gasoline is sold on Sunday all over the State without question. I understand that, when the question first arose in the city of Richmond, a test case was tried in the police court, and the police justice held the sale of gasoline to be a work of necessity.

However, I call your attention to the cases of *Lakeside Inn Corporation v. Commonwealth*, 134 Va. 696, and *Pirkey Brothers v. Commonwealth*, 134 Va. 713. You will see from these cases that the Court of Appeals has practically laid down the rule that the test, as to whether or not a work is a work of necessity, is a question for the jury on the proper instructions from the court.

For your further information, I call your attention to the case of *Ellis v. The Town of Covington*, 122 Va. 821, relating to the sale of soft drinks on Sunday.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SUNDAY—Sale of soft drinks on

RICHMOND, VA., *July 7, 1924.*

HON. E. PEYTON TURNER,
Commonwealth's Attorney,
Emporia, Va.

MY DEAR MR. TURNER:

Acknowledgment is made of your letter of July 5, 1924, in which you call attention to section 4570 of the Code of 1919, and then say:

"Will you give me your opinion on the question following:

"A party in Greenville county conducts a public resort for the purpose of swimming and bathing, etc., and has been selling bottled Coca-Cola on Sunday. Is this a violation of the above section? Does the law make any distinction between amusement places, and other places of business, so far as the right to sell Coca-Cola on Sunday is concerned?"

In response thereto, I call your attention to the case of *Ellis v. The Town of Covington*, 122 Va., 821 (1917), in which, under an ordinance similar to section 4570 of the Code of 1919, the Court of Appeals held that the sale of soft drinks, including Coca-Cola, on Sunday from a soda fountain by the holder of a restaurant license was a plain violation of the ordinance. I also call your attention to the case of *Lakeside Inn Corporation v. Commonwealth*, 134 Va., 696, and *Pirkey Brothers v. Commonwealth*, 134 Va. 713.

To be frank with you, I can see no difference in principle between the sale of gasoline and oil on Sunday and the sale of soft drinks. One is no more of a necessity than the other, and possibly under the decision of the Court of Appeals in *Lakeside Inn Corporation v. Commonwealth*, the question may now be one of fact for the jury rather than a question of law.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—Army officers

RICHMOND, VA., June 18, 1925.

CAPT. EARLE A. JOHNSON,
Blackstone Military Academy,
Blackstone, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you ask me whether an officer or enlisted man of the regular army on duty at a civilian institution is subject to a tax on household goods, capitation tax, or tax on real estate owned by him.

The property of officers and enlisted men stationed on government reservations where the property is located on such government reservation is not subject to tax in this State. Where, however, the officer or enlisted man owns property which is located off of the reservation, this, like other tangible property, is subject to tax in this State. The same is true of real estate owned in Virginia by any person whether he be a citizen of the State or not. In the case of capitation tax, it is provided by section 5 of the tax bill that every male person classified under schedule A thereof shall be taxed at the rate of \$1.50 for the aid of the public free schools. The classification referred to is found in section 4 of the tax bill which classifies for taxation all male inhabitants of the State above the age of twenty-one years, except those pensioned by the State for military services.

You will see, therefore, that the tax is not based upon citizenship or the business that brings one to this State, but upon the question of whether or not he

is an inhabitant of the State. Therefore, if you are living in Virginia off of a government reservation, you would be subject to the Virginia capitation tax.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Assessment

RICHMOND, VA., June 16, 1924.

HON. S. L. WALTON,
Commonwealth's Attorney,
Luray, Virginia.

MY DEAR MR. WALTON:

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

"The Deford Company, a nonresident corporation, with its office located within the corporate limits of the town of Luray, Page county, Va., is assessed on its intangible personal property as capital in business, some of which intangible personal property is located within the corporate limits of said town, and some of which is located without the limits of said town, but all within Luray magisterial district.

"Last year, inadvertently, this property was assessed both by the town of Luray and also by Page county, and the said company paid the taxes, which amounted to the sum of \$1,816.56 both into the town treasury and also to the treasurer of Page county.

"Now said company is asking for a refund of the sum of \$1,816.56 from the county treasurer, claiming that the situs of this intangible personal property is the office of the company, which is located in Luray, and that a warrant should be issued on the county treasurer payable to its order to reimburse it."

I have examined sections 8 and 9 of the tax law, and also section 2209 of the Code. I have, furthermore, discussed this case with the Auditor of Public Accounts and the attorney for the State Tax Board. All of us are agreed that the situation you describe is unusual and the answer to your question is not free from difficulty.

I am clearly of the opinion, however, that the tangible property which, for purpose of taxation, is considered intangible property and assessed as capital (see class 2, detailed list E, capital, on page 3 of enclosed interrogatory) should not be twice assessed. Manifestly, the tax law does not contemplate such a double assessment, which would be obviously unjust. To avoid such double assessment and yet not violate section 8 of the tax law, I hold it will be necessary to segregate to the town of Luray, for purpose of taxation, such property as is physically located within the town, and to Luray magisterial district such of the property as is physically located in that district outside of the town. The commissioner of revenue should be able to accomplish this segregation.

If the Deford Company has actually paid taxes upon the same property twice for the same year, then, undoubtedly, it is entitled to a refund of one-half of what has been so paid. I think a petition setting forth the facts, accompanied by

appropriate affidavits, should be presented to the circuit court for Page county, which would, doubtless, order the refunding of the amount improperly paid, in accordance with section 2386 of the Code.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Correction of illegal tax

RICHMOND, VA., June 9, 1925.

HON. CHARLES F. HARRISON, *Mayor,*
Leesburg, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 6, 1925, written at the suggestion of Judge Fletcher, in which you say, in part:

"A motion is pending before the circuit court for Loudoun county for the correction of an erroneous assessment of taxes, the facts of which are admitted and are as follows, viz:

For year 1923, lot \$220; dwelling \$200. State tax paid.....	\$1 65
County tax paid	5 67

Total paid	\$7 32
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Error: *There was no building.*

Correct tax, deducting value of building \$200:

State, 25 cents per 100	\$ 63
County \$1.35 per 100	3 38

Correct tax for 1923	\$4 01
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Error 1923	3 31
------------------	------

\$7.32

For year 1924. Tax unpaid. Same error.

"Applicant seeks refund for the amount erroneously paid for year 1923, and exoneration from payment for erroneous assessment to the amount of the error for 1924.

"Has the circuit court the power to make this correction? Or will applicant have to await the reassessment?"

On receipt of your letter, I took the matter up with Hon. C. Lee Moore, Auditor of Public Accounts, under whose jurisdiction the matter primarily falls, and he expressed the opinion that the tax on the dwelling was an erroneous and illegal tax, since no dwelling whatsoever was in existence when the assessment was made. He said that, in such cases, the ruling of his office has been that the tax could be relieved against the dwelling without reference to the time of assessment.

After reading section 2385 of the Code, I am of the same opinion, and believe that the court would have the authority to relieve the landowner from the assessment against the dwelling.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Deeds of correctionRICHMOND, VA., *March 6, 1924.*

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

MY DEAR SIR:

Acknowledgment is made of your request of recent date, with which you sent me a letter of Messrs. Nelms, Colonna & McMurran, to you, dated February 23, 1924, in which they asked to be advised whether any tax is required on the recordation of the deed of correction.

It is my opinion that a deed of correction is subject to the tax imposed by section 13 of the Virginia tax bill. You will observe that this section of the tax bill provides that on every deed, except a deed exempt from taxation by law, which is admitted to record, a tax must be paid.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Definition of residenceRICHMOND, VA., *May 1, 1924.*

MR. LINWOOD E. CORSON,
401 Law Building, Norfolk, Va.

DEAR SIR:

I beg leave to acknowledge receipt of your letter of April 30th, contents of which I have carefully noted.

In this you call my attention to the act of the legislature, found on page 247 of the Virginia tax laws, which act undertakes to define "who is a resident for purposes of taxation." You further quote a portion of this act that has been construed by the Auditor and the State Tax Board to mean:

"That a person who resides in Virginia for more than six months of any year is subject to the provisions of this act."

You then ask the question, "If a person moving to Virginia from Nova Scotia in November, 1923, is assessable for tax on personal property as of February 1, 1924." This depends entirely upon the facts and circumstances connected with the case. If the party in question came to Virginia in November, 1923, with the intention of making Virginia his home, then he would be assessable for taxes as of February 1, 1924. Of course, if the party was only here temporarily, he would not be assessable for taxes on February 1, 1924.

Trusting this gives you the information desired, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Estate taxes; basis ofRICHMOND, VA., *September 12, 1924.*

*Messrs. Freiberg, Avery & Simmonds,
Citizens National Bank Building,
Cincinnati, Ohio.*

GENTLEMEN:

I beg leave to acknowledge receipt of yours of September 9th, relative to the estate of Kuper Hood, of Covington, Ky.

In your letter you state that the net estate of Mr. Hood amounts to about \$100,000. You then desire to be advised whether the taxes to be collected by Virginia on this estate are on the net amount of this estate or on the gross amount.

In reply, will state that the State Auditor was correct when he advised you that the taxes are based upon the gross estate and that there is no allowance or reduction for debts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—IncomeRICHMOND, VA., *April 14, 1925.*

MR. J. E. PEDIGO,
400 Fourth Street, Wasena,
Roanoke, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you say that on February 15, 1924, you were a tax paying, voting citizen of the State of New York, of which you had been a citizen for some years. You state that on that day you sold certain stock, which you owned, which netted you a profit; that on that day the company for which you worked also gave you certain money, as a present, in token of its appreciation for the services which you had rendered. You also say that on February 16, 1924, you came to Roanoke, Va., with the intention of making Virginia your home.

You then say:

“Please advise me if I will be required to pay income tax to the State of Virginia on the profit on the stock I sold and on the check I received from my company while a citizen of New York City. You, of course, know that New York State has an income tax, and that money made in New York State by a citizen of New York is charged against the citizen and a percentage of it collected by New York State through income tax channels.”

Section 1 of the Virginia tax bill provides that taxes on persons, property and incomes shall be assessed as of the first day of February of each year. As you were not a resident of Virginia on February 1, 1924, you are not assessable with an income tax for that year.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Income

RICHMOND, VA., July 2, 1924.

HON. W. D. SAUNDERS,
Blacksburg, Virginia.

MY DEAR MR. SAUNDERS:

I am in receipt of yours of July 1st, to which I will reply at once. In this you state that your salary from V. P. I. is \$3,600, but that you get a house from the college, the rental of which is fixed at \$300 a year, which is paid the college, leaving you \$3,300 after payment of rent.

You then desire to be advised whether you should pay an income tax on \$3,300 or \$3,600. The income tax should be paid on the \$3,600. I have discussed this with the Auditor, and in this he agrees.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Inheritance tax; dower

RICHMOND, VA., August 22, 1924.

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

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of August 22nd, relative to the inheritance tax on a widow's dower.

In this connection, you call my attention to the opinion which was rendered to Mr. John Q. Rhodes, Jr., by me on December 23, 1920, which opinion was to the effect that the wife's dower interest in her husband's real estate is not subject to the inheritance tax law.

You desire to be advised whether or not chapter 304 of the Acts of 1924, which amended section 5117 of the Code of Virginia, 1919, affects this ruling or opinion.

In response to this inquiry, I would state that, in my judgment, it does not. The amendment by the legislature, in 1924, simply changed the proportion or quantity of the real estate of the husband of which his wife is entitled to be endowed.

In my judgment, it does not in any manner change the principle of the law, which gives the wife the right of dower in her husband's real estate.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Inheritance taxes

RICHMOND, VA., August 29, 1924.

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

DEAR SIR:

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

"I am in receipt of a letter from Hon. John L. Jeffries, Jr., inheritance tax commissioner for the county of Culpeper, which is as follows:

"I have three estates of persons dying about six years ago, several years before I was appointed inheritance tax commissioner, whose estates should have paid quite a large tax. Is there any action that I should take regarding same?"

"It is my opinion that, under the provisions of section 2332 of the Code, as amended by chapter 115, page 95, Acts 1920, the law does not permit the assessment of inheritance tax except for any of the three years next preceding that in which the assessment is made. As the law providing for the taxation of inheritances authorizes the assessment to be made within one year from the date of the death of the decedent, it is possible to make an assessment in any case in which the decedent died four years prior to the year in which the assessment is made, and that has been the practice in this State respecting the assessment of inheritance taxes since section 2332 of the Code has been in force."

In reply, I beg to say that, in my judgment, you have correctly construed section 2332 of the Code, as amended by chapter 115, page 95, Acts 1920. I am lead to this conclusion by the fact that the amendment made in 1920 consisted only in adding the words "or inheritance tax," so that the section now reads as follows:

"If the commissioner of the revenue, examiner of records, or other assessing officer, commission or board designated by law to assess persons, property (real, personal and mixed), taxes, levies, etc., ascertain that any person, or any real or personal property, or income, or salary, or license tax, or *inheritance tax* has not been assessed, for any year of the three years next preceding that in which such ascertainment is made, by the State, county, district, city or town, or that the same has been assessed at less than the law required for any one or more of such years, or that the taxes, levies, etc., thereon, for any cause, have not been realized, it shall be the duty of the commissioner of the revenue, examiner of records, or other assessing officer, to list the same and assess persons, property (real, personal and mixed) with taxes and levies at the rate prescribed for that year, adding thereto a penalty of five per centum per annum, which shall be computed upon the taxes, levies and penalty from the first day of December of the year in which such taxes should have been paid, and any treasurer collecting such taxes, levies, penalties and interest shall add thereto interest at the rate of six per centum, which shall be computed upon the total amount due from the day on which the assessment is certified to him for collection unless the same is paid within thirty days following such certification."

In my judgment, it would have been a vain and foolish thing for the legislature to include the inheritance tax in this statute, if administrative officers nullify the

amendment by ignoring it and proceeding to investigate and report upon inheritance taxes due more than three years. It seems to me that the intention of the legislature in this matter is too clear for dispute.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Insurance agents

RICHMOND, VA., July 12, 1924.

HON. JNO. A. COKE, JR., *Attorney,*
Life Insurance Company of Virginia,
Richmond, Virginia.

MY DEAR MR. COKE:

I beg leave to acknowledge receipt of yours of July 9th, in which you state that one of your company's agents, desiring to solicit insurance in the town of Boydton, Va., has ascertained that the town imposes a license tax of \$8.00 upon all life insurance agents soliciting business in that town.

You then call my attention to section 26 of the Virginia tax laws, and desire to be advised whether or not a municipality has a right to impose such a tax. I have carefully read this section, a portion of which reads as follows:

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

There can be no doubt in my mind but that this section prohibits the imposition of such a tax, either by the State, county or municipality. I would further call your attention to section 2206, found on page 247 of the Virginia tax laws. I have discussed this matter with the Auditor of Public Accounts, and he concurs in this opinion.

With kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—List of delinquent taxes

RICHMOND, VA., June 7, 1924.

F. H. COMBS, ESQ.,
Attorney at Law,
Grundy, Virginia.

MY DEAR SIR:

I have your letter of June 5, 1924, in which you ask me to advise you whether, under the provisions of section 2414 of the Code of 1919, as amended, the treasurer is not required to complete his list of delinquent taxes by July 1st of each year.

Section 2414 of the Code of Virginia, 1919, as amended, reads as follows:

"The treasurer, after ascertaining which of the taxes and levies assessed in his county or city can not be collected, shall, not later than the first day of July in each year, make out lists of three classes, to-wit: First, a list of property on the commissioner's land book improperly placed thereon or not ascertainable, with the amount of taxes and levies charged on such property; secondly, a list of other real estate which is delinquent for the nonpayment of the taxes and levies thereon; and thirdly, a list of such of the taxes and levies so assessed, other than on real estate as he is unable to collect, except that in the counties of Accomac, Northampton and Northumberland it shall be lawful for the treasurers of said counties to make such lists at any time prior to the first day of September of any year."

It seems to me that this statute so clearly provides that the delinquent list must be completed not later than July 1st of each year that there is no room for any other construction.

I also note what you say with reference to the right of the board of supervisors to transfer county funds assessed and collected for one purpose to another fund, which has been exhausted, for the purpose of paying claims which should be charged against the fund which has become exhausted. This is a question which you will readily see falls within the jurisdiction of the Commonwealth's attorney of your county, who is the legal advisor of the board of supervisors of your county.

You will readily appreciate the fact that the Attorney General has no jurisdiction in a matter of this kind, the fund in question being a local fund, and, therefore, I should not express an opinion with reference to the same.

With my best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Of solicitors

RICHMOND, VA., *April 15, 1925.*

HON. WILLIAM T. GRAYBEAL,
Commonwealth's Attorney,
Buena Vista, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of April 11, 1925, with which you enclose a copy of an ordinance of the city of Buena Vista which, under the guise of a police regulation, seeks to impose a tax on solicitors of a dollar per day, five dollars per week, fifteen dollars per month, or one hundred dollars per year.

Such an ordinance is certainly invalid, so far as it applies to persons engaged in interstate commerce. See 7 Ency. of U. S. Sup. Ct. Rep., page 444, and cases there cited.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—On probate of willsRICHMOND, VA., *October 1, 1924.*

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

MY DEAR MR. MOORE:

I have your letter of September 10, 1924, addressed to Hon. Wm. C. Stuart, commissioner of accounts, Newport News, Va., in which you construe section 12 of the tax bill to impose a tax upon the probate of a will or grant of administration on the value of the estate passing as therein provided, regardless of whether the estate is the property wholly of creditors or beneficiaries or partly the property of both.

Section 12 of the tax bill, so far as is applicable to the subject under consideration, provides as follows:

"On the probate of every will or grant of administration, not exempt by law, there shall be a tax of one dollar, where the estate, real, personal or mixed, passing by such will or by intestacy of the decedent, shall not exceed one thousand dollars in value at the time of the death of the decedent, and for every additional one hundred dollars of value, or fraction of one hundred dollars, an additional tax of ten cents; and no one shall be permitted to qualify and act as executor or administrator until said tax shall have been paid, and the value of all real estate shall be included in determining the tax imposed by this section, although the administrator does not administer upon the real estate and whether or not the personal representative under the will is charged with any duty with respect to the real estate; provided, however, that if the estate of any decedent, whose will is admitted to probate or on whose estate qualification is had in this State, consists partly of real estate situated outside this State, then the value of such real estate situated outside this State shall not be considered in computing the taxes herein imposed."

This act, then, provides that the value of the real estate for the purpose of taxation under this section shall be the assessed value of the year preceding the qualification of the personal representative. I am also advised, upon inquiry, that the clerks generally throughout the State have been imposing a tax on the probate of wills and the grants of administration on the same basis which you held in your letter of September 10, 1924, applied, and that this practical construction of the statute has always been the construction placed on it by your office.

I am further advised that this practical construction has been long recognized and applied throughout the State. This being the case, even if the language of section 12 of the tax bill were open to two constructions, it is my opinion that the practical construction placed thereon by you and the clerks of the State should prevail. *Virginia Blue Ridge Railway v. Kidd, Clerk*, 120 Va. 426 (1917).

In that case, the statute construed by the court, section 13 of the tax bill, was certainly open to the construction contended for by the Commonwealth, and, in my opinion, the construction contended for by the Commonwealth was the proper construction to be placed on the statute, but the court held that, in view of the long recognized construction of the statute by the clerks of the State giving it a different interpretation from that placed on it by this office, the tax on deeds of trusts and mortgages was to be fixed according to the construction long recognized and adopted by the clerks throughout the State.

Aside from this, however, it is my opinion that section 12 of the tax bill clearly imposes a tax on the gross estate, and not on the net estate, the tax being imposed on the estate, real, personal or mixed, "passing by such will or by intestacy of the decedent." While such an estate, real, personal or mixed, may pass by such will or by intestacy of the decedent, subject to his debts, the whole estate, nevertheless, passes either by the will or by the intestacy of the decedent, and the whole should be taxed.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—On recordation of deeds of trust

RICHMOND, VA., October 4, 1924.

HON. CHAS. A. MACDONALD, *District Counsel,*
U. S. Shipping Board Emergency Fleet Corp.,
Norfolk, Virginia.

SIR:

Subject: Loan to Robert E. Lee Steamship Corporation by the United States Shipping Board.

Acknowledgment is made of your letter of the 2nd inst., in which you say:

"The Robert E. Lee Steamship Corporation is building a ship at Newport News Shipbuilding and Dry Dock Company designated as hull No. 277. The United States Shipping Board has advanced, or is about to advance, to Robert E. Lee Steamship Corporation \$526,000 to aid in the construction and completion of this hull into a ship. The Seaboard National Bank of Norfolk is the trustee.

"An elaborate deed of trust designed to protect the United States Shipping Board against loss by reason of this advance has been drawn up and executed by the parties. This document is to be recorded in the office of the clerk of the corporation court in the city of Newport News. The question which I should like to raise is whether the United States Shipping Board, which is offering this deed of trust, should be compelled to pay a tax of twelve cents per hundred on the amount of the loan.

"The loan made under this deed of trust arises from the authority granted in section 11 of the merchant marine act, June 5, 1920. This section provides that for a period of five years from the passing of the act the board may annually set aside from the revenue of sales and operation a sum not exceeding \$25,000,000, to be known as the 'construction loan fund.' No aid shall be greater than two-thirds of the cost of the vessel, and the board shall require such security, including a first lien upon the entire interest in the vessel, as it shall deem necessary to insure the repayment of such sum with interest."

In reply, I beg to say that, in my judgment, you are right in holding that the funds are funds of the United States, and the deed of trust in question is designed to secure the repayment of these funds; and that, therefore, the State of Virginia should impose no State tax either upon the maximum sum named in the said deed of trust or upon the amount of the promisory note

secured thereby. It follows, therefore, that it is not necessary to tender this tax when offering this deed of trust for record at Newport News.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Passports

RICHMOND, VA., July 8, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Va.

MY DEAR GOVERNOR:

Acknowledgment is made of your communication of recent date, with which you sent me a letter from Secretary of State, the Hon. Charles Evans Hughes, and a letter from R. E. Marable, Esq., clerk of the corporation and circuit courts for the city of Newport News, with reference to the tax charged by Mr. Marable on the passport issued to Mr. O. W. Reynolds, secretary of the Newport News Chamber of Commerce.

The Auditor also consulted me about this matter, and some days ago advised Mr. Marable that no State tax was required for the seals attached to the affidavits accompanying the application for or issuance of a passport. Section 16 of the Virginia tax bill imposes a tax on the seal of the State and the seals of a court or notary. Section 2402 of the Code of 1919, as amended by chapter 145 of the Acts of 1924, however, provides, in part, as follows:

“No tax shall be charged * * * when a seal is annexed by a notary or clerk of court to an affidavit or deposition.”

The clerk of the court has no official seal except the seal of his court, and, therefore, the affidavits attached to a passport are clearly exempted from the tax required by section 16 of the tax bill.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Peddlers

RICHMOND, VA., September 18, 1924.

HON. P. H. DREWRY,
Petersburg, Virginia.

MY DEAR MR. DREWRY:

I am just in receipt of your letter of September 17th, to which I will reply at once. Before writing you, I discussed this matter with Mr. C. Lee Moore, the Auditor of Public Accounts, and he showed me your letter to him, and his reply thereto.

You failed to state in your letter whether the merchant who proposes to sell and deliver merchandise through the country from a truck is a retail merchant and is delivering and selling goods to consumers. If such be the case, he can not do so under the law, and to do this would class him as a peddler. There is no question but what a wholesale merchant can take orders and deliver them to merchants, or one retail merchant can sell and deliver goods to other retail merchants, but a retail merchant who has a license to do business at a designated place can not take wares and merchandise from his store and sell and deliver them to consumers.

I trust I have made myself clear in this matter.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Recordation of declaration of trust

RICHMOND, VA., November 19, 1924.

JOHN H. SPRING, ESQ.,
Herndon, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of the 15th instant, in which you complain of the demand of the clerk of the court of Fairfax county, Va., for a tax of \$600 for the recordation of a declaration of trust of the Springs Food Products Company, and the authorities which you enclosed.

I have taken this matter up with the Auditor of Public Accounts, and note from his file that Hon. F. W. Richardson, clerk of court of Fairfax, consulted Hon. C. Lee Moore, Auditor of Public Accounts, on November 10th, in regard to this tax, and that Mr. Moore referred the matter to the second assistant for the State Tax Board, Hon. E. Warren Wall, on November 13th. I have before me Mr. Wall's letter to Mr. Moore in regard to this tax, which is as follows:

"In accordance with your request, I have examined the file forwarded you by Mr. F. W. Richardson, clerk of the court, Halifax, Va., pertaining to the declaration of trust in the Spring's Food Products Company, a trust estate unincorporated.

"Article 6 of the declaration of trust provides as follows:

"It is hereby agreed and declared that the whole and entire capital of this trust estate shall be divided into 5,000 beneficial interests, or shares, having a par value of \$100 a share, and that a value may be set upon said shares by the trustee, or trustees, in accordance with the value of the assets of the *trust estate*, and that said beneficial interests, or shares, shall be represented by *trustees' certificates*, which shall be transferable only upon the books of the trust estate, when properly endorsed and delivered to the acting secretary or trustee for cancellation and reissue."

"Section 13 of the tax laws provides: 'That on every deed, except a deed exempt from taxation by law, which is admitted to record, the tax shall be ten cents on every one hundred dollars or fraction thereof, of such consideration or actual value.'

"Under the special revenue act of 1924, an additional tax of two cents on each one hundred dollars consideration or actual value is imposed.

"In my opinion, article 6 of the trust agreement, quoted above, fixes the consideration or actual value of the trust estate at \$500,000, because by this

deed the trustees are authorized to issue in return for property conveyed to them, five thousand certificates of a par value of \$100 each. I believe that the trustees will be estopped to deny that the value of the property is not equal to the par value of the certificates issued in exchange therefor. I am of the opinion, therefore, that the tax upon the recordation of this deed should be \$600, being twelve cents on the one hundred dollars on \$500,000."

After careful consideration of the statute quoted by Mr. Wall, I am constrained to hold that his interpretation of it is correct, and that the tax for the recordation of this deed is \$600.

Of course, none of the administrative officers of the State has anything to do with the policy of this statute, which is a matter solely for the consideration of the legislature. If we are correct in our interpretation of the statute, it would not be proper for the clerk of the court of Fairfax to admit the declaration of trust to record except upon payment of the said tax. If, however, the said interpretation is not correct, the circuit court of Fairfax or the Supreme Court of Appeals at Richmond would doubtless issue a mandamus requiring the clerk to accept the said declaration of trust for recordation upon payment of some other amount by way of tax. Of course, I do not know whether a similar tax has been demanded for declarations of this character submitted for recordation, for I can only rule upon such cases as are brought before me officially.

Our tax laws, under which this fee of \$600 is demanded, have been on the statute books for some years and have been subject to litigation in our Supreme Court of Appeals and in the Supreme Court of the United States, and they have not as yet been declared unconstitutional. Of course, neither this nor any other tax system is entirely beyond criticism, but as long as it remains upon our statute books, we can only construe and apply it in accordance with the public will as shown by the action of the legislature in enacting these laws.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Recordation or deeds of trust

RICHMOND, VA., *January 23, 1925.*

MR. FRED B. GREER,
Attorney at Law,
St. Paul, Va.

MY DEAR MR. GREER:

Acknowledgment is made of your letter of January 22, 1925, in which you say:

"Will you please give me your opinion on the following case:

"Mr. A sold a house to Mr. B, consideration \$15,000; \$5,000 paid cash, and the balance of \$10,000 secured by a deed of trust executed by Mr. B to Mr. A. The clerk of this county wants to charge \$15.00 stamp tax on this deed, and my contention is that it should be only \$5.00, as that is all the money that has passed or may pass. This as to the Federal stamp tax.

"The clerk also wants to charge the State tax on the basis of \$15,000 on the deed, and then \$10,000 on the deed of trust, thus making the parties pay State tax on a \$25,000 deal when it is only a \$15,000 one. Of course, there are no stamps required on the deed of trust."

I am unable to advise you as to the amount of Federal stamps to be placed on the deed, as this involves the construction of a Federal statute. I, therefore, suggest that you submit your inquiry as to this matter to Hon. J. C. Noel, collector of internal revenue, Richmond, Va., who will be glad to advise you.

As to the State tax, I am of opinion that the clerk is entirely right in the construction which he has placed upon section 13 of the Virginia tax law as amended, as it applies to your case. If you will examine this section of the tax bill you will see that the State tax is based on the consideration, or, if there be no consideration, the actual value of the property conveyed.

In your case the consideration is \$15,000. The tax should, therefore, be based on \$15,000 when the deed is admitted to record. The clerk is also right as to the tax to be paid for recordation of the deed of trust, as section 13 of the Virginia tax bill, as amended, provides that, in such case, the tax shall be upon the amount of bonds or other obligations secured thereby. The amount of the bonds or other obligations secured by the deed of trust is \$10,000, according to the statement in your letter, and the tax should be based on that amount.

I also call your attention to the fact that the General Assembly, in 1924, imposed an additional two cents tax on the amount of the consideration of deeds and the obligations secured by deeds of trust, etc., making the tax rate twelve cents instead of ten cents.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Recordation of deeds of trust

RICHMOND, VA., June 29, 1925.

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

MY DEAR MR. AUDITOR:

Acknowledgment is made of your communication of recent date, in which you submit, for my opinion, the following statement of facts:

It appears that the Westover Hills Corporation, a Virginia corporation, conveyed certain real estate located in the county of Chesterfield to the First National Bank, of Richmond, Va., in trust to secure the payment of certain bonds issued by the grantor. The Westover Hills Corporation now desires to obtain a release of some of the lots conveyed by that deed of trust without reducing the debt, and to substitute for the lots released other lots of equal value owned by the said corporation in Chesterfield county. The question upon which my opinion is desired is whether or not the deed of trust conveying the lots substituted in place of those to be released is subject to the tax imposed on the recordation of deeds of trust or mortgages by section 13 of the Virginia tax bill, as amended.

This section, so far as is applicable to the question here under consideration, provides as follows:

“* * * on deeds of trust or mortgages, the tax shall be upon the amount of bonds or other obligations secured thereby. * * *”

In next to the last paragraph of the act, it is provided as follows:

"This act is not to be construed as requiring the payment of any tax for the admitting to record of any deed of trust, mortgage, contract, agreement, or other writing *supplemental* to any deed of trust, mortgage, contract, agreement, or other writing theretofore admitted to record, and upon which the tax herein imposed has been paid, hereinafter called the original instrument, where the sole purpose and effect of the said *supplemental* deed of trust, mortgage, contract, agreement, or other writing is to convey, set over, or pledge property, real or personal, *in addition* to the property conveyed, set over, or pledged in the original instrument, to secure or to better secure the payment of the amount contracted for in the original instrument; but in such case there shall be no tax for the admitting to record of said supplemental deed of trust, mortgage, contract, agreement, or other writing." (Italics supplied.)

Because of the importance of the question, no less than the hardship involved on the Westover Hills Corporation, I have considered this matter at some length, and it is my conclusion that the new deed of trust can not be admitted to record without the payment of an additional tax, even though the debt which is secured by the new deed of trust is the same debt secured by the first deed of trust on which the tax has been paid. I am forced to this conclusion by the language of the above quoted paragraph of section 13 of the Virginia tax bill, as amended. The tax imposed is on deeds of trust or mortgages generally, the tax being based upon the amount of the bonds or other obligations secured thereby.

The next to the last paragraph of this section was added by amendment to the original section for the purpose of overcoming the hardship created by the statute as construed by the Court of Appeals in *Saville v. Virginia Railway and Power Company*, 114 Va. 444, 76 S. E. 954 1913).

You will observe from the above quoted paragraph of section 13 of the Virginia tax bill, as amended, that this exception is limited to a deed of trust, etc., which is supplemental to a deed of trust, etc., which has been previously recorded. As you will see from the italics supplied by me, the intention of the General Assembly was that only deeds of trust which were supplemental to an original deed of trust on which the tax had been paid was to be admitted to record without the payment of the tax. This intention is emphasized by the expression that such supplemental deed of trust "is to convey, set over, or pledge property, real or personal, *in addition* to the property conveyed" by the original instrument. The word "supplemental" is defined as meaning "that which is added to a thing to complete it." 3 Bouviér's Law Dictionary (Rawle's 3rd Revision) p. 3187.

The deed of trust referred to in this communication is in no sense supplemental to the first deed of trust, but instead of supplementing it seeks to substitute as security for the debt secured by the first deed of trust other property in place of property conveyed by the first deed of trust, which has been or is to be released from the lien of the first deed of trust. The second deed of trust in the first place is not supplemental to the first deed of trust, and, in addition to this, it does not convey real property "*in addition* to the property conveyed, * * in the original instrument; * * *." On the other hand, instead of adding to the property conveyed by the first deed of trust it seeks to

substitute other property in lieu of a part of the property conveyed by the first deed of trust.

I am aware that emphasis has been placed on the last part of this paragraph which provides that the instrument exempted shall be "to secure or to better secure the payment of the amount contracted for in the original instrument." This language, however, is manifestly controlled by the italicized portions of the above quoted paragraph of section 13 of the Virginia tax bill as amended. It is, therefore, my opinion that the second deed of trust cannot be admitted to record without the payment of the tax imposed by law for the recordation thereof.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Refund of license

RICHMOND, VA., June 26, 1925.

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

DEAR SIR:

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

"I enclose copy of an order entered by the hustings court of the city of Richmond on June 17, 1925, directing refund out of the State treasury of a portion of the State license tax imposed by law and paid by the parties, respectively, mentioned in the order, for operating a slot machine, the operation of which was stopped by police order; the police being of the opinion that the operation of the machine violated the law of the Commonwealth with respect to gaming.

"This order is entered on a proceeding had under section 2385 of the Code as amended by chapter 290, Acts 1924, and section 2386 of the Code. Please advise me if I am required to make the refund and recognize this order of court, as the question of whether or not the machine operated violates the gaming law has not been passed upon by any justice or court, but the operation of the same being stopped on an order of notice of the city of Richmond.

"Did not the license issued by the commissioner of the revenue confer only the privilege of operating a slot machine in the operation of which the element of chance did not enter, and have not the licensees now the right to use the privilege for which they paid provided the slot machine operated does not have the element of chance in its operation?"

In reply, I beg to say that after careful examination of section 2385 of the Code as amended by chapter 290, Acts 1924, and section 2386 of the Code; and having been reliably informed that the machines in question have been held by the courts in various sections of the State, notably by Judge E. P. Cox sitting in the hustings court of the city of Richmond, to violate the gaming laws; and in view of the fact that these parties when making application for license disclosed fully the nature and character of the mode by which the machines were operated, and that the licenses were issued under the belief that the operation of the machines was lawful, I am of the opinion that the order of the hustings

court of the city of Richmond of the 17th day of June, 1925, was proper and, therefore, you would be justified in recognizing the order and refunding to the parties named therein the amounts stated in said order.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Release of lien of taxes—Validity of

RICHMOND, VA., *December 31, 1924.*

WALTER E. DUVAL, ESQ., *Clerk,*
Hustings Court, Part II,
Richmond, Virginia.

MY DEAR MR. DUVAL:

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

"Sometime ago a statement was made of delinquent State taxes for the years 1890 to 1921 inclusive.

"The gentleman I made the statement for comes in and says he wants to pay the State taxes from 1902 to 1921, instead of from 1890 to 1921 inclusive. I refused to accept them until I could get a ruling from you as to whether State taxes before the year 1902 are to be collected by the clerks or not.

"I am sending you the statement of taxes I made out and you can return same to me when you write your opinion."

Chapter 341 of the Acts of 1924, which governs this matter, provides as follows:

"1. Be it enacted by the General Assembly of Virginia, That all lines upon real estate for taxes and levies due and payable to the Commonwealth or any political subdivision thereof prior to the tenth day of July, nineteen hundred and two, be, and the same are hereby, released.

"2. The right, title and interest of the Commonwealth of Virginia in and to all real estate sold for taxes and levies assessed prior to the tenth day of July, nineteen hundred and two, which real estate has been purchased by the Commonwealth and not resold, is hereby unconditionally released unto and vested by operation of law in the person or persons who owned the real estate at the time the Commonwealth so acquired title, or persons claiming, or to claim, by, through, or under them.

"3. On and after July first, nineteen hundred and twenty-six, no clerk of any court in Virginia shall make a tax deed conveying to any person any real estate sold for delinquent taxes or levies assessed prior to July tenth, nineteen hundred and two."

You will see from this section that all liens upon real estate from taxes and levies due and payable to the Commonwealth, or any political subdivision thereof, prior to the 10th day of July, 1902, have been by this act released.

While it is true that the Constitution of Virginia, section 174, provides that the statute of limitations shall not run against any claim of the State for taxes upon any property, and, therefore, claim for the tax cannot be barred, the lien of such taxes on property was created by statute, and not by the Constitution, and, therefore, it is my opinion that the General Assembly has the right to re-

peal either in whole, or in part, the statute making taxes assessed on real estate a lien thereon, and for that reason chaptr 341 of the Acts of 1924 is a valid exercise of the legislative power. Of course, the person in whose name the tax was assessed remains personally liable for the payment of the same, even though such taxes accrued prior to 1902.

As requested, I am returning the statement of taxes which accompanied your letter to me.

With kindest regards and best wishes, I am,

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—Segregation

RICHMOND, VA., *February 13, 1924.*

HON. W. WORTH SMITH, JR.,

Senate Chamber,

Richmond, Va.

MY DEAR SENATOR:

Acknowledgment is made of your request to be advised as to whether it is constitutional to have a total segregation of property in Virginia for the purpose of taxation.

Section 169 of the Constitution provides that nothing in the Constitution shall prevent the General Assembly, after the first day of January, 1913, from segregating, for the purpose of taxation, the several kinds and classes of property so as to specify and determine upon what subjects State taxes, and upon what subjects local taxes, may be levied.

Section 189 of the same Constitution provides a rate of State taxation on lands and the improvements thereon, and on all tangible personal property not exempt from taxation, but further provides that, after the first of January, 1907, the rate tax upon this property shall be prescribed by law.

This section, read in connection with section 169 forces the conclusion that, after the first day of January, 1907, the legislature may abolish any rate of State taxation on this property.

I am of the opinion, therefore, that an act totally segregating property for the purpose of taxation would not be unconstitutional.

With kindest personal regards, I remain,

Yours truly,

J. D. HANK, JR.,

Assistant Attorney General.

TAXATION—Stock of foreign corporationsRICHMOND, VA., *March 3, 1925.*

PROF. CHARLES S. GARDNER,
2407 Longest Ave.,
Louisville, Ky.

DEAR SIR:

Acknowledgment is made of your letter of February 23, in which you ask the following question:

"If a citizen of Virginia owns some stock in a corporation outside of Virginia, and whose property is located outside of Virginia, is he required to pay State taxes on the certificate of stock so held, although the corporation is paying taxes on its property in another State?"

In reply, I beg to say that, under the laws of Virginia, a citizen of this State is required to pay State taxes on certificates of stock in a corporation outside of Virginia, and whose property is located outside of the State, even though the corporation is paying taxes on its property in another State.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Tangible personal propertyRICHMOND, VA., *April 28, 1924.*

MESS. DUKE & DUKE & GENTRY,
Court Square Building,
Charlottesville, Va.

GENTLEMEN:

I beg leave to acknowledge receipt of your letter of the 25th, in which you say in part:

"A gentleman is a resident of the State of New York, but leases a farm in one of the counties of Virginia, where he winters some of his horses and keeps some brood horses. He races his horses in several States, but does not race them in the State of Virginia. The only thing he does in the State of Virginia is to keep and raise some of his horses. Is he not taxable as a nonresident doing business in the State of Virginia?"

I have just discussed the question with the Auditor, and we both agree that if the horses of the nonresident are in the State of Virginia on the first day of February, they should be taxed as tangible personal property. I know of no other taxes which the party in question would have to pay. However, if you have any suggestion to make, I would be very glad to hear from you.

With kindest regards, I am,

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Trust funds

RICHMOND, VA., July 8, 1924.

HON. B. RICHARDS GLASCOCK,
Commonwealth's Attorney,
Warrenton, Virginia.

MY DEAR MR. GLASCOCK:

Acknowledgment is made of your letter of July 2, 1924, with which you sent me a copy of your letter of June 24, 1924, to the Auditor of Public Accounts, and his reply to you of June 26th, with reference to the tax to be imposed on Harriet T. James; also copy of trust agreement between Harriet T. James and the National Savings and Trust Company, dated January 22, 1920, by which agreement she turned over \$10,000.00 in money to the National Savings and Trust Company to be invested for her by said company, with the provision that the party of the second part should pay the annual net income derived from the investment to her during the term of her life, and at her death, to certain other parties.

It is to be observed that Harriet T. James further reserves the right by her last will and testament to change any and all of the terms of this agreement, or to cancel the same.

It is possible that Miss James has no more than a life estate in this fund, although I am not absolutely certain that she has not a greater estate therein. I, therefore, concur in the Auditor's opinion given you on June 26, 1924, and am of the opinion that this fund is subject to taxation in Virginia. See *Ellett v. Commonwealth*, 132 Va., page 136, *Wise v. Commonwealth*, 122 Va., 693, *Brooklyn Trust Company v. Booker*, 122 Va., 680, and the authorities cited in the above cases.

Trusting this gives you the desired information, I am,

Yours very truly,

INO. R. SAUNDERS,
Attorney General.

TREASURERS—Compensation of

RICHMOND, VA., July 28, 1924.

WM. A. WYGAL, ESQ.,
Division Superintendent of Schools,
Jonesville, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 23, 1924, in which you say:

"I am writing you regarding the commissions of an incoming treasurer derived from funds turned over to him by an outgoing treasurer.

"The Acts of 1920 definitely determined all of these points, but there is a doubt in my mind as to who shall pay this commission in the acts approved March 27, 1922, section 2431. It appears that we will have to pay out of the school funds two per centum additional commissions to the 3½ already paid. It does not seem equitable that we should pay two commissions on the same amount of money."

I am frank to say that I do not definitely understand the subject of your inquiry. Section 2431 of the Code of 1919, as amended by the Acts of 1922, provides with reference to the compensation of the incoming treasurer for receiving and disbursing funds turned over to him by an outgoing treasurer, as follows:

"For receiving and disbursing the money turned over to him by an outgoing treasurer, the treasurer shall receive as compensation for his services two per centum of the amount of such money turned over to him, and for collecting the tax tickets turned over to him and disbursing the proceeds thereof, he shall receive three and one-half per centum, except that on school funds turned over to him derived from appropriations by the State or apportionments of the literary fund his compensation shall be one per centum of the amounts of such funds turned over to him, and on funds derived from county, city, or district bond issues his compensation shall be one-fourth of one per centum of the amounts of such funds turned over to him."

The three and one-half per centum provided for by this section is for collecting tax tickets turned over to the treasurer and disbursing the proceeds thereof, and is not in addition to the two per centum paid the treasurer on money turned over to him.

Of course, on school funds turned over to the incoming treasurer, which were derived by appropriations from the State, or apportionments of the literary fund, his compensation is only one per centum of the amount of such funds turned over to him.

If you wish to know from your inquiry whether the compensation to be provided for the incoming treasurer by this section of the Code must be paid in addition to the compensation already paid the outgoing treasurer, it is my opinion that this was the object of the statute.

You will recall that prior to the amendment of this section of the Code, the law formerly required the compensation of the incoming treasurer to be paid by the outgoing treasurer, but this was changed when the law was amended, and the compensation of the incoming treasurer is now paid by the public.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER, STATE—Sale of Insurance bonds deposited with

RICHMOND, VA., May 18, 1925.

HONORABLE JOHN M. PURCELL,
Treasurer of Virginia,
Richmond, Virginia.

MY DEAR MR. PURCELL:

Acknowledgment is made of your letter of May 12, 1925, in which you say:

"Recently this department has been called upon by attorneys in regard to judgment against various insurance companies under section 4213 of the Code of Virginia. I am requested to subject securities, deposited with me as Treasurer of Virginia, for sale to satisfy claims.

"I note that section 4213 says that the Treasurer shall sell securities of said company after giving the company or its general agent ten days' notice and that the sale shall be advertised for ten days in some newspapers published in the city of Richmond. Section 4214 says when a company fails to meet its obligations, etc., that a bill may be filed in the circuit court of the city of Richmond, the Treasurer being made a party to the suit.

"The Honorable A. W. Harman, Jr., former Treasurer of Virginia, took the stand, upon the advice he stated of the late Attorney General Scott, though I have been unable to find the written opinion, that he would not sell any securities as set forth in section 4213, even though judgment was rendered in a court of competent jurisdiction, but force all plaintiffs to file bills in the circuit court of the city of Richmond.

"I am writing to ask your written opinion as to whether I should dispose of the securities in the event of nonpayment of claim on judgment rendered in various courts of the Commonwealth, or should insist upon suit being brought in the circuit court of Richmond as provided for by section 4212."

In reply, I beg to say that having carefully examined section 4213 of the Code and other cognate sections, I am of the opinion that in controverted cases you should insist that suit be instituted in the circuit court of the city of Richmond, in order that these securities may be disposed of by order of court under provisions of section 4214 of the Code of Virginia.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

TRIAL JUSTICE—Necessity of election for establishment of

RICHMOND, VA., March 2, 1925.

MR. J. N. BOWEN,

Justice of the Peace,

R. F. D. No. 7,

South Richmond, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you call my attention to chapters 272 and 436 of the Acts of 1924, and ask whether a trial justice for the county of Chesterfield can be established before the question, as to the establishment of such an office, has been voted on by the people at a general election.

Section 15 of chapter 272 of the Acts of 1924 and section 14 of chapter 388 of the Acts of 1922, of which chapter 436 of the Acts of 1924 is only an amendment, expressly provided that the question should be submitted to a vote of the people. As these acts are accessible to you, you will have no difficulty in examining the contents thereof.

I would suggest, however, that the matter is one which should properly be submitted to the Commonwealth's attorney of your county, as he is the legal adviser of the board of supervisors, and the supervisors should be governed by his advice in the matter.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

WAR MEMORIAL COMMISSION—Powers of

RICHMOND, VA., January 27, 1925.

JOHN J. WICKER, JR., ESQ.,
*Secretary War Memorial Commission,
Richmond, Virginia.*

MY DEAR SIR:

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

"On August 14, 1924, the War Memorial Commission of Virginia, created by virtue of chapter 405 of the Acts of 1924, met at the call of the Governor and was duly organized. At that time the undersigned was elected secretary of the Commission.

"At this meeting by unanimous resolution I was directed to request of you an official opinion construing chapter 405 of the Acts of 1924, and also chapter 189 of the Acts of 1924. (This last chapter having reference to the repeal of the former war memorial act and the site to be provided for the new memorial.)

"It is the desire of the Commission to be advised as to the full scope and extent of its powers and duties particularly in relation to the fact that the appropriation made by chapter 405 is specifically directed to be out of the year ending February 28, 1926.

"Furthermore, the city of Richmond has informally suggested as a possible site for the memorial a plot of ground located at the intersection of Libby avenue and Monument avenue. This site is owned in fee simple by the city of Richmond but is outside of the city limits. I am sure that the Commission would appreciate your opinion in the two acts referred to above."

Chapter 189 of the Acts of 1924 referred to in your letter reepals, in part, the act of March 25, 1920, providing for the erection of a library building and auditorium as a memorial to the soldiers, sailors, marines, etc., who served in the World War.

The third section thereof provides as follows:

"If such commission as may be created by the General Assembly for the purpose of erecting a memorial to the soldiers, sailors, marines and women of Virginia who served in the late World War, choose as the site for such memorial the square or parcel of land in the city of Richmond bounded by Eleventh, Twelfth, Capitol and Broad streets, which was conveyed by the said city to the library board pursuant to the said act of March twenty-fifth, nineteen hundred and twenty, and if the city of Richmond should, by ordinance, consent unconditionally to the use of such square for such purpose (authority to give such consents being hereby conferred upon the city), then the title to said square shall immediately, by operation of law, be transferred from the library board to the Commonwealth of Virginia, but if such commission do not propose to the council of the city of Richmond the erection of the memorial on the said square, but choose some other site in the capital city, to be made available by the city of Richmond without cost to the Commonwealth, the library board shall, within sixty days after the acceptance by the commission of the other site, reconvey the said square unconditionally in fee simple to the city of Richmond, by proper deed, acknowledge for record, and authority to accept the said conveyance is hereby conferred upon the city of Richmond."

Chapter 405 of the Acts of 1924 creates a War Memorial Commission; prescribes the powers and duties of the commission; and provides for the erection of

a memorial of a monumental type to such soldiers, sailors, marines, etc., and appropriates money for carrying out the provisions of the act.

The first section of the act, after creating the War Memorial Commission, provides that the commission shall have the powers and duties hereinafter prescribed, and that it shall appoint one of its number chairman and another secretary.

Sections 2 and 3 of this act provide as follows:

"2. It shall be the duty of the War Memorial Commission to proceed with all reasonable dispatch to do all things necessary to erect or cause to be erected in the capital city of the Commonwealth, on a site to be selected, as hereinafter provided, a memorial to the patriotism and valor of the soldiers, sailors, marines, and women from Virginia who served in the World War, which memorial shall be of a monumental or nonutilitarian type, and shall cost not exceeding the sum of two hundred and fifty thousand dollars. For the year ending February 28, 1926, there is hereby appropriated to the War Memorial Commission, out of any moneys in the State treasury not otherwise appropriated, the sum of ten thousand dollars. The sum hereby appropriated shall be disbursed by the State Treasurer on warrants of the Auditor of Public Accounts issued on vouchers signed by the chairman of the War Memorial Commission, countersigned by its secretary. The exact character and design of the memorial shall be decided on by the commission, and the commission is hereby authorized to offer reasonable prizes to artists in a contest for competitive designs.

"3. The commission may select for the site of the memorial the site which the city of Richmond will tender to the Commonwealth, without cost to the Commonwealth, as pledged by joint resolution of the council, as aforesaid; and in the event that such site is selected, the city of Richmond shall, before work is commenced on the erection of the memorial, convey the land or lot so selected for the site to the Commonwealth of Virginia for the purpose, authority to make which conveyance is hereby conferred upon the said city. The form and sufficiency of the deed shall be approved by the Attorney General. But if the commission do not select the site which the city offers, as aforesaid, then the commission shall select some other site in the city of Richmond suitable for the memorial, the said site to be conveyed to the Commonwealth without cost to the Commonwealth."

Answering the last paragraph of your letter first, you will observe, if you examine chapter 405 of the Acts of 1924, that the second "whereas" clause of the act recites, as the inducing motive for the enactment of the same, that it "should be erected by the Commonwealth in the capital city of the Commonwealth," and the second section of that act provides that it shall be erected in the capital city of the Commonwealth.

When this is read in connection with chapter 189 of the Acts of 1924, the third section of which is quoted above, I am of the opinion that the site on which this monument is to be erected must be within the corporate limits of the city of Richmond.

With reference to your first request that the commission be advised as to the full scope and extent of its powers and duties, I will say that it is almost impossible to prepare an opinion which would cover every conceivable question that might arise. I will, however, attempt to advise you as to such as occur to me at the present time, with the understanding that there are many matters which conceivably may arise in the future, which are not covered by this opinion.

1. It would appear from the reading of the third section of chapter 189 of the Acts of 1924 that the commission has the right to select as the site for such

memorial the lot or parcel of land in the city of Richmond bounded by Eleventh, Twelfth, Capitol and Broad streets, which was deeded to the Commonwealth by the city of Richmond in return for a part of the Capitol Square. The commission, therefore, has the power to select this lot for the site of said memorial if it so desires, and, while it is possible that this act, as it is worded, would not compel the city to agree to the erection of the memorial on this site, it would at least, if the city declined, prevent the city from recovering the title to this tract of land which is now in the Commonwealth, but which, by the reasons of the provisions of chapter 189 of the Acts of 1924, would be defeated by the acceptance of some other site.

2. The commission has the power to appoint one of its number chairman, and another secretary.

3. It is the duty of the commission to proceed "with all reasonable dispatch to do all things necessary to erect or cause to be erected in the capital city of the Commonwealth" the memorial provided for by chapter 405 of the Acts of 1924.

4. This memorial must be of a monumental or nonutilitarian type, and must not cost over \$250,000. As no money has been appropriated, however, for the erection of such monument, I would not suggest that the commission let a contract for the erection of the same unless it would be done with the understanding that there is no legal obligation whatsoever on either the commission or the Commonwealth to pay therefor.

You will observe from the above quoted provision of section 2 of chapter 405 of the Acts of 1924 that, for the year ending February 28, 1925, the sum of \$10,000 is appropriated to your commission "out of any moneys in the State treasury not otherwise appropriated." The act provides that this sum shall be disbursed by the State Treasurer on warrants of the Auditor of Public Accounts issued on vouchers signed by the chairman of the War Memorial Commission, countersigned by its secretary.

With the exception of the offering of reasonable prizes to artists in a contest for competitive designs, no mention is made in the act as to what purpose this appropriation shall be expended. Certainly a part of it at least may be used for the offering of reasonable prizes to artists "in a contest for competitive designs," and, no doubt, there may be other things for which payments out of this fund may be validly made, such as the necessary and proper expenses of members of the commission in performing the duties required of it by law.

As I said in the beginning, however, it is impossible for me to undertake to lay down any absolute and binding rule applicable to the expenditures of this fund. Each item, it seems to me, with the exception of the prizes and expenses mentioned above, will have to be passed on as it arises.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WATER POWER DEVELOPMENT COMMISSION—Employees of

RICHMOND, VA., June 26, 1924.

His Excellency, E. LEE TRINKLE,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of June 20, 1924, in which you say:

"I want to call your attention to chapter 359, page 517, of the Acts of Assembly, 1924, which deals with the question of the Waterpower Development Commission. The act speaks for itself. I was desirous of appointing on this commission a member of the General Assembly, and, to be frank with you, Hon. J. R. Horsley, the father of the bill, who is intensely interested in the work and well equipped with information to be the director of this work. I am cognizant of section 44 of the Constitution. I would appreciate it if you would advise me whether or not I can appoint Mr. Horsley, who is a member of the General Assembly, to this position and allow him to be paid for his services, as we would want his entire time, such sum as the commission would fix with my approval.

"I am also mindful of section 45 of the Constitution. It seems as if the point involved is whether or not this is a civil office of profit. Then this question suggests itself: Could Mr. Horsley resign as a member of the General Assembly and be appointed under this act?"

Section 44 of the Constitution of Virginia provides, in part, that:

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

Section 45 of the Constitution, so far as is applicable to the question under consideration, provides:

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

The first question which presents itself in the consideration of this matter is whether or not the commission created by this act is an office, and its members officers, of the Commonwealth of Virginia.

The act, after providing for the investigation and means for the development of the water power, industrial and agricultural interests and resources of the State and after authorizing surveys to be made, provides for the appointment of a commission in the following words, found on page 518 of the Acts of 1924:

"For the furtherance of the chief object and purposes of this act it is hereby provided that there shall be created a water power and development commission, to be composed of three members, to be appointed

by the Governor, who shall be citizens of Virginia and shall serve during the will and pleasure of the Governor, said appointments to be subject to confirmation by the Senate of Virginia. Should the appointment of the members of said commission, or either of them, to fill vacancies or otherwise, be made during recess of the Senate, such appointees shall serve as other recess appointees, until the next meeting of the General Assembly. Two members of the said commission may, in the discretion of the Governor, be selected from among State officers or employees of State supported institutions, in which case such members shall serve without compensation and shall receive only their actual expenses during the time necessarily occupied with the duties of said commission. If not otherwise in the employment of the State while serving as members of said commission, such members shall receive a reasonable per diem in addition to their expenses, to be fixed by the Governor. One member of said commission shall be designated as director and shall be the active head of said commission, and shall devote so much of his time to the work as may prove necessary as the work progresses, and shall receive such compensation as may be fixed by the commission, with the approval of the Governor, in addition to actual necessary expenses incurred in the discharge of his duties. Said commission shall be provided such clerical assistance as may be approved by the Governor as necessary."

The duties of the commission are thus prescribed:

"It shall be the duty of said commission to gather and disseminate information relative to the water powers and industrial advantages and resources and opportunities for industrial and agricultural enterprises or commercial power plants; to promote the development and utilization of the water powers and other resources of the State; to seek investors and the establishment of manufactories or other enterprises within the State; and to co-operate with any State, Federal or private agencies for the development and utilization of the vast natural resources of the State."

After carefully examining chapter 359 of the Acts of 1924, it is my conclusion that the commission created by this act is not an office, and the members, therefore, are not, as such, officers of the State. No oath is required, which is generally an indication of office, and none of the duties imposed on the commission involves a delegation to it or its members of some of the sovereign functions of the government to be exercised by the commission or its members for the benefit of the public.

In my opinion, the members of the commission created by chapter 359 of the Acts of 1924 are merely employees of the State, and not officers. Therefore, sections 44 and 45 of the Constitution of Virginia would not operate to prevent a member of the General Assembly from serving on this commission, either as a member of the commission or as its director.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

WEAPONS—Limits of permit to carry concealed
CITIES AND TOWNS—*Territory embraced in permit to carry concealed*
weapons in

RICHMOND, VA., October 1, 1923.

JAMES H. HILL, Esq.,
Norfolk, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of September 26th, in which you ask whether one having a permit to carry a concealed weapon in a city, has a right to carry the same concealed outside of the city.

In my opinion, the right to carry a concealed weapon, granted by the corporation court of a city, extends only to the corporate limits of that city, and therefore, one having such permit for a city, would not be entitled to carry concealed weapons in a county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WEIGHTS AND MEASURES—Act relating to—Directory as to counties

RICHMOND, VA., October 22, 1924.

Hon. Philip Kohen,
Commonwealth's Attorney,
Buchanan, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of October 14, 1924, in which you say:

"Please be kind enough to write me if chapter 216 of the Acts of Assembly, 1924, is *mandatory* or *directory* on the part of boards of supervisors of the respective counties of this State. This chapter is concerning weights and measures, and any information that you may write me relative to the above will be appreciated."

Most of the attorneys for the Commonwealth with whom I have discussed this matter have reached the conclusion that the act referred to is directory merely, and not mandatory, and this is the opinion which I have reached.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WEIGHTS AND MEASURES—Appropriation forRICHMOND, VA., *November 8, 1924.*

L. R. TRAVERS, Esq.,
1003 *State Office Building,*
Richmond, Virginia.

MY DEAR MR. TRAVERS:

Acknowledgment is made of your several letters with reference to the construction to be placed on section 31 of chapter 216 of the Acts of 1924. You ask to be advised whether the appropriation provided for by this section is an annual or biennial appropriation.

The section reads as follows:

"In order to enable the Superintendent of Weights and Measures to purchase the necessary standards to carry out the provisions of this act, and to employ necessary clerical assistance, the sum of five thousand dollars is hereby appropriated, said sum to be paid out of any moneys in the treasury not otherwise appropriated."

In my opinion, this is not an annual appropriation, but is the only appropriation which your department will have until a new appropriation is made by the General Assembly.

I would have answered your letters before, but the first letter reached me while everybody in my office was engaged in preparing the briefs for the approaching term of the Court of Appeals, and your subsequent letters came either just on the eve of the session of the court, when we had no time for anything except the preparation of our cases in that court, or during its session; hence the delay in answering your letters.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

WEIGHTS AND MEASURES—IceRICHMOND, VA., *January 16, 1925.*

MR. L. R. TRAVERS ,
Bureau of Weights and Measures,
Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of January 6, 1925, in which you say, in part:

"I kindly ask that you give me, in writing, your opinion as to the exact status of ice as a commodity as its basis of sale.

"Some of the manufacturers are claiming that ice can be sold by the piece, yet I am of the opinion that the basis of sale on which the price of ice is established is per hundred or per pound, as the case may be, which makes the basis of sale weight. Therefore, it is my opinion that ice is a commodity, and the basis of sale is weight, and I would like to have you confirm this if this is your opinion.

"If so, wouldn't ice dealers be required to weigh ice under section 26, chapter 216, Acts 1924?"

Section 26 of chapter 216 of the Acts of 1924, referred to in your letter, reads as follows:

"Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity, and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this act, it shall be understood and construed to mean the net weight of the commodity."

When ice is sold by weight, it must, of course, be weighed. Where it is sold by the piece, however, it is not sold on a basis of weight, and, therefore, section 26 of the act, in my opinion, would not apply.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WEIGHTS AND MEASURES—Under control of dairy and food commissioner

RICHMOND, VA., *December 29, 1924.*

HON. D. A. KINSEY,
*Dairy and Food Commissioner,
Richmond, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you request me to advise you whether appointments made by you as Superintendent of Weights and Measures, pursuant to the provisions of chapter 216 of the Acts of 1924, and the operation of the Weights and Measures Department are under the control of the Department of Agriculture, or the commissioner thereof.

By virtue of the provisions of chapter 216 of the Acts of 1924, the Dairy and Food Commissioner is declared to be *ex officio* Superintendent of Weights and Measures (section 2).

Section 31 of that act, which makes an appropriation for the work relating to weights and measures, reads as follows:

"In order to enable the Superintendent of Weights and Measures to purchase the necessary standards to carry out the provisions of this act, and to employ necessary clerical assistance, the sum of five thousand dollars is hereby appropriated, said sum to be paid out of any moneys in the treasury not otherwise appropriated."

Unless this section is qualified by some other statute, it authorizes you to employ the clerical assistance referred to, and after reading and carefully considering section 1158 of the Code of Virginia, 1919, together with the Acts of 1918, page 483, it is my opinion that section 1158 of the Code of 1919, as affected by the act of 1918, does not control your actions as Superintendent of Weights and Measures, and, therefore, the appointments made pursuant to chapter 216 of the Acts of 1924, and the operation of the Weights and Measures Division are not subject to the control of the Commissioner and Board of Agriculture.

As chapter 216 of the Acts of 1924 is drawn, the Weights and Measures Division is not, strictly speaking, a branch of the Department of Agriculture, but a separate and independent branch of the government, of which you are *ex officio* the head. The act is complete in itself, and, unlike the laws relating to the Dairy and Food Division, contains no reference to the exercise of any control over the Weights and Measures Division by the Board of Agriculture.

Prior to the act of 1924, the Weights and Measures Division had no connection with the Department of Agriculture, being under the control of the Register of the Land Office (section 1465, Code of Virginia, 1919). This section, with others, was repealed by chapter 216 of the Acts of 1924, which makes the Dairy and Food Commissioner *ex officio* the Superintendent of Weights and Measures. If there had been any intention on the part of the General Assembly to place the control of weights and measures jointly under you and the Commissioner of Agriculture, or the Department of Agriculture, I am convinced that some reference to this very important matter would have been made in the act itself, and in the absence of all reference in the act itself—chapter 216 of the Acts of 1924 being complete in itself—I do not think that section 1158 of the Code of 1919, and the act of 1918, page 483, can be construed so as to apply to the Weights and Measures Division.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WEST FEE BILL—Clerk of courts in city of Norfolk

RICHMOND, VA., September 25, 1924.

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

MY DEAR MR. AUDITOR:

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

"I have called upon Mr. James V. Trehy, who is clerk of the corporation court of the city of Norfolk, also clerk of the corporation court No. 2 of the city of Norfolk, for report of fees, allowances, commissions, etc., for the year 1923, and Mr. Trehy is ready to file his report as clerk of the corporation court of the city of Norfolk, but does not think he is required to file report as clerk of the corporation court No. 2 of the city of Norfolk, in view of the provision in Acts of 1914, as amended, which excepts from making report under that act any office or officer where the total gross compensation of such office or officer from all sources, directly or indirectly, does not exceed the sum of \$2,500 as of December 31, 1917, he being of the opinion that the corporation court No. 2, although created by law passed subsequent to this amendment to the act of 1914, and, of course, after December 31, 1917, nevertheless comes within the provision of that exception in the act of 1914, as amended. I do not agree with this position, being of the opinion that the exception provided in the act of 1914, as amended, is limited specifically to the offices and officers in existence at the time of the enactment of the amendment to the act of 1914, whose total annual gross compensation received from all sources, directly or indirectly, did not exceed the sum of \$2,500 as of December 31, 1917.

"There is another difference of opinion between Mr. Trehy and myself with respect to his report or reports, about which I would be obliged if you will advise me. Please examine the Acts of the General Assembly of Virginia creating the court of law and chancery of the city of Norfolk, namely: Acts 1893-4, chapter 231, page 244, and the act creating the corporation court No. 2 of the city of Norfolk (Acts 1922, chapter 79, page 117), and decide whether or not Mr. Trehy is clerk of these courts by virtue of being clerk of the corporation court of the city of Norfolk, or are the three courts of which he is clerk, namely: corporation court, corporation court No. 2, and law and chancery court, separate and distinct offices, as you held with respect to the hustings court and circuit court of the city of Portsmouth in an opinion you gave me under date of May 8, 1920, copy of which will be found in your printed reports of 1920 on page 43."

As I advised you at the several conferences held with reference to this matter, I am of the opinion that there is no merit in the contention advanced by Mr. Trehy, as set out in the first paragraph of your letter.

As I advised you at the same time, however, I am of the opinion that Mr. Trehy, as clerk of the corporation court, the corporation court No. 2, and the law and chancery court of the city of Norfolk, holds three offices which are separate and distinct each from the other, and, therefore, his settlement would, under the West fee bill, be by separate accounts for each court, and it is my opinion that he would be entitled to the allowances and deductions provided by that act for each separate office held by him.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

WEST FEE BILL—Officers can not decline fees due thereunder

RICHMOND, VA., September 6, 1924.

HON. POSIE J. HUNDLEY,
Commonwealth's Attorney,
Chatham, Va.

MY DEAR MR. HUNDLY:

Acknowledgment is made of your letter of September 3, 1924, in which you say:

"The law provides that the treasurer of the county shall receive as compensation a certain percentage on funds collected by him. In a county like this, the commission exceeds the limit fixed in the West fee bill. We are building some roads on obligation on the county to be paid out of the 1926 levy, the patrons of the roads making the arrangement to finance the roads until the levy is available. Please advise me if the treasurer can receive and disburse the fund without taking his authorized commission."

I am of the opinion that neither the treasurer nor any other fee officer affected by the West fee bill can decline to receive the fees prescribed by law, so as to decrease the compensation which he would otherwise earn.

Under the West fee bill, the Commonwealth is entitled to the excess fees to which such officers are entitled, and to decline to receive the same would be, in effect, depriving the Commonwealth of that which the law gives her.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

of the will:

WILLS—Validity of devises

RICHMOND, VA., April 19, 1924.

JOHN M. PERRY, ESQ.,
*Central Union Trust Company Building,
80 Broadway, New York City.*

MY DEAR MR. PERRY:

I have delayed reply to your letter of the 11th, following our conversation with the Governor of Virginia, on the 9th, concerning the residuary bequest contained in the will of the late Granville P. Meade, until I could have an opportunity to consider thoroughly the question at issue, and to examine the authorities to which you referred me.

As I understand the matter, my opinion is desired on the following clause

"Upon the death of my wife, Elizabeth C. Meade, the trust estate herein created for her benefit shall become a fund to be used in assisting young men without means to gain a college education. To this end, the Governor, the Superintendent of Public Instruction, and the Commissioner of Agriculture of the State of Virginia and their successors in office shall constitute a board to take control of said fund, keep same in safe investment, and use the interest therefrom for the purpose above set forth. They shall select from the applicants the most worthy, by methods they shall determine, the young men to be assisted, selecting as many as the interest from the fund will permit.

"It is the desire of the testator to open the benefits of the fund to deserving Virginia youths without restriction, save it is limited to young men of the white race, born in Virginia, who are unable to raise the cost of college education. The colleges patronized must be located within the State of Virginia."

After a full consideration of the statutes and decisions, both of New York and Virginia, I am confident that this bequest is entirely valid. I can find no uncertainty in the designation either of the trustees or the beneficiaries which would serve to prevent the creation and administration of the educational use which the testator has so evidently desired to create.

The Virginia statute applicable to this case may be found in section 587 of the Code of Virginia, 1919, and is as follows:

"Every gift, grant, devise or bequest which, since the second day of April, in the year 1839, has been, or at any time hereafter shall be, made for literary purposes, or for the education of white persons within this State, and every gift, grant, devise, or bequest which, since the 10th of April, in the year 1865 has been, or at any time hereafter shall be, made for literary purposes, or for the education of colored persons within this State, and every gift, grant, devise or bequest hereafter made for charitable purposes, whether made in any case to a body corporate or unincorporated,

or to a natural person, shall be as valid as if made to or for the benefit of a certain natural person, except such devises or bequests, if any, as have failed or become void by virtue of the seventh section of the act of the General Assembly passed on the said 2nd of April, 1839, entitled 'an act concerning devises made to schools, academies, and colleges.' Nothing in this section shall be so construed as to give validity to any devise or bequest to or for the use of any unincorporated theological seminary."

It is scarcely necessary to cite any Virginia authorities in view of the clear terms of the statute. Should you desire a comprehensive view of the matter in the light of Virginia decisions, you will find it set forth in 1 Virginia Law Register N. S. 161.

With kind regards, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WORKMEN'S COMPENSATION—Policement and firemen

RICHMOND, VA., *April 28, 1924.*

J. J. HOLZBACH, ESQ., *Secretary,*
Eagle Engine Company No. 3, Volunteers,
4911 Virginia Avenue, Newport News, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of April 26, 1924, in which you say, in part:

"Will you kindly give me your opinion as to whether firemen and policemen come under the workmen's compensation act, and are they considered employees in the general term of speaking."

Prior to the amendment to section 2 of the workmen's compensation law, acts of 1918, page 637, policemen and firemen did not come within the terms of the act. *Mann v. Lynchburg*, 129 Va. 453, 106 S. E. 671.

Since section 2 has been amended, it provides, in part:

"* * * Policemen and firemen, except policemen and firemen in cities containing more than 125,000 inhabitants, shall be deemed to be employees of the respective cities, counties or towns in which their services are employed and by whom their salaries are paid. * * *"

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WORKMEN'S COMPENSATION LAW—School employees

F. F. JENKINS, ESQ.,
Division Superintendent,
Franklin, Va.

DEAR MR. JENKINS:

Acknowledgment is made of your letter of the 22nd in which you say:

"Some question has arisen as to the position of county school boards under the Virginia workmen's compensation law. I should like to know whether or not a county school board is classified as an employer under the above law and is liable for injuries to teachers which occur during the performance of their regular school duties.

"I should also be very glad to have your opinion regarding the liability of school boards in case of injury to pupils while being transported to and from school in school busses."

In reply, I would say teachers do come under the workmen's compensation law. They are employed, as you know, jointly by both the State and the localities. The school boards as the agents of both have been assuming responsibility. This, of course, is done only as a matter of convenience.

Injuries to pupils do not come within the purview of the law, since pupils are not employees.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WORKMEN'S COMPENSATION LAW—State employees

RICHMOND, VA., December 31, 1924.

MR. T. C. JOHNSON, *Director,*
Virginia Truck Experiment Station,
Norfolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of recent date in which you submit, for my opinion, the following five questions:

"1. Would the Virginia truck experiment station or the State be liable, under the workmen's compensation act, for personal injuries that might be sustained by farm laborers employed by the station in the discharge of their duties as such farm laborers?

"2. If a farm laborer, so employed, is temporarily assigned to operate the station's motor truck or motor car or tractor in farm operations or in delivering goods to and from shipping points, or in transporting other employees of the station, would the station or State be liable, under the workmen's compensation act, for injuries that might be suffered by such farm laborer so employed in the discharge of these duties?

"3. Would the station or the State be liable, under the workmen's compensation act, for personal injuries sustained by employees other than farm laborers in the regular discharge of their duties as such employees?

"4. If the station is not liable under questions 1 and 2, should the wages paid farm laborers be included in our payroll report to the Industrial Commission under the self-insurance clause of the workmen's compensation act?

"5. Would the station or State be liable for damages (1) to persons other than employees of the station, and (2) to property other than that of the station for accidents that might be incurred in the operation of the motor driven vehicles of the station when employed in the regular routine of the station's activities?"

In response to your first three questions, I think that it is doubtful whether agricultural laborers employed by the station come under the provisions of the workmen's compensation law. They would appear to be exempted by section 15 of that law, but in view of the provisions of section 8, a considerable doubt arises, and the Industrial Commission is inclined to the view that agricultural laborers employed by the State do come within the provisions of the workmen's compensation law. I would, therefore, suggest that insurance be carried for such employees as a matter of precaution.

In view of my answer to your first three questions, question four should be answered in the affirmative.

As to your fifth question, neither the State nor any subdivision of the State is liable for damages caused by the negligence of a State employee either for injuries to persons or property. *Fry v. Albemarle County*, 86 Va., 197.

With kindest regards and best wishes, I am

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

Statement

*Showing the Current Expenses of the Office of the Attorney General from
October 1, 1923, to June 30, 1925*

Telegrams	\$ 54 65
Telephone service and tolls	460 57
Subscriptions to and purchase of law books.....	175 75
Postage	285 00
Towels, drinking water, furniture, office supplies, repairs.....	1,402 38
Additional stenographic service	297 70
Insurance premiums	20 00
Total	\$ 2,696 05

Statement

*Showing Amounts Expended from the Appropriation for Traveling Expenses
from October 1, 1923, to June 30, 1925*

1923		
Oct.	1. J. D. Hank, Jr., expenses to Washington, Glass v. State Live Stock Sanitary Board	\$ 38 16
	6. J. R. Saunders, expenses to Washington, Glass. v. State Live Stock Sanitary Board	25 00
	22. L. M. Bazile, expenses to Washington, Oriental University Case	22 50
	30. J. R. Saunders, expenses to Pittsburgh, Pa., extradition of Xippas	50 00
Nov.	10. L. M. Bazile, expenses to Hopewell, Va., Warren Case.....	2 88
	17. J. D. Hank, Jr., expenses to Norfolk, Atlantic Deeper Waterways Convention	10 68
Dec.	14. J. D. Hank, Jr., expenses to Washington, Glass v. State Live Stock Sanitary Board	14 85
	L. M. Bazile, expenses to New York, Oriental University Case	62 46
	17. J. R. Saunders, expenses to Washington, Glass v. State Live Stock Sanitary Board	21 00
1924.		
Jan.	7. Ethel L. Nugent, expenses Washington to Richmond, Oriental University Case	21 70
	L. M. Bazile, expenses to Washington, Oriental University Case	35 15
Feb.	28. L. M. Bazile, expenses to Alexandria, Ketland Case.....	19 75
June	6. J. R. Saunders, expenses to Wytheville, Court of Appeals..	25 00
July	1. L. M. Bazile, expenses to Wytheville, Court of Appeals.....	39 50
Sep.	15. Lewis H. Machen, expenses to Norfolk, request of Governor ..	9 92
	20. Lewis H. Machen, expenses to Staunton, Court of Appeals..	31 82
Oct.	16. L. M. Bazile, expenses to Staunton, Court of Appeals.....	30 00
1925.		
Apl.	15. Lewis H. Machen, expenses to Petersburg, Burr Case.....	2 73
	17. J. R. Saunders, expenses to Bristol, attending the funeral of Judge Joseph L. Kelly	38 43
June	9. Lewis H. Machen, expenses to Wytheville, Court of Appeals ..	38 78
	L. M. Bazile, expenses to Wytheville, Court of Appeals.....	35 65
Total		\$ 575 96

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