

REPORT
OF THE
ATTORNEY GENERAL

TO THE
Governor of Virginia

From July 1, 1929, to June 30, 1930

RICHMOND:
1930

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LETTER OF TRANSMITTAL

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *July 30, 1930.*

Honorable JOHN GARLAND POLLARD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

In accordance with the provisions of section 377 of the Code of Virginia, I herewith transmit to you my annual report. This gives the "state and condition," as is required by this section, of the causes pending in the courts in which the Commonwealth is a party. You will observe I have added a number of opinions on questions of public interest, as well as a statement of the expenditures of this office for the year ending July 1, 1930.

The opinions included in this report and statements of suits pending and disposed of by no means represent all of the work of the office, the records of which show that the Attorney General has received a large and ever increasing number of inquiries concerning public business. Many of these inquiries require considerable time and research to answer, but it is not deemed necessary to preserve all such opinions in printed form.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

Personnel of the Office

(Postoffice address Richmond.)

NAME	COUNTY	OFFICIAL TITLE
JOHN R. SAUNDERS	Middlesex	Attorney General
EDWIN H. GIBSON	Culpeper	Assistant
COLLINS DENNY, JR.	Richmond City	Assistant
NERHEA S. TOWNSEND	Charlotte	Secretary
LOUISE W. POORE	Richmond City	Secretary
EVA E. KIBLER	Augusta	Secretary

Attorneys General of Virginia

From 1776 to 1930

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. BOCKOCK	1852-1857
JOHN RANDOLPH TUCKER	1857-1865
THOMAS RUSSELL BOWDEN	1865-1869
CHARLES WHITTLESEY (military appointee)	1869-1870
JAMES C. TAYLOR	1870-1874
RALEIGH T. DANIEL	1874-1877
JAMES G. FIELD	1877-1882
FRANK S. BLAIR	1882-1886
RUFUS A. AYRES	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	1918-1930

*Hon. J. D. Hank, Jr., was appointed Attorney General on January 5, 1918, to fill the unexpired term of Hon. John Garland Pollard and served until February 1, 1918.

Cases Decided in the Supreme Court of Appeals of Virginia

1. *Boggs, Simon v. Commonwealth.* From Circuit Court of Wise County. Murder. Affirmed.
2. *Boggs, Willard v. Commonwealth.* From Circuit Court of Wise County. Assault and battery. Writ dismissed.
3. *Bornstein, I. L. v. Commonwealth.* From Hustings Court of City of Richmond. Prohibition. Error confessed.
4. *C. I. T. Corporation v. Commonwealth.* From Circuit Court of Roanoke County. Forfeited automobile. Reversed.
5. *Commonwealth v. Chilton Maltng Company.* From Circuit Court of City of Richmond. Action for conversion of malt. Reversed.
6. *Dinges, Franklin v. Commonwealth.* From Circuit Court of Page County. Larceny. Error confessed.
7. *Dingus, Victor v. Commonwealth.* From Circuit Court of Russell County. Murder. Reversed.
8. *Duggins, Lawrence v. Commonwealth.* From Circuit Court of Roanoke County. Murder. Reversed.
9. *Eaton, Tullie v. Commonwealth.* From Circuit Court of Princess Anne County. Game Law. Error confessed.
10. *Finney, Schley v. Commonwealth.* From Circuit Court of Accomac County. Attempt to commit rape. Reversed.
11. *Goodman, Joe v. Commonwealth.* From Hustings Court of City of Portsmouth. Manslaughter. Reversed.
12. *Hannah, Harris v. Commonwealth.* From Circuit Court of Lee County. Murder. Reversed.
13. *Hardyman, George v. Commonwealth.* From Circuit Court of Alleghany County. Rape. Affirmed.
14. *Hodge, Lucien v. City of Winchester.* From Corporation Court of City of Winchester. Prohibition. Affirmed.
15. *Hopkins, Walter v. Commonwealth.* From Circuit Court of Giles County. Seduction. Reversed.
16. *Kilgore, Loyd v. Commonwealth.* From Circuit Court of Wise County. Record. Prohibition. Error confessed.
17. *King, Daniel v. Commonwealth.* From Circuit Court of Fauquier County. Prohibition. Reversed.
18. *Langford, Harper Green v. Commonwealth.* From Circuit Court of Charlotte County. Prohibition. Affirmed.
19. *Mason, Robert T. v. Commonwealth.* From Circuit Court of Brunswick County. Attempt to murder. Affirmed.
20. *Meekins, Vernon v. Commonwealth.* From Circuit Court of Warwick County. Prohibition. Reversed.
21. *Miller, Russell v. Commonwealth.* From Circuit Court of Russell County. Seduction. Affirmed.
22. *McElroy, Dona Laxton v. Commonwealth.* From Circuit Court of Wise County. Malicious wounding. Affirmed.
23. *Nelson, Gilbert v. Commonwealth.* From Circuit Court of Alleghany County. Murder. Reversed.

24. *Nelson, Thomas v. Commonwealth.* From Circuit Court of Albemarle County. Murder. Reversed.
25. *Parsons, W. Carroll v. Commonwealth.* From Circuit Court of Northampton County. Prohibition. Affirmed.
26. *Railway Express Agency, Incorporated v. Commonwealth.* From State Corporation Commission. Right of foreign transportation company to do business in Virginia without first domesticating. Affirmed.
27. *Sifford, R. W. v. Commonwealth.* From Circuit Court of Pulaski County. Murder. Affirmed by divided court.
28. *Spratley, Charlie v. Commonwealth.* From Hustings Court of City of Portsmouth. Prohibition. Reversed.
29. *Webb, D. E. v. Commonwealth.* From Circuit Court of Pittsylvania County. Murder. Affirmed.
30. *Williams, V. S. v. Commonwealth.* From Circuit Court of Princess Anne County. Unlawful wounding. Reversed.
31. *Wood, Louis H. v. Commonwealth.* From Corporation Court, Part I, of City of Norfolk. Prohibition. Dismissed at request of petitioner.

Cases Pending in the Supreme Court of Appeals of Virginia

1. *Aetna Insurance Company, et al. v. Commonwealth.* From State Corporation Commission. Proceedings to reduce rates of insurance companies doing business in Virginia.
2. *Boyd, W. E. v. Commonwealth.* From Hustings Court of City of Portsmouth. Murder.
3. *Brown, Melvin v. Commonwealth.* From Circuit Court of New Kent County. Prohibition.
4. *Fentress v. Commonwealth.* From Circuit Court of Norfolk County. Manslaughter.
5. *Frazier, C. A. v. Commonwealth.* From Circuit Court of Pittsylvania County. Prohibition.
6. *Jennings and Glazebrook v. Commonwealth.* From Circuit Court of Surry County. Prohibition.
7. *Jones, Willie v. Commonwealth.* From Circuit Court of Norfolk County. Prohibition.
8. *Puckett, Slemph v. Commonwealth.* From Circuit Court of Tazewell County. Murder.
9. *Seay, Leon v. Commonwealth.* From Circuit Court of Essex County. Prohibition.
10. *Slade, Lester v. Commonwealth.* From Circuit Court of Southampton County. Prohibition.
11. *Smith, Garland v. Commonwealth.* From Circuit Court of Mecklenburg County. Murder.
12. *Sullivan, Eugene v. Commonwealth.* From Hustings Court of City of Roanoke. Malicious maiming.
13. *Taylor, James v. Commonwealth.* From Corporation Court of City of Newport News. Prohibition.
14. *Thacker, James v. Commonwealth.* From Circuit Court of Buchanan County. Murder.

15. *Trent, W. B. v. Commonwealth.* From Circuit Court of Buckingham County. Prohibition.
16. *West, M. L. v. Commonwealth.* From Circuit Court of Southampton County. Prohibition.

Cases Pending or Tried in the Circuit Court of the City of Richmond

AT LAW

1. *Commonwealth v. O. B. Thomas, Treasurer.*
2. *Commonwealth v. G. P. Barr, Treasurer.*
3. *Commonwealth v. W. M. Gray and J. J. Geisler.*
4. *Commonwealth v. O. D. Foster, Adm.*
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. Atlantic Coast Line Railroad Company.*
9. *Commonwealth v. Seaboard Air Line Railway Company.*
10. *Commonwealth v. Virginia Railway and Power Company.*
11. *Commonwealth v. John T. Fitzgerald.*
12. *Commonwealth v. John D. Evans, Sergeant.*
13. *Commonwealth v. E. Thompson, Clerk.*
14. *Commonwealth v. R. C. Glover, Commissioner of Revenue.*
15. *Commonwealth v. Jas. T. Trehy, Clerk.*

IN CHANCERY

1. *Commonwealth v. R. H. Huffman, et als.*
2. *Commonwealth v. Walter Milan, Treasurer.*
3. *Commonwealth v. T. J. Young, Treasurer.*
4. *Commonwealth v. A. A. Chapman, Treasurer.*
5. *Commonwealth, ex rel. Joseph Button, Commissioner of Insurance v. Surety Corporation of America.*
6. *Commonwealth v. B. B. Van de Grifdt & Son.*
7. *Fidelity and Deposit Co. of Maryland v. Commonwealth.*
8. *R. H. Stuart's Ex'ors v. Commissioners of Sinking Fund.*
9. *Minton W. Talbot v. C. Lee Moore, Auditor of Public Accounts.*
10. *W. P. Weaver v. State Live Stock Sanitary Board.*

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OPINIONS

ADJUTANT GENERAL—Salary.

RICHMOND, VA., May 23, 1930.

GENERAL W. W. SALE,
*The Adjutant General,
Richmond, Virginia.*

MY DEAR GENERAL SALE:

I beg leave to acknowledge receipt of your letter of May the 19th, which is as follows:

"Paragraph 2, section 5, article 2, chapter 446, Acts of Assembly, 1930, approved March 27, 1930, revising, collating and codifying into one act the general statutes of the Commonwealth relating to militia reads as follows:

"The Governor shall appoint an Adjutant General, with the rank of brigadier general, to serve at the pleasure of the Governor, who shall have had not less than five years commissioned service in the Virginia National Guard, and who, while holding such office, may be a member of the National Guard. The Adjutant General shall receive the present base pay of an officer of the same grade of the regular army, but he shall receive no other pay from the State."

"For your information, the pay schedule carried in the annual official army register since June 10, 1922, shows a brigadier general entitled to an annual base pay of \$6,000.

"Kindly advise me what salary the Adjutant General is now entitled to in return for his services as such, and the method to follow in obtaining this salary."

There can be no doubt, from the provisions contained in paragraph 2, section 5, article 2, chapter 446, Acts of Assembly, 1930, which you quote in your letter, that the legislature clearly intended that the Adjutant General of the State should receive the same salary as is paid a brigadier general in the regular army, which you state in your letter is \$6,000.

It is true that in the appropriation bill the salary of the Adjutant General is fixed at \$4,800. However, the appropriation bill was approved on March 17, 1930, and the act, which you quote and refer to in your letter, was approved on March 27, 1930, which is the last expression of the legislature as to what the salary of the Adjutant General should be and, of course, takes precedence over the appropriation bill.

You further ask in your letter what method should be followed in order that this salary may be paid. In this connection, I call your attention to section 21 of the appropriation bill, which, among other things, contains the following provisions:

"* * * provided, however, that the several appropriations made by this act may not only be used for the purposes specified in this act, but authority is hereby given to the governing board of any State department, institution or other agency, or, if there be no governing board, to the head of such department, institution or other agency named in this

act, to transfer, within the respective department, institution or other agency, any such appropriations from the object for which specifically appropriated or set aside to some other object deemed more necessary in view of later developments, subject, however, in every case, to the consent and approval of the Governor, in writing, first obtained; and provided, that the total amount appropriated to the respective department, institution or other agency shall in no case be exceeded; * * *."

In my judgment, the military board should authorize a transfer of \$1,200 to be applied towards the payment of the salary of the Adjutant General, and obtain the consent and approval of the Governor for so doing.

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

AGRICULTURE AND IMMIGRATION—Authority of commissioner to inspect commission merchants' books.

RICHMOND, VA., June 9, 1930.

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

MY DEAR SIR:

I beg to acknowledge receipt of your letter of May 19, which is as follows:

"In connection with the Commission Merchants Law, as sections 1257 to 1265, inclusive, of the Code of Virginia of 1919, as amended, are generally known, some question has arisen as to the extent of the power vested in the Commissioner of Agriculture and Immigration to inspect the books and records of commission merchants holding licenses under the provisions of the act. We shall, therefore, appreciate your considering the sections involved and giving us your opinion as to the following questions:

"1. Under sections 1260 and 1263, does the Commissioner, without having a complaint, verified or otherwise, have the right to inspect the books and records of a commission merchant?

"2. Assuming that the Commissioner has the right to inspect, if the commission merchant refuses to permit such inspection what steps must the Commissioner take to see the books?

"3. Will the same steps outlined in answer to Question 2 be followed in case a verified complaint is filed with the Commissioner?

"4. When a verified complaint is filed with the Commissioner, is he limited in his investigation to the matters therein referred to?

"5. Under section 1263, certain records therein set forth are open to the 'confidential inspection of the Commissioner.' What use may be made of information thus gained?

"6. Under these two specific sections, are powers vested in the Commissioner under any circumstances to seize the books and records of a commission merchant to prevent possible destruction or alteration?"

In answering your questions in the order in which they are asked, I beg to advise as follows:

1. Section 1260 of the Code contains two paragraphs. The first clause of the first paragraph authorizes the Commissioner to receive complaints; the first clause of the second paragraph requires the Commissioner, when a verified complaint is filed, and authorizes him, on his own motion, to investigate the several matters therein set forth, and in furtherance of this investigation the second sentence of that paragraph empowers him to examine books, etc. It will be noticed that the books, etc., which the Commissioner is here empowered to examine, are in the nature of permanent records. Section 1263 of the Code requires the temporary records of each transaction to be kept by commission merchants for one hundred and twenty days, and the books are open for the confidential inspection of the Commissioner. I am, therefore, of the opinion that the Commissioner, either upon complaint or on his own motion, has the right to inspect the books and records of a commission merchant.

2 and 3. In the event a commission merchant refuses to permit an inspection of any transaction as to which a verified complaint has been filed, or as to which the Commissioner on his own motion may move, the Commissioner is to issue appropriate orders and subpoenas and, if he be disobeyed, he may cite the commission merchant for contempt. I am also of the opinion that, as the Commissioner is given statutory authority to investigate these records and as it thereby becomes the duty of a commission merchant to open them to him, the inspection thereof may be obtained by a mandamus proceeding.

4. An investigation of any particular transaction, pursuant to verified complaint or on the motion of the Commissioner, is in the nature of a judicial inquiry, and, if the facts therein disclosed are such as would authorize the Commissioner to revoke the license of a commission merchant, he may so do. It would, therefore, appear that the investigation must be confined to the matters set forth in the complaint. The complaint, however, could be amended so as to broaden the scope of the inquiry, or the Commissioner under his power to investigate any transaction might on his own motion broaden it.

5. Confidential inspection refers only to temporary records which must be kept for one hundred and twenty days. I am of the opinion that, if this confidential inspection discloses that a commission merchant is violating the law, the Commissioner has the right to proceed in the manner set forth in section 1260 of the Code.

6. I am of the opinion that the Commissioner is not authorized to seize books and records of a commission merchant.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AGRICULTURE AND IMMIGRATION—Pure food law—Does “Min-oilaise” meet requirements of.

RICHMOND, VA., October 31, 1929.

HON. F. C. BREAZEAL, *Director,*
Dairy and Food Division,
Department of Agriculture and Immigration,
Richmond, Virginia.

MY DEAR SIR:

I am just in receipt of your letter of October 31, 1929, in which you enclose a label that reads as follows: “Sharp’s Original Minoilaise A Delicious Salad Dressing.” This label states that this preparation “contains non-fattening mineral oil in place of vegetable oil—not more than 1/40th the fattening properties and food value of vegetable oil mayonnaise.” I note that you desire my opinion as to whether this label meets the requirements of the pure food law, coupled with the statement that you request this opinion to be used at a hearing at three o’clock this afternoon. You refer me to sections 1180; 1181, paragraphs one, two and three, and 1182 of the Code of 1919 (1924). In your letter you suggest that the label should read “Mineral-Oil-Aise.”

Section 1180 of the Code describes as “food” articles used for food, drink, confectionery, or *condiment* by man or other animals, whether simple, mixed or compound.

Section 1181 undertakes to state those cases in which articles are to be deemed adulterated. Three paragraphs of this section have to do, first, with the *condiment* in which substances have been mixed or packed with it so as to reduce or lower or injuriously affect its quality or strength; second, where some other substance has been substituted wholly or in part for the article; and, third, where some valuable constituent has been wholly or in part abstracted.

“Minoilaise” is a separate *condiment* and, so far as the label shows, none of the objections provided for in the three paragraphs referred to above are applicable thereto.

Section 1182 has to do with the misbranding or false blending of articles of food.

I fail to see that the name “Minoilaise” is objectionable to any of the clauses, under section 1182, in which the label may be deemed as misbranding or objectionable as a blend. It would appear to me that the name is not objectionable, and that it is in no wise necessary to change the name from “Minoilaise” to “Mineral-Oil-Aise.” It is not only not unlawful, but it is customary for preparations of this character to contain an abbreviated name indicating by the very name itself the articles of which it is composed and the character of the finished product.

The law does not require that articles of food such as the one in question shall carry the full name of each and every substance contained in such preparation, and I can see no objection to the name "Minoilaise."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

APPROPRIATIONS—Lapse of.

RICHMOND, VA., May 23, 1930.

HONORABLE JOHN H. JOHNSON, *Pension Clerk,*
Comptroller's Office,
Richmond, Virginia.

MY DEAR MR. JOHNSON:

I beg leave to acknowledge receipt of yours of the 22nd, in which you say:

"Will you kindly let this office have in writing the ruling you made verbally to me this week, concerning the unexpended balance which the books in the Comptroller's office may show June 30, 1930, in the fund provided by the General Assembly to pay pensions to Needy Confederate Women. The ruling was that any unexpended balance of this fund on the books of the Comptroller's office June 30, 1930, should be carried forward and added to the next appropriation for the year beginning July 1st, 1930, to be expended in the payment of these pensions."

In reply to your question, I beg leave to call your attention to section 23 of chapter 118 of the Acts of Assembly of 1930 appropriating the public revenue for the period from March 1, 1930, to June 30, 1932, which provides as follows:

"All the appropriations here made out of the general fund of the State treasury for the period of four months, beginning March 1 and ending June 30, 1930, and for the two years ending, respectively, on June 30, 1931, and on June 30, 1932, unexpended on the books of the division of accounts and control at the close of business on June 30, 1932, shall revert to and become a part of the general fund of the State treasury of the Commonwealth of Virginia, * * *."

You will see from a reading of this section that the legislature did not intend that any funds appropriated for specific purposes, as set forth in the appropriation bill, should revert into the State treasury until the close of business on June 30, 1932. Such being the case, any unexpended balances on the books of the Comptroller's office on the 30th day of June, 1930, which was appropriated to pay pensions to needy Confederate women, can be carried over and expended any time during the period between July 1, 1930, and June 30, 1932.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

APPROPRIATION BILL—Constitutionality of section 18.RICHMOND, VA., *April 24, 1930.*STATE BOARD OF EDUCATION,
Richmond, Virginia.

GENTLEMEN:

My opinion has been requested as to the constitutionality of section 18 of the appropriation bill passed at the 1930 session of the General Assembly of Virginia.

In this section provision is made for the issue and sale of certificates of indebtedness in the names and on behalf of the University of Virginia, the Virginia Polytechnic Institute, and William and Mary College by the commissioners of the sinking fund, subject to the approval of the State Board of Education, first obtained.

The State Board of Education is authorized by this section to sell bonds of the State held as a part of the literary fund and to invest the proceeds from the sale of such bonds in the certificates of indebtedness issued under the provisions of the act. The Board of Education is further authorized to invest any uninvested portion of the literary fund in these certificates of indebtedness. In the event that sufficient funds are not available for the purchase of all of such certificates with money belonging to the literary fund or proceeds arising from the sale of certain bonds, the commissioners of the sinking fund are authorized and directed, when and as required by the State Board of Education, to invest any uninvested portion of the sinking fund created for the payment of the certificates of indebtedness issued under authority of chapter 489 of the Acts of 1926 and of chapter 61 of the Acts of 1928, or to sell any or all of the securities now in those sinking funds and in the sinking fund under the provisions of chapter 93 of the Acts of 1927, and to invest the proceeds in certificates of indebtedness issued on behalf of the institutions above mentioned.

The question has arisen as to whether or not this provision is germane to the appropriation bill and can constitutionally be carried into effect by the Board of Education and sinking fund commissioners.

In my opinion, section 18 of the appropriation bill is constitutional. The bond securities and monies affected by the provisions of the section are undoubtedly a part of the public funds of the State of Virginia. They are made available by section 18 for the use and benefit of the institutions named. The appropriation bill having already made certain provisions for the institutions by way of direct appropriations and evidently taking into consideration the relative obligation of the State to other institutions, it was apparently deemed unwise by the Legislature to make a further unconditional appropriation to the institutions mentioned. The money was made available by the appropriation bill, but was made available in such a way that the institutions receiving the benefit of the provisions of the section are made to account to the State and its funds for the amounts received under the provisions of section 18.

The courts universally hold that every presumption of law is in favor of the constitutionality of every act passed by the Legislature and that, if there is any reasonable way in which effect, under the Constitution of the State,

can be given an act of the Legislature, it is constitutional and will be so held by the courts.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

AUTOMOBILES—Offenses under—Prosecution for.

RICHMOND, VA., July 29, 1929.

HON. W. W. HASKINS,
Justice of the Peace,
Prospect, Virginia.

MY DEAR MR. HASKINS:

Acknowledgment is made of your letter of July 29, 1929, in which you say in part:

"A man is to be tried here on Wednesday, July 31, on three separate charges:

"1st, operating a car on the highway without a license tag on same;

"2nd, changing the license plates from one car to another of different kind;

"3rd, having in his possession a car for which he had no license.

"These warrants were sworn out by O. T. Snell, of Crewe, State automobile officer, and I am writing to ask if these cases can be tried separately, and, if the party is found guilty, what is the penalty in each case. I see in the Code that for some infractions of the law a party can be fined for each day he operated a car which was not lawfully equipped, etc."

If the first two offenses charged were committed at different times, they are made offenses by section 27, paragraph 1, of chapter 149 of the Acts of 1926, and the punishment prescribed therefor is found in section 37 of the same act, which provides a punishment by fine of not more than \$500.00, or by imprisonment in jail for not more than six months, or by both fine and imprisonment.

If, however, the offenses charged in the first two warrants occurred at the same time, it is my opinion that, under section 4775 of the Code, as amended, prosecution and conviction of one of the offenses would bar a prosecution in the other.

As to the third offense mentioned in your letter, I cannot find in the law where it is an offense for a person to have in his possession an automobile which has not been licensed, so long as he does not use the same on the public roads. If he does use the car on the public roads, then the offense is that of operating the vehicle without a license, which appears to be charged in the first warrant. Therefore, I would suggest that the third warrant be dismissed.

In response to your last inquiry, I am of the opinion that each separate day's use of the car without a license, or with license plates thereon

issued for another car without lawful transfer thereof, would constitute a separate offense.

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

BOARD OF SUPERVISORS—Authority of to order reassessment of lands.

RICHMOND, VA., *June 30, 1930.*

HON. A. W. EMBREY, JR.,

Attorney at Law,

Fredericksburg, Virginia.

DEAR MR. EMBREY:

I am in receipt of your letter of Saturday, in which you ask to be advised as to whether or not the board of supervisors of Spotsylvania county may order a reassessment of lands for the current year, and I note that you say that the board have been advised that they cannot order such reassessment.

A careful reading of the law leads me to the conclusion that the law now providing for general reassessments is limited to cities and counties in the State with a population in excess of 500 to the square mile and to counties adjoining such counties and adjoining cities having a population of more than 150,000 inhabitants, according to the last Federal census.

I called up Mr. Morrisett, State Tax Commissioner, and he is of the same opinion. He is also of the opinion that the evident purpose of the board of supervisors of Spotsylvania can be obtained through the activities of the county's board of equalization, and I agree with him that this board can accomplish the same purpose as could be accomplished by a general reassessment for the county.

If the Legislature unintentionally omitted to provide for general reassessments in practically all of the counties of the State, a provision for general reassessment in those counties must necessarily await an amendment of the law by the next General Assembly.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

BOARD OF SUPERVISORS—Loans from county levy to district for payment of bonded indebtedness—Repayment of from sinking fund created to retire said bonded indebtedness.

RICHMOND, VA., August 9, 1929.

HON. W. POTTER STERNE,
*Attorney for the Commonwealth,
Dinwiddie, Virginia.*

MY DEAR MR. STERNE:

Acknowledgment is made of your letter of August 6, 1929, in which you say in part:

"It seems, that in August, 1917, the board of supervisors of this county paid out of the county fund \$3,000 for Namozine road warrants in the following manner:

"\$3,000 was placed on certificate of deposit in bank to the credit of the chairman of the board of supervisors.

"An order appears in the supervisors' record book as follows:

"Ordered that a warrant be drawn in favor of the board of supervisors for three thousand dollars, payable out of the county levy 1916, for account of redeeming road bonds."

"In 1921 a certain party, who I am advised held certain of the road bonds, drew a draft on the said chairman of the board of supervisors. This draft was honored by the said chairman of the board of supervisors, and the money was paid to holders of \$3,000, approximately, in bonds to redeem that amount of Namozine district bonds. In other words, it seems that in August, 1917, the board of supervisors advanced \$3,000 out of the general county fund, by placing it on C. D. to the credit of the chairman of the board to purchase Namozine district road bonds, although several years passed, apparently, before the purchase was actually consummated.

"On July 9, 1929, the board of supervisors of this county drew a warrant on the Namozine district sinking fund, I am advised, for \$4,210.20, reimbursing the county fund, being the amount due the said county fund, including interest.

"It appears that on July 9, 1929, the supervisors' record shows in part the following:

"Ordered that the following accounts be allowed.—P. B. Halligen, Treas. Transfer from Namozine road interest and sinking fund to general county fund for Namozine bonds paid for out of county levy, August 23, 1917."

"I am informed that when the bonds were taken up in 1921 there was left on C. D. in bank in the name of the chairman of the board of supervisors something over \$100 and that this C. D. has now been indorsed over by him to the treasurer of the county and this with interest and the amount of the warrant makes a total amount of \$4,410 due the county funds, the above mentioned warrant being drawn for the difference between the said C. D. and the said amount of \$4,410.

"In other words, as I understand the situation, in 1917 the board of supervisors took money out of the county fund and placed it in the name of the chairman of the board in bank to take up certain Namozine district road bonds, which was done in 1921; that now the board of supervisors has decided that Namozine district should pay this amount back, including interest, I believe at 4 per cent, and the amount, except for the small balance left on C. D., is to be taken from the Namozine district road bond interest and sinking fund to be placed in the general county fund. The warrant has been drawn, I am informed, by the board,

but the treasurer is waiting on your opinion before he makes the transfer. The question is, has the treasurer a legal right to make the transfer under these conditions and be protected.

"From an equitable standpoint, it appears that Namozine district is simply paying back what they already got and has made something on the deal, as I understand that they did not pay the county as much interest as they were paying on the bonds, but from a strictly legal standpoint, the treasurer wishes to know if he can make this transfer now and be protected. I do not think that the present treasurer was in office at the time of the original transaction; I know I was not Commonwealth's attorney at that time. At the meeting of the board, at which time this question came up in this year, and the last order was entered, I was not present, as I was sick."

It appears from your statement that \$3,000 was loaned from the Dinwiddie general county fund to Namozine district to redeem certain road bonds of that district and now that the board of supervisors have ordered that same with interest be paid from the sinking fund of Namozine district into the general county fund for the purpose of reimbursing it.

I do not find a special act authorizing Namozine district to issue road bonds, so I assume that the bonds were issued under the general statute relating to district road bonds. The general law at that time relating to the issuance of county bonds for road improvement in the magisterial districts was chapter 225 of the Acts of 1912, which was amended by chapter 238 in 1916.

I am not advised as to whether the original of the amended act applied to the issuance of the bonds in the district referred to. You will see from section 7 of the act of 1912, which was amended in 1916, that the board was authorized and required to levy a tax to pay the interest on the bonds issued and to create a sinking fund to redeem the principal at maturity. The board of supervisors was authorized to apply any part of the sinking fund to the payment or purchase of the bonds at any time and to invest the remainder thereof. In 1916 this section was amended by adding the following provision (Acts 1916, page 462):

"The amount levied for and set apart as a sinking fund and the interest accruing thereon shall be used for the payment of the principal of said bonds, and for no other purpose."

As the \$3,000 original loan from the county levy was used for the redemption of road bonds issued by Namozine district, in my opinion, it would be within the keeping of the spirit as well as the letter of the law to reimburse the county levy to the extent of the principal sum loaned by the county to the district for the purpose referred to.

I am of the opinion, however, that no part of the sinking fund under the law as it then existed and as it exists at the present time (section 2118 of the Code of 1919, as amended) could be used for the payment of interest on the \$3,000 loaned to the district.

As to whether any part of the levy made for the purpose of paying the interest on the said road bonds could be used for this purpose, I express no opinion, as that does not appear to be involved in issue here.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BONDS—Commissioner of Agriculture—Act fixing bond at \$30,000, being latest, controls.

RICHMOND, VA., *February 3, 1930.*

HON. G. W. KOINER,
*Commissioner of Agriculture,
Richmond, Virginia.*

DEAR MR. KOINER:

I am in receipt of your letter of even date, asking whether or not section 325 of the Code of Virginia, 1919, has been amended.

There is conflict between section 325 and section 1105 as to the bonds required of the Commissioner of Agriculture.

Under the provisions of section 325, the bond of the Commissioner is placed at ten thousand dollars, while under section 1105 the bond is fixed at thirty thousand dollars.

Section 325 was last amended at the 1902-3-4 session of the General Assembly, page 579, while section 1105 was passed at the 1908 session of the General Assembly, page 99.

Under the general rule of law that the last act governs, the law fixing the bond at thirty thousand dollars controls.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BONDS—Matured bonds accepted as collateral security by State Treasurer.

RICHMOND, VA., *December 20, 1929.*

HON. JOHN M. PURCELL,
*Treasurer of Virginia,
Richmond, Virginia.*

DEAR SIR:

The Attorney General has handed me for attention your letter of today, in which you quote section 2158 of the Code of Virginia, as amended and re-enacted by chapter 93 of the Acts of the General Assembly of 1928, in reference to the security required of banks in which you, as State Treasurer, deposit funds of the Commonwealth of Virginia, and especially with reference to whether or not you are authorized to accept bonds maturing January 1, 1930, as security for de-

posits which will remain in bank on and after the date of the maturity of the bonds offered as security.

There is nothing in the act requiring the deposit of bonds before maturity or preventing the acceptance of bonds after the same shall have matured, and I am of the opinion, and so is Colonel Saunders, with whom I have discussed the statute and the question raised by you, that you are authorized to accept bonds maturing January 1, 1930, as security for deposits of State money which is to remain in bank after that time. Your only responsibility in the matter is to satisfy yourself that the security offered is good and sufficient to cover the deposits made by you.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

**CITIES AND TOWNS—Mayors—Power to administer oaths.
ELECTIONS—Failure of candidates to file expense accounts—Effect of.**

RICHMOND, VA., July 5, 1929.

HON. JOHN F. BETHUNE, *Mayor,*
Falls Church, Virginia.

MY DEAR MR. MAYOR:

I am in receipt of your letter of July 2nd, in which you ask certain questions.

The first question you ask is whether or not a mayor is authorized to administer oaths of office to members elect of the town council and to execute affidavits requiring a jurat. You refer me to section 3011 of the Code.

While members of town councils are not specifically mentioned in section 273 of the Code, I am rather of the opinion that that section governs, and it is best to have members of the council take their oaths before the judge of your circuit court, or the clerk in vacation. The provisions of section 3011 of the Code are not entirely clear, and your right to execute affidavits and other papers requiring a jurat is not clear. Therefore, it would be inadvisable for you to execute such papers, as the legality thereof might be successfully assailed.

Second. Oaths of office of all persons is prescribed by section 34 of the Constitution, and for councilmen of your town it would be as follows:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Virginia, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as councilman of the town of Falls Church, according to the best of my ability, so help me God."

The anti-dueling oath is no longer required. Sections 270 and 271 of the Code having been repealed by the Acts of 1926, page 318.

Third. In my opinion oaths of office are required to be in writing. You will notice they are not only required to *take*, but, to subscribe their oaths of office.

Fourth. You ask me as to the status of a member of the town council who is reelected but fails to file the statement of his expenses, as required by section 253 of the Code.

In my opinion, he would not be entitled to hold over, but, in case he does not file his expense account, his election is inoperative instead of void and a vacancy occurs. However, Judge John H. Ingram, in the Law and Equity Court of the city of Richmond, held in the case of *Grundy v. Christian*, clerk of the Hustings Court of the City of Richmond, 10 Va. Law Reg. 434, that his office would not be forfeited because he did not take his oath of office within the time prescribed by law and, although a penalty was imposed for his failure to file his oath and expense account within a limited time, he could file it afterwards, and would be entitled to a certificate of election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CLAIMS—Fact that claim was not filed in prescribed time limit relieves railway company from legal responsibility for loss of property.

RICHMOND, VA., *February 3, 1930.*

HON. W. W. SALE,

Adjutant General of Virginia,

Richmond, Virginia.

MY DEAR SIR:

I am in receipt of your letter of the 22nd instant, enclosing letter of Major M. M. Kimmel, surveying officer, to you under date of the 20th ultimo, the subject of his letter to you being a request for a legal opinion from the Attorney General upon the following state of facts:

"(a). On November 22, 1928, Major John B. Fitts, M. C., 183d Infantry Va. N. G., made a shipment of one trunk of medical supplies, on U. S. War Department, Government bill of lading No. W. Q. 17111327 to Commanding Officer, 110th Hospital Company Va. N. G., Danville, Va.

"(b) Before shipment the contents of the above mentioned trunk of medical supplies was checked by Major John B. Fitts, trunk sealed (but not locked as lock was broken) and personally turned over by him to the Southern Railway for shipment.

"(c) On November 26, 1928, this trunk was received by a representative of Captain John A. Hawkins, commanding officer of the 110th Hospital Company in Danville, Va., one Ellis Mann, Staff Sergeant, 110th Hospital Company Va. N. G. The freight agent representing the Southern Railway Company in Danville requested Sergeant Mann to sign the bill of lading before he had had an opportunity to inspect the trunk. Upon inspection of the trunk it was discovered that it was in 'bad order, unlocked and seal broken,' and further that a considerable amount of its normal contents was missing. Sergeant Mann called the attention

of Mr. S. F. Pace, the Southern Railway delivery clerk, to the condition of the trunk and to the fact that certain articles were missing. This Mr. Pace acknowledged and a notation was placed on the delivery receipt signed by Sergeant Mann. However, no notation was placed on the bill of lading, as Sergeant Mann evidently believed that the interest of the government had been safeguarded by his notation on the delivery receipt.

"(d) It was later discovered, by a careful check of the contents of the trunk, that governmental property to the amount of \$130.26 was missing. However, no formal claim in writing was presented to the Southern Railway until October 25, 1929.

"3. An answer to the following question is desired:

"Assuming that the evidence clearly establishes the fact that the articles mentioned were lost while en route from Richmond, Va., to Danville, Va., does that fact that no written claim, other than the notation on the delivery receipt, was made prior to the date mentioned (over six months from date of delivery) relieve the Southern Railway from legal responsibility for the loss of this property?"

In my opinion, the Southern Railway cannot be held liable for loss of the property mentioned in Major Kimmel's letter, on account of the fact that the claim was not made within the time limit prescribed in the bill of lading on which the goods were shipped.

This conclusion is undoubtedly correct as to an individual having claims against the company. If it is sought to take this claim, out of the general rule, on account of the fact that the property is governmental, it has been held in *U. S. v. Ches. & D. Canal Co.*, 206 Fed. 964, that the government of the United States as one of the contracting parties in a bill of lading is bound by the provisions of the bill.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

CLERKS—Fees of.

RICHMOND, VA., April 7, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR SIR:

You have handed me for an opinion a letter of Honorable A. D. Latane, clerk of Essex county, Virginia, dated March 26, in which Mr. Latane recites that his accounts for fees in two cases in which the accused were convicted of felonies, sentenced and worked out their time and fines and costs on the road were reduced from \$6.00 in the Nelson case and \$3.75 in the Bingham case to \$2.50 in each case.

I note that Mr. Latane takes the position that in those cases in which costs due the clerk exceeded \$2.50, recoverable against an accused and worked out on the convict road force, the Commonwealth should account to him for the full amount of his fee.

Section 3493 of the Code provides:

"No clerk, sheriff or sergeant shall receive payment out of the treasury for any services rendered in cases of the Commonwealth, except where it is allowed by this or some other chapter."

You will see that, unless there is a special provision for the payment of a fee to a clerk, there is no authority of law for its payment.

By virtue of the provisions of section 3506 of the Code a clerk of a court is entitled to a fee as against the Commonwealth for each case of felony tried in his court—\$2.50, and under the provisions of chapter 407, section 46, page 610, of the Acts of 1924, for each case of violation of the prohibition law (felony or misdemeanor) tried in his court \$2.50.

The only other provision for the payment of a fee to a clerk is that contained in section 4787, in which, for registering descriptive lists of a person convicted of a felony or other infamous offense, an allowance is made for each person of fifty cents.

These are the only provisions of law I find for the allowance of clerk costs in criminal cases against the Commonwealth.

In my opinion, a clerk is not entitled in such cases as are cited by Mr. Latane to be paid in excess of the statutory fees allowable as charges against the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMISSION OF GAME AND INLAND FISHERIES—Authority to appoint game wardens vested in chairman of—Returns on hunting licenses should be paid to State treasurer for account of game protection fund.

RICHMOND, VA., *January 29, 1930.*

HON. J. WARREN TOPPING,
House of Delegates,
Richmond, Virginia.

DEAR MR. TOPPING:

I am in receipt of your letter of yesterday, in which you request an opinion as to the power having the appointment of game wardens for Accomac and Northampton counties and the authorities to whom net returns on hunting licenses collected by the county clerks of those counties are payable.

As my opinion is based upon the state of facts fully set forth in your letter, I am quoting it in full, as well as certain provisions of the act creating the Eastern Shore Game Protection Association:

"On March 15, 1894, an act was passed to incorporate the Eastern Shore Game Protection Association of Virginia, a copy of which act is attached hereto and made a part of this letter.

"By an act dated February 26, 1900, the courts of Accomac and Northampton counties were authorized to appoint game wardens in the aforesaid counties, the said act being in full as follows:

"Be it enacted by the General Assembly of Virginia, That it shall be lawful for the county courts of Accomac and Northampton counties, or for the judges thereof in vacation, to appoint and qualify game wardens for the enforcement of the game laws in effect in said counties; provided, the number of such wardens shall not exceed five in the county of Accomac and three in the county of Northampton; and provided further, that no appropriation shall be made for the compensation of the same out of the State or county funds.'

"On March 11, 1916, an act was passed entitled 'an act to create a State Department of Game and Inland Fisheries, and providing for the issuing of licenses to provide revenue for the support of such department, and imposing penalties for its violation,' section 42 of which act reads in part as follows:

"'Provided, however, that nothing herein contained shall be construed to repeal the laws creating the Eastern Shore of Virginia Game Protective Association *nor prevent the said association from appointing and having control of the game wardens in and for the counties of Accomac and Northampton as now provided by law*; provided, further, that * * * all monies collected by the clerks of the said counties for hunters' licenses shall be paid by the said clerks to the treasurer of the said association, to be by it used in the enforcement of the game and dog laws in force in the said counties.'

"The section above quoted was adopted in substance for the Code of 1919, see section 3347, but from such examination as I have been able to make, there is no act repealing the law of February 26, 1900, which authorized the courts of Accomac and Northampton to appoint the game wardens of these counties. Therefore, the provision of section 42 of the act of March 11, 1916, and of section 3347 of the Code of 1919, reading '*nor to prevent the said association from appointing and having control of the game wardens in and for the counties of Accomac and Northampton as now provided by law*,' is apparently without force and effect because no provision was ever made for the association to appoint or control such game wardens.

"I now quote from an act of March 15, 1928, chapter 220, concerning the powers of the Commission of Game and Inland Fisheries:

"Section second, subsection (b).—'The chairman shall appoint such supervising, regular and special game wardens as he may deem necessary to enforce the dog, game and inland fish laws, * * * such game wardens shall have jurisdiction throughout the State in all matters relating to the enforcement of the dog, game and inland fish laws.'

"Section Third, subsection (d).—'*All acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed to the extent of such inconsistency or conflict.*'

"The power to appoint all game wardens in the State seems by the above to have been definitely and finally vested in the Commission of Game and Inland Fisheries.

"Likewise, it appears that the provision contained in section 42 of the act of March 11, 1916, and also in the Code of 1919, section 3347, to the effect that: '*All monies collected by the clerks for hunters' licenses shall be paid by said clerks to the treasurer of said association, to be by it used in the enforcement of the game and dog laws in force in said counties,*' was repealed by an act approved March 24, 1926, amending section 3333 of the Code of Virginia, and which provided that:

"From the money received for licenses issued by them, each clerk in this State shall retain ten cents for a county license and twenty cents for all other forms of hunting and angling licenses. *Each of said clerks shall report to the Department of Game and Inland Fisheries on or before the fifth day of each month following * * * the amount of gross collections and fees and the number of licenses of each kind in hand and unsold at the end of the month, accompanied by certified check, payable to the Treasurer of Virginia for the net amount, after deducting fees herein provided, which shall be covered into the game protection fund, * * * 'All other laws or parts of laws in conflict herewith are to such extent repealed.'*

"Will you be so good as to advise me if it is not the duty of the Commission of Game and Inland Fisheries to appoint game wardens for Accomac and Northampton counties and of the clerks of these counties to remit the money collected by them for licenses to the Treasurer of Virginia as now provided by law.

"As the legislature is now in session, I will appreciate a ruling from your office in this matter with all possible dispatch."

Omitting the enactment clause of the bill, its purposes are stated as follows:

"2. The purposes for which this corporation shall exist are as follows:

"The association of gentlemen, with a view of procuring and securing enforcement of a wise and judicious system of laws for the preservation of the game of the Eastern Shore of Virginia; restocking, as far as the means of the association will permit, such portions of the shore as are depleted of game; offering rewards, as far as the means of the association will permit, for the killing of game, destroying animals and birds; the encouragement of an interest on the part of the people in preserving of the game laws, and informing upon and securing the punishment of the violators of such laws.

"3. The officers of said association shall consist of a president and vice-president, to be chosen from the counties of Accomac and Northampton; also a secretary and treasurer, and executive committee of three or more, to be chosen for such terms and in such manner as said association, by its constitution or by-laws, may determine.

"4. The principal office of said association shall be at Accomac courthouse, and all taxes shall be paid in money.

"5. Said association may acquire, hold, enjoy and dispose of real estate not exceeding one thousand acres at any one time."

The legislation on the subject presents a rather complicated state of affairs.

1. The Eastern Shore Game Protection Association is given no greater power or authority than an individual or a voluntary association of gentlemen with a purpose to protect game by every laudable endeavor and to prevent the violation of game laws and regulations.

2. By an act of February, 1900, the county courts of Accomac and Northampton were given the power to appoint game wardens for those counties, and, while the act of March 11, 1916, in continuing the association, provided that that law which created the State Department of Game and Inland Fisheries was not to be construed as repealing the act of March 15, 1894, the language used, "nor prevent the said association from appointing and having control of the game wardens in and for the counties of Accomac and North-

ampton, as now provided by law," did not vest the power of appointment in the association.

The act of 1916 did, however, provide that all monies from hunters' licenses should be paid to the treasurer of the association.

3. Many other acts concerning the Commission of Game and Inland Fisheries have since been passed:

By an act approved March 24, 1926, amending section 3333 of the Code, it was provided that "each clerk in the state * * * shall report to the Department of Game and Inland Fisheries on or before the fifth day of each month following * * * the amount of gross collections and fees, * * * accompanied by a certified check, payable to the Treasurer of Virginia, for the net amount * * * which shall be converted into the game protection fund * * *. All other laws or parts of laws in conflict herewith are to such extent repealed."

By an act approved March 15, 1928, chapter 220, the chairman of the commission was given power to appoint all game wardens without a proviso exempting the game wardens of Accomac and Northampton counties. The third section of the act of 1928, subsection (d), provided that all acts or parts of acts inconsistent or in conflict with that act are repealed to the extent of the inconsistency or conflict.

4. In my opinion, the proviso in the act of March, 1916, in which it is provided that the monies arising from hunters' licenses shall be paid to the treasurer of the game protection association, is in conflict with the provisions of the act of March 24, 1926, providing for the payment of money received for licenses to the Treasurer of Virginia for the account of the game protection fund, and, therefore, the proviso contained in the act of 1916 covering the disposition of license money is repealed, and all such license money should be accounted for by the county clerks of Accomac and Northampton to the Treasurer of Virginia for the account of the game protection fund.

I am further of the opinion that the act of 1900, vesting the appointing power of game wardens in the courts of Accomac and Northampton counties, is in conflict with the act of 1928, vesting such appointment in the chairman of the Commission of Game and Inland Fisheries, and has been repealed by subsection (d) of section 3 of the act of 1928, and that the appointment of all game wardens in the State of Virginia is vested in the chairman of the Commission of Game and Inland Fisheries.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Duty of to appear before justice of peace in certain cases.RICHMOND, VA., *June 19, 1930.*HON. A. H. CRISMOND, *Clerk,*
Spotsylvania, Virginia.

MY DEAR MR. CRISMOND:

Acknowledgment is made of your letter of June 14, 1930, in which you ask the following question:

"Does the law require a Commonwealth's attorney to attend trials for misdemeanors, such as adultery, petty larceny, etc., when such trials are had before a trial justice for a county, and, if he does attend such trials, is he entitled to any fee payable out of the State treasury?"

The only cases that I know of in which the Commonwealth's attorney of a county is required by law to appear before a justice of the peace, or a trial justice, are prosecutions under the prohibition laws, forestry laws and before the juvenile justices when he is required by such juvenile justices to appear. Except in those cases where an attorney for the Commonwealth is required by law to appear before a justice of the peace, no fee is payable out of the State treasury even though he appears. Trial justices and juvenile justices are merely special justices of the peace. *Ex Parte Settle*, 114 Va. 715.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Fees of in prohibition cases.RICHMOND, VA., *June 30, 1930.*C. J. HARKRADER, ESQ.,
Police Justice,
Bristol, Virginia.

DEAR MR. HARKRADER:

I beg to acknowledge receipt of your letter of June 27, which reads as follows:

"Please advise me what fee should be collected for a Commonwealth's attorney in the case of a person who pleads guilty before a police justice or justice of the peace on a charge of operating a car while intoxicated."

In reply thereto, I refer you to section 46 of the prohibition law which reads in part as follows:

"* * except that in cases where pleas of guilty are entered in cases of misdemeanor before a justice of the peace the attorney for the Commonwealth shall receive only ten dollars * * *."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Prosecutions of ordinances—State law.RICHMOND, VA., *April 3, 1930.*

HON. TED DALTON,
Attorney for the Commonwealth,
East Radford, Virginia.

DEAR MR. DALTON:

I am in receipt of your letter of the 27th ultimo, in which you ask the following question:

"As Commonwealth's attorney for the city of Radford, I shall be pleased to have your opinion as to whether I am confined to the civil and police justice court for the city of Radford in the prosecution of prohibition cases. Or is it optional with the Commonwealth's attorney to prosecute prohibition cases either in the name of the Commonwealth or in the name of the city of Radford?"

I assume from your letter that the city of Radford has adopted a prohibition ordinance, in which case prosecutions for violations of the ordinance should be in the name of the city of Radford, the city having concurrent jurisdiction with the State to pass prohibition ordinances.

In my opinion, therefore, you may, as Commonwealth's attorney, prosecute in the civil and police justice court of Radford for violations of city prohibition ordinances, or in the corporation court of Radford for a violation of the State prohibition law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONCEALED WEAPONS—Confiscation of.RICHMOND, VA., *October 31, 1929.*

MR. L. T. MUNDY, *Sheriff,*
R. F. D. 1,
Buchanan, Virginia.

DEAR MR. MUNDY:

I am in receipt of your letter of the 29th instant, in which you write that a person who carried a pistol on his person on Sunday and had a gun in his car at the time he was arrested for shooting along a public highway, and for carrying the gun away from his premises on Sunday, was convicted for carrying the gun from his home, and you ask if his conviction automatically forfeited his pistol.

It is very difficult for me to advise you upon the facts contained in your letter.

Carrying concealed weapons is an offense under the provisions of section 4534 of the Code and, besides the punishment inflicted, the law provides that "the pistol, * * shall, by the order of the court, justice or police justice, be forfeited to the Commonwealth, and may be seized by an officer as forfeited. * *"

Under the provisions of section 4578, it is an offense for a person to carry a gun, pistol, bowie knife, dagger, or other dangerous weapon to a place of worship while a meeting for religious purposes is being held at such place, or, without good and sufficient cause therefor, carry any such weapon on a Sunday at any place other than his own premises. There is no provision in this section for the forfeiture of a weapon.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**CONFEDERATE MEMORIAL ASSOCIATION—Appropriation for
Confederate cemeteries limited.**

RICHMOND, VA., *March 25, 1930.*

MRS. ESTELLE C. DICKERSON, *President,*
Blue Ridge Grays, U. D. C.,
Ruckersville, Virginia.

DEAR MRS. DICKERSON:

I am in receipt of your letter of yesterday, in which you ask to be advised as to whether money appropriated to the Confederate Memorial Association at Stanardsville can be used for the purpose of erecting a monument at the court house lawn at that place, and I note you say that the cemetery at Stanardsville is in a remote place.

Under the provisions of the act appropriating money for Confederate Memorial Associations, it is provided that the money may be "expended in caring for the cemeteries and graves of the Confederate soldiers and sailors buried in the cemeteries herein specified."

This quotation is from the Acts of 1928. I have not seen the act passed at the recent session of the legislature making an appropriation to the Confederate Memorial Association.

In my opinion, the money heretofore appropriated can only be used for caring for cemeteries and graves of Confederate soldiers and sailors and cannot be used for the erection of a monument on the court house lawn.

If you will write me later, after the Acts of 1930 are printed, I shall be pleased to advise you whether or not there has been a change in the provisions for use of the money appropriated for the Confederate Memorial Association.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

CONSTITUTIONAL LAW—Taxation—State taxes required to be paid into the State treasury—Chapter 91 of Acts 1930 held to be unconstitutional.

RICHMOND, VA., June 26, 1930.

HON. JAMES E. CANNON,
City Attorney,
Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of June 25, 1930, in which you say:

"You doubtless recall the case of *McRae v. The Commonwealth, et al.*, in which the plaintiffs attempted to have released all taxes upon their property on Hull street, South Richmond, accruing between 1902 and 1924. The case was handled by Mr. Bazile and myself and resulted in a decree dismissing the plaintiffs' bill, from which decree an appeal was denied by the court of appeals. The owners of this property have made no attempt to pay the delinquent taxes and it is my purpose to take steps to have the property sold.

"I desire to call your attention to chapter 91 of the Acts of 1930, which abrogates the right of the Commonwealth to receive such delinquent taxes, and would like to have an expression from you as to the right of the city of Richmond to collect the entire sum."

Chapter 91 of the Acts of 1930 reads as follows:

"Be it enacted by the General Assembly of Virginia, That all taxes, which, prior to the segregation of land and tangible personal property to the localities, were assessed upon land and tangible personal property for any State purpose or purposes, and which now appears as uncollected upon the delinquent tax books, shall be collected by the officer charged by law with the duty of collecting same, and all such delinquent taxes upon lands and all sums paid to redeem the same, which but for this act would be paid to the treasurer of the State of Virginia, shall be paid by the clerk of the court or other collecting officer to the treasurer of the county, city or town in which the land lies at the time of such collection, and all such delinquent taxes upon tangible personal property shall be retained by the treasurer collecting same. All such taxes shall be retained and used for school purposes by the respective counties, cities and towns receiving same in accordance with the foregoing provisions, and all right of the State of Virginia to receive said delinquent taxes is abrogated."

I have read this act with care and am of the opinion that it is in conflict with section 186 of the Constitution and, therefore, invalid.

Section 186 of the Constitution provides that all taxes "of the State shall be collected by its proper officers and paid into the State treasury. No money shall be paid out of the State treasury except in pursuance of appropriations made by law * *."

Chapter 91 of the Acts of 1930 does not require the delinquent State taxes on real and tangible personal property to be paid into the State treasury, but provides that they shall be paid into the local treasury in violation of section 186 of the Constitution. Mr. Bazile, my former assistant who was in charge of the division of legislative drafting during the session of 1930, in-

forms me that he advised the patron of the bill, which became chapter 91 of the Acts of 1930, that the same was unconstitutional. In this opinion I fully concur.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONTRACTS—Conditional sales—Admission to record—Deeds—Admission to record of photostatic copy.

RICHMOND, VA., *December 28, 1929.*

HON. H. M. WALKER,
Clerk of Circuit Court,
Heathsville, Virginia.

DEAR MR. WALKER:

I am in receipt of your letter of the 19th instant, in which you request my opinion upon two questions:

1. You ask as to your duty to docket a conditional sales contract if it is not acknowledged by both vendor and vendee, or proved by two witnesses.

Such was the law in the Code of 1919. By an act passed at the 1923 special session of the General Assembly, the provision requiring acknowledgment or attestation by witnesses was omitted. It is a general rule of law that changes of legislative statutes are intentionally made, and I am of the opinion that it is not now necessary to have acknowledgment or attestation.

However, even if I should be wrong, a clerk cannot get himself into trouble by accepting, filing and docketing a conditional sales contract which has neither been acknowledged nor attested. The only complication which might arise would be between the vendor and a subsequent lienor or purchaser who asserts the proposition that the filing and docketing of an unacknowledged or unattested conditional sales contract is not constructive notice and to that extent is inoperative and void as to creditors and purchasers without actual notice.

2. You say that photostatic copies of two trust deeds have been filed with you for record, the originals of which have been heretofore recorded in another county in Virginia, and ask to be advised if you have authority to admit the copies to record.

I do not think you should record these copies. By the provisions of section 204 of the Code, clerks are authorized to admit writings to record as to persons whose names are signed thereto. This I take to be the original recordation. The courts have held that the recordation of the original deed is not limited to record in one county, and, having been recorded in one county, the original may be recorded in another county.

Section 5212 provides for the recordation of copies where the original writing has been recorded and lost or mislaid. This copy is restricted to a

copy furnished by the clerk of one of the courts in which it has already been recorded.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONTRACTS—Docketed as reservation of title contract.

RICHMOND, VA., July 30, 1929.

HON. E. R. HOLBROOK,
Deputy Clerk,
Fairfax, Virginia.

MY DEAR MR. HOLBROOK:

Acknowledgment is made of your letter of July 29, 1929, in which you request me to advise you whether a contract of lease, which provides that at the expiration of the time for which the property is leased a bill of sale for it shall be executed and delivered in the event that all of the rental installments are paid, can be docketed as a reservation of title contract under section 5189 of the Code.

Such contracts have generally been construed as contracts of conditional sales and not as leases. It is thus said in the article on "Sales," 35 Cyc. 656-658:

"In many cases instruments designated as and in the form of leases, and usually providing for the payment of rent and stipulating that in default of payment the lessor may retake the goods, but that on payment the property in the goods shall pass to the lessee, have been construed as contracts of conditional sale, although it was expressly stipulated that the contract should not be regarded as a sale. Especially will this construction be given to the contract where the form of the agreement was adopted merely to evade the statute relating to conditional sales. Usually the rent reserved is for greater than the fair rental value of the goods and the sum of the instalments equals the value or agreed price. In some cases, however, similar instruments containing an option on the part of the lessee to buy have been construed as leases."

In view of this, I am of the opinion that paper of the description referred to by you can be docketed under section 5189 of the Code.

Very sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

COSTS—Costs and fines—Division of.

RICHMOND, VA., June 19, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR MR. COMBS:

You have requested an opinion as to the distribution of costs collected in criminal cases where there was a judgment against an accused for fine

and costs, your question relating to the payment of a sum insufficient to pay the fine and costs in full and was directed as to whether the payment should be applied to costs or first to the fine and then to the costs.

From an examination of the file, I note that Honorable C. Lee Moore, Auditor of Public Accounts, on January 31, 1927, in a letter to Honorable Horace Adams, county clerk of Prince Edward county, expressed the opinion that the payment of the first money collected on a fine and costs should be first applied to costs, and that on February 3, 1927, after a consultation with Honorable Leon M. Bazile, then Assistant Attorney General of Virginia, Mr. Moore wrote Mr. T. Y. Price, Jr., Green Bay, Virginia, that in both his opinion and that of Mr. Bazile a partial payment should first be applied to the fine and that, until the full amount of both the fine and costs were paid, the clerk was not authorized to pay the costs to the officers entitled thereto.

I have examined the case upon which Mr. Bazile based his opinion (*Commonwealth v. Fields*, 33 Gratt. 291). In this case Fields was fined \$1.00 and the court's judgment was that he should pay the fine and costs. He paid the fine, a capias was issued against him for the costs and he was taken in custody. Upon a writ of habeas corpus the court held that the fine was part of the judgment and that a capias pro fine could issue for the costs although an amount equivalent to the fine had been paid to the clerk. In other words, the court held that the aggregate of fine and costs must be paid to relieve the accused and that, unless they were both paid, he could be confined under a capias pro fine.

This in no way determines the question as to the distribution of a partial payment on fine and costs collected and in the hands of the clerk. In very many instances provision is made for the payment of costs in criminal cases to officers even though they may not have been collected from the defendant. The purpose to provide for the payment of fees of officers out of the public treasury is incompatible with the idea that the law contemplates the payment of fines into the State treasury before the payment of costs to officers, and, in my opinion, officers' fees should be paid first out of the money collected on fines and costs where sufficient amounts have not been collected to pay both fines and costs in full.

The fact suggested by Mr. Adams that, if costs are first paid, no effort will be made to collect fines is not a sufficient reason to prefer the payment of fines to the payment of costs. However that may be, few of the officers to whom fees go are charged with the collection of fines, while the larger number of those entitled to fees are in no wise charged with the collection of either fine or costs.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COUNTY ENGINEER—Elections as to whether or not such engineer shall be employed—Who qualified to vote in.

RICHMOND, VA., October 29, 1929.

SAM. C. STOWERS, ESQ.,
Attorney at Law,
Altavista, Virginia.

MY DEAR MR. STOWERS:

Acknowledgment is made of your letter of October 25, 1929, in which you say in part:

"The question of whether or not the county of Campbell will have an engineer for roads, or whether the board of supervisors will handle the matter, or that they will be handled as under the old method, is being voted on at this general election. It has been decided that the citizens of an incorporated town that pays no road tax shall not have a right to participate in determining just which plan we shall have, and I would much appreciate a ruling on whether or not if a citizen of an incorporated town in this county who owns land outside of the incorporated town and pays a county and district road tax just the same as if he did not live in the said town would not have a right to vote on the question as outlined above."

Section 45 of chapter 159 of the Acts of 1928 provides in part that when any election is held for the purpose to determine the method of operation under this act, the qualification of voters at such election shall be as follows:

"Any voter qualified to vote at such general election, excluding the qualified voters in any incorporated town situated in such county, which maintains its own roads free of expense to the magisterial district in which it is located or which is exempt by the terms of its charter from the payment of district road taxes, shall be qualified to vote on the questions herein provided."

You will see that this statute excludes the qualified voters in any incorporated town which maintains its own roads free of expense to the magisterial district, or which is exempt by the terms of its charter from the payment of district road taxes.

It would seem, therefore, that the citizens referred to in your letter would not be entitled to vote in this election, even though he owned property outside of the town, as the test seems to be not the ownership of property, but whether you are a voter residing in one of the towns referred to in the act.

It is true that this section does not use the word "residing," but the phrase, qualified voters in any incorporated town, necessarily refers to voters who are qualified to vote in a town within the meaning of section 2997 of the Code, which reads as follows:

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

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CRIMINAL LAW—Bad checks—Punishment.RICHMOND, VA., *December 31, 1929.*

MR. SHEFFEY L. DEVIER,
Attorney at Law,
First National Bank Building,
Harrisonburg, Virginia.

DEAR SIR:

I am in receipt of your letter of the 30th instant, in which you ask my opinion as to which of two acts passed by the 1928 General Assembly, punishing the drawing of bad checks, controls.

After chapter 401, page 1026, was passed and approved March 23, 1928, making it larceny to draw bad checks and providing punishment for grand and petit larceny according to the amount for which the check was drawn, the legislature passed chapter 507, which was approved March 27, 1928, in which all laws pertaining to banks and banking were codified, under section 45 of which, page 1323, the offense of drawing bad checks was reduced in all cases to a misdemeanor.

In my opinion, the provisions of chapter 507 prevail and the drawing of a bad check is now only a misdemeanor, punishable as provided in section 45.

I understand that a bill is now in preparation to go before the next legislature, repealing section 45 and re-enacting the provisions of chapter 401, making the drawing of a bad check larceny.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CRIMINAL LAW—Process for defendant to be served by officer.RICHMOND, VA., *May 16, 1930.*

HON. J. LIVINGSTONE DILLOW,
Attorney for the Commonwealth,
Narrows, Virginia.

DEAR MR. DILLOW:

I am in receipt of your letter of the 10th instant, in which you ask:

“Would the sheriff of a county have the right to refuse to summon witnesses which he is by proper writ directed to summon for a defendant in a criminal case until he is paid the legal fees for such services by the defendant?”

I am of the opinion that officers charged with the service of process in criminal cases are under obligation to serve such process, as directed, without the prepayment of their fees.

The provision for the payment of fees is contained in section 3502 of the Code. This, in my opinion, is confined to fees in civil cases.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DAIRY AND FOOD—Salad dressing made from mineral oil.

RICHMOND, VA., July 6, 1929.

HARDIN HARRIS, ESQ.,
Travelers Building,
Richmond, Virginia.

MY DEAR MR. HARRIS:

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

"A client desires to manufacture and sell in Virginia a product to be used as a mayonnaise or salad dressing, under the distinctive name 'Minoilaise,' the distinctive feature of which consists in the use of mineral oil, in the place of the usual vegetable oil employed in the common mayonnaise formula of an emulsion of egg yolk, or whole egg with vegetable oil, flavored with lemon and/or vinegar, salt, sugar and spices. The chief advertising feature of the product, is, its *lack of fattening properties* due to the use of mineral oil in the place of vegetable oil. The respective food values of an olive oil mayonnaise and a mineral oil mayonnaise, of equal egg content, as given by the Mayo Clinic, Rochester, Minn., are as follows:

Mayonnaise

"Olive oil base—Protein 2 gm. fat 186 gm. using $\frac{3}{4}$ cup olive oil.

"Mineral oil base—Protein 2 gm. fat 6 gm. using 2 cups mineral oil.

"The product is intended to appeal to those who wish to reduce weight, or abstain from fattening foods. As the enclosed proposed label will show, the product's low content of fattening elements, or low food value will be capitalized, and advertised as far as possible. In other words, the use of mineral oil, in place of vegetable oil, is not intended as a means of adulterating, or cheapening the product, but, as a means of producing a mayonnaise with a lesser fattening value to appeal to a special class of trade. The product is practically identical, in color, consistency and taste, with commercial mayonnaise made with vegetable oil. The use of it in the usual size helpings, would have no appreciable medicinal effect.

"I am writing to ask whether the formula, or label is in conflict with the Virginia food and seed laws."

The article referred to is a food within the meaning of section 1180 of the Code. I have carefully examined sections 1181 and 1182 of the Code, and it is my opinion that the article referred to in your letter could be lawfully sold in this State, if properly labeled. It would be essential, however, that the label be such as would clearly indicate that the article is not mayonnaise, but a substance made with mineral oil.

I would suggest that you take the matter of the label up with the Dairy and Food department and be governed by its advice in the matter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DEEDS—No tax to secure sinking fund.RICHMOND, VA., *February 21, 1930.*

HON. H. H. KERR,
Attorney for the Commonwealth,
Staunton, Virginia.

DEAR SIR:

I am in receipt of your letter of the 19th instant, in which you state that in Augusta county loans are being made from a sinking fund under the provisions of section 2118 of the Code; that the loans are being secured by deeds of trust upon real estate, and that a question has arisen as to whether the State recordation tax should be paid.

I also note that, in your opinion, no such tax is payable upon deeds of trust given to secure money loaned by your county.

In this opinion I agree. Section 122 of the Tax Code provides that straight conveyances of land to the State or to a county, city, town, district, or other political subdivision of the State, require no recordation tax. It is true this section further provides that "except as provided in this chapter, no deed or other instrument shall be admitted to record without the payment of the tax imposed thereon by law." A narrow construction of the section would require the payment of the recordation tax on a deed securing a loan made by your county. I do not think, however, that such was the intention of the General Assembly.

In my opinion, a conveyance of land to a trustee to secure a debt due a county comes within a liberal construction of the provision allowing the recordation of a deed without the payment of the recordation tax.

Deeds of trust and mortgages are largely of the same general nature. I am sure that a mortgage deed, by which the mortgagor conveys directly to a county to secure money due the county, would come within the exemption provision of section 122. I can see no possible distinction in principle between a mortgage deed and a deed of trust.

It certainly cannot be successfully contended that the State law which exempts every possible class of public property from taxation makes an exception in the case of the recordation of a deed to secure a county. It in no instance undertakes to take money out of the treasury of a county and put in the treasury of the State.

I should say, however, that my office called up Honorable C. H. Morrisett, State Tax Commissioner, and was informed by him that, in his opinion, a deed of trust of the character mentioned in your letter is subject to a recordation tax.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DEEDS—Recordation tax—Change of corporate name.RICHMOND, VA., *January 17, 1930.*

HON. J. P. BUCHANAN,
Attorney at Law,
Marion, Virginia.

DEAR SIR:

I am in receipt of your letter of the 11th instant, in further reference to the recordation tax upon a deed from the Virginia Table Company, Incorporated, to the Virginia-Lincoln Furniture Corporation, and I note your suggestion as to the manner of arriving at the value of the property conveyed.

In my opinion, you are in error in suggesting that the property of a corporation, after its name has been changed by an amendment to its charter, of both a legal and equitable character, is vested in the new corporation, and that thus no interest in the property is left in the old corporation.

It may be, as you contend, that the old corporation is divested of all of its property upon amendment to its charter and a change in its name. Under this construction of the law, a deed would be unnecessary. If, however, a deed is considered necessary or desirable, there is no provision of law by which the new corporation, the grantee, can have the deed recorded without payment of the usual recordation tax.

In my opinion, and in this Mr. Combs, with whom I have just conferred, concurs, the tax should be based upon the fair cash valuation of the property conveyed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DEEDS—Recordation tax on trustee deed.RICHMOND, VA., *December 27, 1929.*

HON. F. W. RICHARDSON,
Clerk of Circuit Court,
Fairfax, Virginia.

DEAR MR. RICHARDSON:

I am in receipt of your letter of the 26th instant, asking my advice as to the value to be placed by you for taxing purposes upon the recordation of a deed for land purchased at a trustee's sale at a bid of \$2,300, subject to the value to be placed by you for taxing purposes upon the recordation taxing purposes at \$10,800 upon the deed of trust tendered to you for recordation.

I am of the opinion that you are entirely correct in the valuation upon which you have assessed the 12 cents per \$100 recordation tax.

I have heretofore in an opinion given Honorable B. C. Garrett, Jr., clerk, King William, Virginia, under date of February 19, 1929, held that he

was correct in assessing the 12 cents recordation fee on the total purchase price of a tract of land sold at a trustee's sale on which a certain amount was bid over and above a deed of trust then on the property. In my letter I quoted from an opinion by Honorable Christopher B. Garnett, then an Assistant Attorney General (Report of Attorney General 1914, pages 126-128).

I have received a letter from Honorable John W. Rust concerning this same matter and am enclosing a copy of my letter to you.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DENTISTRY—Practice by corporations.

RICHMOND, VA., June 20, 1930.

HON. JOHN M. HUGHES, *Secretary,*
Virginia State Board of Dental Examiners,
Richmond, Virginia.

MY DEAR SIR:

I beg to acknowledge receipt of your letter of June 14, in which you call my attention to the fact that a charter has heretofore been granted to the United Dentists, Incorporated, to conduct a dental practice in Virginia and that the manager of this corporation is employing registered dentists to practice dentistry for it. You wish to know what may be the duty of the board of dental examiners in Virginia in the premises.

Sections 1652 and 1653 of the Code of Virginia, 1919, set forth the conditions under which a corporation may engage in the practice of dentistry. Such a corporation, under the provision of section 1652 of the Code, may employ to actually do its dental work anyone who has been duly licensed, and section 1653 thereof provides that the names of the persons so employed shall be furnished to the State board of dental examiners and that notice shall be promptly given when such employee leaves the employment of such corporation. It would, therefore, appear under the law as it stood up to June 17 of this year that this concern mentioned by you had a perfect right to proceed in the manner indicated in your letter, and the duly licensed dentists had a right to work for it.

On June 17 of this year, a new act went into effect amending sections 1640 to 1654, inclusive, of the Code regulating the practice of dentistry in this State. By that new act no corporation can hereafter be formed for the purpose of practicing dentistry, but it is expressly provided that nothing therein contained shall be construed "to prevent the continued use of the name of any corporation heretofore legally chartered under the laws of this State, and at present engaged in the proper conduct of its business from continuing its said business in accordance with the provisions of sections sixteen hundred and fifty-two and sixteen hundred and fifty-three of the Code of Virginia, as they existed the day before the sections in this act take

effect". It, therefore, appears to be clear that this corporation has the right to continue to operate and employ duly licensed dentists.

I call your attention, however, to the last paragraph of section 1652 of the new act which provides, in part, as follows:

"Any person under the meaning of this act shall be deemed to be practicing dentistry who is a manager, proprietor, operator, or conductor of a place for performing dental operations of any kind * *."

It is my opinion, therefore, that the manager of any corporation heretofore incorporated for the purpose of practicing dentistry must himself be a duly licensed and registered dentist.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DIVISION OF MARKETS—Treasurer may handle voluntary contributions.

RICHMOND, VA., May 27, 1930.

HON. J. H. MEEK, *Director,*
Division of Markets,
Department of Agriculture and Immigration,
1030 State Office Building,
Richmond, Virginia.

DEAR MR. MEEK:

I recall our conversation of last week and have carefully noted your letter of the 21st instant, both in further reference to the question of the disbursement of funds voluntarily supplied by boards of supervisors of counties for use by your department in testing gasoline pumps and in furthering your activities in regulating weights and measures.

On April 26, of this year, you wrote Governor Pollard that the board of supervisors of Smyth county had agreed to pay fifty per cent of the cost of testing gasoline pumps in that county and that it was expected that the boards of supervisors of a number of other counties would agree to pay a percentage of the expenses incurred in weights and measures work in their counties.

This matter was referred to my office for advice and in a letter dated April 29, addressed to the Honorable J. H. Bradford, Director of the Division of the Budget, I called his attention to sections 7 and 10 of the appropriation bill, chapter 119 of the Acts of 1930, and quoted section 7, which provides as follows:

"All monies, fees, taxes and other charges hereafter collected by or on behalf or on account of the division of markets of the department of agriculture and immigration, in pursuance of law, from whatever source, or on account of the laws administered by the said division of the said department, shall be paid promptly and directly into the

general fund of the State treasury; and any unexpended balance existing on the date this act takes effect in any special fund or special funds, heretofore derived in the manner as aforesaid, shall on such date be converted into the general fund of the State treasury. This paragraph includes the fund known as the voluntary inspection fund."

I then expressed the opinion that the provisions quoted prohibited the use of the money as desired by the Division of Markets.

Upon a more thorough investigation of the subject and with fuller information from both you and Mr. A. B. Gathright, assistant comptroller, I have arrived at the conclusion that my previous opinion was based upon an erroneous construction of the law as applicable to the facts.

While there is no law expressly allowing, there is none prohibiting, the State Treasurer from receiving contributions to be used in furtherance of State activities. I understand that the Comptroller is willing to receive and disburse the voluntary contributions mentioned in your letter and our conference.

It is my opinion that all monies, fees, taxes and other charges provided for by law must be converted into the general fund of the State treasury and cannot be used in carrying on any of the activities of the department, the department being limited in expenditures to money lawfully appropriated and such as may be voluntarily contributed for departmental use.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**DIVISION OF MOTOR VEHICLES—Director of—Appointments made
by not subject to control of Governor.**

RICHMOND, VA., *November 25, 1929.*

His Excellency, HARRY F. BYRD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your request of this afternoon that I advise you whether you have any control over the selection of persons appointed by the Director of the Division of Motor Vehicles, under section 3 of chapter 149, Acts of 1926, for the purpose of distributing automobile license plates from branch offices.

Subsection (a) of section 3 of chapter 149, Acts of 1926, provides that the Director of the Division of Motor Vehicles shall maintain his principal office in the city of Richmond "and shall maintain branch offices in such other places in the State as he shall deem necessary properly to carry out the provisions of this act and all other motor vehicles laws."

Subsection (g) of section 3 of the same act provides as follows:

"Within twelve months next following the date that this act shall become effective the commissioner may establish branch offices in each city within the State with a population of one hundred and fifty thousand or more, and in each county where the county shall have a population one

hundred and fifty thousand or more, inclusive of the incorporated towns and cities, and in such other places as he may deem proper and necessary and wherein an applicant for the operation of such branch shall be satisfactory to the commissioner.

"And when such branch offices are established a deputy motor vehicle commissioner shall be placed in charge thereof, who shall be properly bonded, and whose sole and only compensation for his services and for the expenses incident to the maintenance of the branch office, shall be the amount of fees authorized under this section to be paid to county or city treasurers."

From an examination of this statute, I am of the opinion that the law does not confer any power upon the Governor to control the Director of the Division of Motor Vehicles in the establishment of branch offices or in the persons selected by him as deputy motor vehicle commissioners to be placed in charge thereof.

Sincerely yours,

LEON M. BAZILE,

Assistant Attorney General.

DOG LAW—Killing of sheep by dog—Who liable for costs of proceeding.

RICHMOND, VA., January 23, 1930.

HON. H. B. CHERMSIDE, *Clerk,*
Charlotte Court House, Virginia.

DEAR MR. CHERMSIDE:

I am in receipt of your letter of the 21st instant, in which you write:

"A dog belonging to A has been killing sheep belonging to and owned by B. B, under section 2323-R of the Code, applied to a magistrate for a warrant and the warrant was issued by the magistrate requiring the owner of the dog to appear before him and at the trial of said warrant the magistrate decided that the dog had been killing sheep and ordered the dog killed.

"The question that the board of supervisors want you to pass on is whether A, the owner of the dog, shall pay the cost of having the dog killed and all cost in connection with the trial, or whether all of this cost shall be borne by the board of supervisors. I take it that, under section 2323-S of the Code, it is the duty of the board of supervisors to pay the game warden for killing the dog. The main question is who shall pay the magistrate for issuing and trying the warrant and the witnesses for attending the trial."

I agree with you that the costs of proceedings before the magistrate, as well as the fee for killing the dog, are payable out of the dog fund. However, where the owner appears and makes defense and additional costs are incurred over and above the necessary expenses of an uncontested proceeding, I am of the opinion that in such cases the costs should be charged against the owner of the dog, provided of course, that such costs can be made out of the owner.

I will have you understand that I am of the opinion that the ordinary costs should be paid, but such costs as are added to that class of costs incurred in litigation on account of a defense being made to the charge against the dog should be paid by the owner.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

DOG LAW—Right to kill dogs.RICHMOND, VA., *April 23, 1930.*

MR. H. B. POWELL,
Keyesville, Virginia.

DEAR MR. POWELL:

I am in receipt of your telegram of yesterday, which I quote in full:

"Please advise me if a man who catches a dog killing chickens has a legal right to kill it, also if one has good reasons to believe certain dogs are killing chickens, but has failed to catch them in the act, and can convince a trial court of such and cause said court to believe such dogs are very likely killing chickens, can said court have them confined or killed. Please answer at once my expense."

According to the provisions of section 1 of what is known as the new general dog law, the term "live stock" is construed to include cattle, sheep, goats, swine and domestic rabbits or hares.

The term "poultry" is construed to include all domestic fowl.

By the provisions of section 9, it is the duty of a game warden or any person who catches a dog in the act of killing, injuring, worrying or chasing sheep, or killing or injuring other live stock, to kill such dog forthwith.

The board of supervisors of the county or any magistrate or other court has the power to order the game warden or other officer to kill any dog known to be a confirmed poultry killer, and any dog killing fowls for the third time is considered a confirmed poultry killer.

In those cases in which the dog is not found killing live stock or fowls, it is necessary to obtain a warrant from the magistrate where the dog is found, requiring the owner or custodian to appear for a trial of the dog and, if it appears that the dog is a live stock killer or is a confirmed poultry killer, it is the duty of the magistrate to order the dog killed immediately.

In my opinion, a magistrate cannot order a dog killed because it may be likely that it is killing chickens. I should say that a magistrate could only order a dog killed where the proof is reasonably certain that the dog has killed chickens on three or more occasions. The amount of evidence required to satisfy a magistrate or court is largely in the discretion of the magistrate, and it is practically impossible for me to give an opinion upon a question of fact. Questions of fact are within the peculiar province of the officer trying a case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters' law—Opening of ballot.RICHMOND, VA., *July 16, 1929.*

MR. F. G. DUNCAN,
Hopewell, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 15, 1929, in which you request me to advise you whether any person, other than the judges of election, is authorized to open the ballot of an absent voter.

Under the absent voters' law, when an envelope containing the ballot of the absent voter is received by the registrar, it must be deposited, unopened, in a sealed box provided for the purpose, in which the law requires it to remain until it is opened on the day of election by the judges of election, in the manner provided by section 214 of the Code. See sections 211-214 of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters' law—Ballot not registered by mail.

RICHMOND, VA., *August 1, 1929.*

HON. ARCHER L. JONES,
Attorney for the Commonwealth,
Hopewell, Virginia.

MY DEAR SIR:

Acknowledgment is made of your request over telephone this afternoon that I advise you whether, in my opinion, a ballot received by the registrar from an absent voter in a letter which was not registered could be cast in the manner provided by section 214 of the Code.

It is true that section 208 of the Code prescribes that the ballot must be returned to the registrar in an envelope which has been sealed and registered, or, delivered to the registrar in person. I do not think, however, that the registration of a letter, if it reaches the registrar in time and has not been tampered with, is essential to the validity of the ballot.

Section 218 of the Code provides:

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

The registering of the letter, in my opinion, was to insure the certainty of its delivery, and when it has been delivered in time in an unregistered letter, I am of the opinion that the vote should be counted, assuming, of course, that the person sending the ballot is qualified to vote.

Sincerely yours,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Absent voters' law not applicable to special elections.

RICHMOND, VA., *December 30, 1929.*

His Excellency, HARRY F. BYRD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I have read with care the letter of J. G. Davis, Esquire, of Max Meadows, Virginia, in which he asks to be advised whether one is entitled to vote as an absent voter in a special election.

Section 202 of the Code, as amended, only provides for absent voting in primaries and general elections. For some unaccountable reason, special elections have not been provided for. It is, therefore, my opinion that one is not entitled to vote as an absent voter in a special election.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Adoption of voting machines.

RICHMOND, VA., May 16, 1930.

MR. DAVID C. GIBSON,
1001 Baltimore Trust Building,
Baltimore, Maryland.

DEAR MR. GIBSON:

I am in receipt of your letter of May 10, in which you recall our conversation of the previous Thursday and ask for my advice upon two questions:

"1. Who can call a meeting of the State Board of Voting Machine Commissioners, which board, according to the law, shall consist of the members of the Board of State Canvassers?"

The only provision of law for the calling together of the Commissioners referred to is contained in section 242 of the Code, providing that the Board may be called together by the Secretary of the Commonwealth.

"2. In view of the fact that the new law does not become effective until June 16, ninety days after passage, can the Board of Voting Machine Commissioners be called to meet under the old voting machine law, enacted by the Legislature of 1922, which law carried the same provisions as the new law with regard to inspection of voting machines by the State Board of Voting Machine Commissioners?"

The new voting machine law becomes effective June 17 instead of the 16th. There is no provision for calling the Commissioners together for the purpose of passing upon voting machines. It would appear that the matter would have to be taken up with the Board at some meeting day. However, I can see no legal objection to a voluntary meeting of the Board.

The voting machine law of 1922 is limited to the adoption of voting machines by cities of 50,000 or more population. Just what will be the effect of the approval by the Board of Canvassers of a particular kind of voting machine before June 17, I am not now prepared to say and, as it seems hardly feasible to get the Board together before the new law becomes effective, I suggest that no meeting be called until on or after that date.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Appointment of judges and clerks serving in primary.

RICHMOND, VA., July 24, 1929.

WILLIAM C. KING, ESQ.,
c/o King Overall Company,
Suffolk, Virginia.

MY DEAR MR. KING:

Acknowledgment is made of your letter of July 23, 1929, in which you say in part:

"In our city, and probably in other places, there are Republicans serving on the electoral board and as judges and clerks at the voting precincts. Kindly rule for me, whether or not these Republicans should be replaced with Democrats for the coming primary. It seems to me that if a Republican or Independent has no right to vote in the Democratic Primary, he certainly must not be allowed to officiate therein. This would strike at the very existence of our primary, in which they have no more right than we have in their conventions.

Section 31 of the Constitution requires the electoral board to be composed of three members to be selected as far as practicable from the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes. However, the judges and clerks in a primary must be selected from the members of the party holding the primary. Section 224 of the Code, Virginia Election Laws, pp. 71-72, provides in part:

"The primaries provided for in this chapter shall be held by three judges appointed for each party participating from members of that party by the electoral boards of the respective cities and counties in the State, upon application made by the duly constituted authorities of the party or parties desiring to hold a primary under this law, in such manner as may be provided by the party plan of such party or parties, one of which judges so appointed shall act as clerk in the conduct of such primary so held, at each of the several precincts as now designated or as may be hereafter provided by law. * * *"

The judges and clerks who are appointed under section 138 of the Code, in the month of May, for a term of one year, are appointed to hold the general elections, in which all citizens eligible to vote are to participate, they are not appointed to hold a party primary. But, other judges and clerks if necessary for the party holding the primary, should be appointed by the electoral board, in accordance with section 224 of the Code above quoted.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Arrangement of names of candidates on ballots.

RICHMOND, VA., May 14, 1930.

MR. A. P. COLEMAN,
Rustburg, Virginia.

DEAR MR. COLEMAN:

I am in receipt of your letter of the 8th instant, in which you ask to be advised as to the manner of arranging names of candidates on election tickets, and I note your reference to section 155 of the Code.

After having referred to that section of the Code, you write of four different ways in which names of candidates may be placed on official ballots.

Section 155 is the only provision of law dealing with election tickets. The only provision in that law is that the names shall be upon white paper tickets, without distinguishing mark or symbol, and immediately below the office for which they are candidates and in due and orderly succession, with each name in clear print, in the same order on each ticket and each in a separate line.

This provision of law, in my judgment, invests full authority and discretion in the electoral board of each county or city in the arrangement of the names of the candidates for office.

I am further of the opinion that any of the four plans suggested in your letter may legally be adopted.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**ELECTIONS—Ballots—Last day on which to make application for to vote
in November election.**

RICHMOND, VA., *October 28, 1929.*

THEODORE POBST, ESQ., *Registrar,*
Jeffersonville Precinct,
Tazewell, Virginia.

MY DEAR MR. POBST:

Acknowledgment is made of your letter of October 25, 1929, in which you say:

"I note from the Roanoke Times this morning that Wednesday, October 30th, is the last day a registrar can receive application for ballot to vote by mail in election of November 5th. I construe from the law that October 31st would be the last day to receive applications. Please write me your ruling in this matter."

Section 203 of the Code, as amended, provides that an absent voter "shall 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 confines of the United States, * * *."

Section 5 (Eighth) of the Code provides:

"Where a statute requires a notice to be given, or any other act to be done, a certain time before any motion or proceeding, there must be that time exclusive of the day for such motion or proceedings, but the day on which such notice is given or such act is done, may be counted as part of the time."

Applying the rule laid down in this statute, the day on which the ballot is applied for may be counted as one of the five days provided for in section 203 of the Code, as amended, but the day of election must be excluded from the computation.

The day fixed by law for the holding of the November, 1929, election falls on the 5th of November. Excluding that day, there are four days in November.

Adding the last day of October to the first four in November, it will be seen that one will have five days prior to the 5th day of November, 1929. It is, therefore, my opinion that October 31st, and not October 30th, is the last day on which a ballot to vote by mail can be applied for.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Ballot to be deposited by judge of.

RICHMOND, VA, May 27, 1930.

MR. R. HOUSTON BRETT,

Attorney at Law,

Mutual Building,

Richmond, Virginia.

DEAR MR. BRETT:

Governor John Garland Pollard has forwarded me your letter of the 23rd instant, with request that I give it the required attention.

I note that you are of the opinion that section 162 of the Code is in direct conflict with section 21 of the Constitution, as section 162 of the Code provides that the elector shall prepare and deliver his ballot to the judges of election, while section 21 of the Constitution provides that, unless he is physically unable, he shall prepare and deposit his ballot without aid. You are evidently of the opinion that each elector is required by the Constitution to deposit his ballot in the ballot box.

This precise question has not been passed upon. However, the Supreme Court of Appeals, in *Moore v. Pullen*, 150 Va. 174, decided in favor of the constitutionality of what is called the absent voters' law, permitting persons to obtain ballots and vote by mail. A careful reading of the opinion by Chief Justice Prentiss will, I think, convince you that you are mistaken in your construction of section 21 of the Constitution as applicable to the deposit of ballots by the individual elector. The court held that the absent voters' law was covered by section 56 of the Constitution. This section gives the General Assembly full authority to provide for the manner of conducting elections. If the Legislature can enact a law providing for voting by mail, it certainly can provide the manner in which the elector must mark his ballot and deposit it, or have it deposited in the ballot box. Section 162 of the Code provides how this is to be done, and the provision that it is to be marked by the elector, folded and delivered to a judge of election, who shall deposit it in the ballot box, is a valid exercise of legislative authority.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Ballots—Marking of.

RICHMOND, VA., October 31, 1929.

HON. R. H. ANGELL, *State Chairman,*
Virginia Republican State Committee,
207-208 Liberty Trust Building,
Roanoke, Virginia.

MY DEAR MR. ANGELL:

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

"There is some confusion as to the presence on the official ballots of the *addresses* of the candidates as well as their names. I am sure the law did not contemplate the addresses being placed on the ballots, but judges of election in the past have, at various places, ruled that unless the addresses were marked out, as well as three-fourths of the names, the ballots would be invalidated and the vote thrown out.

"A simple ruling by you publicly made that the voter need pay no attention to the addresses on the ballots, but only mark out the names of the candidates he does not wish to vote for, will prevent confusion and all judges of election will have your decision by which their action throughout the State can be uniform."

In response thereto, I call your attention to section 162 of the Code which, so far as is applicable to the question here under consideration, reads as follows:

"Every elector qualified to vote at a precinct shall, when he so demands, be furnished with an official ballot by one of the judges of election selected for that duty by a majority of the judges present. The said elector shall then take the said official ballot and retire to said voting booth. He shall then draw a line with a pen or pencil through the names of the candidates he does not wish to vote for, leaving the title of the office and the name or names of the candidates he does wish to vote for unscratched. No name shall be considered scratched unless the pen or pencil mark extends through three-fourths of the length of said name; and no ballot, save an official ballot especially prepared as provided for in this chapter shall be counted for any persons. The elector shall fold said ballot with the names of the candidates on the inside and hand the same to the judge of the election, who shall place the same in the ballot box without any inspection further than to assure himself that only a single ballot has been tendered and that the ballot is a genuine ballot, for which latter purpose he may, without looking at the printed inside of said ballot, inspect the official seal upon the back thereof * * *."

You will see from this that all a voter is required to do is to draw a line with a pen or pencil through the names of the candidates for whom he does not wish to vote. This line must extend through at least three-fourths of the length of such names. A voter is not required to strike out the addresses of the candidates in order to vote against such persons.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Candidates—Eligibility of.RICHMOND, VA., *January 25, 1930.*

HON. ALFRED H. McDOWELL,
City Clerk,
Richmond, Virginia.

MY DEAR MR. McDOWELL:

Acknowledgment is made of your letter of January 24, 1930, in which you say:

"Will you please construe the election laws, so far as applicable, in the following case? A person who desires to become a candidate in the April, 1930, primary election failed to pay his 1929 poll tax on or before December 9, 1929, but did shortly thereafter pay said poll tax. Is there any provision of law to interfere with the eligibility of such person to become a candidate at said election?"

One is not eligible to vote in a regular election unless, at least six months prior thereto, he has paid all the State poll taxes assessed or assessable against him, under the Constitution, during the three years preceding that in which he offers to vote (section 21 of the Constitution).

Section 35 of the Constitution provides that "No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election."

The person in question, not having paid his capitation tax at least six months prior to the date on which the regular municipal election will be held, is not qualified to vote in the primary to be held in April, 1930, for the purpose of nominating the candidates to be voted for in the regular June election.

Section 229 of the Code, with reference to candidates in primaries, provides in part:

"The name of no candidate shall be printed upon any official ballot used at any primary unless such person is legally qualified to hold the office for which he is a candidate, and *unless he is eligible to vote in the primary in which he seeks to be a candidate * * **" (Italics supplied.)

It is, therefore, my opinion that the name of the person referred to cannot be printed upon the official ballots used in the April, 1930, primary to be held in the city of Richmond.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***ELECTIONS—Candidates—Expense accounts—Allowable expenditures.**RICHMOND, VA., *August 13, 1929.*

HON. JOHN GARLAND POLLARD,
Williamsburg, Virginia.

MY DEAR MR. POLLARD:

Acknowledgment is made of your letter of August 10, 1929.

I have carefully examined the expense account enclosed with your letter and, in my opinion, it fully conforms with the law, both as to the amount of

your expenditures and the items for which they were made. As I wrote you on June 10, 1929, the maximum expenditure that could be incurred in the August, 1929, primary was \$16,106.70. Your account is for less than this amount.

The items of your account are as follows:

"Postage	\$ 3,245.11
Payroll of office force.....	6,086.67
Printing	1,851.45
Multigraphing and letter service.....	1,082.52
Traveling	1,375.19
Headquarters rent	1,004.83
Telephone and telegraph	491.61
Stationery and office supplies.....	304.62
Filing petition	100.00
Advertising (Int. Moulders Union \$10.00; Va. Educational Assoc. \$32.00)	42.00
	<u>\$ 15,584.00."</u>

All of these items are authorized by section 251 of the Code, except the next to the last item which is authorized by section 249 thereof. It is my opinion that sections 232, 233, 234, 251 and 253 of the Code apply to expenditures in primaries and require the filing of a candidate's expense account. Section 232 of the Code requires the account to be filed with the "clerk of the court of the county or city in which" such candidate resides. Section 253 of the Code, which applies to primaries as well as to general elections, requires a candidate to "make out and file with the officer or board, empowered by law to issue certificates of election to such office or place, and a duplicate thereof with the clerk of the circuit court of county or corporation court of the city for any county or city in which such candidate resides, a statement in writing, which statement and duplicate shall be subscribed and sworn to by such candidates before an officer authorized to administer oaths."

It is, therefore, my opinion that you should file your expense account not only with the clerk of your court, but a duplicate with the Secretary of the Commonwealth as he is the officer empowered by law to certify your nomination (section 154 of the Code).

As requested by you, I am sending four blanks which I procured from Mr. Hutchinson. I am also returning the copy of your account sent me.

Sincerely yours,

LEON M. BAZILE,
Assistant Attorney General.

ELECTIONS—Candidates—Qualifications.

RICHMOND, VA., August 31, 1929.

HON. W. L. PRIEUR, JR., *Clerk,*
Norfolk, Virginia.

MY DEAR MR. PRIEUR:

Acknowledgment is made of your letter of August 30, 1929, in which you say in part:

"'A' actually resides in the city of Norfolk, but is a registered and qualified voter in the city of Richmond, and so far as I am able to learn,

voted there in the Primary Election in August, 1929. He now desires to file his notice of candidacy for an office in the general election in the city of Norfolk.

"I am desirous of knowing—First: As to whether or not, under any circumstances, he may be a candidate for an office in this city in the General Election in November, 1929. Second: Assuming that he cannot, whose duty is it to disqualify him and prevent his name appearing on the ballot?"

Section 32 of the Constitution of Virginia provides in part:

"Every person qualified to vote shall be eligible to any office of the State, or of any county, city, town or other subdivision of the State, wherein he resides, except as otherwise provided in this Constitution, * * *."

"Wherein he resides," in my opinion, means the jurisdiction in which he legally resides as distinguished from the place where he may be actually living at the time.

Under the law, as you will see from an opinion given by me on November 1, 1928, to Hon. Wilmer L. O'Flaherty, Secretary of the Richmond Electoral Board, a copy of which I am sending herewith, a person may be a legal resident of one place while actually residing in another. From the facts stated in your letter, it would appear that A referred to was a legal resident of the city of Richmond as late as August 6, 1929. Under section 18 of the Constitution, in order to become a legal resident of a county, city or town one must have resided there six months. In my opinion, this means that one must have had his legal residence in such county, city or town for six months preceding the election. If Mr. A had his legal residence in Richmond on August 6, 1929, he could not possibly have been a legal resident for the period required by the Constitution before November 5, 1929.

I, therefore, conclude that Mr. A is not qualified to be a candidate for an office to be filled by election in the city of Norfolk on the facts stated in your letter, for the reasons set forth in this opinion and the opinion to Mr. O'Flaherty referred to above.

From an examination of sections 154 and 155 of the Code, I am not certain whose duty it is to prevent Mr. A's name appearing on the ballot. The matter perhaps could be tested by the clerk refusing to certify his name to the electoral board, in which event Mr. A could apply to the court, as provided in section 154, at which time the matter could be tested and judicially determined. It seems to me that this would be the better course to pursue.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax—Payment of.

RICHMOND, VA., May 15, 1930.

MR. NORMAN B. SMITH,
Luray, Virginia.

DEAR MR. SMITH:

I am in receipt of yours of the 13th, in which you ask if a lady who has paid her capitation taxes for the years 1927 and 1928, and her capitation tax for

the year 1929 on November 16, 1929, is entitled to vote in a special election to be held on May 20, 1930. Unquestionably she is.

Section 83 of the Code provides that at any 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, * * *."

Inasmuch as the lady in question paid her 1929 capitation tax on November 13, 1929, she has complied with this provision in the law, namely, that the tax shall be paid six months prior to the second Tuesday in June.

I am enclosing you copy of an opinion written to Mr. Crosby Thompson, the Mayor of Port Richmond, which goes more fully into the question.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Capitation taxes may be levied by towns.

RICHMOND, VA., May 22, 1930.

HONORABLE JNO. Q. RHODES, JR.,

Attorney at Law,

Louisa, Virginia.

MY DEAR COLONEL RHODES:

I have carefully noted the contents of your letter of May 21st, relative to the town of Louisa, which for a number of years, as stated in your letter, has been placing a capitation tax of one dollar on each resident of the town. In this connection you call my attention to section 173 of the Constitution, the last sentence of which provides:

"The General Assembly may authorize the board of supervisors of any county, or the council of any city or town, to levy an additional capitation tax not exceeding one dollar per annum on each such resident within its limits, to be applied to city, town or county purposes."

You further state that from an examination of the charter of the town of Louisa, you can find no provision therein which authorizes the council to levy such additional capitation tax. If you will examine section 293 of the Tax Code, which is section 3073 of Michie's Code of 1924, you will find that the Legislature has authorized the council of every town to lay such a levy. This section reads as follows:

"The council of every city and town shall annually cause to be made up and entered on their journals an account of all sums lawfully chargeable on the city or town which ought to be paid within one year, and order a city or town levy of so much as in their opinion is necessary to be raised in that way in addition to what may be received for licenses and from other sources. The levy so ordered may be upon the persons in the said city or town above the age of twenty-one years, not exempt by law from the

payment of the State capitation tax, and upon any property therein subject to local taxation and not expressly segregated to the State for purposes of State taxation only."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Capitation tax—Treasurer's list.

RICHMOND, VA., *June 9, 1930.*

MR. S. L. JOHNSON,
Narrows, Virginia.

DEAR SIR:

I am today in receipt of your letter of the 6th instant, in which you say that I did not answer the question contained in your letter of May 3 and that you did not understand the copy of the letter written to Mr. J. E. Pollard as covering your inquiry. You again ask whether or not a person who has paid capitation taxes for 1927 and 1928 and whose name is shown on the treasurer's list of voters as having paid taxes for those years, and who has paid the capitation tax for 1929, six months prior to the June election, but whose name is not upon the treasurer's list as having paid the capitation tax for that year, is entitled to vote upon the presentation to the judges of election of the capitation tax receipt for 1929.

Section 38 of the Constitution provides that the treasurer of each county and city shall make up a list of voters who not later than six months prior to the election shall have paid the State capitation taxes required by the Constitution during the three years next preceding that in which the election is held. It further makes provision for the posting of these notices at each precinct and provides for the correction of the list upon application to the circuit court by the inclusion of the names of those who have paid their taxes, but whose names have been inadvertently omitted from the tax list. It also provides that the General Assembly may prescribe further evidence of the prepayment of the capitation tax.

In my opinion, no person who is not shown by the treasurer's list and who was assessed or assessable with capitation taxes for 1927, 1928 and 1929 can vote in the June election upon the presentation of the treasurer's receipt showing the payment of the capitation tax for the year 1929.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Costs—How paid.

RICHMOND, VA., *April 18, 1930.*

MR. JOHN H. BURNER,
McGaheysville, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, in which you ask how the expenses of primary elections for nomination for Congress or other offices are paid.

Under the provisions of section 245 of the Code, the expenses of primary elections are paid as expenses of elections are paid.

Under the provisions of section 170 of the Code, it is provided "the cost of conducting elections under this chapter shall be paid by the counties and cities respectively."

You know, of course, that candidates for office are assessed a certain percentage upon one year's salary. This assessment is evidently for the purpose of taking care of the election expenses. In some instances it takes care of all of the expenses and, where there are a number of candidates for offices paying large salaries, it more than takes care of these expenses, while in other cases, where there are a few candidates, the assessments do not meet the costs and these costs are then taken care of by the localities.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Election districts—Effect where part of election district becomes a city of the second class.

RICHMOND, VA., September 19, 1929.

KENNON C. WHITTLE, ESQ.,
Attorney at Law,
Martinsville, Virginia.

MY DEAR MR. WHITTLE:

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

"Several months ago, the town of Martinsville was created a city of the second class. Prior to this change, we had in the city two voting precincts designated as Martinsville Precinct No. 1 and Martinsville Precinct No. 2. These precincts accommodated both the voters of the town of Martinsville and the voters of the Martinsville Magisterial District.

"Since the town has been 'cut off' from the county, we have made no change in the voting precincts. There can be no question, as I see it, about the voters of the city of Martinsville having a right to vote at these two precincts as they did before the change. However, there is some doubt in my mind as to whether or not the citizens of the Martinsville Magisterial District can vote at these precincts located within the corporate limits of the city of Martinsville.

"What I would like from you is an opinion as to whether or not it would be proper for us to go ahead with the voting this fall as we have done in the past. It would seem reasonable that the voters of both the city and the district should be permitted to vote at these precincts, as they have never been changed, the only change being in the town of Martinsville which has been changed from a town to a city of the second class."

In my opinion this matter is governed by section 143 of the Code, which reads as follows:

"Each magisterial district of a county, and each ward of a city, shall severally constitute an election district, unless such magisterial district or ward be divided into more election districts than one, and the elections therein shall be held at such place or places as may be designated by the

proper authorities appointed by law for that purpose. *The election districts and voting places as now constituted shall so continue unless and until changed as hereinafter provided.*" (Italics supplied.)

While it is true that, when Martinsville became a city of the second class, it ceased to be a part of Henry county, I am, nevertheless, of the opinion that, under the above quoted section of the Code, the election districts and voting places as constituted at the time it became a city of the second class will continue to be the election districts and voting places for the voters of Martinsville Magisterial District until changed in the manner provided by section 144 of the Code.

As to your second question, I have very grave doubt whether the county precinct, when it is established, can be established at a place within the city of Martinsville, even though that place be the county court house, in view of the wording of section 144 of the Code.

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Eligibility of voters.

RICHMOND, VA., July 22, 1929.

MISS MARY C. CARTER,

*Care Mr. H. Carter Redd,
Ashland, Virginia.*

MY DEAR MISS CARTER:

I am just this moment in receipt of your letter of July 21.

In this you state that a group of young women in Ashland have just become 21 years of age, are interested in the political situation and are anxious to vote in the primary and in the general election this fall. You then ask if this can be done.

This can be easily done. Section 26 of the Constitution provides:

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

The interpretation of this section means that, regardless of the fact as to whether or not a person is 21 years of age, if such person will be 21 years of age on or before the day of the general election in November, such person can be qualified to vote both in the primary in August and in the coming fall election.

It is to be done as stated in your letter, i. e., the ladies must go to the commissioner of the revenue and have themselves assessed with one year's capitation tax, then go to the treasurer of the county and pay that capitation tax, which will be \$1.50. They will then be in a position to appear before the registrar and register. The capitation tax will be for the year 1930.

As soon as these three steps are taken they will be qualified to vote both in the primary and in the coming November election.

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Eligibility to vote.RICHMOND, VA., *August 2, 1929.*

MR. THOMAS R. MECHEM,
541 Marion Avenue,
Clarendon, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 29, 1929, in which you say there are a number of persons in your precinct who moved into Virginia in October, 1928. You state that they wish to register and vote in the approaching primary to be held on August 6, 1929, and, you further state, that the registrar of your precinct has refused to permit such persons to register prior to October 1, 1929.

It is my opinion that such persons, if otherwise qualified, are at this time entitled to register and vote so far as residence is concerned.

Section 26 of the Constitution provides:

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

Section 35 of the Constitution provides that if a person is registered and qualified to vote at the next succeeding election, he may vote at a legalized primary election.

The first paragraph of section 228 of the Code, Virginia Election Laws, page 74, is but declaratory of these constitutional provisions.

Due to the wording of section 20 of the Constitution, such a person does not have to pay any capitation tax as a prerequisite to the right to register in the year 1929, and vote at elections held this year.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Eligibility to vote—Residence.RICHMOND, VA., *July 25, 1929.*

MR. L. W. HUDGINS,
Peary, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of July 22, 1929, in which you submit the following question for an opinion:

"Now will you please let me know if a man who has paid his poll tax and is on the voting list, and on account of being a school teacher has not been in the county long enough to pay but one poll tax, does he or does he not come under the same head as to the voting in this respective county as a person just coming 21 years of age?"

Section 26 of the Constitution, which has been in the Constitution since 1902, reads as follows:

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

You will see that this provision in the Constitution has no application whatever to a party coming into a county who has only been there long enough to pay one year's poll tax. Your question must, therefore, be answered in the negative.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Eligibility to vote.

RICHMOND, VA., *December 9, 1929.*

COLONEL JENNINGS C. WISE,
*1719 H Street, N. W.,
Washington, D. C.*

MY DEAR COLONEL WISE:

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

"* * * upon the following statement of facts which are subject to verification, I request you as Attorney General to advise me:

"As to my citizenship, and as to my liability to the State of Virginia and the city of Richmond for taxes, and just how I may vote without risk of being publicly attacked by the officers of the State for trying to do so.

"I was born in Richmond, Virginia, September 10, 1881, of Virginian parents who in 1888 established a legal domicile in New York. From September, 1898, to June, 1902, I attended the Virginia Military Institute, spending my vacations at my father's residences in Virginia, and from October 28, 1902, to January 1, 1905, was an officer of the United States Army. Resigning my commission, I resided in Watertown, New York, until September 1, 1907, but never voted in New York. From September 1, 1907, to June, 1909, I resided with my family at the University of Virginia, was admitted to the Virginia bar in 1908, and entered the practice of law as a resident of Richmond, Virginia, September 1, 1909. During the next eight years, I was a landowner and taxpayer in Richmond, held commissions from the Governor of Virginia in the Virginia Volunteers, and was a professor of the Virginia Military Institute, where I resided from September 1, 1912, until June 25, 1915. From September, 1915, to May, 1917, I resided near Westham, where I owned a house and land against which taxes were assessed and duly paid. From 1909 to 1912 as a member of the law firm of Wise and Chichester, and from 1915 to 1917 as a member of the law firm of Pollard, Wise and Chichester, I resided constantly in Virginia. In November, 1916, I voted at Westhampton precinct for Charles Evans Hughes.

"In May, 1917, I was commissioned in the National Army and attached to a Virginia regiment at Camp Lee. In December, 1917, I was sent to France and returned to Richmond May 27, 1919, as Lieutenant-Colonel, 318th Infantry, 80th Division—a Virginia Regiment—with which I served in France. At this time I held a commission from the Governor of Virginia on the Virginia War History Commission. The record of my military service as a Virginian will be found in the published reports of that Commission at page 173, Volume I, at page 470, Volume V, in which I am

recorded as a Virginian who has rendered distinguished service to his State, which fact I naturally cherish.

"In September, 1919, I closed my home in Henrico county and accepted service under the Wilson administration in Washington in a legal capacity. In 1920 I sold my home in Virginia and assumed a legal domicile in Washington. I was not a delinquent taxpayer in Virginia. From September, 1920, to January 1, 1928, I resided continuously in Washington, D. C., and paid personal and Federal taxes there. January 1, 1928, I resumed my legal domicile in Richmond in association with a Richmond law firm and as a member of the Virginia Bar Association, and resumed resident membership in the Westmoreland Club and Country Club of Virginia, becoming a resident member of the Commonwealth Club. I resided continuously at the Chesterfield Apartments, and later at the Commonwealth Club until April 8, 1929, except when business took me away.

"Early in April, 1929, it was manifest to me I would have to remain in New York in connection with important litigation in which I was counsel for the Six Nations of New York against the State of New York. Before leaving, I decided to qualify to vote in Virginia. As a new voter I applied for registration, never having voted since 1916, and gave the Commonwealth Club as my residence, which I was advised I had a right to do. The registrar then and there, upon receipt for poll taxes for three years past, changed my registration from Westhampton precinct to Clay Ward, and notified me as to my polling place.

"Having completed my business in New York, on August 6 I returned to Virginia and remained until August 28 with my brother at his residence in Northampton county. On September 15 I rented an apartment in Washington, D. C., where business will require me to be this winter as counsel for various Indian tribes, and in numerous international law cases before the Mexican Mixed Claims Commission and the State Department, which experience has shown me I cannot handle properly in Richmond. I still elect to retain my legal domicile in Virginia where it is my purpose to resume an actual residence as soon as possible, although I have requested my clubs to transfer me to their non-resident lists.

"During October last, I visited as a guest at 913 West Franklin Street, Richmond, Virginia. The longest period I have ever spent in New York since 1907 is four months, and this was this spring and summer during which time I was engaged in the Federal courts there.

"I paid Federal taxes to the Collector of Revenue for the district of Richmond in 1928. The only taxes assessed me in Virginia since January 1, 1928, is the poll tax of \$1.00 for the year 1929, notice of which was left at the Commonwealth Club for me in an envelope dated October 29, 1929. I have no desire to avoid any taxes and am prepared to pay whatever is due from me without delay."

It is very clear from the above statement of facts that for many years prior to September, 1920, you were a legal resident of Virginia. Constitution of Virginia, section 18; *Williams v. Commonwealth*, 116 Va. 272 (1914); *Bruner v. Bunting*, 15 Va. L. Reg. 514, 516 (1909). It would appear equally clear from the statement of facts contained in your letter that you abandoned your legal residence in Virginia from September, 1920, until January 1, 1928. You unquestionably had the right to return to Virginia in January, 1928, and again acquire a new legal residence in this State (Constitution, section 18).

After residing in Virginia for a period of one year, you would again be qualified to vote in this State so far as relates to residence. Having again reestablished your legal residence in Virginia, you could retain it here even though your business required you to be away from the State a large part of your time, as the Court of Appeals held in *Williams v. Commonwealth*, *supra*, that a legal

residence once acquired by birth, or habitancy, was not lost by temporary absence for pleasure, health or business, or while attending the duties of public office. To lose such residence, it must be accompanied by both physical removal and the intent to abandon the legal residence acquired. One's intent always involves a question of fact which must be determined as any other fact.

Having resumed your domicile in Virginia, January 1, 1928, you should have returned to the commissioner of the revenue of the city of Richmond a report of your intangibles for the year 1928, as well as for the year 1929 (Tax Code, section 244).

The Tax Code of Virginia, in fixing the income tax requirement, makes a difference of one day so far as the necessity for a State income tax return is concerned, section 37 of the tax law providing that the status of individuals should be determined as of the last day of the taxable year, and, you not having been domiciled in Virginia on the 31st day of December, 1927, you were not required to make an income tax return for that year, but should have made an income tax return for the year 1929. Not having been domiciled in Virginia for the years 1926 and 1927, and only having become domiciled January 1, 1928, you were not assessable with taxes for 1926 and 1927, and you could not have been required to pay other than your 1928 capitation tax to entitle you to vote in the 1929 gubernatorial election.

For your information, I call your attention to chapter 10 of the Virginia Election Laws. Having left Virginia and been away more than six years prior to the 1st of January, 1928, your name should have been removed by purging from the registration books of your old precinct, but, this not having been done and you having returned to Virginia and residing in another precinct, you should have transferred from the precinct in which you were registered when you left to your new precinct. There is no provision for a second registration so long as the name of the voter remains in one voting precinct.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Eligibility of persons coming of age after January, 1928, to vote.

RICHMOND, VA., August 3, 1929.

HUGH CAMPBELL, ESQUIRE, *Registrar,*
R. F. D. 1,
Ashland, Virginia.

MY DEAR MR. CAMPBELL:

Acknowledgment is made of your letter of August 2, 1929, in which you ask the following question:

"Can a person coming of age after January 1, 1928, but before November 6, 1929, be assessed and at this time pay \$1.50 and register and vote in the primary?"

Such a person, if a legal resident of this State, is entitled, on the payment of \$1.50 to the treasurer at this time, to register between now and the primary

and vote in that election, even though he or she will not be 21 years of age on the day on which the primary will be held. See sections 26 and 35 of the Constitution. Under section 20 of the Constitution, a person coming of age can pay his capitation tax in advance and register at any time during which the registration books are open, which in counties is at all times except the period after thirty days prior to the November election, the books remaining closed until the day after that election is held.

The requirement of section 21 of the Constitution as to the payment of capitation taxes six months prior to the election has no application to a person just coming of age.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Eligibility of person becoming of age in September to vote in August primary and November general elections.

RICHMOND, VA., July 12, 1929.

MR. L. E. BROGDON,
106 N. Third Street,
Hopewell, Virginia.

DEAR SIR:

Pardon my delay in answering your letter of the 6th instant, in which you write asking for a copy of the Virginia Election Laws and for advice as to the right of a person becoming of age in September this year to pay his capitation taxes and vote.

I am enclosing you under separate cover copy of the Virginia Election Laws.

In reference to the right to vote of one becoming of age prior to the November election, I refer you to sections 20 and 26 of the Constitution, found on pages 5 and 7 of the Election Laws, and as to registration, to section 98 of the Code, found on page 25 of the Election Laws.

You will see from these references that a person becoming of age on or before the 6th day of November of this year is entitled to pay his capitation tax at any time thirty days before the election, to register within thirty days of the election, and to vote in that election.

The sum paid in order to register, if he shall become of age since the first of January, 1929, is credited on his 1930 capitation tax.

Should the young man you speak of desire to vote in the August primary, he must, of course, pay his capitation tax and register prior to the primary election day.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Expenses paid by towns.RICHMOND, VA., *April 10, 1930.*

HON. JOE W. PARSONS, *Clerk,*
Circuit Court of Grayson County,
Independence, Virginia.

DEAR SIR:

I am in receipt of your letter of the 7th instant, in which you ask to be advised as to whether the county or an incorporated town should pay for the expense of an election held in such town.

While it is true that section 170 of the Code provides that counties and cities shall pay the expenses of elections held under the provisions of chapter 13 of the Code, and no provision is made for the payment of elections held in incorporated towns, I am of the opinion that the expenses of town elections should be paid by the town and not by the county in which the town is situated, as an election in an incorporated town is purely a local matter, in which a county is in no wise interested.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges and clerks of—Employee of candidate not required to act as such.RICHMOND, VA., *October 10, 1929.*

MR. STANLEY VAN VLEEK, *Secretary,*
South Norfolk Electoral Board,
902 Rodgers Street,
South Norfolk, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of October 8, 1929, in which you say:

"The electoral board of this city recently appointed judges and clerks for the coming November general election, and it so happens that one of the judges appointed claims to be an employee of our incumbent commissioner of revenue, who is running in said election to succeed himself. The party contends that she is a *clerk* in the office of said commissioner of revenue and flatly declines to serve, claiming exemption under section 149 of the Virginia Election Laws.

"However, under section 31 of the Constitution of Virginia, the electoral board, if its interpretation is correct, does not feel that she is disqualified.

"I will thank you for your opinion and ruling on this question at your earliest convenience."

I have examined both section 31 of the Constitution and section 149 of the Code with care and it is my opinion that the last paragraph of section 31 of the Constitution was not intended to repeal section 149 of the Code.

I am, therefore, of the opinion that the person referred to is correct in refusing to serve as a judge of election in an election at which her employer is a candidate.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges and clerks of—Party affiliation.

RICHMOND, VA., July 11, 1929.

MR. W. C. WALLER,
South Boston, Virginia.

DEAR MR. WALLER:

I am in receipt of your letter of the 8th instant, in which you ask as to whether or not it is compulsory for the electoral board to appoint members of the Democratic and Republican parties as judges and clerks in town elections.

The Constitution, section 31, and the Code, sections 84 and 148, expressly provide that the electoral board of each county shall, in appointing judges of election for county and city elections, give representation to each of the two political parties which at the general election next preceding cast the highest and next highest number of votes. No such requirement is provided as to the appointment of clerks.

Section 2995 of the Code, providing for the appointment of judges of elections for towns, makes no express provision covering the question of the party affiliation of judges. Section 84 of the Code seems to provide for party representation among the judges even in town elections.

You ask me further "in counting the votes, do they have to have two or three to count and recheck them."

There is no provision as to just how judges of election count and check the votes. I should say that the method is in their discretion and that any one the judges adopted would be legal unless it produced fraud or irregularity.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges and clerks—Party affiliations.

RICHMOND, VA., October 30, 1929.

MRS. C. C. BASSETT,
Bassett, Henry County, Virginia.

MY DEAR MRS. BASSETT:

Acknowledgment is made of your undated special delivery letter received this morning.

In it you state that the electoral board of your county has appointed one Republican judge for each precinct, but has refused to appoint a Republican clerk. You request my opinion as to the legality of this.

In response thereto, I call your attention to the second paragraph of section 31 of the Constitution, which reads as follows:

"Each electoral board shall appoint the judges, clerks and registrars of election for its county or city; and, in appointing the judges of election, representation as far as possible shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and the next highest number of votes."

You will see that the only requirement as to representation for the two parties is as to the judges. The same provision is found in section 148 of the Code, as amended.

It would appear from this that the requirement of the Constitution and statute as to the political qualifications of the judges of election does not apply to the clerks of election.

Respectfully yours,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Judges may not stamp ballots.

RICHMOND, VA., May 26, 1930.

MR. HOWARD WILLIAMS,

Pamplin, Virginia.

DEAR MR. WILLIAMS:

I am in receipt of your letter of the 23rd instant, in which you write that a candidate for the office of mayor did not announce himself in time to have his name printed upon the official ticket, and I note you ask if it is lawful for the judges of election to have a stamp made and stamp his name on the ticket before handing it to the voter.

I appreciate the fact that by doing so it would save the voters some trouble. In my opinion, however, the judges of election have no authority to stamp or write a candidate's name on a ticket before handing it to a voter.

In previous opinions I have held that a candidate may provide a stamp and leave it in the booth for use by the voters. Of course, if a voter is entitled by law to the assistance of a judge, the judge may in the booth write a candidate's name on the ticket or use the stamp provided by the candidate and stamp the name on the ticket.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Legal qualification of voters in November election.

RICHMOND, VA., August 22, 1929.

MR. A. J. BANKS,

Low Moor, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of August 21, 1929, in which you request me to advise you what are the legal qualifications of voters in the election to be held on November 5, 1929.

You are entirely in error in believing that Judge Groner declared the Constitution of Virginia to be in conflict with the fourteenth and fifteenth amendments. He did no such thing. He merely declared that portion of section 228 of the election laws, which authorizes a political party to fix the qualifications of persons who participate in the primary, to be invalid so far as it authorized a political party to discriminate against voters on account of race or color.

The same qualification applies for the November, 1929, election and has heretofore applied to all other elections, and the decision of Judge Groner in the primary case has nothing to do with the general election.

In order to vote in November, 1929, one must be at least 21 years of age, a legal resident of the State, county and precinct in which he offers to vote, and must have paid all of the capitation taxes assessed or assessable against him during the three years preceding the year 1929, six months prior to the date of the election, except in the case of a person becoming of age and new residents who became residents of the State subsequent to January 1, 1928, and must have registered.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Notice of candidacy—Question of signature.

RICHMOND, VA., *September 19, 1929.*

MR. GEORGE W. TALIAFERRO, *Secretary,*
Electoral Board City of Harrisonburg,
Harrisonburg, Virginia.

DEAR MR. TALIAFERRO:

I am in receipt of your letter of the 17th instant, enclosing copy of what purports to be a notification to the electoral board of the city of Harrisonburg of Mr. F. W. Coffman as a candidate for the office of commissioner of the revenue of your city.

In my opinion, the question as to whether or not Mr. Coffman's notice of candidacy is in proper form depends entirely upon whether or not he intended the insertion of his name at the beginning of his notice as his signature to such notice. That question is one of fact and not of law. The copy of the notice you sent me is such a one as may have been filled in by Mr. Coffman without a thought that the writing of his name at the top was a signature, and with the intention of signing his name immediately below the last line of the notice reading "Given under my hand this 6th day of September, 1929." If Mr. Coffman, in writing his name on the first line of his notice, intended that act as a signature, he has complied with section 154 of the Code of Virginia, but, if, on the other hand, he simply wrote his name in that place with the intention of afterwards signing his name at the end, and the informality of his notice is because of an oversight in not signing below, then his notice is not such as complies with the statute.

I am indeed very sorry that I cannot give a more decided opinion as to the legality of the notice, but as the question of the notice fulfilling the requirements of the statute depends upon the intent of Mr. Coffman in writing his name in

the first part of the paper notice, and his intention being a question of fact, the electoral board must necessarily pass upon the legality of the notice.

Should the board be of opinion that it was not intended as a signature and refuse to enter his name upon the ballot, Mr. Coffman has his remedy in application to the judge of the circuit court for a *mandamus* to compel your board to place his name thereon.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Primary—Number of candidates to be voted for.

RICHMOND, VA., March 6, 1930.

HON. RICHARD T. WILSON, *Mayor,*
Petersburg, Virginia.

DEAR MR. WILSON:

I am in receipt of your letter of yesterday, in which you write:

"The Democratic primary for councilmen for the city of Petersburg will be held on April 1, 1930. There are two vacancies to be filled in the council and there are three candidates for the Democratic nominations.

"What I desire to know is whether or not the City Central Democratic Committee has a right under the Democratic primary law to make a ruling that each voter in the primary must vote for two candidates. In other words, if a voter scratches two names and votes for one candidate, can this vote be thrown out?"

In section 224 of the Code, chapter 15, relating to primary elections, it is provided that "all the provisions and requirements of the statutes of this State in relation to the holding of elections, the counting of ballots * * * shall apply to all primaries insofar as they are consistent with this chapter."

In section 179, chapter 13, relating to general and special elections, etc., it is provided: "* * * but no ballot shall be void for containing a less number of names than is authorized to be inserted therein."

In correspondence concerning this same question relating to primary elections in Newport News, I have already held in opinions to be found on pages 142 and 146 of my report for 1927-28, and I understand Judge Scott has held in a case before him, that a voter in a primary election is entitled to vote for only so many candidates as he may choose. Of course, should he vote for more candidates than nominees to be selected or offices filled, his ballot would be void.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Printing of ballots for special bond issue—Appointment of judges.RICHMOND, VA., *March 5, 1930.*THOMAS W. BLACKSTONE, ESQUIRE,
Accomac Court House, Virginia.

MY DEAR MR. BLACKSTONE:

Acknowledgment is made of your letter of February 27, 1930, *in re* the printing of ballots for the special bond issue election to be held in the town of Onancock on the 25th of March.

The section that governs the printing of these ballots is number 3085 of the Code, which reads as follows:

"The electoral board of cities and the electoral board of the counties in which an election has been ordered on the question of the issue of bonds shall, prior to the date of said election, have printed at the expense of said city or town, proper ballots to be voted at said election, on which shall be stated the date of election, the amount of the bond issue, and shall also have printed on separate lines the words, 'For bond issue' and the words, 'Against bond issue.' All persons voting at said election shall erase one or the other set of said words and the words remaining shall be counted as expressing the choice and vote of the person casting the ballot. Such ballot shall be delivered to the judge of the election within five days preceding the day of election, in the same manner as ballots are delivered to the judges of election in regular elections, for use at said election."

Section 2995 of the Code, Virginia Election Laws, page 91, requiring the appointment of a registrar and judges in towns not less than fifteen days before any town election, in my opinion, refers to regular town elections and not to special elections.

Under section 148 of the Code, judges who have been appointed for a term of one year hold over thereafter until their successors have been appointed. Judges who have been appointed constitute the judges of election "for all elections to be held in their respective election districts for the term of one year or until their successors have been appointed." The terms of the clerks are coincident with those of the judges. Sec. 148 of the Code.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***ELECTIONS—Qualifications of candidate.**RICHMOND, VA., *March 11, 1930.*MR. D. FRANK WHITE,
Attorney at Law,
Parksley, Virginia.

DEAR MR. WHITE:

I am in receipt of your letter of the 6th instant, in which you ask to be advised as to whether a person who did not pay his 1929 capitation tax until after December 10, 1929, could be a candidate for mayor of your town in an election to be held June 10, 1930.

Let me refer you to section 154 of the Code of Virginia. In this section, the caption of which is "Duty of candidates for office," there is a provision which I quote:

"* * * No person not announcing his candidacy as above, *or who is not qualified to vote in the election in which he offers as a candidate, shall have his name printed on the ballots provided for such election*, unless he be a party primary nominee. * * *"

Not having his name printed upon the ballot, a person may be voted for under the provisions of section 153 of the Code, which, after providing for voting by ballot, the form of the ballot and the printing of the names thereon, provides further:

"* * * but any voter may erase any name on the ballot voted by him and insert another."

By section 32 of the Constitution, it is provided that persons qualified to vote shall be eligible to any State, county, city or town office.

There has been no adjudication as to whether this provision of the Constitution renders a person who is not qualified to vote ineligible to hold office.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Qualification of voters—Person becoming of age—Capitation tax.

RICHMOND, VA., *April 16, 1930.*

MR. DAcOSTA WOLTZ:

Galax, Virginia.

DEAR MR. WOLTZ:

I am in receipt of your letter of yesterday, in which you state that you would like to know who is entitled to vote in the June 10 municipal election.

You then ask whether a person becoming of age on or before election day may pay his or her capitation tax thirty days before the election and be entitled to vote.

Your inquiry is covered by section 20 of the Constitution, which provides:

"* * * If he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; * * *"

and shall have registered according to law, he or she is entitled to vote.

This provision of the statute applies to the case of every person becoming of age since the first day of January, 1929, as persons are assessed with capitation taxes as of the first day of each year and, not having been assessable with the capitation tax for 1929—the year preceding the year in which he or she offers to vote—the person desiring to vote should go before the commissioner of the revenue, be assessed, pay one dollar and fifty cents tax and register. Such a person is then qualified to vote in all elections, having registered, of course, previous to the time that the registration books for the town election closed.

Should the person become of age after the first day of January, 1929, and before the first day of January, 1930, the capitation tax paid is credited for the year 1930. If of the age after the first day of January, 1930, the capitation tax is credited for the year 1931.

There is no provision of law covering the right of individual candidates to have watchers at the counting of votes. Section 177 of the Code provides for the presence of at least two representatives from each political party represented at the election, and, in lieu of the political parties asking representation at the counting, the judges notify bystanders and select such a number from them as, in addition to the representatives of the parties, make four persons.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registrars—Compensation for meeting with electoral board and copying poll books.

RICHMOND, VA., *October 16, 1929.*

HON. WILSON M. FARR,

Attorney for the Commonwealth,

Fairfax, Virginia.

DEAR MR. FARR:

In the absence of Colonel Saunders, I am answering your letter of the 9th instant, in which you say that your electoral board desires an opinion as to the amount registrars should be allowed for meeting with the board at the county seat for the purpose of making arrangements for the copy of the poll books of the county.

Provisions for the copy of mutilated, blotted, defaced, or poll books otherwise unfit for use, is contained in section 91 of the Code. As you say in your letter, there is no specific provision made for the amount they are to receive for their services in copying the books or going to the county seat to confer with the electoral board. However, judges, clerks, registrars and commissioners of election are entitled to receive under the provisions of section 200 of the Code, as amended, \$5.00 per day for each day's service rendered. There is no provision for the pay of mileage for registrars, as there is no such provision requiring them to go outside of their precinct.

In my opinion, each registrar should certainly receive as much as \$5.00 per day for his attendance before the electoral board at the county seat. Ten cents per name for copying the books would unquestionably be more than the labor is worth. I should have advised, had the question been referred to the Attorney General before the work was done, that the electoral board enter into an agreement with each registrar, fixing his compensation for the work to be performed, and that, as there is no fixed fee per diem contained in section 91, the pay of the registrars should be settled upon the allowance of reasonable remuneration for the services rendered.

Yours very truly,

EDWIN H. GIBSON,

Assistant Attorney General.

ELECTIONS—Registrar may ask questions concerning knowledge of Constitution.RICHMOND, VA., *January 13, 1930.*

MR. OLLIE W. TINNER,
Box 144,
Falls Church, Virginia.

DEAR SIR:

I am in receipt of your letter of the 10th inst., in which you ask two questions:

"1. Does the present State law authorize a registrar to ask any question he desires concerning the Constitution of Virginia, or the election laws of Virginia, and to refuse a taxpayer the right to register unless he answers these questions of fact, to his satisfaction?"

The answer to your question is contained in the third paragraph of section 20 of the Constitution of Virginia. This section provides as follows:

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

"2. According to the present State law, what are the exact 'educational qualifications' required to be met by a taxpayer in order to be allowed to register?"

It is practically impossible for me to answer this question. A person desiring to register, should answer, or undertake to answer, all of the questions propounded by the registrar. If denied registration, he has the right of appeal to the circuit court. Such a person should employ private counsel.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration of voters.RICHMOND, VA., *July 16, 1929.*

HON. WALTER E. BEARD,
Middlebrook, Virginia.

MY DEAR MR. BEARD:

Acknowledgment is made of your letter of July 12, 1929, in which you say:

"Our registrars seem to differ in their construction of law as to eligibility of voting in the August primary. Of course they all recognize the fact that capitation tax must have been paid before May 4, 1929.

"Some registrars hold, however, that, in order to participate in the primary, the applicant must be registered or have his transfer in hands of registrar thirty days prior to primary; others hold that an applicant can be registered or transferred up to August 6, the primary date.

"Kindly advise me as to your construction of the law * *."

Under section 98 of the Code, the registration books are closed in the counties only thirty days prior to the November general election. They remain open for registration at all other times. Under section 98a of the Virginia Election Laws, as amended, Acts 1928, page 34, in cities having a population of not less than 50,000 inhabitants and having a general registrar, the registration books are closed for a period of fifteen days next preceding the day of any special or primary election. This section, of course, has no application to a county. Section 98 of the Code fixes "thirty days previous to the November" election as the regular day of registration in a county and the regular days of registration in the cities and towns. This section then provides in part:

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

It follows from this that any person entitled to register in a county may register at any time after the November election, up to and including thirty days prior to the following November election.

Therefore, one, if entitled to do so, may be lawfully registered even on the day of the primary, if the registrar and the books are available for that purpose. Due to the fact that the books are delivered to the judges of election for the purpose of holding the primary, there is some question as to whether one can register on that day, but there can be no question about the fact that one, if entitled to do so, may be registered at any time before the books are delivered to the judges for the purposes of holding the primary.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration of voters.

RICHMOND, VA., *October 8, 1929.*

B. R. HOLLOWAY, ESQ., *Registrar,*
Route 1, Box 71,
Bowling Green, Virginia.

DEAR MR. HOLLOWAY:

Acknowledgment is made of your letter of October 5, 1929, in which you say:

"After the close of registrar's office today at sunset in my precinct I had application to register by a citizen of my precinct, whom I examined and found thoroughly eligible to register. I took Mr. B's application, but refused him entry on the registration book, pending a decision from your office, my refusal being due to a reading of section 98 of the Virginia Election Laws, setting forth the time of registration from sunrise to sunset, and further stating that registration shall be completed in said day.

"The question in this case, as hereinbefore stated, is had I the right to register applicant after sunset of this day, and furthermore does the day officially end as to the right of applicant to register at sunset or after and before midnight of the same day?"

The provision of section 98 of the Code, to which you refer, seems to be limited to registrars in cities and towns. The language as to registrars in the State generally is as follows:

"* * Thirty days previous to the November elections each registrar in this State shall sit one day for the purpose of amending and correcting the list, at which time any qualified voter applying, and not previously registered, may be added. * *"

While I do not think that a registrar is required to sit at his precinct after sunset, I am of the opinion that one may apply to him on the day of registration before the November election at any time before midnight, and, if he makes proper application and is otherwise qualified, it is lawful to register such person.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registration—Change of residence—When new registration not necessary.

RICHMOND, VA., October 31, 1929.

HON. HARRY K. GREEN,
Commissioner of Revenue,
Clarendon, Virginia.

MY DEAR MR. GREEN:

I am in receipt of your letter of October the 20th in which you state:

"A person moves out of Virginia and thereby loses his or her residence. He moves back, pays one year's head tax and wants to vote. Can he vote without registering again?"

Unless his name has been removed from the registration books of his precinct, I am of the opinion that he need not reregister. I would say that this is certainly true unless he has registered and voted in some other state.

If he moved out of the State with the intention of acquiring a permanent residence or domicile in the State into which he moved, I think the law would require that he shall have been in Virginia one year prior to the fifth day of November, 1929. In case he moved out of Virginia with no intention of giving up his Virginia voting residence, I do not think that he would have a right to vote by the payment of one year's capitation tax, but must have paid capitation taxes for such of the years, 1926, 1927, 1928, as was required of him on account of his age, and must also be included in the voting list of his county.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Registration—Copying books.

RICHMOND, VA., June 12, 1930.

MR. ALLEN B. GRAY, *Secretary,*
Winchester Electoral Board,
Winchester, Virginia.

MY DEAR MR. GRAY:

I am in receipt of your letter of the 10th instant, in which you ask to be advised as to the compensation to which a registrar is entitled for recopying registration books.

While section 91 of the Code provides for recopying of the registration books, it does not make provision for the amount of compensation payable for the work.

Under the provisions of section 200 of the Code, as amended, registrars are allowed \$5.00 per day for their services, without a provision for mileage.

However, as it will probably take more than one day and no specific provision for pay is made by law, I am of the opinion that the compensation of registrars for recopying registration books is a matter of contract and agreement between the registrar and the county or city electoral board.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence.

RICHMOND, VA., June 6, 1930.

MR. J. B. FOGLEMAN, *Assistant Treasurer,*
Virginia Polytechnic Institute,
Blacksburg, Virginia.

DEAR MR. FOGLEMAN:

I am in receipt of your letter of yesterday, in which you ask my opinion as to the right of certain persons living outside of the corporate limits of the town of Blacksburg to vote in the municipal election of next Tuesday.

I am enclosing you copies of letters written to Mr. R. L. Longworth, of Bluefield, Virginia, which I think cover some phases of your inquiry.

However, in the first paragraph of your letter you ask if persons living outside of the corporate limits of Blacksburg may vote in the municipal elections. In the second paragraph you ask whether or not persons who have lived within the corporate limits of the town, but who now reside outside, are entitled to vote, they owning property within the town, and I note you state that the regular voting precinct of all of these persons is within the town.

No persons living outside of the corporate limits who do not claim a technical residence within the town are entitled to vote in the town elections. The fact that the magisterial precinct voting place is within the town does not give them a right to vote in the town elections. A town may be a part of a precinct and the actual voting place may be in the town, as it almost always is, and yet persons living outside of the corporate limits are not residents of the town and are not entitled to vote in town elections.

Another proposition of law arises when the right of persons who have formerly lived within the corporate limits, but who now live without the corporate limits, is under consideration, and it is more particularly as to this class that the letters to Mr. Longworth apply.

It is practically impossible for me to accurately express an opinion as to the qualification of voters which will cover every case. The judges of election must determine the eligibility of persons to vote in your town elections.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence.

RICHMOND, VA., May 26, 1930.

MR. R. L. LONGWORTH,
Bluefield, Virginia.

DEAR MR. LONGWORTH:

I am in receipt of your letter of the 24th instant, in which you acknowledge receipt of mine of the 16th instant, in reference to your inquiry as to the meaning of "resident" or "residence," as contained in section 2997 of the Code as to who may vote in town elections.

My letter of the 16th is about as definite as I can make it. The provision contained in section 2997 of the present Code is the same as was contained in section 1024 of the Code of 1887.

The case to which I referred, *Williams v. Commonwealth*, 116 Va. 272, arose after an election in 1910, in which the eligibility of Mr. Williams to a seat in the council of the city of Alexandria was contested. It is true that the sections referred to speak of who can vote in towns and do not embrace cities.

However, section 18 of the Constitution provides:

"Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people, * * *."

In my opinion, *Williams v. Commonwealth* controls even in town elections, and I am further of the opinion that, section 18 of the Constitution having provided that a person who is a resident of a town for six months previous to an election may vote for members of the General Assembly and all officers elected by the people, the Legislature could not, if such was its intention, further restrict the right of suffrage of residents of a town.

As long as a man is a resident of a town, whether he is continually always there or not, he is entitled to vote in town elections, and a residence once acquired for the purpose of voting continues until such person has abandoned that place of residence and acquired a residence elsewhere.

Of course, I do not undertake to pass upon the qualifications of a particular individual nor to say whether such individual is or is not a resident of a particular

town. I have only endeavored to give you the general principle of law by which judges of election should be governed.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence.

RICHMOND, VA., July 30, 1929.

MR. DARRELL F. HOLMES,

Valley Virginian,

Waynesboro, Virginia.

MY DEAR MR. HOLMES:

Acknowledgment is made of your letter of July 27, 1929, in which you state that you are a legal resident of Luray, Page county, Virginia, and vote there, while your wife, who before her marriage, was a resident of King George county, has kept her legal residence in the latter county ever since she has been married. You request me to advise you whether your wife can keep her legal residence in King George county and vote there.

Prior to 1922, I held, under the common law then in force in this State as to this subject, that the legal residence of a married woman was the same as that of her husband and, therefore, that she must vote at the same precinct at which her husband voted. The General Assembly, however, in 1922 (Acts of 1922, page 462), changed the law and it is now provided (Virginia Election Laws, section 1, page 94):

“* * * 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.”

Therefore, on the facts stated in your letter, your wife is entitled to keep her legal residence in King George county and vote there, if otherwise qualified.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence—Party becoming of age.

RICHMOND, VA., April 25, 1930.

MR. PAUL FARMER,

Altavista, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, in which you state that you have been recently appointed registrar for one of the districts of Campbell county, and ask to be advised upon two questions:

“1. Can a man moving to Altavista, Virginia, from North Carolina in February, 1929, vote in the June election, or is he entitled to register and vote in the said election, he not having any receipt for poll taxes paid in this State?

"2. Is a man born in March, 1928, in this precinct entitled to vote in the June election? His 1930 poll tax is not due until December of this year and, therefore, it seems to me he should be entitled to vote in the June and November elections. Am I right?"

Under the provisions of the amended Constitution, residence of only one year in the State is required to entitle a person to register and vote. The requirement that poll taxes shall be paid in advance is to the effect that a person must have paid six months in advance of an election all poll taxes assessed or assessable against him for the three years preceding the year in which he offers to vote. There is no poll tax assessable against a person moving into Virginia in February, 1929, for that year. Consequently, such a person may register and vote without the payment of any poll tax at all.

I assume that your second question concerns a man born in March, 1908, although in your letter you say March, 1928. The law as to the payment of poll tax by a person becoming of age is contained in section 20 of the Constitution, providing that, where a person becomes of age at such a time that no poll tax shall be assessable against such person, he or she may register and vote upon the payment of one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him. Not being of age until March, 1929, the first poll tax assessable against the young man referred to is for the year 1930. He must pay this poll tax and register thirty days prior to the June election or thirty days prior to the November election to qualify to vote in either of those elections.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence—Voting by mail.

RICHMOND, VA., *October 10, 1929.*

MR. C. G. MASON,
Mason's Department Store,
Luray, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of October 8, 1929, in which you ask the following five questions:

"1. Are traveling salesmen, whose business requires them to be away from their voting precincts on day of election, eligible to vote by mail?

"2. Should a traveling salesman who had expected to be absent from his voting precinct on day of election and had voted by mail, but who is at his voting precinct on election day, be permitted to vote in person and his vote by mail not be counted, or should his vote by mail be counted and he not be permitted to vote in person?

"3. Do persons who are physically incapacitated to go to the polls have to have a certificate from a physician as to their physical condition before they can vote by mail?

"4. What are the present requirements as to the length of residence in the State, the county and the precinct?

"5. What is necessary on the part of the voter to satisfy the judges of election as to the required payment of poll tax in a case where the voter has moved from some other State, also where he has moved from some other county in the State, not on transfer, but where he has been in the new precinct a sufficient length of time to register and he has met this requirement, but his names does not, of course, appear on the capitation list."

Your first question should be answered in the affirmative. See section 202 of the Code, as amended.

Your second question must be answered in the negative. If the voter in question had returned his ballot unused, he could be permitted to vote when he personally appeared at the precinct, but not otherwise. See section 208 of the Code, as amended.

In response to your third question, I do not think that a certificate of a physician is required by law. Section 202 of the Code says that "any voter who may be physically unable to go in person to the polls on the day of election" may vote as an absent voter. Of course, he has to satisfy the judges of election that his absence is occasioned by his physical inability to go to the polls. A doctor's certificate, of course, would be the best evidence as to this fact, but any other competent and reliable evidence should be sufficient to satisfy the judges as to the establishment of this fact.

The present requirements as to residence are fixed by section 18 of the Constitution, amended June 19, 1928, and are as follows: Residence in the State one year, in the county, city or town six months, and of the precinct in which the party offers to vote thirty days next preceding the election at which he offers to vote.

In answer to your fifth question, I will say that where a voter moved into Virginia from another State subsequent to the first day of January, 1928, with the intention of becoming a resident of Virginia, if otherwise qualified, he may vote in the November, 1929, election without the payment of any capitation tax at all. The first capitation tax assessable against such a person if he moved into Virginia prior to January 1, 1929, would be for the year 1929, and that, of course, is not one of the three years next preceding the year 1929, and, therefore, section 21 of the Constitution would have no application to such a person, nor would section 20 of the Constitution apply to such a person unless he was a young person just coming of age. In the case of a young person just coming of age, as a prerequisite to register and vote, he must pay his capitation tax for the first year for which he is assessable in advance, and this, in my opinion, would apply whether the young man just coming of age had come here from some other State or not. See section 20 of the Constitution of Virginia.

If the man in question has moved from some other county in Virginia and was assessable with capitation taxes for the three years preceding the year 1929, then the only way he can vote without having his name on the tax list would be to produce a certificate from the treasurer of the county or city or counties or cities in which he had paid his capitation taxes for the three preceding years, as provided by section 115 of the Code. However, this section appears to be limited to the case of a voter who has been transferred from one county to another county or city, and no provision seems to be made in case of a person who has never been registered.

For your information, I am sending you under separate cover copy of the Virginia Election Laws of 1928. You will find all of the Code sections referred to under their proper section headings in this pamphlet. The constitutional amendments, however, are from the Constitution of 1902, which was in force at the time the 1928 edition of the election laws was printed. On June 19, 1928, a great many of these constitutional provisions were changed. You can obtain a copy of the Constitution by asking the Public Printer to send you one.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Special.

RICHMOND, VA., January 6, 1930.

His Excellency, HARRY F. BYRD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I have before me a letter written you by Mr. I. W. McGavock, of Max Meadows, Virginia, in which he says:

"You made a mistake when you called an election for the county of Wythe to fill the term in the Legislature, for which Dr. John Graham was elected, to take place on January 23. Both the Democrats and Republicans have candidates who filed their notices of candidacy thirty days before election. The statute law, section 155 of 1928, requires the ballots to be printed thirty days before the election and they have not been printed yet (Friday). Of course, the election will be void and neither candidate can hold the place, if the Legislature does its duty. I have been the chairman of the Republican party for twenty-five years and am writing to you by legal advice."

In view of section 146 of the Code, it is my opinion that Mr. McGavock and his advisor are mistaken in the position they take. This section provides as follows:

"Whenever a special election is ordered by the Governor, Speaker of the House, or President of the Senate, it shall be his duty to issue a writ of election, designating the office to be filled at such election, and the time when such election is to be held, and to transmit the same to the sheriff of the county and the sergeant of the city in which such election is to be held, to be by such sheriff or sergeant published by posting a copy thereof at each voting place in his county or city at least ten days before such election."

You will see from the above that the only time limit fixed for a special election, when called by the Governor, is that it must be called at such time as will enable the sheriff to post the notices at least ten days before such election.

The provision of section 155 of the Code, which requires the ballots to be printed thirty days before an election, is limited to primaries and general elections and has no application to a special election which may be called for a date less than thirty days from the issuance of the writ of election.

Yours very truly,

LEON M. BAZILE,

Assistant Attorney General.

ELECTIONS—Special—Official ballot.RICHMOND, VA., *December 27, 1929.*

HON. A. H. WILLIAMS,
Wytheville, Virginia.

DEAR MR. WILLIAMS:

I am in receipt of your letter of the 24th instant, in which you ask for an opinion by Saturday as to how a candidate to succeed the late lamented Dr. J. C. Graham, member of the House of Delegates from Wythe county, may file his name in order to have the same printed on the official ballot in the special election called by the Governor for the 23rd day of January of next year.

Your letter was written on the 24th day of December. Evidently notice of the election which was called for the 23rd day of January was given more than thirty days before that date. If so, pursuant to section 154 of the Virginia Election Laws, candidates could have filed their announcement of candidacy with the clerk of Wythe county at least thirty days before such election. In such event, the names of those announcing their candidacy have been certified by the clerk to the Electoral Board of Wythe county and their names printed on the official ballot for the January 23, 1930, special election. Only those filing notice of candidacy with the clerk at least thirty days before the election can have their names printed on the official ballot. Should no person have announced his or her candidacy as provided by section 154, I am of the opinion that the Electoral Board of Wythe county should print an official ballot without inserting the name of any candidate. In other words, the ballot should show, just as all other ballots show, that the election is to be held in Wythe county for the election of a member of the House of Delegates, but should be blank as to the names of candidates. If the official ballot is blank, or the name of all candidates are not included therein, the names of other candidates may be written or stamped on the ballot on election day.

Elections to fill vacancies may be called upon ten days' notice. If called with such a limited time before election day, no candidate can have his name printed upon the official ballot and necessarily it must be left blank and the names of candidates written or stamped thereon.

The only provision applicable to special elections which must be necessarily observed is that requiring the sheriff to give at least ten days' notice by posting copies of the called for election at least ten days before such election at each voting precinct in the county.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***ELECTIONS—Special—Qualification of voters.**RICHMOND, VA., *March 21, 1930.*

MR. C. T. NEALE,
West Point, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, enclosing copy of an act providing for a special election in the town of Port Richmond, passed March 7, 1930, to

ascertain the sense of the qualified voters of the town upon the question of the repeal of the charter of said town. You ask several questions:

1. When was it necessary for a poll tax to be paid in order to vote in this election?

Answering this inquiry, I am enclosing copy of a letter written by me to Mr. C. G. Mason, Judge of Election, Luray, Virginia.

2. You ask whether or not persons not formerly registered, who have paid their poll taxes, can register and vote in this election.

In my opinion, persons who have paid their poll taxes six months prior to the second Tuesday in June, 1930, may at any time up to and including the day of the special election, register and vote in the special election.

I am mindful that the registration books are turned over to judges of election for their use all of election day and, while no one can require the judges to surrender the registration books to the registrar for the purpose of being registered, the judges may allow the use of the registration books by the registrar for registration purposes on election day.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Special—Qualification of voters.

RICHMOND, VA., *April 16, 1930.*

MR. G. E. LITTLE,
Brookneal, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, in which you state that you are one of the judges of the special election to be held April 22, for the purpose of determining whether or not the town of Brookneal shall issue bonds for the establishment of water and sewerage systems, and I note that you desire my opinion upon two questions:

1. Will those who were qualified to vote in the last general election held in November, 1929, be entitled to vote?

Yes.

2. Will those who were not qualified to vote in the general election held in November, 1929, but have qualified themselves to vote in the coming general election to be held in June of the present year, be entitled to vote?

Yes.

Section 83 of the Code provides in part as follows:

"The qualifications of voters at any special election shall be such as are hereinbefore prescribed for voters at general elections, but at any such special election, held before the second Tuesday in June in any year, any person shall be qualified to vote who was so qualified at the last preceding regular November election, or who is otherwise qualified to vote, and has personally paid, at least six months prior to the second Tuesday in June of that year, all State poll taxes, assessed or assessable against him during

the three years next preceding that in which such special election is held, * * *."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Special—Qualification of voters—Residence.

RICHMOND, VA., *March 27, 1930.*

HON. CROSBY THOMPSON, *Mayor,*

Port Richmond, Virginia.

MY DEAR MR. THOMPSON:

In reply to your inquiry as to who is qualified to vote in the special election to be held on April 14, 1930, in the town of Port Richmond to determine the question whether or not the charter of Port Richmond shall be abolished, I beg leave to state that the following persons only will be qualified to vote in said election:

First: All persons who were qualified to vote in the general election which was held in November, 1929.

Second: All persons who are otherwise qualified to vote (which means, of course, comply with other provisions of the Constitution, namely, residence, registration, and so forth), and have personally paid at least six months prior to the second Tuesday in June, 1930, all State poll taxes assessed or assessable against them during the three years next preceding the year 1930.

As to all State poll taxes assessed or assessable against them during the three years preceding the year 1930, this means that any persons who for this period of time were residents of the State of Virginia, regardless of the county, city, or town in which they resided, must have paid the three years capitation taxes with which they were assessed or assessable six months prior to the election held in November, 1929, or six months prior to the second Tuesday in June, 1930.

Of course, you understand that in addition to the requirement of the payment of capitation taxes, a person must have been a resident of the town of Port Richmond at least six months prior to the election, and also must be duly registered.

The law requires that the registration books shall be closed thirty days prior to any general election, but inasmuch as your election, which is to be held on the 14th day of April, 1930, is not a general election but a special election, it is my opinion that any person who has met the requirements as to the payment of poll taxes and residence will have a right to register at any time up to and including April 14, 1930.

I would state that any person who became of age after January 1, 1929, can go to the commissioner of the revenue, have himself assessed with one year's capitation tax, pay this to the treasurer, register and be qualified to vote in the special election to be held on April 14, 1930.

I would further add that I gave Mr. C. T. Neale, of West Point, an opinion bearing on certain phases of this election, dated March 21, 1930, a copy of which I take pleasure in enclosing you.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ties.

RICHMOND, VA., June 30, 1930.

MR. ROY C. DEAL,
Editor and Business Manager,
Virginia Beach News,
Virginia Beach, Virginia.

MY DEAR MR. DEAL:

I am in receipt of your letter of recent date, which reads as follows:

"We would thank you to kindly advise in regard to the following situation:

"We have two candidates who tied for the town council. Will you kindly advise as to the proper procedure for the selection of one of the two councilmen? A prompt reply would be appreciated."

In reply thereto, I would refer you to sections 184 and 186 of the Code of Virginia, the former of which provides that in the matter of a tie for any county, city or district office the commissioners of election shall proceed publicly to determine by lot which of the candidates shall be declared elected. In my opinion, this section requires that the commissioners shall give notice of the time, place and hour when the lots are to be cast. Section 186 requires of the clerk that he issue a certificate of election to the person who has been decided by lot to be elected.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Town—General law—Declarations of candidacy.

RICHMOND, VA., February 18, 1930.

HON. JOHN F. BETHUNE, *Mayor,*
Falls Church, Virginia.

MY DEAR MR. MAYOR:

I am in receipt of your letter of February 15, in which you quote certain provisions of the charter of the town of Falls Church, relating to the conduct of town elections, and I note you say that there is a provision in your charter to the effect that candidates for any office to be voted upon by the electors of the town shall at least five days before such election file notice of candidacy with the town clerk, and that the town clerk shall have the official ballots printed.

You also call my attention to section 154 of the Code of Virginia, as amended, which provides as to duties of candidates for office. This section provides for at least sixty days' notice to the clerk of the county, etc.

You then ask to be advised as to whether the State law or the municipal charter, as relating to your town election, prevails.

Section 63 of the Constitution of Virginia provides that the General Assembly shall not enact any local, special or private law—

“11. For conducting elections or designating the places of voting.”

In my opinion, the election provisions of your town come within the inhibited provisions of subsection 11 of section 63 of the Code, and are inoperative and void, and the conduct of elections in Falls Church should be held under the provisions of the general law.

It necessarily follows that I am of the opinion that candidates should file their notices of candidacy with the clerk of your county at least sixty days prior to the town election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Voting list, posting of.

RICHMOND, VA., August 30, 1929.

HON. A. B. RICHARD, *Treasurer,*
Leesburg, Virginia.

MY DEAR MR. RICHARD:

I am in receipt of your letter of the 28th instant, in which you ask me to advise you as to the law governing the posting of voters' lists.

The law does not require the posting of voters' lists at voting precincts at each election. Pursuant to the provisions of section 109 of the Code, the treasurer of every county and city shall at least five months before the second Tuesday in June (for city elections) and before each regular election in November (for all other elections) file with the clerk of the circuit court of its county or the corporation court of the city, the voting lists prepared by him. The clerk, within twenty days after receipt of the lists, makes a sufficient number of certified copies and delivers to the sheriff of the county, or the sergeant of the city, one copy for each voting precinct. These lists are posted without delay by the sheriffs, who make returns to the proper clerks.

Within thirty days after lists have been posted persons who have paid their capitation taxes, but whose names are omitted from the lists, may, under the provisions of section 110 of the Code, have the lists corrected and their names entered thereon. This last section of the Code is the only provision for correcting the voting lists and having names entered thereon.

There is no posting of lists for the November election, and no person can apply for the correction of a list after the thirty days have expired from the date of the posting of the lists by the respective treasurers.

Section 111 requires clerks to deliver copies of the voting lists to judges of election previous to every election.

It is too late now for any person to have his or her name put upon the voting list.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voting list—Right of person whose name is omitted.

RICHMOND, VA., October 8, 1929.

MR. JEFFERSON KEITH,
Columbia, Virginia.

DEAR SIR:

I am in receipt of your letter of recent date, advising that your capitation taxes for the years 1926, 1927 and 1928 were all paid on or before May 5, 1929, that your name does not appear upon the list of voters for Flanigan Mills voting precinct (your precinct) that the list of voters was not posted at the August, 1929, primary election, and that no such list is now posted at the voting place of your precinct.

You ask me what steps you will have to take to enable you to cast your ballot in the November, 1929, election.

I fear that you have been unintentionally deprived of your right to vote in the November election. According to the election laws of the State, your county treasurer should have made up and filed with the county clerk a list of all the citizens of your county by precincts who on or before the 5th day of May, 1929, had paid their capitation taxes for the year 1926, 1927 and 1928. The county clerk is required, within twenty days after receipt of the list, to make and certify copies of the treasurer's list and to deliver one copy for each voting place in his county to the sheriff of the county, whose duty it is to post one copy without delay at each of the voting places, and, within ten days after receipt of the list from the clerk, to make return on oath to the clerk as to the places and dates on which copies were posted. The clerk is required to keep a record of the sheriff's returns. Within thirty days after the list has been posted, a person who has paid his capitation taxes may apply, after five days' written notice to the treasurer, to the circuit court of his county to have the list corrected and his name entered thereon, and the judge is required promptly to decide upon his application.

There is one possibility by which you may now vote, as I take it that the voting list shows that you paid your capitation taxes for the years 1927 and 1928. If you have paid your capitation taxes in some other county and can secure a certificate from the treasurer of your former county that you paid your 1926 tax on or before the 5th day of May, 1929, you are entitled, upon showing that tax receipt to the judges of election, to cast your ballot in the November election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ESCHEATS—Money held by administrators—Disposition of in absence of distributees.

RICHMOND, VA., *August 10, 1929.*

GEORGE E. WALKER, ESQUIRE,
Attorney at Law,
Charlottesville, Virginia.

MY DEAR MR. WALKER:

Your letter of August 7, 1929, addressed to the counsel for the Department of Taxation, has been referred to this office for reply. In your letter you say:

"I represent a client who qualified as administrator of A. B. Schenk.

"After the payment of all debts and costs of this administration there will be left in his hand about \$150.00.

"The decedent was a journeyman tailor and every effort has been made to locate an heir or distributee, but without any result. My client is anxious to be relieved of the responsibility, and I take it that the amount will escheat to the Commonwealth under section 5275 of the Code.

"I am a little puzzled, however, as to the procedure. My client has made an *ex parte* settlement of the account, and an order has been entered and duly published on the report of the commissioner of accounts of the corporation court; and in this order so entered and published notice was given for any legatee or distributee to appear and show cause why the amount should not be paid to the Commonwealth.

"I would appreciate it if you would write me about this matter. Do you think an order can now be entered directing that the fund be paid to the Commonwealth in the *ex parte* proceedings, or would it be necessary to have a proceeding under section 519 of the Code?"

Section 5275 of the Code reads as follows:

"To the Commonwealth shall accrue all the personal estate of every decedent, of which there is no other distributee."

This section is found in chapter 213 of the Code, which relates to descents and distributions.

In my opinion, the personal estate of such a decedent would be paid into the treasury of the Commonwealth in the same manner that it would be paid to an individual who was a distributee of the deceased person, under section 5273 of the Code.

Section 519 is in that part of the Code which deals with escheats. These sections seem to relate exclusively to real property and, in my opinion, section 519 has no application to property which passes to the Commonwealth under section 5275 of the Code.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ESCHEATS—Personal estate of patients in State hospitals when there is no other distributee goes to Commonwealth.RICHMOND, VA., *October 2, 1929.*

DR. H. C. HENRY, *Superintendent,*
Central State Hospital,
Petersburg, Virginia.

MY DEAR DOCTOR HENRY:

In reply to your letter of September 30, 1929, in which you desire to be advised whether or not the Central State Hospital has the right to use for the benefit of the patients in such hospital certain sums of money belonging to patients who have died in the hospital leaving no known relatives.

I wish to state that this cannot be done. Section 5275 of the Code provides:

"To the Commonwealth shall accrue all the personal estate of every decedent, of which there is no other distributee."

You will, therefore, observe from a reading of this section that this money goes to the Commonwealth, and cannot be used for other purposes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FEES—Clerk—Entries upon delinquent land book.RICHMOND, VA., *September 23, 1929.*

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.
Attention Mr. C. E. Downs.

DEAR MR. COMBS:

I am in receipt of your letter of the 14th instant, in further reference to the claim of Mr. W. B. Hamilton, former clerk of Wise county, relative to fees charged against the Commonwealth for entering certain tracts and lots of land upon the delinquent land books of his county.

Subsection 42 of section 3484 of the Code, the paragraph of law upon which Mr. Hamilton's rejected account is based, provides:

"For each tract of land entered in the delinquent land book, to be paid out of the State treasury, ten cents."

There is, of course, no question as to the right of a clerk to have received out of the State treasury, at the time the services for which Mr. Hamilton bases his claim were rendered, a fee of ten cents for each tract of land separately assessed.

I do not understand that any part of his claim is for separately assessed tracts of land but I understand that he has already been paid one fee where two or more lots or parcels of land were assessed together and the delinquent return copied by him as one entry in the delinquent tax land book.

Evidently the fee provided for copying the treasurer's delinquent land tax report was for services rendered and, I think, contemplated one fee for

the entry of one delinquent assessment, and that the law did not contemplate the allowance of a separate fee for each of a number of lots or tracts of land which were bunched together in an assessment.

Take for example, the assessment of one person of ten numerically designated lots. Had an assessment of those lots been made separately and no tax paid upon any one of them, and the treasurer had returned to the clerk a list of delinquent lands covering separate assessments and the clerk had copied the separate assessments in his delinquent land book, he would have been entitled to ten fees of ten cents each or one dollar for the entries. Upon the other hand, where there has been one assessment of ten numerically designated lots at a lump assessment of say \$1,000, and the clerk had copied the return of the treasurer in the delinquent land book, he would only be entitled to one fee of ten cents for the entry.

The above basis of compensation has been practiced by the auditor's office for a great length of time and is, I think, the correct method of settling with county clerks.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FEES—Clerks—Recording of tract on delinquent land book.

RICHMOND, VA., *September 5, 1929.*

HON. C. A. JOHNSON, *Clerk,*
Wise, Virginia.

MY DEAR MR. JOHNSON:

I beg leave to acknowledge receipt of your letter of the 2nd, in which you submit the following for an opinion:

"Under the schedule of fees allowed clerk's of the courts, section 3484 of the Code, under section 42 of said Acts, the clerk is allowed 10 cents for each tract entered in the delinquent land book to be paid out of the State treasury, which fees are now paid by the county.

"I would be glad to have you construe this paragraph of said section as to whether or not it means that the clerk shall have 10 cents for each separate tract of land entered in said book, or is he allowed only 10 cents for all of the tracts or lots that may appear on each line of the report made by the treasurer."

After an examination of subsection 42, section 3484 of the Code of Virginia, I am of the opinion that the clerk is allowed 10 cents for each separate tract of land entered by him.

I would add further that I have discussed the matter with Hon. E. R. Combs, Comptroller, and he concurs in this opinion.

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

FEES—Commonwealth's attorney.RICHMOND, VA., *July 22, 1929.*

HON. S. P. POWELL,
*Attorney for the Commonwealth,
Spotsylvania, Virginia.*

DEAR MR. POWELL:

Your letter of the 17th instant has been received.

The law governing the payment of fees to attorneys for the Commonwealth is very complicated and has been the subject of a number of inquiries, to which the Attorney General has heretofore replied. I have also answered quite a few questions concerning these fees.

In an opinion given to Honorable S. L. Walton, attorney for the Commonwealth of Page county, found on page 29 of the Attorney General's Report for 1927-28, the Attorney General held that the fee of an attorney for the Commonwealth for prosecuting a misdemeanor case before a justice of the peace, upon a plea of guilty, is \$10.00; that in misdemeanor cases heard by a trial justice the fee of an attorney for the Commonwealth, upon a conviction, when taxed against the accused, is \$25.00; when the accused is acquitted or insolvent, his fee is \$10.00.

The law having provided that the fee of the attorney for the Commonwealth shall be the same as in felony cases and, the trial justice having no final jurisdiction to try, but only to examine, the fee of the attorney for the Commonwealth is the same as in cases of an examination of a felony before any other justice, and is \$5.00.

Special provision is made in section 46 of the prohibition law for fees in trials of offenses under sections 17 and 18. Under these sections, upon a plea of guilty, there is no fee for the attorney for the Commonwealth. If there be a trial, the fee of the attorney for the Commonwealth is \$5.00, first to be taxed against the accused, and, if not paid by him, to be paid by the State.

Except as to prosecutions under sections 17 and 18 and pleas of guilty in misdemeanor cases before a justice, an attorney for the Commonwealth is entitled to the same fees in all other prosecutions as are allowed in courts of record.

In your particular case and answering your questions as to fees before a trial justice, I would say that you are entitled to the same fees before a trial justice as you would be for trials in the circuit court. In all convictions except for offenses under sections 17 and 18 the fee is \$25.00, if taxed to and collected out of the accused. In misdemeanor cases, if not paid by the accused, or the accused is insolvent, a fee of \$10.00 is allowed, payable by the Commonwealth. In felony cases, the trial justice only having the power to examine, the fee is \$5.00.

I note in your letter that you refer to the fact that the Attorney General wrote Honorable E. R. Carner, trial justice, Spotsylvania county, under date of April 22, 1929, a letter which he construes as limiting your fees to \$10.00 "in all other cases before him or in his court which terminated there." I should say that Mr. Carner has misconstrued the letter of the Attorney General, from which I quote:

"It is, therefore, my opinion that, when misdemeanor prohibition cases, other than those arising under sections 17 and 18 of the prohibition law, are finally disposed of in a trial justice court, the attorney for the Commonwealth is entitled to the same fees he would be entitled to if such cases had been tried before the circuit court and conviction resulted."

I certainly construe the above quotation as expressing the opinion that you will be entitled to the same fees in cases heard by a trial justice as would be allowed you in prosecutions in the circuit court.

In your letter of the 17th instant, you ask as to the right of the attorney for the Commonwealth to refuse to attend trials in the trial justice's court, and ask a question as to whether you should be required to attend as early as 9 o'clock in the morning and on applications for bail from 6 o'clock in the evening until midnight, and trials on Saturday afternoons, and in your former letter you ask as to what penalties or liabilities you would incur if you refused to attend a hearing after reasonable notice from the trial justice.

The details as to the time and place of a hearing are matters which should be adjusted between the trial justice and the attorney for the Commonwealth, each having due regard to the business engagements of the other. It is not a subject upon which the Attorney General's office should express an opinion.

The attorney for the Commonwealth is made one of the enforcement officers, but it has not been the practice of the Attorney General to prescribe the regulations of attorneys for the Commonwealth in the discharge of their official duties.

Yours very truly,

EDWIN H. GIBSON,

Assistant Attorney General.

FEES—Commonwealth's attorney—Prohibition cases tried under city ordinance before civil and police justice.

RICHMOND, VA., November 23, 1929.

HON. CHARLES E. POLLARD,

*Attorney for the Commonwealth,
Petersburg, Virginia.*

DEAR MR. POLLARD:

In reply to your inquiry as to the fee of an attorney for the Commonwealth when taxed as costs against the defendant in all prohibition cases tried under your city ordinance before the civil and police justice of your city, I will say that, in my opinion, attorneys for the Commonwealth in all of such cases, except for the offenses mentioned in sections 17 and 18 of the Layman Prohibition Act, are entitled, under the provisions of sections 33 and 46 of that act, to fees of \$25.00 against each defendant, both upon pleas of guilty and final judgments of the justice.

In those cases in which appeals are taken to the corporation court of your city, only one fee of \$25.00 is taxable against defendants against whom final judgment is rendered upon their convictions.

Yours very truly,

EDWIN H. GIBSON,

Assistant Attorney General.

FEES—Commonwealth's attorney in misdemeanor cases before a justice of the peace.

RICHMOND, VA., September 25, 1929.

HON. R. E. L. WATKINS,

*Attorney for the Commonwealth,
Franklin, Virginia.*

DEAR MR. WATKINS:

I am in receipt of your letter of the 23rd instant, in further reference to the fee of an attorney for the Commonwealth in misdemeanor cases heard before a justice of the peace upon a plea of guilty.

In your letter you express the opinion that an attorney for the Commonwealth is entitled to a fee of \$25 as against the convicted person. I do not think you are correct in this conclusion. In my opinion, an attorney for the Commonwealth is entitled, upon a plea of guilty to a prohibition misdemeanor before a justice of the peace, to a fee of only \$10.

It is true that section 33 of the Layman Act provides for the same fees in these cases as are allowed in courts of record. This section is contained in the Layman Law of 1924. Subsequently the Legislature amended section 46 of the Layman Act, in which it expressly provided that the fee of an attorney for the Commonwealth, where guilt is confessed in a misdemeanor case, shall be \$10. The amendment to section 46 was passed in 1926 and, being the last act on the subject, I conclude that it governs and limits the fee of an attorney for the Commonwealth as against the accused to \$10.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FEES—Lunacy commission—Justice of the peace.

RICHMOND, VA., June 12, 1930.

MR. R. E. REID:

*Justice of the Peace,
Rustburg, Virginia.*

DEAR MR. REID:

I am in receipt of your letter of yesterday, in which you make the following inquiry:

"Will you please advise me what is the legal fee for a justice of the peace for issuing warrant and holding commission of lunacy. The Acts 1928 provide a fee of \$2.00 for sitting on the commission, etc.,

but what I want to know is if I am entitled to a fee of \$1.00 for issuing the warrant, making \$3.00 altogether."

In my opinion, a justice of the peace is entitled to a fee of \$1.00 for an arrest warrant in a lunacy case, provided for by section 1017 of the Code, and that he is further entitled to a fee of \$2.00 provided for by section 1021 of the Code, as amended, for his services on the lunacy commission. I do not think that the fee of \$2.00 allowed in section 1021 was intended to cover the fee for the arrest warrant provided for in section 1017.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FEES—Sergeants and jailers for feeding prisoners.

RICHMOND, VA., August 7, 1929.

JOHN T. GOOLRICK, ESQUIRE, *Editor,*

The Free Lance-Star,

Fredericksburg, Virginia.

MY DEAR MR. GOOLRICK:

Acknowledgment is made of your letter of August 5, 1929, in which you say:

"May I ask you whether a city sergeant of a city in Virginia who is allowed fifty cents per meal for each prisoner can legally contract with a restaurant owner to serve meals at a less price than fifty cents and keep the difference for himself.

"May I also ask where the duties of a city sergeant are defined in the laws of Virginia? In this city, in the ordinances, there is only a vague definition.

"Are the ordinances of this city the sole control of the city sergeant of this city?"

The fees of a sheriff or sergeant for feeding prisoners in jail are provided for by sections 3487 (17) and 3510 of the Code.

In my opinion, under the law a sheriff or sergeant is entitled to contract with a restaurant proprietor for the meals of his prisoners at a price less than the allowances made by law, and the sheriff or sergeant is entitled to the difference between the allowance made and the price that he has to pay the proprietor of the restaurant. The compensation received by a sheriff or sergeant for city prisoners would be fixed by the city ordinance, but his compensation for the feeding and care of State prisoners is fixed by the statutes referred to above.

In reply to your question as to where the duties of a city sergeant are to be found in the laws of Virginia, I will state that you will find these in the Code. The sections are too long to be copied, but you can easily obtain them by an examination of the Code. If additional duties are prescribed for city sergeants, they, of course, would be specified in the city ordinance or charter.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FINES—Cannot be remitted by court.

RICHMOND, VA., May 15, 1930.

HON. N. CLARENCE SMITH,
Attorney for the Commonwealth,
Tazewell, Virginia.

DEAR MR. SMITH:

I am in receipt of your letter of the 8th instant, in which you refer to sections 2557, 2569 and 4952 of the Code, the first two of which have reference to the remission of fines, and the last of which deals with the discharge of persons confined in jail or in the State convict road camp for failure to pay fines and costs, and I note that you are very much perplexed with what you consider are conflicting provisions of these sections.

As you say, section 2557 denies the right of a court to remit a fine except a fine imposed by the court itself for contempt.

Section 2569 provides for the remission of fines by the Governor.

While section 4952 confers jurisdiction upon courts to relieve persons from confinement for the non-payment of fines and costs.

It would seem that the provisions of these sections are very simple.

Courts have no right to relieve persons from fines or penalties except to the extent of releasing them in proper cases from confinement.

In my opinion, their release under the provisions of section 2569 would still leave a judgment in favor of the Commonwealth in effect and binding and recoverable just like any other debt due the Commonwealth.

While section 4952 does not specifically apply to persons serving in convict road camps, but to persons confined in jail, I am of the opinion that such persons are subject to release by an order of the court in which they were convicted. Even in such cases, that part of the fine which had not been worked out would still be due and owing to the Commonwealth and could be recovered out of any estate of the person convicted.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FINES—Where payable town, county, State.

RICHMOND, VA., June 6, 1930.

HON. F. W. RICHARDSON, *Clerk,*
Fairfax Circuit Court,
Fairfax, Virginia.

DEAR MR. RICHARDSON:

I am in receipt of your letter of yesterday, in which you write:

"A person is fined by a justice of the peace or a mayor of a town for violation of the traffic laws and takes an appeal to court and is fined in the court or by a jury. When said fines are paid to the clerk, shall the clerk pay same into the State treasury or to the county treasurer, or to the mayor of said town?"

If the person convicted and fined was tried for a violation of the town ordinance, the fine should be paid to the town; if tried for a violation of the

State traffic law, the fine should be paid, as all other fines for violations of State laws are paid, to the State Treasurer; while, if the person was tried for a violation of the county ordinance, the fine is payable to the county.

Court costs, where a party is acquitted, are payable by the State or locality, according to the offense being against a town or county ordinance or a State law.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

FIREARMS—Unlawful to sell toy cap pistols to any person under twelve.

RICHMOND, VA., *January 23, 1930.*

SEARS, ROEBUCK AND COMPANY,

Philadelphia, Pennsylvania.

Attention Mr. R. R. Gallraith, Personnel Department.

GENTLEMEN:

In a letter from Honorable John Hopkins Hall, Jr., Commissioner of Labor, under date of the 21st instant, this office was requested to answer your letter of the 20th instant addressed to the State Commissioner of Labor, Richmond, Virginia, in which you ask to be advised as to the law concerning the sale of toy cap pistols by parcel post mail.

Under the provisions of section 4697, it is unlawful to sell any toy gun or pistol, if the same shall, by means of powder or other explosive, discharge blank or ball charges, to any person under twelve years of age.

The offense is a misdemeanor punishable by a fine of not less than \$50 nor more than \$100, or confinement in jail for not less than thirty nor more than ninety days, or both, and every sale constitutes a separate offense.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Bounty claims—Certificate required.

RICHMOND, VA., *January 9, 1930.*

HON. M. D. HART, *Executive Secretary,*

Commission of Game and Inland Fisheries,

Richmond, Virginia.

DEAR MR. HART:

You will recall the conference in my office this morning, at which were present with us Honorable Douglas Mitchell, attorney for the Commonwealth, and Mr. C. C. Caldwell, chairman of the board of supervisors, of King and Queen county, Virginia, at which we discussed at length the claim of King and Queen county to a refund by your commission of one-half of the bounties paid by that county under the provisions of chapter 97, page 365, of the Acts of 1928.

I have before me the report to your commission for King and Queen county for the month of November, 1929. The items contained in the ac-

count are not the subject of dispute. The refusal of the commission to pay its part of the account is based upon the refusal of the Honorable H. C. Hall, clerk of King and Queen county and, as such, clerk of the board of supervisors of that county, to certify the account according to the full form supplied by your commission, resulting in the erasure of a certain portion of the certificate required by you. I quote the full certificate:

"I certify that the following account for the heads of predatory animals and birds is covered by orders upon the treasurer which I issued as required by chapter 97, Acts 1928, and which have been paid by said treasurer as shown by my orders returned by him accompanied by his statement for the aggregate amount. I further certify that no claim for crow heads is included unless sworn to by those presenting the same as having been killed within the period commencing April 1 and ending September 30, and, further, that all heads included in this claim were produced before me and affidavit made by claimant as to the species and that the same were killed in this county."

Of the certificate the clerk has allowed the following sentence to remain, so that the certificate as to the correctness of the account reads as follows:

"I certify that the following account for the heads of predatory animals and birds is covered by orders upon the treasurer which I issued as required by chapter 97, Acts 1928, and which have been paid by said treasurer as shown by my orders returned by him accompanied by his statement for the aggregate amount."

Mr. Hall erased so much of the certificate as reads as follows:

"I further certify that no claim for crow heads is included unless sworn to by those presenting the same as having been killed within the period commencing April 1 and ending September 30, and, further, that all heads included in this claim were produced before me and affidavit made by claimant as to the species and that the same were killed in this county."

My understanding of the matter is that the commission has refused to pay King and Queen county the amount admittedly due her, because of Mr. Hall's refusal to sign the full certificate, and Mr. Hall refuses to sign the full certificate on the ground that that part which he has signed fully complies with the requirement in section 2 of chapter 97 of the Acts of 1928, and that your commission cannot require the inclusion in his certificate of the portion erased by him.

The commission has refused to pay the account unless the erased portion of the certificate is included, thus a very unfortunate deadlock has resulted, and the county of King and Queen is being denied the payment by your commission of \$700 or \$800 of bounty scalp money, to which she is unquestionably entitled.

Scalp bounties are paid in the following manner:

1. Persons claiming the bounties produce the head of the bird or animal before the county clerk, naming its species and making affidavit that it was killed within the county and, if crow heads, stating the month in which killed—bounties for crow scalps being paid for only those killed during the months of April, May, June, July, August and September.

2. If, in the judgment of the clerk, the species named in the affidavit has been correctly identified as one on which bounties are paid, the clerk

issues an order on the treasurer in favor of the claimant for the amount due, specifying the species and number of each species.

3. The order is taken to the county treasurer, who is by law required to pay the order upon presentation.

4. At the end of each calendar month the treasurer makes up his account and returns it to the clerk of the board of supervisors. The board thereupon issues a warrant for the amount due in favor of the treasurer against the dog license fund.

5. The clerk of the board of supervisors makes up an account stating the species, the number of each species and the amount paid in bounties, and forwards the same to the Commission of Game and Inland Fisheries, and the commission is required to remit one-half of the amount paid by the county to the treasurer of such county for a credit to the dog license fund.

You will notice that the requirement of the law as to the certificate is fully complied with in the November, 1929, report made by the clerk of King and Queen county. The report shows the species, the number of each (species), and the amount of bounties paid. The clerk certifies that the account is covered by orders upon the treasurer which he issued as required by chapter 97 of the Acts of 1928 and that the orders have been paid by the treasurer, as is shown by the returned orders.

In my opinion, the facts which the clerk has certified cover in substance, though not in language, the same facts included in that part of the printed form of certificate which Mr. Hall has erased, and I am of the opinion that the certificate signed by Mr. Hall is as full and complete as is required by the law and that the Commission on Game and Inland Fisheries should pay the county of King and Queen the amount shown to be due upon its November, 1929, account with your commission and all other amounts covered by certificates of a like character.

I have before me a copy of a letter of the Honorable C. Lee Moore, Auditor of Public Accounts, under date of September 24, 1929, addressed to Mr. Hall, in which he holds that the certificate signed by Mr. Hall with the erasures is not a compliance with the law and that the full certificate contained in the form furnished by your commission should be signed by him. I note that Mr. Moore is of the opinion that the General Assembly intended that your commission should have before it evidence that the payments made by the board of supervisors were legally made, and that such proofs should show that the head of the bird or animal had been produced before the county clerk and affidavit made and filed with the clerk that the bird or animal was killed within the county. His letter also contains the conclusion, and with this I agree, that, if the county clerk has complied with the law, he will have no difficulty in certifying that fact to your commission, but I do not agree with his conclusion that, before the commission is required to pay its one-half of the bounty, it should have certificate of the county clerk to that effect. The effect of Mr. Moore's conclusion, if adhered to by the commission, might result in the commission's refusal to pay its part of the amount due King and Queen county upon the refusal of the clerk to certify as fully as Mr. Moore thinks he should certify, or, in other words, complies with the letter of the law, while refusing to certify to the language contained in the printed form.

The clerk having issued his order upon the treasurer, the treasurer having paid the order, and the board of supervisors having paid the treasurer, in the absence of suggestions of actual fraud or some serious irregularity in the conduct of the clerk, payment should be made by the commission to the county interested.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Fees of clerk for issuing duplicate licenses and buttons for hunting.

RICHMOND, VA., August 8, 1929.

HON. O. B. CHILTON, *Clerk,*
Lancaster, Virginia.

MY DEAR MR. CHILTON:

Acknowledgment is made of your letter of August 5, 1929, in which you say in part:

"I have been requested by the Commission of Fisheries to remit to them the sum of thirty cents for three duplicate hunting licenses sold by me during the hunting season of 1928 and 1929. This is indeed a very small amount, but since I feel that the commission is wrong in its interpretation of the law governing this matter, I wish to get a ruling from you on the subject.

"Subsection 18, page 500, of the Acts of 1928, states that a clerk is not required to report to the commission or remit to the treasurer his fees collected for exchanging licenses, issuing license certificates and attesting affidavits covering the same, and, since a license certificate is in reality a duplicate license, I cannot see why the same law would not apply in reference to duplicate buttons. In other words, if the commission is right, the law requires me to issue these duplicate buttons and at the same time bars me from any remuneration for such services."

I have examined subsections 5, 13, 18 and 19 of section 3327 of the Code, as amended by chapter 149 of the Acts of 1928, with care and it is my opinion that, where you exchange a license or issue a license certificate, while you are entitled to charge the same fee therefor that you are entitled to for issuing the original license, you are not required to report such fee to the commission or to remit the same to the treasurer.

The button provided for by subsection 5 and required to be carried by subsection 13 of this section of the Code is not the license, the license being the certificate issued by you. When subsection 19 of this section is examined it will be seen that no provision is made for paying the clerk where a new button is issued, but he is required to collect from a person receiving a button to replace one lost or destroyed the sum of ten cents, which, in my opinion, must be paid by the clerk to the treasurer, as the statute makes no provision for any compensation to the clerk for doing this act.

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Fishing legal on Sunday—Use of trot line permissible in Washington county.RICHMOND, VA., *September 17, 1929.*

MR. DAN DRINKARD, *Clerk,*
Corporation Court City of Bristol,
Bristol, Virginia.

DEAR SIR:

I am in receipt of your letter of last Saturday, in which you write:

“Will you please advise me by return mail if it is illegal to fish with a trot line on Sunday? I have a party here who is very anxious to know about this and will appreciate an early reply.”

The general fish law does not prohibit fishing on Sunday. You are doubtless familiar with the special fish law for your county, last amended in 1923, page 43. By section 1 of this law it is made unlawful for any person to catch or take fish of any kind or description from any stream in Washington county by any method or means other than angling with hook and line, trot line, gun or gig, except as hereinafter provided. In section 4 it is made unlawful to take any species of black bass or Southern chub by any method or means in any way other than with hook and line.

If there is any question about the violation of your county's fish law, I refer you for advice to the attorney for the Commonwealth of Washington county. He is the officer charged with the enforcement of the criminal laws of his county, and my office represents the Commonwealth in all cases appealed from the circuit or corporation courts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND INLAND FISH—License to fish in waters on rented land.RICHMOND, VA., *August 2, 1929.*

HON. A. B. DAVIES,
Clifton Forge, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 30, 1929, in which you say in part:

“Sometime ago I rented a building and grounds for the purpose of taking my family camping at intervals during the year and the owner of the land gave me a hunting and fishing permit as part of my contract as a tenant, but I am now informed by the game warden that it is necessary for me to obtain a license for each of my family in order to hunt or fish on the premises I have rented, and the adjoining premises.

“It has been my understanding that section 3327 of the Code would give me the right to hunt, trap or fish within the boundaries of the lands and waters so rented by me, and adjoining lands and waters, without license, but as I desire to be clearly in the right I am writing to ask you.”

You further state that you take your family to the premises and actually live there while camping; that you do not use it for fishing at any other time than when your family is actually located there.

Section 3327, as amended, requires a license of anyone to hunt, or trap, or fish, in the inland waters of this State, with rod and reel. Among the exceptions to this general provision this statute, in subsection 1 thereof, provides in part as follows:

"that license shall not be required of resident landowners, their husbands or wives and their children, nonresident children of resident landowners, nonresidents who own land in this State, their husbands or wives and their children and unnaturalized persons who own land in this State and their children when hunting, trapping and fishing within the boundaries of their own lands and waters or when fishing in waters bounding and adjoining their said lands; *or of tenants, renters and lessees when hunting, trapping and fishing within the boundaries of the lands and waters of their landlord or when fishing in waters bounding and adjoining said land, if such tenant, renter or lessee actually resides upon said land and has the written consent of the landlord so to do upon his person at the time. * * *.*" (Italics supplied.)

It is my opinion that any *bona fide* tenant, renter or lessee of land may hunt, trap and fish within the boundaries of the lands and waters so rented, and, in addition, fish in waters bounding and adjoining said land, provided the tenant, renter or lessee actually resides upon said land and has the written consent of his landlord to hunt, trap or fish upon his person at the time he so hunts, traps or fishes.

You will observe, however, that while the members of the family of a landowner may hunt, trap or fish on such land without a license, the right of a tenant, renter or lessee so to do is limited to the tenant, renter or lessee, and, in my opinion, in order for members of his family to engage in such sports a license would be required.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Licenses required of all persons to fish with nets, etc.

RICHMOND, VA., March 8, 1930.

MR. JOHN CULLETT, *Inspector,*
Morattico, Virginia.

DEAR SIR:

I am in receipt of your letter of the 6th instant, in which you ask to be advised as to the present law governing the necessity of persons to obtain license to fish with a net, even though they are not fishing for market but for domestic use.

Section 3166 of the Code contains, among other things, the provision that a person desiring to fish for *market or profit other than domestic use* should obtain a fishing license, the latter part of the section providing:

"* * this section shall not apply to any person using a net solely for the purpose of supplying his own table * *."

This section was amended by chapter 495 of the Acts of 1928, page 1292. In the amendment no reference is made to exceptions of persons fishing for domestic use, and, in my opinion, every person fishing with nets must obtain a fishing license from the oyster inspector of his district.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Repeal of statutes—Chapter 40 of Acts 1923 not repealed by chapter 292 of Acts 1930.

RICHMOND, VA., June 20, 1930.

HON. FRED C. PARKS,
Commonwealth's Attorney,
Abingdon, Virginia.

MY DEAR SIR:

I wish to acknowledge receipt of your letter of June 18 which reads as follows:

"Chapter 40 of the Acts of the General Assembly of 1923 is an act to amend and re-enact an act entitled an act for the protection of fish in Washington county, approved March 8, 1894, as heretofore amended.

"Chapter 292 of the Acts of the General Assembly of 1930 is an act to repeal all special laws of local application relating to game, inland fish and dogs passed by the General Assembly of Virginia which adjourned March 19, 1930, and all such laws passed prior thereto; and certain other laws of local application relating thereto.

"Please advise me whether in your opinion the first section of chapter 292 of the Acts of 1930 repeals chapter 40 of the Acts of 1923."

In reply thereto, I beg to advise that in my opinion section 1 of chapter 292 of the Acts of 1930 does not repeal chapter 40 of the Acts of 1923, and that the Act of 1923, which is not specifically referred to in chapter 292 of the Acts of 1930, is still in force and effect.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Sales of permits and licenses.

RICHMOND, VA., April 24, 1930.

HON. LEWIS W. TYUS, *Fiscal Secretary,*
Commission of Game and Inland Fisheries,
State Office Building,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your communication of April 19, which involves the interpretation of section 7 of the new game, inland fish and dog

laws adopted at the recent session of the Legislature. That section reads as follows:

"The commission shall have power and authority to appoint agents for the issuance and sale of the permits provided for in this act. If the clerk of any court desires to be relieved of this duty, or gives his consent thereto in writing, the commission shall have the power and authority to require its agents also to sell hunting, trapping and fishing licenses in the place of or in addition to the said clerk. Such agents shall be subject to the laws covering the issuance and sale of licenses and the regulations of the commission as to the issuance and sale of permits. The compensation of agents for issuing licenses and permits shall be fixed by the commission but shall not be more for issuing licenses than provided in this act for clerks of courts. Before such appointment shall become effective, the agent shall deposit with the commission a bond of a surety company entitled to do business in this State, payable to the Commonwealth, in the penalty of one thousand dollars, or such additional amount as the commission may require, conditioned for the faithful performance of their duties."

In reply to your question whether the treasurer of a county may be authorized to sell hunting, trapping and fishing licenses, without being appointed an agent to sell permits, I beg to advise that, in my opinion, no person can be authorized to sell licenses who has not, prior to that time been appointed an agent for the issuance and sale of permits.

You wish to know whether the treasurer of a county who is appointed to sell licenses must give bond as provided by the section above quoted, or whether his bond to the State is adequate.

I beg to advise that, in my opinion, he must give bond as provided by the above quoted section for in selling permits and licenses he is not acting in his capacity as treasurer, but is acting as an agent of the commission and the bond given as treasurer would not cover his transactions as agent.

You have orally asked whether, in the event an agent be appointed and a clerk desires to be relieved of the duty of selling licenses, the commission must confer that power and authority on the agent and thus relieve the clerk.

I beg to advise that, in my opinion, the second sentence of the above quoted act is not mandatory, but leaves to the commission the determination of whether it will or will not relieve the clerk and grant the power and authority to the agent.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

GAME AND INLAND FISH—Season for capturing black bass.

RICHMOND, VA., June 12, 1930.

HON. W. E. DUVAL,
Clerk Hustings Court, Part Two,
Richmond, Virginia.

MY DEAR MR. DUVAL:

You have asked whether the bass season will begin on June 15 of this year.

The new Game, Inland Fish and Dog Code of Virginia provides that the bass season shall begin on June 15, but by section 85 thereof that Code

does not become effective until July 1. Until that last mentioned date, fishing is governed by the former law and the season will not begin this year until July 1.

The above is in accord with a number of replies given by this office to similar inquiries.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

GASOLINE TAX—Application for refund within time required.

RICHMOND, VA., *December 28, 1929.*

MR. H. E. STANLEY,
Waldsboro, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of December 26, 1929, in re the refusal of the Director of the Division of Motor Vehicles to refund to you the tax on 54 gallons of gasoline purchased by you and used in operating a Delco light plant.

It appears from the receipt filed with your application that the gasoline was bought on November 19, 1929. Your application, while made on December 18, 1929, was not received by the Director of the Division of Motor Vehicles until December 20, 1929. Section 7 of the Gasoline Tax Law, as amended by chapter 470 of the Acts of 1928, pages 1185-1186 provides in part:

"* * * application for refunds as provided herein must be filed with the said director within thirty days from the date of sale or invoice, on forms prepared and furnished by said director."

Counting the day of your purchase, as is provided by the statute, we would have twelve days in November, and excluding the day on which the notice was received, nineteen days in December. This would be thirty-one days. Therefore, your application was not received within thirty days, and it is my opinion that the Director was right in declining to make the refund, as no authority exists for making a refund unless the application is received within thirty days.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

GASOLINE TAX—Incorporated towns not entitled to any part.

RICHMOND, VA., *February 17, 1930.*

HON. P. W. COLEMAN,
Town Manager,
Appomattox, Virginia.

DEAR MR. COLEMAN:

I am in receipt of your letter of the 14th instant, in which you desire to know whether the town of Appomattox is entitled to a part of the gasoline tax allotted to South Side district, in which Appomattox is situated.

You say that the town builds and maintains its streets, with the exception of that part of the State highway passing through the town, and that the State Highway Commission built and maintains this highway.

Incorporated towns maintaining their streets are exempt from both county and district road taxes. Sections 11 and 12½ of chapter 159, pages 574-5, Acts of 1928.

One and a half cents per gallon of the gasoline tax is distributed under the provisions of subsection 25 of section 2154 of the Code. This section gives to boards of supervisors and local road and bridge commissions exclusive authority to spend the gasoline tax for the construction, reconstruction, repair and maintenance of the roads and bridges embraced in the county road systems.

In my opinion, no proportion of the gasoline tax can be spent upon the streets of the town of Appomattox.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GASOLINE TAX—Refund on gasoline sold Federal government.

RICHMOND, VA., March 14, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

MY DEAR MR. COMBS:

Acknowledgment is made of your letter of recent date, in which you state that the Standard Gas and Oil Supply Company, Incorporated, has filed a claim against the Commonwealth for \$57.85, covering the amount of tax at five cents per gallon paid to the Commonwealth by that company upon gasoline sold and delivered to the United States Post Office Department, Lynchburg, Virginia, during the months of January, February and March, 1929.

You request me to advise you whether this claim should be paid by the Commonwealth.

The Supreme Court of the United States decided in *Panhandle Oil Company v. Mississippi*, 277 U. S. 218, 72 L. ed. 857, that a State may not impose a tax measured by the quantity sold upon the privilege of one of its citizens of selling gasoline to the Federal government for use of its Coast Guard Fleet or Veterans' Hospital which the United States is empowered by the Federal Constitution to maintain and operate. Therefore, a dealer in this State who sells gasoline to the Federal government has the right to sell it to the government, or one of its departments, free of the tax, and the State cannot compel him to account for a tax on such gasoline, other than to establish by competent proof the fact that the quantity claimed was actually sold or delivered to the Federal government, or one of its departments.

If, in fact, the Standard Gas and Oil Supply Company, Incorporated, of Staunton, Virginia, did sell this gasoline to the United States Post Office Department for government use and has, in fact, paid the gasoline tax

thereon, I am of the opinion that a refund should be made of so much of the tax as was collected on account of the gasoline which was actually sold and delivered to the United States Post Office Department.

It is true that section 7 of the Motor Vehicle Fuel Tax Act, as amended by chapter 470 of the Acts of 1928, does not authorize a refund in a case such as this, but, in view of the decision of the Supreme Court of the United States in *Panhandle Oil Company v. Mississippi*, *supra*, it is my opinion that a refund should be made, as the tax has already been paid and the gasoline has subsequently been sold to the Federal Government.

This refund, in my opinion, should be made from gasoline taxes collected by the Division of Motor Vehicles. Of course, you and the director of that division will have to satisfy yourselves before making a refund that the tax on the particular gasoline sold to the post office department has been paid to the Commonwealth and that the gasoline on which the refund is claimed was actually sold and delivered to the United States Post Office Department.

I do not attempt to advise you as to any matter of fact connected herewith, but merely give you my opinion as to what you may lawfully do with reference to making a refund under facts to be ascertained by you.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

GENERAL ASSEMBLY—Member of a State officer.

RICHMOND, VA., December 23, 1929.

HON. A. J. MONTAGUE,
House of Representatives,
Washington, D. C.

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of December 17, 1929, in which you request me to furnish you with the citation of any authority holding that a Delegate or Senator is not an officer of the State government.

So far as I have been able to find, the Court of Appeals has never passed on this question. Special Judge Louis C. Phillips, in the case of *Commonwealth v. Barrett*, Corporation Court of Newport News, Virginia, 14 Va. L. Reg. 271, 273 (1908), held that a member of the House of Delegates was a State officer within the meaning of section 1538 of the Virginia Code of 1904, which prohibited a State officer from being chosen or allowed to act as district school trustee. He cited as authority for his holding *State v. Stanley*, 8 Amer. Rep. (N. C.) 489; *Hill v. Boyland*, 40 Miss. 619; *Morris v. Haines*, 2 N. H. 246, and 33 Am. & Eng. Enc. of Law, 322.

In the article on "States," found in 36 Cyc. 852, 853, the only authority referred to on the subject is *Morris v. Haines*, 2 N. H. 246, 247, found in note 39. This case does not hold that a representative in the State Legislature is a State officer. While the question was not involved in *Burch v. Hardwicke*, 30 Gratt. (71 Va.) 24, 32-35, the reasoning of our court would support the position that a member of the General Assembly is a State officer.

This morning I carefully went through your official reports while Attorney General of Virginia and was not able to find any opinion relating to this subject.

Very sincerely yours,

LEON M. BAZILE,
Assistant Attorney General.

HIGHWAY COMMISSION—Authority to expend money on city streets.

RICHMOND, VA., *April 4, 1930.*

CARL BUDWUESKY, ESQ.,
Attorney at Law,
Alexandria, Virginia.

DEAR MR. BUDWUESKY:

The provision of law under which the State Highway Commission operates as to the building of highways to the exclusion of towns or cities containing populations in excess of 3,500 is found in section 2154 of the Code.

There is no express provision of law prohibiting the Highway Commissioner from building in cities; section 2154 providing that funds from maintenance and construction may be expended in incorporated towns of 3,500 or less being construed to prohibit the building or maintenance of roads in towns or cities of more than 3,500.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

ILLEGITIMATE CHILDREN—Father not liable for support of.

RICHMOND, VA., *November 13, 1929.*

WALTER V. ROSS, ESQUIRE,
Attorney at Law,
Bluefield, West Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of November 11, 1929, in which you request me to inform you whether the Court of Appeals in this State or any other court has construed section 1936 of the Code of Virginia of 1924, with reference to whether it is applicable to the non-support of a bastard by its father.

This question has not been passed on by the Court of Appeals of this State, and, so far as I am advised, has not been decided by any of the courts of inferior jurisdiction.

It is my opinion, however, that this section is limited in its application to the father of a legitimate child and has no application to the father of a bastard.

You are, of course, familiar with the rule that at common law no legal liability rests on the putative father to support his illegitimate offspring (7 C. J., Title "Bastards," section 31). Section 2 of our Code declares that the common law of England, so far as it is not repugnant to the principles of the Bill of Rights and Constitution of this State, shall continue in full force within the

same, and be the rule of decision, except in those respects wherein it is or shall be altered by the General Assembly.

In my opinion, the language employed in section 1936 of the Code does not have the effect of altering the common law with reference to the legal liability of the father to support his illegitimate offspring.

It may be interesting to you to know that a statute was introduced some years ago in the General Assembly to accomplish this purpose, but it was defeated.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INSANE, EPILEPTIC AND FEEBLE-MINDED—Pay for care of feeble-minded.

RICHMOND, VA., May 27, 1930.

HON. FRANK BANE,

Commissioner of Public Welfare,

State Office Building,

Richmond, Virginia.

DEAR MR. BANE:

I am in receipt of your letter of the 22nd instant, in which you enclose a copy of a letter under date of the 21st instant from the Secretary to the Board of the Children's Home Society of Virginia.

I note that the Society is of the opinion that it should receive compensation for the care of feeble-minded children in its custody, and that reference is made in its letter to section 1049 of the Code, providing allowances to sheriffs, sergeants and jailors for the board of insane, epileptic, feeble-minded and inebriate persons confined in their jails, and further to a provision in the Appropriation Bill for 1930-32, on page 142, in which a sum sufficient, estimated at four thousand dollars, is appropriated to the Department of Finance for the support of lunatics in jails and in care of private persons.

In my opinion, lunatics and feeble-minded persons are in different categories, and the appropriation mentioned was not intended to cover the care of feeble-minded. I have been unable to find any provision of law by which allowances are made for the care of feeble-minded outside of those who are committed to jail or to appropriate colonies, and I am of the opinion that there is no warrant of law for the payment to the Children's Home Society of Virginia for the care of children in its custody.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUOR—Authority of county officer to search premises.RICHMOND, VA., *October 24, 1929.*HON. LUTHER PANNETT,
Winchester, Virginia.

MY DEAR SIR:

I am in receipt of your letter of the 22nd instant, in which you write:

"At 7 o'clock one evening an officer was called on the telephone by a married woman and asked to come to her home as she had found a couple of gallons of moonshine liquor and wanted to turn it in. Upon the arrival of the officer he found no one at home but the woman and he asked her where the liquor was she wanted to turn in; she thereupon went to the cellar and brought up a gallon and a half and turned it over to the officer, telling him it belonged to her husband and she wanted to turn him in. The husband was not at home, but the officer was told where he could be found, to which place he proceeded. The man was placed under arrest and brought before the justice. He plead guilty and was fined \$50.00, which fine was paid.

"Now I would like to know whether, under these circumstances, the officer properly performed his duty, or whether he exceeded his rights, and whether or not this could be construed as an unlawful search."

In reply, I will say that, in my opinion, the officer entering the premises you have described and searching for ardent spirits clearly acted within his authority.

You state that the husband was placed under arrest and brought before a justice and, upon his plea of guilty, was punished by a fine of \$50.00. You do not say as to whether the justice was a county justice or a justice of the peace of Winchester. However, in my opinion, the proper penalty was not imposed upon the man arrested.

Under the provisions of section 12 of the Layman Prohibition Act, he was guilty of the unlawful possession of ardent spirits at his home. Under the provisions of section 6 of the same act, he should have been punished, upon his plea of guilty, by a fine of not less than \$50 nor more than \$500 and by confinement in jail not less than one nor more than six months.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***INTOXICATING LIQUORS—Barley malt sprouts—Sale of not prohibited.**RICHMOND, VA., *November 25, 1929.*HON. F. C. BREAZEAL, *Director,*
Dairy and Food Division,
Department of Agriculture and Immigration,
Richmond, Virginia.

DEAR SIR:

Acknowledgment is made of your request of November 20, 1929, that I definitely advise you whether barley malt sprouts can be legally sold for feed

in this State. With your letter you enclose a statement from Dr. Bradbury, the State Chemist, which is as follows:

"When breweries were numerous, malt sprouts were a somewhat undesirable by-product of beer manufacturing. They were, and are, of no practical value for beer making, and therefore, were, and are, sold to dealers in mixed feeds for stock. If they were useful in brewing, they would be utilized by the brewers. This seems so plain that nothing short of express mention in the list of forbidden malt products could justify forbidding use of malt sprouts in stock feeds. There is no such express mention."

Mr. Knox, of your department, informed me on yesterday that the barley sprout is not malt and is no part of malt, but that it is the grain sprout separated from the grain, which has been malted.

Assuming that this is true, it is my opinion that sections 15 and 16 of the Layman Prohibition Law have no application to malt sprouts and that the same can, therefore, be legally sold in this State.

At the time I dictated the letter of November 12, in answer to yours of the 9th, I was under the impression that barley malt sprouts were either malt or a mixture thereof.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Capture of stills—Fees of county officers.

RICHMOND, VA., July 23, 1929.

HON. P. H. DILLARD, *Judge,*
Rocky Mount, Virginia.

MY DEAR JUDGE:

I am in receipt of your letter of the 20th instant, enclosing a certificate from the clerk of Franklin county circuit court to the effect that that court had made allowances to deputy sheriffs totaling \$270.50 for the capture and destruction of illicit stills in Franklin county. I also note that no arrests have been made and that you doubt the wisdom of allowing such accounts as are included in the clerk's certificate and do not propose to do so in the future.

Section 20 of the prohibition law, providing for the capture of stills and certain allowances to seizure officers, provides that the still, cap and worm should be delivered to the sheriff of the county or the sergeant of the city in which the seizure is made, and that upon the certificate of the sheriff or sergeant allowances are made to seizure officers.

I take it that a deputy sheriff is authorized to act for a sheriff in all matters pertaining to the discharge of the sheriff's office unless expressly excluded. There is no such exclusion in the prohibition law. However, the law providing for the delivery to the sheriff seems to have had in mind a seizure by officers other than the sheriff, although sheriffs or deputy sheriffs are expressly charged with the enforcement of the prohibition law and are required, whenever their attention is called to the presence of a still, to raid and seize the same.

I conclude that you are entirely correct in arriving at your determination not to allow fees or rewards for the capture of stills upon the unsupported certificate of deputy sheriffs, and it seems reasonable that, where the fee is claimed by a sheriff or a deputy, independent evidence of the seizure of the still should be submitted to the court.

The allowance of claims for the capture of stills is one peculiarly within the province of the court, and it is for the judge to be satisfied as to the merit and justice of the claim to all fees and rewards.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Fee of Commonwealth's attorney in misdemeanor cases.

RICHMOND, VA., *September 30, 1929.*

HON. A. F. DIZE, *Mayor,*
Cape Charles, Virginia.

DEAR MR. DIZE:

I am in receipt of your letter of the 25th instant, asking my opinion as to what fee or fees the attorney for the Commonwealth of your county is entitled to in a prohibition misdemeanor case which was first tried and convicted in your court, and in which, upon an appeal to the circuit court, the accused was acquitted.

Section 46 of the Layman Prohibition Act allows the same fees to all officers connected with prohibition enforcement, including, of course, attorneys for the Commonwealth, in cases charging violation of prohibition ordinances of cities and towns as are allowed in felony cases where accused are acquitted.

A careful examination of the statute leads to the conclusion that the particular case about which you write is not expressly covered by statute.

Allowances to attorneys for the Commonwealth in prohibition cases, where such fees are paid out of the State treasury, include—

First, a fee of \$5.00 for each person prosecuted by him at a preliminary examination for either a felony or a misdemeanor before any court or justice. This fee, it will be seen, does not cover a case in which the trial officer has final jurisdiction to dispose of the case;

Second, attorneys for the Commonwealth are entitled to fees of \$10.00 for each person tried in his circuit or corporation court, whether the charge is a felony or misdemeanor.

In cases for violations of town ordinances the trial officer has final jurisdiction, subject to the right of appeal. Necessarily, where there is an appeal and an acquittal, there have been two complete trials.

The statute not having covered this particular case, it was up to the judge of the circuit court to determine and allow the fees to which the attorney for the Commonwealth was entitled, and, having done so, I think it is up to the

city of Cape Charles to pay the allowance, unless the judge changes his opinion as to the amount due the attorney for the Commonwealth for the two prosecutions.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Fee—Complete still to be delivered.

RICHMOND, VA., May 10, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

MY DEAR MR. COMBS:

In re: Claims for capturing stills.

I am in receipt of your letter of May 9, 1930, in which you advise me that your office has returned accounts allowed by the circuit court of Wise county for the capture of stills, with the request that the sheriff of the county report that each still, for which a claim is made and allowed, was delivered to him as required by law. I note that you request my opinion as to whether you are authorized to pay these accounts, unless you are furnished with a certificate from the sheriff showing the delivery of the stills.

Under the provisions of the last paragraph of section 20 of the Layman Prohibition Law, it is the duty of the officers making seizure of stills to deliver them complete, including cap and worm, to the sheriff of the county or the sergeant of the city in which such stills are seized, and it is the duty of the sheriff or sergeant to report the seizure and delivery to the judge of the circuit or corporation court. No allowance should be made by the judge, unless the claim of the officer is accompanied by a certificate of the sheriff. It is the duty of the judge to allow a certified claim for the seizure and delivery of a still to your office for payment.

In my opinion, no reward or fee is allowable to an officer making seizure of a still until and unless such still is delivered complete, including cap and worm, to the sheriff or sergeant of his county or city. The fee or award is not allowable upon presentation of evidence of the fact of the seizure and destruction of a still.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Fees—Officers prosecuting entitled to fees.

RICHMOND, VA., July 11, 1929.

MR. J. WARREN TOPPING,
Attorney at Law,
Cape Charles, Virginia.

MY DEAR WARREN:

I am in receipt of your letter of yesterday, in which you state that, as attorney for the town of Cape Charles, it is your duty to appear in prosecutions for violations of the prohibition law, as provided by the town ordinance. You then say that, where convictions are obtained before the mayor, attorney's fees are paid to you, but that, when appeal is taken to the circuit court, the attorney for the Commonwealth of your county assumes charge of the prosecution and that you associate with him. You then say that you know of no law which provides for a division of the fee of \$25 taxed in most prohibition cases against a convicted defendant as between yourself and the attorney for the Commonwealth. You ask as to whether you, as attorney for the town, are entitled to any part of the taxed attorney's fees.

Unfortunately, the State prohibition law does not cover this situation. The concluding paragraph of section 34 of the Layman act provides:

"In any prosecution before a mayor * * * the attorney for the Commonwealth of the city or town shall be notified * * *, in time to attend said trial, and the attorney for the Commonwealth * * * shall have the same power in respect to such cases that they have in cases before the circuit or corporation court."

In some jurisdictions the judges hold that the attorney for the Commonwealth of the county or city is the proper prosecuting officer before a mayor, as well as upon appeal to the circuit or corporation court. Of course, in such cases he receives the fees.

In other jurisdictions, and I cite Wise county, the courts hold that town attorneys appear and prosecute in the mayors' courts and follow the cases to the circuit courts. In such prosecutions the town attorneys are entitled to the fees.

The question was raised at Wise county court before Judge Skeen by the attorney for the Commonwealth of that county and the city attorney of Appalachia. Major Gibson, one of my assistants, was present at the time, but took no part in the determination of the question. He tells me that Judge Skeen reached his conclusion after citing the fact that in Wise county there are seven incorporated towns. He referred to the practical impossibility of the attorney for the Commonwealth discharging his duties as prosecutor in the local courts and discharging his duties as county prosecutor in the circuit court.

Either the attorney for the Commonwealth or the town attorney is of right entitled to appear and prosecute, the one prosecuting being entitled to the fees. In the appealed cases to which you refer and state that both you and the attorney for the Commonwealth of the county jointly prosecuted, I suggest that a division of the fees in that case is a matter of courteous adjustment between you two.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Forfeiture of automobiles—Motorcycle included.RICHMOND, VA., *April 7, 1930.*

HON. ROBERT G. JAMES:

*Attorney for the Commonwealth,
Clifton Forge, Virginia.*

DEAR MR. JAMES:

I am in receipt of your letter of the 3rd instant, in which you ask certain questions concerning prohibition law enforcements.

1. You ask if there is any difference between the law applicable to the forfeiture of a foreign owned automobile upon which there is a lien and one owned in the State of Virginia, and I note that you refer to the case of *C. I. T. Corporation v. Commonwealth*.

Under a decision of the Supreme Court of Appeals, foreign liens are treated just as local liens are.

2. You ask my opinion as to whether a motorcycle with a side car attached comes within the provisions of section 28, forfeiting conveyances.

In my opinion, a motorcycle is a conveyance within the meaning of section 28. However, in case any question is raised, the court must interpret the law and decide whether or not a motorcycle is a conveyance.

I will be pleased at any future time to advise you concerning the enforcement of the prohibition law.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***INTOXICATING LIQUORS—Home brew made from malt prohibited.**RICHMOND, VA., *August 30, 1929.*

HON. ROBERT A. RUSSELL,

*Attorney for the Commonwealth,
Rustburg, Virginia.*

MY DEAR SENATOR:

I am in receipt of your letter of the 27th instant, in which you write concerning prohibition cases in the mayor's court at Altavista as follows:

"In the trial of a case in the mayor's court at Altavista this morning, it was brought out that one defendant had furnished a can of malt, four pounds of sugar and some yeast, and had made for himself four gallons of home-brew which he was consuming at about one gallon per week as medicine for rheumatism.

"Another party had ten gallons of a similar concoction that he admitted contained malt, but there was no evidence in either case that either solution had more than one-half of one per cent of alcohol."

In my opinion, you are entirely correct in your position that section 1 of the Layman Prohibition Act embraces the character of home brew described in your letter. Not only are all malt beverages classed as ardent spirits, but all compounds or mixtures of any of them are so classed. Such liquids are conclusively

banned. Added to that category are "also all liquids, mixtures or preparations, whether patented or otherwise, which will produce intoxication, fruits preserved in ardent spirits, and all beverages containing more than one-half of one per centum of alcohol by volume, except as herein* provided."

In my opinion, all of the articles, compounds and mixtures mentioned in the first part of the section are unqualifiedly prohibited. Those included in my quotation are qualifiedly prohibited, depending as to certain ones of them whether or not they will produce intoxication, "fruits preserved in ardent spirits, and all other beverages containing more than one-half of one per centum of alcohol by volume."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Manufacture of denatured alcohol.

RICHMOND, VA., *April 2, 1930.*

MR. GEORGE E. NELSON,
Attorney at Law,
230 Park Avenue,
New York City.

DEAR MR. NELSON:

I am in receipt of your letter of the 31st ultimo, in which you desire my opinion as to the legality of your client, the West Virginia Pulp and Paper Company, engaging in the manufacture of denatured alcohol.

In my opinion, denatured alcohol may be legally manufactured in the State of Virginia.

In section 1 of the prohibition law it is provided that ardent spirits shall be construed to embrace alcohol. As you have stated in your letter, the last clause of section 32 provides "nothing in this act shall be construed to apply to wood or denatured alcohol, the manufacture or sale of which does not require the payment of United States liquor dealer's tax."

Taking these two sections together, the definition of ardent spirits, as contained in section 1, as applicable to alcohol, should be construed as if the word alcohol applied to pure grain, fruit or ethyl alcohol and not to that manufactured from wood or to denatured alcohol. Certainly is this true unless the manufacture or sale of denatured alcohol requires the payment of United States liquor dealer's tax.

I infer from your letter that in the process of manufacture of wood or denatured alcohol from the waste of your company's mill there is a product of pure alcohol, but that after the process is complete there is no pure alcohol, but all of the finished product is wood or denatured alcohol.

Your company could not under the Virginia law manufacture and sell, or manufacture without selling, pure alcohol in the sense that pure alcohol was the finished product. However, where the production of pure alcohol is only one step in the process of the manufacture from wood pulp waste of wood or denatured alcohol, the fact that pure alcohol is temporarily produced would not

make the manufacture of the wood or denatured alcohol unlawful, provided that the process of manufacture is continued and all of the product immediately converted into wood or denatured alcohol.

Section 23 of the prohibition law provides a severe punishment for the manufacture or sale or possession for sale of ardent spirits containing wood alcohol and fixes the punishment at from one to ten years in the penitentiary for a violation of that law and a more severe punishment in case death is produced by the drinking of such ardent spirits. I take it that this provision was not intended to cover pure wood or denatured alcohol.

In section 70, licenses may be issued to druggists for the sale of pure fruit, ethyl or grain alcohol for scientific, mechanical or pharmaceutical purposes. No mention is made of the necessity of a license to sell wood or denatured alcohol.

Of course, your company will be held to a strict accountability should it undertake the production of wood or denatured alcohol and abuse the privilege to the extent of manufacturing pure alcohol as a finished product.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Prosecutions under town ordinances—Fees of attorney for the Commonwealth.

RICHMOND, VA., *November 26, 1929.*

HON. H. H. KERR,
*Attorney for the Commonwealth,
Staunton, Virginia.*

DEAR MR. KERR:

I am in receipt of your letter of the 23rd instant, in which you write concerning the fee of an attorney for the Commonwealth taxed against an accused upon a plea of guilty in a trial for an offense committed against a town ordinance. You write in part:

"On yesterday I was called to Waynesboro to try a case for possession. * * *. He entered a plea of guilty, and counsel for the defendant, * * * raised the point that under section 47, as amended, I was entitled to a fee of \$10.00."

Under the provisions of section 37, certain counties and all cities and towns are authorized to pass prohibition ordinances.

"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."

Under the provisions of section 46 of the Layman Act:

"* * * in every case where a conviction is had on the final hearing the attorney for the Commonwealth shall be allowed a fee of twenty-five dollars, to be taxed with the costs and paid for by the defendant, inclusive of the fee allowed at the preliminary hearing. * * *"

Undoubtedly, attorneys for the Commonwealth are allowed fees in courts of record upon pleas of guilty as well as upon final judgment of conviction against the accused. The provision of the same section limiting the fees of attorneys for the Commonwealth to \$10.00 in misdemeanor cases upon pleas of guilty before a justice of the peace was intended to limit his fees to \$10.00 only in cases which are brought before a justice of the peace, and was not intended to apply and does not apply to a trial before an officer authorized to hear cases under town ordinances. Justices of the peace have no jurisdiction to hear and determine the guilt or innocence of the accused (except under sections 17 and 18). They are limited to an examination of the charge and may dismiss or send on the accused to await the action of a grand jury. Upon the other hand, trial officers in counties, cities or towns adopting prohibition ordinances have full and complete jurisdiction to hear and determine upon the guilt or innocence of the accused, and acquittal of the accused is the end of the charge against him. Upon his conviction he may appeal to the circuit court of a county or the hustings or corporation court of a city.

The fee allowed you by the court was a proper one.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

INTOXICATING LIQUORS—Sale of wood or denatured alcohol for medicinal or culinary purposes not prohibited.

RICHMOND, VA., *September 14, 1929.*

MR. C. E. BONES, *Sheriff,*
Pulaski, Virginia.

DEAR MR. BONES:

I am in receipt of your letter of the 13th, in which you ask whether or not rubbing alcohol can be sold without a special license and by men who are not merchants, and sold by orders and most of the time sold direct and promiscuously to anyone and peddled out.

The sale of alcohol is prohibited by section 1 of the Layman Prohibition Law, but by section 32 it is provided that nothing in the act shall be construed to apply to wood or denatured alcohol, the manufacture or sale of which does not require the payment of U. S. liquor dealer's tax.

Under the provisions of section 59, a general merchant may, after he has obtained a license therefor, sell medicinal preparations in accordance with formulas prescribed by U. S. pharmacopia, but the preparations allowed to be sold under such license can only be sold for medicinal or culinary purposes and cannot be sold for beverage purposes.

The Federal Constitution does not protect a person in the illegal sale of ardent spirits and no person has a right to sell any prohibited article upon orders for interstate shipment any more than they can make intrastate sales.

I note that you have fifteen seized bottles on hand. The Commonwealth's attorney of your county is charged with the prosecution of violations of the prohibition law. I advise you to see him and go over the matter carefully with him and be guided by his advice. If there is any question as to the character

of the liquid you have seized and you desire to have it analyzed and will send me one of the bottles, I will be pleased to have it analyzed by the State Chemist.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Stamp permit required on interstate shipment.

RICHMOND, VA., *September 30, 1929.*

McKESSON-ROANOKE DRUG CORPORATION,
*135 Salem Avenue, West,
Roanoke, Virginia.*

DEAR SIRs:

I am in receipt of your letter of the 25th instant, in which you inquire if it is necessary to place a stamp permit on an interstate shipment of alcohol.

Your inquiry is covered by section 74 of the Layman Prohibition Act, by which persons transporting ardent spirits must secure permits in triplicate from the Commissioner of Prohibition (the Attorney General) for the purchase or transportation of ardent spirits.

There is no exception made in the case of interstate shipments. In my opinion, it is necessary for wholesale druggists to secure permits for the purchase and transportation of ardent spirits.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Town ordinances—Jurisdiction of mayors and police justices.

RICHMOND, VA., *September 19, 1929.*

HON. ROBERT A. HUTCHISON,
*Attorney at Law
Manassas, Virginia.*

DEAR MR. HUTCHISON:

I am in receipt of your letter of the 18th instant, which I quote practically in full:

“Yesterday, one of the town policemen, having reason to believe that one Payne was both under the influence of liquor and possessed of liquor, near town, shortly after an automobile accident undertook to arrest Payne, who lost his bottle in the melee, which contained whiskey, and is now held by the town officers.

“A question of jurisdiction arose, and by actual measurement, it was determined that the arrest was made 2.6 miles from town, at the precise point where Payne was possessed of the liquor.

“I have advised the authorities:

“(1) That the town authorities have jurisdiction;

"(2) That the policemen had a right to make the arrest within three miles, without warrant, where the offense was committed in his presence;

"(3) That Payne can be charged with and tried on the charge of unlawful possession and transportation."

Unfortunately, I am not informed as to whether Manassas has a town prohibition ordinance.

If so, under section 34 of the Layman Act, mayors and police justices have jurisdiction over territory contiguous to your town within three miles of its limits, and the police officer of the town has a right to make arrests without a warrant where the offense charged was committed in his presence.

It necessarily follows that Payne, the man arrested, may be tried either for transportation or unlawful possession of ardent spirits. He may be charged with two separate offenses, but cannot be convicted of both, as the same act constitutes both offenses.

In the event that Manassas has no town prohibition ordinance, I suggest that the information you have as to the offense committed by Payne be turned over to the county authorities for action.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Credit for payment of fines and costs.

RICHMOND, VA., May 16, 1930.

CAPTAIN R. R. PENN, *Superintendent,*
State Farm, Virginia.

DEAR CAPTAIN PENN:

I am in receipt of your letter of yesterday, in which you inform me that the mother of an inmate of your institution serving sentence of imprisonment and for non-payment of fine and costs desires to know if she may pay a part of the fine and costs and have credit for the same, and I note that you request my opinion upon this question.

It is the usual practice to receive part payment of fine and costs. Such payment should be made to the clerk of the court or of the county or city in which conviction is had. The convict should then be released whenever the amount paid and earned by the convict aggregates the total fine and costs after he has already served his time on account of his confinement sentence.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Execution—Date fixed by court.RICHMOND, VA., *October 4, 1929.*

MAJOR R. M. YOELL, *Superintendent,*
State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR:

I am just in receipt of yours of October 2nd, in which you enclose a copy of the court order of the hustings court of Roanoke, Virginia, which order sentenced one Luther Clayborn to be executed for murder in the first degree. I quote the following from this order:

"It is therefore considered by the court that the said Luther Clayborn be sentenced to death during the week beginning on the 25th day of November, 1929."

You then desire to be advised if it is not necessary that the court should fix the date of execution.

Unquestionably, the court should do this. I call your attention to sections 4942 and 4943a of the Code. A portion of section 4942 reads as follows:

"The said superintendent, or the assistants appointed by him, shall, at the time named in said sentence, cause the said felon under sentence of death to be electrocuted until he is dead, unless a suspension of execution be ordered."

The first sentence in section 4943a reads as follows:

"Whenever, for an offense hereafter committed, the day fixed for the execution of a sentence of death shall have passed without the execution of such sentence and it shall have become necessary to fix a new date therefor, it shall be the duty of the court which pronounced such sentence to fix another day for such execution."

These provisions in the law, in my judgment, clearly show that a specified date for execution should be fixed by the court pronouncing the sentence of death.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Pardon, when null and void.RICHMOND, VA., *August 10, 1929.*

MAJOR R. M. YOELL,
Superintendent of the Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YOELL:

Acknowledgment is made of your request of August 10, 1929, that I advise you whether you, as superintendent of the penitentiary, have the authority to arrest, or cause the arrest, of one C. L. Trivett of Washington county at this time.

It appears that some years ago C. L. Trivett was convicted of a felony and sentenced to the penitentiary but subsequently conditionally pardoned by Governor Trinkle, the condition being that, if he was ever again found guilty of violating any of the penal laws of the Commonwealth, the pardon should be null and void. It also appears from the file furnished me by you that, subsequent to the granting of this conditional pardon, Trivett was indicted and convicted in the circuit court of Washington county for violating the State prohibition law and sentenced to serve a term of sixty days in the jail of that county. Thereupon, on March 30, 1929, Governor Byrd wrote you informing you of this conviction, saying in part:

"This will make the conditional pardon granted him in December, 1924, null and void. Please see that he is returned to complete his penitentiary sentence."

You advise me that delay in making the arrest has been occasioned by reason of sickness, or alleged sickness, on the part of Trivett, but that he is at this time physically able to be moved from Washington county to the State Farm.

In 46 C. J., title "Pardons," section 61, it is said:

"A breach of the condition of a pardon avoids and annuls it. Execution of the original sentence may then be enforced. This is true, although the term for which the convict was sentenced has expired * *."

In section 64 of the same article in 46 C. J., it is said:

"Upon the revocation of a pardon for a breach of one of its conditions, the legal status of the person pardoned must be regarded the same as it was before the pardon was granted."

I am, therefore, of the opinion that you have the authority to arrest, or cause the arrest of Trivett and to compel his return to the penitentiary or the State Farm for the completion of his sentence, his violation of the condition of his pardon having annulled it.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Term of confinement.

RICHMOND, VA., *December 10, 1929.*

MR. E. H. DEJARNETTE, JR.,
Attorney at Law,
Orange, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of December 9, 1929, in which you say in part:

"Ernest L. Foster was at the last term of this circuit court tried and convicted of two violations of the prohibition law: first, for the transportation of liquor without a license; second, for possession of a still—two separate trials and two separate convictions.

"Section 2095 of the Code provides that a man shall not be held for more than six months for failure to pay a fine. It is my contention that Ernest L. Foster can only be held for six months for fine and costs in these two cases."

It further appears from the correspondence between you and the superintendent of the penitentiary that a fine and costs were imposed in each case, in addition to the time to be served on the roads. These sentences, having been rendered at the same term of the circuit court of your county, are cumulative and not concurrent (section 4786 of the Code). This being true, I am of the opinion that under section 2095 of the Code, as amended, he should be held for the fine and costs in each case until they are paid in full, or the limitation prescribed by this section of the Code has been reached.

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Time allowed for good behavior.

RICHMOND, VA., *October 28, 1929.*

H. THORNTON DAVIES, ESQ.,
Attorney at Law,
Manassas, Virginia.

MY DEAR MR. DAVIES:

Acknowledgment is made of your letter of October 25, 1929, in re: the time to be allowed jail prisoners.

It is true that prior to 1928, I held that under the law then in existence a prisoner held in jail, but sentenced to the State convict road force, was entitled to a credit on his sentence of ten days per month for good behavior.

However, the General Assembly, in 1928, amended section 5017 of the Code, and since that time I am of the opinion that persons sentenced to the convict road are not entitled to an allowance of ten days per month for the time they are held in jail, as the statute now provides that "such good conduct allowance shall commence only on the date the prisoner is received in the penitentiary, or the convict road force camp."

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Time allowed on sentence.

RICHMOND, VA., *May 8, 1930.*

MAJOR R. M. YUELL, *Superintendent,*
State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YUELL:

I have just read Honorable Joel W. Flood's letter to you of May 7, 1920, in re *Commonwealth v. Archer Richardson*, and your reply to him dated May 8, 1930. I have also examined sections 2095 and 5017, as amended.

The facts in this case appear to be that Richardson was confined on July 7, 1929, that he received a sentence of six months in jail and a fine of \$100. and that the costs amounted to \$197.50. It also appears that this man, in lieu of a jail sentence, was sentenced to the State convict road force.

Under section 2095 of the Code, as amended, a prisoner works his fine and costs out at the rate of 50 cents per day for each day that he works and receives an allowance of 25 cents for each Sunday and holiday. The section provides, however:

“* * No person shall be held to labor in any chain gang for the non-payment of any fine imposed upon him for a longer period than six months.”

Section 8 of the prohibition law was amended by chapter 481 of the Acts of 1928 so as to provide that, when the fine and costs incident to a prosecution and conviction under the prohibition law are not paid, “the defendant shall be sentenced to and held in the State convict road force, under the provisions of sections twenty hundred and ninety-four and twenty hundred and ninety-five of the Code, as amended.”

Section 5017 of the Code, as amended, provides for a good conduct allowance of ten days per month from the date the prisoner is received in the penitentiary or the convict road force camp. It further provides that, in addition to this, the prisoner “shall be allowed a good conduct credit of four days per month for each month actually served by him in jail after sentence and while awaiting removal to the penitentiary or the convict road force.”

Section 5019 of the Code, as amended, provides that any person sentenced to confinement for the commission of a crime, or for default in payment of a fine, shall have deducted from any such term “all time actually spent by such person in jail awaiting trial or pending an appeal.”

In view of these facts, I am of the opinion that you have acted strictly in accordance with the law in the above case.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Time allowed on sentence.

RICHMOND, VA... May 9, 1930.

MAJOR R. M. YOEUELL, *Superintendent,*
State Penitentiary,
Richmond, Virginia.

MY DEAR MAJOR YOEUELL:

I have before me the correspondence between you and Honorable Joel W. Flood, in reference to the case of *Commonwealth v. Robert Brown*.

It appears that in this case Robert Brown was sentenced to the penitentiary in 1929 for one year on the charge of manufacturing ardent spirits, and that the costs of the case amounted to \$103.00. This man was sent by you to the State convict road force and was released sometime in December, 1929, without collecting the costs or holding him for additional time for the non-payment of costs.

While this man was confined in the State convict road force, he was, nevertheless, a penitentiary prisoner and not a jail prisoner.

I have examined my opinion to you of December 5, 1924, with reference to this subject, and I am of the same opinion at this time, viz: that you are not authorized to hold a man sentenced to the penitentiary for any additional time on account of the non-payment of the costs of his prosecution, and that section 8 of the State prohibition law, as amended in 1928, has no application to this case, that act relating to jail prisoners sentenced to the State convict road force.

Yours very truly, -

JNO. R. SAUNDERS,

Attorney General.

JIM CROW LAW—Enforcement on street cars and buses—Duty of officials, etc.

RICHMOND, VA., March 18, 1930.

MR. RICHARD T. YATES:

Krise Building,

Lynchburg, Virginia.

DEAR SIR:

Your letter of February 14, to which you refer in your letter of the 14th instant, has been received.

Section 3962 of the Code provides for separate cars for white and colored passengers in railroad and transportation companies, and section 3964 provides a fine of not less than \$300 nor more than \$1,000 for violations of that section.

Section 3965 provides that conductors shall assign white and colored passengers to their respective compartments and section 3966 provides punishment of not less than \$25 nor more than \$50 fine upon conductors for failure to carry this law into effect.

By section 4097c of the Code, the sections which I have quoted of chapter 155 of the Code are made applicable to all common carriers. The street railways of Lynchburg are common carriers and, as such, are required to separate whites and blacks.

The enforcement of the law is in the hands of local police authorities. If upon complaint the police of your city or the sheriffs of adjoining counties refuse to make arrests, I suggest that you lay complaint before the attorney for the Commonwealth of Lynchburg or the adjoining counties.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JUSTICE OF THE PEACE—Authority to issue warrants—Prohibition cases.

RICHMOND, VA., August 29, 1929.

HON. W. W. G. DOTSON,
*Attorney for the Commonwealth,
Wise, Virginia.*

DEAR MR. DOTSON:

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

"There is a difference of opinion here as to whether a justice of the peace has the right or authority to issue search warrants and warrants of arrest for violations of the prohibition law in the corporate towns in his district. We have had some few cases to come up where the jurisdictions of mayors and justices were tangled."

In my opinion, State and local authorities of towns having prohibition ordinances have concurrent jurisdictions for violations of the prohibition law.

If this conclusion is correct, the authority first taking jurisdiction is entitled to proceed to final determination of the charge.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Authority to suspend jail sentence in prohibition case.

RICHMOND, VA., May 5, 1930.

HON. EARL L. ABBOTT,
*Commonwealth's Attorney,
New Castle, Virginia.*

MY DEAR SIR:

I beg to acknowledge receipt of your letter of April 30, in which you ask whether a justice of the peace may suspend a jail sentence in a prohibition case.

Under date of August 2, 1928, I gave an opinion to the effect that the mayor of a town had the right to suspend a jail sentence for a violation of a town ordinance concerning a prohibition offense. That right of a mayor applies only to violations of town ordinances and has no application to violations of the State law. By section 34 of the act, jurisdiction to try offenses against city and town ordinances is expressly reserved to mayors or police justices.

The right of a justice of the peace to suspend sentences in prohibition cases is determined primarily by section 33 of the act. From a consideration of that act, it appears that, if no plea of guilty be entered, the justice can do one of two things: first, if he believe the accused not to be guilty, he can dismiss the proceeding; second, if he believe the accused to be guilty of a violation of the State law, he must require him to appear before the circuit, hustings or corporation court having jurisdiction. The justice, therefore, cannot sentence a man who does not plead guilty.

By the second paragraph of section 33 of the act, if the charge be for a misdemeanor, the accused may, in the presence of the attorney for the Commonwealth and with his consent endorsed on the warrant, enter a plea of guilty, in which event the justice may enter judgment and fix the punishment, but it is expressly provided that he shall not suspend sentence.

The only cases for violations of the State prohibition law in which a justice may enter judgment and fix the punishment, when no plea of guilty has been entered, are set forth in sections 17 and 18 of that law, and for the offenses therein set forth punishment is confined to a fine.

I am, therefore, of the opinion that under no circumstance can a justice of the peace suspend sentence in a case involving a violation of the State prohibition law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Criminal jurisdiction.

RICHMOND, VA., June 30, 1930.

HON. A. F. DIZE, Mayor,
Cape Charles, Virginia.

MY DEAR MR. DIZE:

I am in receipt of your letter of recent date, which reads as follows:

"Will you kindly advise me, as promptly as possible, what right a justice of the peace living in Eastville district, Northampton county, has to issue a warrant against a person in Cape Charles (Capeville district) and try the case in Cape Charles? The justice lives in Eastville.

"It does not seem right that this should occur unless there are no other justices in the county at the time. I should say it would be all right to issue such warrant and have the officer executing the same return it to a justice in the district that the crime was committed."

In reply thereto, I beg to advise that any justice of the peace has the right to issue a warrant for the arrest of a person committing a crime within his county. If the crime be a misdemeanor, the warrant must, pursuant to the provisions of sections 4824 of the Code, "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." (Italics supplied.)

Therefore, unless there be good cause shown by such affidavit, the trial for the commission of a misdemeanor must be held in the district in which the offense was committed and before a justice of that district.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Fees—Actual trial.RICHMOND, VA., *April 8, 1930.*

JUDGE DAVID S. BLANKINSHIP,
Rustburg, Virginia.

MY DEAR JUDGE:

I am in receipt of your letters of March 24 and April 4, and I note what you have to say in the former in reference to fees charged by trial justices where cases are not actually tried but are dismissed before such trial takes place.

Under the provisions of paragraph 4, section 4988, as amended by chapter 511, Acts of 1926, page 862, trial justices are entitled to the same fees as justices of the peace.

Under the provisions of section 3481, paragraph 5, justices of the peace are entitled to a fee of fifty cents for issuing civil warrants, and in paragraph 6, same section, "for trying and giving judgments on such warrants, including swearing witnesses, taxing costs and issuing executions, one dollar."

Under the head of "Trials" in 8 Words & Phrases, there are a number of definitions of trial, practically all of the definitions defining trial as a judicial examination of the issues. None of the definitions give a meaning to the word trial which would include a dismissal of a case without an examination or hearing.

On page 7101 of the book referred to, under subhead "In statutes relating to officials' fees," it was held:

"A trial is an examination before a competent tribunal, according to the laws of the land, of the facts appertaining to the cause, for the purpose of determining such issue, and it is held that the dismissal of a suit is not the trial thereof, within the Code of Criminal Procedure, authorizing the county judge to receive the sum of \$3 for each criminal action tried and finally disposed of before him. *Brackenridge v. State*, 11 S. W. 630, 632, 27 Tex. App. 513, 4 L. R. A. 360."

"A trial is a judicial examination of the issues between the parties; but, when the court refuses to examine the issues, it would be a stretch of common sense and of law to hold that there had been a trial. Where no jury was ever empaneled, and, on the action coming on for trial, an order was made, on plaintiff's motion, allowing him to discontinue the action on the payment of defendant's costs, there was no trial, within Code, section 3251, subd. 3, providing that a trial fee of \$30 may be taxed 'for the trial of an issue of fact.' *Studwell v. Baxter* (N. Y.). 33 Hun. 331, 332."

I am still of the opinion as expressed in my letter of the 13th of March, addressed to Mr. C. H. Edwards, of Altavista, Virginia, that, where there is no trial but a dismissal of the warrant, at the instance of the plaintiff, a justice is not entitled to a fee for the trial of the case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Fee for mittimus.RICHMOND, VA., *March 27, 1930.*

HONORABLE CLAUDE R. WOOD,
*Attorney for the Commonwealth,
Dillwyn, Virginia.*

MY DEAR MR. WOOD:

Yours of the 25th has been received. In this you desire to be advised whether or not a justice of the peace is entitled to a fee of fifty cents for writing a mittimus.

You also refer me to section 3481 of the Code, calling my attention to subsection 8. You will observe this subsection provides that "for other services, a justice of the peace shall have the same fees as the clerk of a circuit or city court for like services."

I also call your attention to subsection 43 of section 3484, which section provides for fees of clerks of courts. This subsection states that "for any other writ not hereinbefore provided for, fifty cents"; that is, of course, for the clerk.

I have always understood, and it has been my experience, that a justice of the peace charged a fee of fifty cents for writing a mittimus, and I am of the opinion that he is entitled to receive a fee of this amount for such service.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Fee of—Writing peace bond.RICHMOND, VA., *August 23, 1929.*

MR. G. H. FOLTZ,
*Justice of the Peace,
Stanley, Virginia.*

DEAR MR. FOLTZ:

I am in receipt of yours of the 17th, in which you desire to be advised if a justice of the peace has a right to charge for writing peace bond and, if so, what is the fee.

If you will examine section 3507 of the Code of Virginia, you will see that the fee for this service is \$1.00, but it should be paid by the party for whom the bond is taken and not by the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Jurisdiction in prohibition cases.RICHMOND, VA., *April 7, 1930.*HONORABLE A. L. WITCHER,
Gretna, Virginia.

MY DEAR MR. WITCHER:

I am just in receipt of yours of April the 5th, in which you submit the following question for an opinion:

"Will you please advise me if a justice of the peace has the right to try a person for operating an automobile while intoxicated? If he has this right, is it necessary for the Commonwealth's attorney to be present at the trial that the offender's license to operate an automobile may be suspended upon conviction?"

Section 33 of the Prohibition Law reads in part 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."

You will therefore observe from the reading of this section that a party may plead guilty in the presence of the attorney for the Commonwealth, and with his consent, endorsed on the warrant of arrest, be tried for operating a car while intoxicated by a justice of the peace. If convicted, his license to operate a car is automatically revoked. It is not a question of whether or not it may be suspended; it must be revoked.

Yours very sincerely,

JNO. R. SAUNDERS,
*Attorney General.***JUSTICE OF THE PEACE—Fee—Issuing civil warrants and trying same.**RICHMOND, VA., *March 13, 1930.*MR. C. H. EDWARDS,
Altavista, Virginia.

DEAR MR. EDWARDS:

In reply to your letter of March the 7th, I refer you to section 3491 of the Code of Virginia, which section provides for fees of justices of the peace. Among other things it provides for issuing any warrant in which the Commonwealth is not plaintiff (which, of course, means a civil warrant) fifty cents, for trying and giving judgments on such warrants, including swearing witnesses, taxing costs and issuing executions, one dollar.

You will see from a reading of this law that for issuing a civil warrant a justice is entitled to a fee of fifty cents; for trying the same he gets an

additional fee of one dollar. Where there is no trial, I do not understand that the justice of the peace is entitled to a fee for such trial.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—May hold commission of lunacy in all counties.

RICHMOND, VA., *April 25, 1930.*

W. A. HALL, ESQ.,
Justice of the Peace, '
Crystal Hill, Virginia.

DEAR SIR:

I beg to acknowledge receipt of your letter of the 21st instant, which involves an interpretation of Senate Bill No. 378 adopted at the recent session of the Legislature.

Whether or not a justice of the peace in a county having a population of not less than forty thousand nor more than forty-six thousand can hold a coroner's inquest or act on a lunacy commission, after this law goes into effect, is governed by section 2 of that bill which provides as follows:

"Such trial justice shall have all the power and authority of a justice of the peace, for the trial of, and he is hereby charged with the duty of trying, all civil and criminal cases which justices of the peace now have, or may hereafter by general law be given authority to try. He shall not have authority to issue any warrants, either civil or criminal. All such warrants shall be issued by the justices of the peace of the county, as heretofore, and shall, when served, be returned to the trial justice, who shall hear and determine all such cases in the same manner as justices of the peace hear and determine similar cases, keeping similar records of his proceedings, and making return of papers to the clerk's office of his county, as justices of the peace are required to do by general law."

I am of the opinion that this bill will not deprive justices of the peace of the authority and power they now have to hold a coroner's inquest, in the event a coroner wilfully or negligently fails to perform his duty, or in the event that there is no coroner or none in the neighborhood in which the dead body is found. A coroner's inquest, in my opinion, is not a trial of a civil or criminal case.

I am likewise of the opinion that this bill will not affect the right of a justice of the peace, in any county governed by it to perform the duties heretofore possessed in connection with lunacy proceedings as set forth in section 1017, *et seq.*, of the Code. While there can be no doubt that a proceeding before such a commission is in the nature of an adversary proceeding, and while it materially affects the status of the person involved, I am of the opinion that the act in question withdraws from the justices of the peace and confers upon the trial justices jurisdiction in those cases alone which are purely adversary.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Not entitled to receive Virginia reports.

RICHMOND, VA., November 19, 1929.

MR. J. WALTER SMITH,
Justice of the Peace,
R. F. D. 1,
Hampton, Virginia.

DEAR SIR:

I am in receipt of your letter of the 15th instant, enclosing copy of your letter of the 1st instant to Honorable M. A. Hutchinson, Secretary of the Commonwealth, together with copy of his reply of the 11th instant, and note that this correspondence has to do with your request that you, as a justice of the peace of Elizabeth City county, be furnished with copies of the Virginia reports, and I further note that you are of the opinion that section 347 of the Code of Virginia, providing for furnishing Virginia reports to civil justices, applies to justices of the peace.

I have examined section 347 and note that it requires the Secretary of the Commonwealth to furnish, among others, copies of the Virginia reports to "each civil justice."

I have also examined chapter 124, under the title of civil and police justices and civil justices, sections 3097 to 3120 inclusive, and note that section 3097 provides, in cities containing 10,000 inhabitants and less than 45,000 inhabitants, for a special justice of the peace to be known as the civil and police justice, and that section 3112 provides for the election by the two houses of the General Assembly, in cities containing 45,000 or more inhabitants, a special justice of the peace to be known as the civil justice.

In my opinion, section 347, providing for copies of the reports of the Supreme Court of Appeals, applies to civil justices selected under the provisions of chapter 124 of the Code and that justices of the peace throughout the State are not entitled to receive these reports.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LANDLORD AND TENANT—Right of re-entry for nonpayment of rent.

RICHMOND, VA., December 27, 1929.

MR. OTTO HOLLOWELL, *Secretary,*
Norfolk Real Estate Board,
Arcade Building,
Norfolk, Virginia.

DEAR MR. HOLLOWELL:

I am in receipt of your letter of the 20th instant, in which you refer to my address before the Real Estate Association in Richmond last October, in which, among other matters, I referred to section 5182 of the Code in reference to the right of re-entry for nonpayment of rent and for breach of covenants.

You then say that you are anxious for an interpretation of "possession," or more particularly "repossess" in relation to entering into and upon a

demise premises, and you ask: "Does possession in this instance give the lessor legal authority to enter in upon the premises and remove the furniture without further process of law?"

The right of re-possession is of common law origin and, in case of failure to pay rent, has been held to require notice, and, if the rent is not paid, the plaintiff would exercise his right of re-entry. A discussion of this matter in a letter is difficult and I refer you to chapter 223, having to do with summary remedy for unlawful entry or detainer, and to chapter 227, having to do with recovery of rent and right of re-entry, both sections of the Code of 1924.

Under the provisions of chapter 223, section 5448, a lessor of premises in a city or town or subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes and not for farming or agriculture, whose tenant or lessee is in default in the payment of rent, may give such tenant notice in writing requiring possession of the premises or the payment of rent, and, should the tenant continue in default for five days after such notice has been given, he thereby forfeits his right to possess, and the lessor may, at his option, deem the possession unlawful and proceed to recover possession as provided in other cases of unlawful detainer, and action must necessarily be brought before a landlord may re-enter.

The statute does not provide for the relief of a tenant who has forfeited his lease in case an action of unlawful detainer is brought against him, and I assume that, upon proof of default in rent, notice and failure to pay continuing for five days, a judgment must go for the landlord. Under the provisions of chapter 224, covering actions of ejectment, is found relief from forfeiture.

Your inquiries as to the right to remove furniture from the premises are answered by saying that in each instance in which a landlord is entitled to enter upon the premises, or an officer is directed to give possession, each has authority to remove the furniture as well as any and all persons occupying the premises.

As every case must stand or fall upon its particular circumstances, I advise that your association consult with its attorney before taking action in any and every case.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LIBRARIES—County school funds cannot be diverted for purpose of establishing a county library.

RICHMOND, VA., *July 26, 1929.*

HON. H. R. McILWAINE,

State Librarian,

Richmond, Virginia.

MY DEAR DOCTOR McILWAINE:

Acknowledgment is made of your letter of July 18, 1929, in which you say in part:

"The Julius Rosenwald Fund, of Chicago, has appropriated \$500,000 to be spent in the next five years to promote county library establishments in the South. Of this sum, \$40,000, to be spent in five years, has been granted to Albemarle county, Virginia, under certain conditions, one of which is that the county shall raise each year the money necessary to meet the Rosenwald fund payments, which are graded so that the sums decrease each year on the part of the Rosenwald Fund and increase each year on the part of the county. Within five years the county agrees to assume full responsibility for the maintenance of the county library.

"A committee representing the schools (the division superintendent of schools), the county government, the University of Virginia, the Charlottesville public library and other interests, is trying to comply with the conditions of the Rosenwald Fund grant. This committee is seeking to raise the amounts required of Albemarle county by private donations and an appropriation each year from the county board of supervisors. It believes that the board of supervisors can not be induced at first to increase county expenses by appropriating money separately for such a purpose. If, however, the money may be included in the budget under appropriations for educational purposes, the committee feels that there is a much better chance of success, inasmuch as the State "board of education has recently set up standard for the libraries of accredited high schools which will necessitate increased appropriations, and that the board of supervisors can be shown that the county library would fulfill the requirements of the standards efficiently adequately, and economically. The standards admit of such service in lieu of individual operation of libraries by each school. Money thus appropriated by the board of supervisors for a county free public library would constitute a proportional compliance with the conditions of the Rosenwald Fund grant.

"The division superintendent of schools, with the advice of the school board, must prepare each year an estimate of the amount of money needed for the support of public schools, which may include *auxiliary agencies* (Code sec. 657), and the amount so levied by the board of supervisors is expended by the school board. Would it be legal to include an appropriation for a county library in the budget for schools, the money to be expended by the county library board, which must by law consist of five members appointed by the judge of the circuit court of the county, one of whom must be the county superintendent of public schools, and which must control all expenditures of county library funds?"

The only authority that I have been able to find for the establishment of a county library is the Act of 1924, page 12, which is found in the Virginia Code of 1924, sections 2695a-2695g. Section 2695a of the Virginia Code of 1924, which is section 1 of this Act, reads as follows:

"The board of supervisors of any county shall have the power to appropriate from the general funds of the county a sum sufficient for the establishment and maintenance of a county free library for the use and benefit of the residents of such county; or, upon petition of five per centum of the qualified voters of the county, may levy a tax for the establishment and maintenance of such county free library. All funds of the county free library, whether derived from taxation or otherwise, shall constitute a separate fund to be called 'the county free library fund,' and shall not be used for any purposes except those of the county free library."

You will see from this that the law expressly provides that a county library shall be established and maintained out of the general funds of the county, or, upon petition of five per centum of the qualified voters of the county a special tax may be levied therefor.

Therefore, in my opinion, funds levied for school purposes in a county could not be diverted for the purposes of establishing a county library, although such funds may be used in part for the establishment of school libraries. See Code section 713.

There is no question about the fact that the funds necessary for the establishment of such library could be appropriated by the board of supervisors from the funds derived from the general county levy, or, upon petition of the qualified voters, as provided in section 2695a of the Code of 1924, a special levy could be laid. I know of no other way in which the funds could be raised under the law as it exists in this State.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSES—Authority of municipality to impose on motor vehicles operated by Southeastern Express Company.

RICHMOND, VA., January 28, 1930.

HON. S. T. BOWMAN,
*Commissioner of the Revenue,
Bristol, Virginia.*

MY DEAR MR. BOWMAN:

I beg leave to acknowledge receipt of yours of the 23rd, in which you enclose a letter from Mr. Harry L. Greene, General Attorney for the Southeastern Express Company, Atlanta, Georgia.

In Mr. Greene's letter he takes the position that a municipality of the State cannot impose a license tax on motor vehicles operated by the Southeastern Express Company. I note from your letter that you take a different view from that expressed by Mr. Greene. The concluding part of the last paragraph of section 219 of the Tax Code provides:

"* * * that nothing herein contained shall except the said companies (evidently except was intended for exempt) from the payment of any motor vehicle license or any motor vehicle fuel tax, heretofore or hereafter imposed by law."

It, therefore, unquestionably follows that the city of Bristol has a perfect right to impose a license tax on motor vehicles operated by the Southeastern Express Company in the incorporated limits of that city.

I would further add that this company pays such a license tax to the city of Richmond.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSES—Chauffeur's, when required.RICHMOND, VA., *March 21, 1930.*HON. ALFRED H. GRIFFITH, *Mayor,*
Buena Vista, Virginia.

DEAR MR. GRIFFITH:

I am in receipt of your letter of the 18th instant, in which you write:

"The Motor Vehicle Commissioner quotes you as stating that you believe it necessary for at least one chauffeur's license to be obtained for each truck in the State, unless it is operated solely by the owner.

"I am up against this proposition. Many merchants in our city employ men and boys to work in their store, to clerk and deliver packages with a truck. *Must* these employees obtain a chauffeur's license? Must everyone who drives a truck, and is paid a salary, obtain a chauffeur's license? Are there any exceptions as to the obtaining of chauffeur's license, that is, where men are paid a fixed salary and part of their duties is driving a truck? Must they obtain chauffeur's license?"

You are most probably mistaken in saying that the Director of the Division of Motor Vehicles quotes me as saying that it is necessary for at least one chauffeur's license to be obtained for each truck in the State unless it is operated solely by the owner. I have made no such ruling.

The law governing chauffeur's license is contained in section 19½ of the motor vehicle law and provides that:

"Any person other than the owner of a motor vehicle which has been registered and licensed to be operated in this State, whose principal duty or occupation is the driving of a motor vehicle for compensation, and every person who drives a motor vehicle while in use as a public or common carrier of persons or property before he shall operate a motor vehicle in this State shall first take out a chauffeur's license. * *"

•

In my opinion, the law means that a person who is employed for the purpose of driving a truck should obtain a chauffeur's license, but that it is not necessary for a person to obtain a chauffeur's license where he is employed for some other duty and only drives the owner's truck occasionally or temporarily for some particular purpose or trip. In other words, if he is paid a salary as a truck driver, a chauffeur's license is required. If he is paid a salary for the performance of some other duty, he is not required to take out a chauffeur's license although he occasionally drives a truck.

Yours very truly,

JNO. R. SAUNDERS,
*Attorney General.***LICENSES—Chauffeur's, when required.**RICHMOND, VA., *February 24, 1930.*HON. A. D. BARKSDALE,
Lynchburg, Virginia.

MY DEAR SENATOR:

I beg to acknowledge receipt of your letter of February 21, in which you submit the following question for an opinion:

You state that Mr. R. L. McBroom personally owns his motor bus and operates it himself; that he has been informed by Mr. Bingham of the Department of Motor Vehicles that, under the provisions of section 19½ of chapter 149 of the Acts of Assembly, 1926, Mr. McBroom is required to obtain a chauffeur's license in order to operate this bus. You then desire to be advised whether or not he is required to obtain such a license.

That part of section 19½ which is applicable to your question reads as follows:

"Any person other than the owner of a motor vehicle which has been registered and licensed to be operated in this State, whose principal duty or occupation is the driving of a motor vehicle for compensation, and every person who drives a motor vehicle while in use as a public or common carrier of persons or property before he shall operate a motor vehicle in this State shall first take out a chauffeur's license
* *"

While it may be true that Mr. McBroom owns and operates his own bus, at the same time, he uses it as a public or common carrier of persons or property, and the language of the statute is very plain, i. e., that before he can do this he shall first take out a chauffeur's license.

I have read the provisions contained in subsection 1 of section 5 of the Motor Vehicle Carrier's Act, but I do not think that would have any bearing on the case, for the reason that a license fee and a license tax, as used in that section, do not include a chauffeur's license. Moreover, section 19½ was enacted two years later and, if there is any conflict in the two statutes, the provisions of section 19½ would prevail.

I have just talked with Mr. McCall Frazier relative to this and he concurs in this opinion. However, he states that at this session of the Legislature he has introduced a bill, which, if enacted into law, will not in the future require the owner and operator of a bus to obtain a chauffeur's license.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSES—Fishing, when required.

RICHMOND, VA., June 9, 1930.

HON. L. W. TYUS, *Fiscal Secretary,*
Commission of Game and Inland Fisheries,
Richmond, Virginia.

• DEAR MR. TYUS:

I am in receipt of your letter of even date, in which you ask for a construction of sections 8 and 19 of chapter 247 of the Acts of 1930, covering the issue of licenses to persons fishing in the waters of Virginia. As your letter contains quotations from both of these sections, either partially or in full, I am quoting it:

"Please refer to chapter 247, Acts of 1930, approved March 24, 1930, section 8, which reads in part as follows:

"The chairman is hereby vested with sole jurisdiction, power and authority to enforce or cause to be enforced all laws for the protection, propagation and preservation of game birds and game animals in this State and all fish in the inland waters thereof, *which waters shall be construed to mean and to include all waters above tidewater and the brackish and fresh water streams, creeks, bays (including Back Bay), inlets and ponds in the tidewater counties* and all dog laws.'

"Section 19 provides as follows:

"It shall be unlawful to hunt, or to trap, except with box or rabbit traps, or to fish in the inland waters of this State with a rod and reel; or by any other method whereby artificial lures or live minnows are used or to fish for brook or rainbow trout without first obtaining a license, provided that such license shall not be required as follows:

"(a) Of resident landowners, their husbands or wives and their children; nonresident children of resident landowners; nonresidents who own land in this State, their husbands or wives and their children; and unnaturalized persons who own land in this State and their children, to hunt, trap and fish within the boundaries of their own lands and inland waters or to fish in inland waters bounding and adjoining their said land.

"(b) Of tenants, renters and lessees to hunt, trap and fish within the boundaries of the lands and inland waters of their landlords or to fish in inland waters bounding and adjoining said land; provided that such tenant, renter or lessee actually resides upon said land and has the written consent of the landlord to do so upon his person at the time.

"(c) Of persons under sixteen years of age to fish in inland waters.

"Nothing in this section shall be construed as authorizing any persons to hunt, trap, or fish upon the lands or in the inland waters of any public or private gun club, association or preserve of any description as a member thereof, or as a landowner, tenant, renter or lessee, without having procured a license.'

"This commission construes the language of section 8 to mean that the license required by section 19 does not apply to the salt water areas of Tidewater Virginia, but we think that the license requirement does apply to the brackish and fresh water streams, creeks, bays (including Back Bay), inlets and ponds in the Tidewater counties, whether the tide ebbs and flows at a given point or not."

In my opinion, you are entirely right in your conclusion that it is unlawful to fish with rod and reel, or by any other method whereby artificial lures, or bait, or live minnows are used, or to fish for brook and rainbow trout in any manner or by any means, without a license, with the exceptions contained in your letter, in all of the waters of the State with the exception of salt water in Tidewater Virginia. The exception as to the necessity for a license to fish in Tidewater Virginia does not apply to brackish or fresh water streams, creeks, bays (including Back Bay), inlets and ponds, and this is so whether the tide ebbs or flows in such streams, creeks, bays, inlets or ponds.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSES—Hunting—Lessee of farm not actual resident to obtain license.RICHMOND, VA., *January 14, 1930.*

MR. IRA BOGGS, J. P.,
Care Mr. H. C. Buchanan,
Darwin, Virginia.

MY DEAR SIR:

I am in receipt of your letter of yesterday, in which you ask, if A owns a farm and leases B the right to hunt or gives B a permit to hunt on the farm, would B be required in either case to obtain a hunter's license.

In reply to your inquiry, I will say that B would have to obtain a hunter's license. Only those tenants who actually reside upon the land of their landlord have a right to hunt on his land and even then such tenants must have the written consent of the landlord.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Hunting at night, coons, opossums, polecats, skunks.RICHMOND, VA., *October 8, 1929.*

HON. S. L. ESTEP,
Justice of the Peace,
Millwood, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of October 5, 1929, in which you request me to advise you whether it is necessary for one to obtain a license in order to hunt coons, opossums, polecats and skunks at night.

After examining section 3327 of the Code, as amended, Virginia Game Laws, 1928, page 11, I am of the opinion that a license is required in such a case.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Hunting—Soldier of the United States Army.RICHMOND, VA., *September 5, 1929.*

SGT. HARDEN STEPHENS,
P. O. Box 382,
Lynchburg, Virginia.

DEAR SIR:

I beg leave to acknowledge receipt of yours of September 4th, in which you say:

"It is requested that I be informed as to whether or not there is a law governing the issuance of hunting license to soldiers of the United States Army stationed in the State of Virginia. Also as to whether or not a soldier is exempt from capitation taxation.

"2. The undersigned made application for hunting and fishing license to the clerk of the court in this city and was informed that I could not be accommodated due to the fact that I have paid no capitation tax."

In reply thereto, I will state that a soldier in the United States Army stationed in the State of Virginia is entitled to obtain a hunting license without the payment of a capitation tax. The cost of this license is the same as is charged a resident of the State of Virginia, namely, \$1.00 for a county, and \$3.00 for the State at large.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Peddlers.

RICHMOND, VA., *February 17, 1930.*

MR. P. S. FAHRNEY, *Clerk,*
Strasburg, Virginia.

DEAR SIR:

I am in receipt of your letter of the 15th instant, in which you state that trucks come to the town of Strasburg from West Virginia and Maryland loaded with green groceries and other goods, to sell, deliver and collect for the same from the merchants of your town. You say that they do so without paying a license and ask me to construe section 192, page 106 of the Tax Code of 1928, providing as to peddlers.

I have called up Honorable C. H. Morrisett, State Tax Commissioner, under whose special supervision the State Tax Code was prepared and under whose direction the tax laws are enforced, and stated the situation occurring in your town. In his opinion, and I agree with him, persons conducting such operations as you describe come within the definition of peddlers and should obtain a peddler's license.

Unless you have a special town ordinance, a violation of the peddler's license law is a matter which should be handled by the attorney for the Commonwealth of your county, and I am sure that Mr. Pence will very cheerfully advise you and do what is necessary to see that the State tax law is enforced.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSES—Right of clerks to make extra charges for.

RICHMOND, VA., *October 5, 1929.*

HON. L. W. TYUS, *Fiscal Secretary,*
Commission of Game and Inland Fisheries,
State Office Building,
Richmond, Virginia.

MY DEAR MR. TYUS:

I beg leave to acknowledge receipt of your letter of today, in which you state that complaint has reached the commission that the clerk of the circuit

court of Wise county is charging \$1.10 for a county license and \$3.20 for a State license (hunting license), and there is no doubt from exhibits filed in your office of the fact that an extra charge for hunting, trapping and fishing licenses is being made by the clerk of this county.

You then call my attention to section 3327 of the Code, subsections 8, 9, 10 and 11, as amended by the Acts of the General Assembly, 1928, page 556. This specifies the schedule of fees to be charged for licenses, namely,

County	\$ 1.00
State	3.00
Nonresident	15.50
Nonresident Fishing (minimum).....	2.50

You then desire to be advised whether or not the clerk has a right to make these extra charges, namely, ten cents and twenty cents for county and State licenses, in addition to the regular license fee fixed by law.

In reply I will state that I know of no provision in the law which authorizes a clerk to make this charge. As stated in your letter, the statute is specific as to what these charges shall be, and any other charge in addition thereto is without warrant in law.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

LICENSES—Town license on delivery trucks.

RICHMOND, VA., May 5, 1930.

HON. ROBERT S. KIME,
City Attorney,
Salem, Virginia.

DEAR SIR:

I beg to acknowledge receipt of your letter of April 28, in which you ask whether the town of Salem can enforce its existing license tax against a corporation dealing in gasoline in that town by selling or delivering the same in wagons, trucks or other vehicles on the streets, etc., of such town, when that corporation has paid its local license tax in the city of Roanoke wherein is located its place of business.

If the corporation maintains a definite place of business in Salem, or if it sells in Salem to consumers as opposed to licensed dealers or retailers, the town of Salem can enforce its license tax.

However, I am of the opinion that, if the corporation maintains no place of business in Salem and if it confines its sales to licensed dealers or retailers and makes no sale to the ultimate consumer, then the local license tax cannot be enforced.

The sixteenth paragraph of section 188 of the Tax Code seems to me to be conclusive of this question. It provides specifically that a concern, which has paid a State license tax and has paid to the city or town in which its place of business is located a license tax, can engage in such transac-

tions as are above described in other cities or towns without the payment of any additional tax to such cities or towns.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LUNACY COMMISSION—Residence of lunatic—Fees payable by.

RICHMOND, VA., *April 11, 1930.*

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.
Attention Mr. S. C. Day.

DEAR SIR:

I am in receipt of your letter of the 8th instant with papers in connection with the lunacy commission held in Staunton on one Arthur Williams attached, and I note that you call my attention to section 1021 of the Code, as amended by chapter 395, pages 1014-15 of the Acts of 1928, and ask if the State may pay the costs of the commission under the provisions of the statute quoted.

It seems that Williams has no fixed place of abode in the State of Virginia and that, as I wrote Taylor McCoy, Esquire, attorney at law, Staunton, Virginia, on the 27th of March, the commission papers show that, while Williams was born in Luray and had lived in Culpeper county, he had never voted, had been in jail in Pittsburgh and was in a hospital in Milwaukee in 1920.

These facts appearing in the commitment papers, it may be said that Williams' residence is not established in Virginia and, if not, the costs should be borne by the State, and I so advise.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILLER SCHOOL FUND—Construction of act relating to—Trustees of Miller School fund not to be interested directly or indirectly in investment of fund.

RICHMOND, VA., *July 11, 1929.*

HON. ALBERT S. BOLLING,
Charlottesville, Virginia.

DEAR MR. BOLLING:

Your letter under date of July 8 was duly received on the 9th and placed on my desk. There were many other matters of importance before me at the time and I did not notice from a cursory reading of your letter that you expected, or even requested, an answer by return mail, and I was surprised this morning to receive your telegram in which you asked that receipt of your letter be at least acknowledged.

The question asked in your letter and the illustrations you gave require a degree of consideration I have until now been unable to give.

I note your reference to clauses 3 and 5 of chapter 111 of the Acts of 1928, page 517. In looking into the matter I have also considered clause 6 of the same act, and I understand the law as to the purchase of securities for the Miller Manual Labor School of Albemarle differently from what I presume to be your construction.

I do not understand that the fiscal agent of the fund is charged with the purchase of securities or that he makes any manner of investments of the funds of the school. He is, in my opinion, only a custodian and I do not understand the expression in your letter, in which you ask whether or not a member of the board of trustees can use the fiscal agent as an outlet for the securities owned by a bank of which he is an official or director, or both, whether the transaction is at a loss or profit.

I am under the impression that under clause 6 the board of trustees is the agency charged with the investment of the funds belonging to the school and that its investments may be made "in safe and profitable stocks or securities, although not legal investments for fiduciaries."

Clause 3 provides for the appointment of trustees without qualification and, so far as that clause is concerned, it cannot be construed as including by its language an inhibition upon the part of a member of the board to be interested in the sale of stocks or securities to the school.

However, it is a well recognized principle of law that no person can at the same time be the seller and buyer of the same property, and I am of the decided opinion that a member of the board of trustees of the Miller School should not be interested, either directly or indirectly, in an institution which sells securities to the board of trustees.

From your letter I infer that the fiscal agent has been accustomed to buying stocks and securities. If this is true, its purchases are made upon behalf of the board as the board and not he is authorized to invest funds in stocks and securities.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

MISDEMEANORS—Cases may be tried by trial justice at county seat rather than in district in which offense was committed.

RICHMOND, VA., July 26, 1929.

HON. A. O. BARTON,
Justice of the Peace,
New Canton, Virginia.

DEAR SIR:

Acknowledgment is made of your letter of recent date, in which you request me to advise you whether one charged with a misdemeanor has a right to demand a trial of his case in the district in which the offense was committed when the county has a trial justice and the trial will be before that official.

From an examination of section 4988 of the Code, as amended, I am of the opinion that a misdemeanor case may be tried by the trial justice at the county

seat, "or at such other place or places as may be designated by the judge of the circuit court," even though the county seat or such other place is not within the district in which the offense was committed.

Section 4824 of the Code of 1919, which requires the warrant to be returnable in the magisterial district in which the offense was committed, in my opinion, has reference only to such cases as are to be tried by a justice of the peace and has no application to those counties that have a trial justice.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MUNICIPAL CORPORATIONS—Power to own and hold real estate outside of State—Right to own stock in public corporation.

RICHMOND, VA., July 6, 1929.

HON. FRANK W. DEFRIECE,
Attorney at Law,
Dominion National Bank Building,
Bristol, Virginia-Tennessee.

DEAR MR. DEFRIECE:

Acknowledgment is made of your letter of recent date, in which you request me to advise you whether or not, under its present charter, the city of Bristol, Virginia, may own jointly with the city of Bristol, Tennessee, the real estate and personal property in a free joint municipal public library to be located in the city of Bristol, Tennessee.

Section 4 of the charter of the city of Bristol (chapter 309 of the Acts of 1920, page 433) provides in part as follows:

"In addition to the powers mentioned in section two hereof, the said city of Bristol shall have the following powers:

* * * * *

"(5) To acquire by purchase, gift, devise, condemnation or otherwise, property, real or personal, or any estate or interest therein, within or without the city or State and for any of the purposes of the city; and to hold, improve, sell, lease, mortgage, pledge or otherwise dispose of the same or any part thereof, including any property now owned by the city."

This section unquestionably authorizes the city of Bristol to acquire and to hold property, real or personal, or any estate or interest therein, within or without the State, for any of the purposes of the city. The only questions that could possibly arise with reference to the right of the city to acquire and hold property in the city of Bristol, Tennessee, would be, first, whether the General Assembly possessed the power to grant such authority to the city of Bristol, and, second, whether the Constitution or laws of Tennessee would prohibit a Virginia municipality from so owning and holding property in Tennessee, if the first question be answered in the affirmative.

The general law with reference to the right of a State to acquire and to hold property in another state is thus stated in 36 Cyc. 870:

"A state cannot hold land in another state if the latter state objects thereto; but it may do so with the consent of such other state; and where a state has acquired land in another state with the tacit consent of the latter, its title can be divested only by some proceeding by that state in the nature of office found; it cannot be impeached by a private individual in the absence of any action by the state. When a state purchases land in another state from a private person it holds such land as a subject and not as a sovereign. So also where a state grants land within its territory to a sister state, reserving the right and title of government, sovereignty, and jurisdiction, the grantee state assumes merely the position of a private proprietor, and holds its estate subject to all the incidents of ordinary ownership."

See also *Dodge v. Briggs*, 27 Fed. 160, 170-172 (1886), and *Burbank, et al. v. Fay, et al.*, 65 N. Y. 57 (1875).

The law is well settled that the Legislature of the State is possessed of plenary legislative power, except where restrained by the Federal and State Constitutions. *Prison Ass'n v. Ashby*, 93 Va. 667 (1896).

So far as I have been able to find, there is nothing in the Constitution of Virginia which prohibits the General Assembly from conferring upon the city of Bristol the power to acquire and to hold property, both real and personal, located outside of the Commonwealth. The same is true of the Federal Constitution.

The ownership of property by a municipality outside of its limits and in other states is generally discussed in the article on "Municipal Corporations" in 43 C. J., section 2082, pages 1327-1328, where it is said:

"As a rule a municipal corporation has no power to purchase and hold land for a park, highway, or other municipal purpose beyond its territorial limits, unless the power has been specially conferred upon it by the legislature; and such power is not conferred by a general grant of power to purchase, hold, and convey such property, real and personal, as may be necessary for its public uses and purposes. The legislature, however, may confer such power, either in express terms or by necessary implication; and there are cases in which, without any special grant of such power, it has been implied as necessary in order to carry out powers granted, although land beyond its boundaries cannot be taken by a municipality by eminent domain if the power is not within a fair construction of the language of the statute. It has also been held that a city may, without special authority from the legislature, take a devise of land beyond its limits for a public park, and that it may do so in trust for a charitable use, although it may not, in the absence of such special authority, be able to exercise any police power over it."

In *Langdon, et al. v. City of Walla Walla, et al.*, 193 Pac. (Wash.) 1 (1920), the subject is considered at some length and the conclusion reached that, where a municipality has been authorized by the State creating it to acquire property outside of the State limits for public purposes, it may do so unless prohibited from so doing by the State in which the property is located.

The case of *Becker v. La Crosse*, 99 Wis. 414, 75 N. W. 84, 67 A. S. R. 874, 40 L. R. A. 829 (1898), in my opinion is not in conflict with this rule, as the court found in that case that the State of Wisconsin had never authorized the city of La Crosse to acquire and to hold the property in Minnesota on which the injury complained of occurred.

It is, therefore, my opinion that the General Assembly has the power to authorize a municipality located within this State to acquire and to hold property

located outside thereof for use in the performance of its governmental functions. I am further of the opinion that it has done so in the case of the city of Bristol (sub-section 5 of section 4 of chapter 309 of the Acts of 1920).

I am not in a position to advise you as to whether the Constitution and laws of the State of Tennessee permit the exercise of such authority by the city of Bristol in that State. Of course, if the acquisition of property in the State of Tennessee by the city of Bristol is permitted by the State, it would be owned and held only in the city's proprietary capacity, and the rights therein would be left to the protection of the courts of the State and of the United States. *Langdon, et al. v. City of Walla Walla, et al., supra.*

You further request me to advise you whether, in my opinion, section 185 of the Constitution of Virginia would prohibit the formation of a corporation in Virginia to be domesticated in the State of Tennessee, the stock of which would be wholly and equally owned by the cities of Bristol, Virginia, and Bristol, Tennessee, the object of the corporation being to provide a free municipal public library for the use of the citizens of both cities.

Section 185 of the Constitution of Virginia, so far as is applicable, provides as follows:

"Neither the credit of the State, nor of any county, city or town, shall be, directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation, nor shall the State, or any county, city, or town subscribe to or become interested in the stock or obligations of any company, association, or corporation, for the purpose of aiding in the construction or maintenance of its work; * * *."

The inhibitions of this section of the Constitution have to do with aid or assistance to a person, association, or corporation, or the subscription to stock of a company, association, or corporation, for the use and benefit of these persons or associations or for their purposes. It certainly cannot be construed as applicable to aid or assistance, or subscription to the stock of a company having for its purpose the erection of such a public enterprise as a city is authorized by law to establish. I do not, however, see any necessity for the formation of a corporation by the two cities of Bristol for the purpose of establishing and maintaining a public library. While the proposition to establish a joint library by cities of two states is unusual, I believe that it would be legal in the case of the two cities of Bristol, as they adjoin each other being only separated by the middle of a Main Street, and the citizens of each of the cities having easy access and it being available for every legitimate purpose to citizens of Bristol, Virginia, just as if it were situated within the corporate limits of that city.

Should the undertaking materialize, the property should be conveyed jointly to the cities of Bristol, Virginia, and Bristol, Tennessee, and the deed of conveyance could and should be made to cover the erection, management and control of the joint property.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARY PUBLIC—Time limit for qualification.

RICHMOND, VA., May 29, 1930.

HONORABLE JOHN GARLAND POLLARD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I beg leave to acknowledge receipt of your letter with reference to the appointment of Mr. M. J. Stockdon, of Hampton, as a notary public for the State of Virginia at large, which appointment was made on November 20, 1929.

Section 2850 of the Code provides for the appointment of notaries public. Among other things contained in this section, it is provided that the said notary, when appointed, shall qualify before the clerk within four months from the date of his commission, and if he fails to qualify within that period of time, the clerk shall return his commission to the Secretary of the Commonwealth.

Section 2850a, which was enacted by the Legislature of Virginia at its session in 1926, provides for the appointment of notaries public for the State at large. This section provides as follows:

"Any notary public so appointed may exercise the same powers and functions and shall be subject to the same restrictions and regulations as are prescribed by general law for notaries public for counties and cities, * * *."

This provision having reference, of course, to section 2850.

It, therefore, follows that Mr. Stockdon should have qualified within four months from the date of his appointment, but he having failed to do so, the clerk was entirely right when he returned his commission to the Secretary of the Commonwealth.

You are asked to extend the time for Mr. Stockdon to qualify. In my judgment, you have no authority to do this, because the Legislature has clearly and definitely fixed the period of time in which a notary public must qualify, and certainly you would have no right to change this. To do this, would invalidate all acknowledgments taken by Mr. Stockdon, which, perhaps, might mean considerable litigation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARY PUBLIC—Residence.

RICHMOND, VA., April 1, 1930.

MR. B. B. ROANE, *Clerk,*
Gloucester, Virginia.

DEAR MR. ROANE:

Honorable Peter Saunders, Secretary of the Commonwealth, has forwarded to me your letter of March 29, in which you state that a party has been appointed a notary public (I take it for Gloucester county) who does not reside in Gloucester, nor does he hold the commission as notary for the county in which he

resides. You ask for a construction of the law in reference to the residence of notaries public.

In my opinion, a notary public appointed for one county must be a resident of that county. Under section 2850 of the Code, the same person may be appointed for one or more counties, in which event he may qualify in any one of the counties for which he is appointed.

Where a person is appointed notary for the State at large, he should in his application for appointment state the court in which he desires to qualify and should qualify in the court designated in his application.

You state in your letter that the person to whom you refer resides in some other county than Gloucester and desires to qualify as a notary public for Gloucester county.

In my opinion, he cannot qualify in Gloucester county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Compatibility of.

RICHMOND, VA., July 9, 1929.

MR. O. BEALE KENT,
Wicomico Church, Virginia.

DEAR MR. KENT:

This is my first opportunity to reply to your letter of the 6th, due to the fact that I was out of the office on yesterday. In answer thereto, I call your attention to section 12 of chapter 499 of the Acts of 1928, which contains the following provision:

"No Federal, State or county officer, or any deputy of such officer and no supervisor shall be chosen or allowed to act as member of the county school board, * * *."

Unquestionably an oyster inspector is a State officer; it, therefore, follows he cannot be a member of a county school board.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Compatibility of.

RICHMOND, VA., July 23, 1929.

MR. A. O. BARTON,
*Justice of the Peace,
New Canton, Virginia.*

DEAR MR. BARTON:

I am in receipt of your letter of yesterday, in which you ask whether or not a justice of the peace may serve as an election clerk though not a candidate at that election.

Your question is covered by section 149 of the Code, which provides:

"No person shall act as a judge or clerk of any election who is a candidate for, * * * or who is the deputy of any person holding any office

or post of profit or emolument under the United States Government, or who is in the employment of such government, or holding any *elective office* of profit or trust in the State, or in any county, city or town thereof. * * *"
(Italics supplied.)

Clearly, a justice of the peace, holding an elective office in a county, is ineligible to serve as clerk of an election.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

OFFICES—Compatibility of—Deputy commissioner of revenue may take school census.

RICHMOND, VA., March 15, 1930.

MR. LONNIE D. BENNETT,
Commissioner of the Revenue,
Chatham, Virginia.

DEAR MR. BENNETT:

I am in receipt of your letter of March 7, in which you ask whether or not a deputy commissioner of the revenue may take the list of personal property and at the same time take a school census.

In my opinion, there is no provision of law prohibiting an officer such as a deputy commissioner of the revenue from taking a school census.

Under the provisions of section 2702, certain officers are prohibited from holding more than one office, but this provision, in my opinion, does not apply to such a duty as that of a person selected to take a school census.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

OFFICES—Incompatibility of.

RICHMOND, VA., December 19, 1929.

HON. CHARLES M. HUTCHESON, *Secretary and Treasurer,*
Town of Charlotte Court House,
Charlotte Court House, Virginia.

MY DEAR MR. HUTCHESON:

I am in receipt of your letter of December 17, 1929, in which you ask to be informed as to whether county officers, such as Commonwealth's attorney, treasurer, clerk or members of the board of supervisors, are eligible to the office of town councilman of the town of Charlotte Court House.

Your attention is called to section 2702 of the Code in which it is provided:

"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,

* * * and a commissioner of the revenue of a county may also be commissioner of the revenue of a town located in said county, * * * 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."

In my opinion, none of the officers mentioned in your letter is eligible for election or appointment as a member of the town council of Charlotte Court House. Should any such officer accept such election or appointment, the office he already holds would be vacated.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Member of General Assembly eligible to appointment as commissioner of insurance and banking.

RICHMOND, VA., *December 3, 1929.*

HON. GEORGE A. BOWLES,
Tabscott, Virginia.

MY DEAR SIR:

Acknowledgment is made of your request of this morning that I advise you whether a member of the General Assembly is eligible for appointment to the office of Commissioner of Insurance and Banking.

Section 45 of the Constitution, as amended June 19, 1928, provides in part as follows:

"* * * no member during the term for which he shall have been elected shall be elected by the General Assembly to any civil office of profit in the State."

Prior to its amendment, this section provided as follows:

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

The effect of the amendment to the above section was to make members of the General Assembly eligible to all offices, except those filled by an election by the General Assembly. The Commissioner of Insurance and Banking holds an office that is filled by appointment by the State Corporation Commission (chapter 33, Acts of 1927, section 16 (b), page 115).

It is, therefore, my opinion that a member of the General Assembly is eligible for appointment by the State Corporation Commission to the office of Commissioner of Insurance and Banking.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

OFFICES—Secretary of Commonwealth office not abolished.

RICHMOND, VA., *December 9, 1929.*

*His Excellency, HARRY F. BYRD,
Governor of Virginia,
Richmond, Virginia.*

MY DEAR GOVERNOR:

Acknowledgment is made of your letter of December 5, 1929, in which you say:

"I understand that a new act will be necessary to abolish the office of the Secretary of the Commonwealth. Could this be placed in the budget?"

It is true that the General Assembly attempted to abolish this office in 1927 (section 3, chapter 33, Acts of 1927). Due to the wording of section 80 of the Constitution, as amended, however, the General Assembly of 1927 was without authority, in my opinion, to pass an act providing for the future abolition of the office contingent upon the amendment to the Constitution.

I am, of course, familiar with the rule that permits a legislative body to enact valid laws in anticipation of a constitutional amendment, to become effective, of course, only in the event of the amendment (opinions of the Attorney General, 1920, pages 53, 54, and authorities there cited). This rule does not apply where the anticipated amendment to the Constitution carries with it a prohibition upon the General Assembly to act before the time fixed in the amendment.

Section 3 of chapter 33 of the Acts of 1927 was evidently drawn with reference to the proposed amendment to section 80 of the Constitution contained in chapter 271 of the Acts of 1926. The special session of 1927, however, abandoned the proposal of 1926 and incorporated in chapter 32 of the Acts of 1927, the joint resolution proposing amendments to the Constitution of Virginia, a new proposal as to section 80, to which was added this paragraph, not found in the proposed amendment contained in chapter 271 of the Acts of 1926:

"On and after the first day of February, nineteen hundred and thirty, the General Assembly may abolish the office of Secretary of the Commonwealth."

This, in my opinion, is a clear limitation on the General Assembly prohibiting it from abolishing the office of Secretary of the Commonwealth prior to February 1, 1930, and for that reason I am of the opinion that so much of section 3 of chapter 33 of the Acts of 1927 as attempted to abolish this office is invalid.

Answering your specific inquiry as to whether this office could be abolished by a section of the budget or appropriation bill, I am of the opinion that it should not be done in this way. The office of Secretary of the Commonwealth is a constitutional office that has no connection with the appropriation bill. Section 52 of the Constitution provides in part:

"No law shall embrace more than one object which shall be expressed in its title; * * *."

While it is true that the Court of Appeals of this State has been extremely liberal in its construction of this section of the Constitution, nevertheless, there

are limits which it imposes, beyond which the General Assembly is not permitted to go.

However, I am of the opinion that there is no relation between the object of the general appropriation bill and the abolition of a constitutional office.

For that reason, I conclude that the office of the Secretary of the Commonwealth cannot be validly abolished by a section in the general appropriation or budget bill.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

OUSTER LAW—School board member.

RICHMOND, VA., *March 24, 1930.*

FRANK MARSHALL, ESQ., *Chairman,*
Pittsylvania County Electoral Board,
Chatham, Virginia.

DEAR MR. MARSHALL:

Acknowledgment is made of your letter of March 22, 1930, in which you say:

"If charges are brought against a member of the County School Board, would it be the duty of the School Electoral Board to hear and act on the charge, or would it come before the judge of the circuit court of the county in which the party is located? Any information you can give me will be appreciated."

So far as I am able to find from an examination of the School Code, no provision is therein made for the removal of a member of the county school board. Therefore, procedure for his removal would have to be under the general law, as it would be in the case for the removal of any other officer. I call your attention to sections 2705 and 2706 of the Code.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

OYSTER LAW—Assignment of oyster grounds.

RICHMOND, VA., *July 30, 1929.*

HON. J. BOYD SEARS,
Attorney for the Commonwealth,
Mathews, Virginia.

MY DEAR SIR:

I beg leave to acknowledge receipt of your letter of July 29, 1929, which is as follows:

"Will you please refer to section 3223 of the Code as to 'assignment of planting ground to riparian owners,' and tell me whether joint owners of an undivided tract of land, say 25 acres, would be entitled to more than ONE-HALF ACRE of oyster ground. If two parties own the tract, would each be entitled to a half-acre?"

Of course, you are thoroughly familiar with the provisions contained in section 3223 of the Oyster Law. As a matter of convenience, I quote that part of the section which is applicable to your question:

"Any owner of land having a water front thereon suitable for planting oysters, who has not had as much as one-half acre of ground already assigned him on said front, or whose lease has terminated and is not to be renewed, may make application for planting ground to the inspector for the district in which the land lies, who shall assign to him such ground, wherever such owner may designate in front of his land, not exceeding in area one-half acre, and in measurement to be not less than one-fourth of an acre at its narrowest width, the same to be surveyed, platted, marked, assigned and recorded, in all respects, as provided for assignments to persons in the next succeeding section."

I am of the opinion that joint owners, regardless of the number of owners of a tract of land, having a water front thereon suitable for planting oysters, are entitled to have only one-half acre assigned them in accordance with the provisions of the statute above quoted. The right of this one-half acre is due to the fact that the land has a water front and accrues to the land by virtue of its location rather than, to the owners of the land. When the land is subdivided, and each owner acquires a fee simple interest to his share therein, then I think each owner would have the right to have one-half acre assigned to him.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

OYSTER LAWS—Time allowed to remove oysters.

RICHMOND, VA., June 5, 1930.

HON. ALLAN D. JONES, *Counsel,*
Commission of Fisheries,
Law Building,
Newport News, Virginia.

My DEAR SIR:

I beg to acknowledge receipt of your letter of May 31 with its enclosures.

It appears by order of the Commission entered on February 2, 1929, that T. J. Blake and others, oyster planters, were granted two years in which to remove oysters from ground under lease which ground was found to be within the Baylor survey. It further appears that by reason of injunction proceedings and other matters these planters were prevented from operating under the grant until October 1, 1929, and that the Commission now desires my opinion as to its authority, under section 3233 of the Code of Virginia, to enter at this time an order extending to these planters the right to remove oysters until October 1, 1931.

Section 3233 of the Code, as amended by the Acts of 1926, page 97, provides that under certain circumstances any holder, to whom has been assigned any portion of the natural oyster beds, rocks or shoals, "shall be allowed two years, which may be increased by the Commission of Fisheries, in their discretion (and duly advertised), within which to remove his planted oysters or shells from the said ground."

I am of the opinion that such a holder is entitled to the full period of two years within which he may remove his planted oysters or shells and that, if he be stopped by injunction or otherwise from exercising this right, the Commission ought to amend its order and grant to him an extension of time equivalent to the period within which he was prevented from so doing.

I am further of the opinion that, although the Commission may have in the first instance granted to any such holder a period of two years, it is empowered to later extend that period if, in its discretion, it is advisable to do so.

Very truly yours,

JNO. R. SAUNDERS,

Attorney General.

PAWNBROKER—Limit on interest—Violation of act a misdemeanor—Punishment.

RICHMOND, VA., *February 13, 1930.*

MR. H. ALBERT TEUNIS,
53 Baer Avenue,
Cherrydale, Virginia.

MY DEAR SIR:

I am in receipt of your letter of yesterday in further reference to your inquiry as to the rate of interest a pawnbroker may charge on small loans, and I note what you have to say about the case you have in mind.

The present law upon the subject is contained in chapter 152, page 563 of the Acts of the General Assembly of 1928.

By this act it is lawful to charge three and one-half per centum per month interest, but "interest shall not be payable in advance or compounded, and shall be computed on unpaid daily balances." No charges of any other character, such as brokerage, commission, or notary fees, can be charged. The only other charge allowable is for the recordation of the lien should the lien given to secure the loan be recorded.

You say \$105.00 was borrowed September 6, 1929, and that the pawnbroker now demands a total of \$139.00. Calculating as of February 6, 1930, three and one-half per cent per month for five months is seventeen and one-half per cent, and seventeen and one-half per cent of \$105.00 is \$18.37½. The interest added to the principal makes a total of \$123.37½.

Assuming that your statement that the borrower did not receive the full amount of the loan made to him and that the pawnbroker demands \$139.00 be true, the pawnbroker is guilty of a misdemeanor punishable by a fine of not more than \$500.00, or by imprisonment of not more than six months, or by both such fine and imprisonment. Under chapter 152, page 563, of the Acts of 1928, a party guilty of a violation of that act is punishable under section 18 of chapter 300 of the Acts of 1922.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PEDDLERS—Peddling by trucks prohibited.

RICHMOND, VA., May 23, 1930.

MR. W. P. JOHNSON, *Secretary,*
Virginia Wholesale Grocers Association,
304 Broadway National Bank Building,
Richmond, Virginia.

DEAR MR. JOHNSON:

I am in receipt of your letter of the 17th instant, in which you write:

"Would you be kind enough to give us an opinion as to whether or not trucks peddling goods from other states, or peddling goods within the State of Virginia, making deliveries at time of sale, can do so without taking out a peddler's license?"

"In one section of the State they are bothered considerably with this kind of business and are anxious to make a test case, but do not want to go to the expense of it without first knowing that there is a law covering such transactions."

I am of the opinion that the hauling of goods, whether of foreign or domestic make, where delivery is made at the time of sale, with certain specified exceptions, is illegal.

You say that in one section of the State there is considerable hauling of the character mentioned in the first paragraph of your letter. In such case your organization or any other person or organization interested should confer with the attorney for the Commonwealth of the locality, who, I am sure, will be pleased to advise and will take the necessary steps to protect licensed business from illegal competition.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PENSIONS—Confederate soldiers and widows—Solely for personal benefit of pensioner.

RICHMOND, VA., June 20, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

Attention: Mr. John H. Johnson, Pension Clerk.

MY DEAR SIR:

I beg to acknowledge receipt of your letter of June 11, in which you submit the following question:

"The General Assembly of 1930 included in the appropriation bill a provision whereby pensions of Confederate soldiers and widows have been increased. In this same provision respecting pensions the Comptroller is required to pay pensions monthly. The appropriation bill was not approved until late in March, but in such bill increase of pensions was effective from March 1 as all appropriations were. On March 1 there was due pensioners a regular payment which we made on the quarterly basis of the old law to apply as a credit on the new monthly total for the three months begin-

ning March 1 up to June 1, but then not operative. On June 1 the Comptroller put into effect the monthly payment and paid for the month of June in advance, added to which checks for June was the balance due each pensioner under the new law for the past three months.

"The question to consider is, are pensioners who died before June 1 entitled to the difference between the check paid March 1, on the quarter in advance, and the sum for the three months' payment under the new increase? For example: widows' pensions under the increase are \$10.00 per month and they were due, therefore, \$30.00 for the quarter beginning March 1 up to June 1, but were paid \$25.00 March 1 on this \$30.00 account, the difference, in these cases being \$5.00. If the pensioner died within the three months, is her estate entitled to this balance or difference of \$5.00?"

A pension paid by the State is intended solely for the personal benefit and use of the pensioner and, in my judgment, it was never contemplated by the Legislature that any part of the pension should be paid to the estate of such pensioner.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PENSIONS—Eligibility of public school teachers.

RICHMOND, VA., June 14, 1930.

MR. A. M. GENTRY,

Galax, Virginia.

MY DEAR SIR:

I am in receipt of your letter of the 6th instant, in which you inform me that you have been a teacher in the public schools of Virginia for twenty years and have made application for a pension, but that, because of the fact that your application was recent and that you have not taught for five years since 1908, your application was refused.

The law covering your case is found in section 796 of the School Code of Virginia, which was passed at the 1928 session of the Virginia Legislature, the section providing as follows:

"* * * And after January 1, 1914, no person shall be placed on the pension list unless such person shall have taught at least five sessions since July 1, 1908, * * *."

However, your case may possibly be governed by the provisions of section 797, which provides:

"Any person who would have been entitled to a pension under this chapter, under either Class 'A' or Class 'B,' had it been in force prior to July 1, 1908, and subsequent to July 1, 1902, and who retired, either voluntarily or on account of physical disability from teaching in the public schools prior to July 1, 1908, and subsequent to July 1, 1902, and who is otherwise qualified under the provisions of this chapter, shall receive, under this chapter a pension equal to one-fourth of the average salary earned by such person in teaching a public school during the last five years of his service, which shall be paid as other pensions are paid under this chapter,

and all other provisions affecting other pensioners under this chapter shall apply to those pensioned under this section."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

PENSIONS—Retired school teacher entitled to Confederate pension.

RICHMOND, VA., June 6, 1930.

MRS. JAMES CLAIBORNE,
*State Library Building,
Richmond, Virginia.*

MY DEAR MRS. CLAIBORNE:

I beg leave to acknowledge receipt of your letter of June the 5th, in which you say:

"I respectfully request a ruling from you in the case described as follows: I know a Confederate widow who desires to make application for pension. This widow was formerly a school teacher, and is drawing a small teacher's pension, amounting to \$300.00 per annum. Is this lady entitled to a Confederate pension as the widow of a Confederate soldier, under section 5, first paragraph, pension law, page 7, copy of which is enclosed herewith?

"I also invite your attention to the amendment of the pension law by the last General Assembly, whereby an applicant for pension may receive \$1,000.00 per year, and then not be barred from a Confederate pension.

"The case depends upon your interpretation of that clause of the law, namely, 'or who is in receipt of a pension from this State.' While this lady is drawing a teacher's pension, that fund for this class of pensioners is provided jointly by the teachers and the State."

I have carefully examined paragraph 1, section 5, which is found on page 7 of the Pension Law, particularly that portion of the section which refers to a pension received "from this State or any other State," and I am of the opinion that a retired public free school teacher who receives compensation from the retired teachers fund, which fund is created by deduction from the salaries paid the teachers by the State, does not receive a "pension" within the meaning of the State Pension Law.

My conclusion, therefore, is that if the widow relative to whom you write can meet the other provisions of the Pension Law, the fact that she receives \$300.00 per annum from the retired teachers fund does not prohibit her from receiving a pension as a widow of a Confederate soldier.

Yours very sincerely,

JNO. R. SAUNDERS,

Attorney General.

PISTOL LAW—Crippled Children's Hospital fund payments from.

RICHMOND, VA., July 26, 1929.

DR. J. B. WOODSON,
Lowesville, Virginia.

MY DEAR DR. WOODSON:

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

"At a meeting of the Board of the State's Diseased and Crippled Children's Fund it was voted to appropriate five thousand dollars to the University of Virginia and, as chairman of the board, I voted along with the other members for this to be done, but since reading the law very carefully (chapter 158, Acts 1926, page 285, as amended by the appropriation bill, Acts 1928, pages 423-4), I am of the opinion that this money cannot be spent for any other purpose except to build a hospital and to maintain such hospital after it is built and such hospital be for the specific purpose as set forth in the act, and before authorizing the appropriation of this five thousand dollars, I shall be glad for you to give me your opinion on this matter."

I have carefully examined chapter 158 of the Acts of 1926 and the amendments thereto found in the appropriation bill for 1928, pages 423-4, and, after carefully considering the same, I think that you are correct in concluding that the money in this fund cannot be expended for the purpose suggested in your letter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

POLICE JUSTICE—Authority to suspend sentence in prohibition cases.

RICHMOND, VA., July 16, 1929.

MR. T. W. ROSS, *Police Justice.*
Gordonsville, Virginia

DEAR SIR:

I am in receipt of both of your letters of the 9th and 13th instants.

In that of the 9th you ask whether or not the sentence of a person convicted by you as a police justice for the transportation of ardent spirits less than a quart may be suspended.

I take it that you refer to a trial by you as a justice of the town of Gordonsville and that he is charged with a violation of a town ordinance.

A justice of the peace is not authorized in any case to suspend the execution of judgment. The provision as to suspension of sentence for a violation of town ordinances by mayors, police justices, or other persons having jurisdiction to try offenses against such ordinances, is contained in section 37 of the State prohibition law. The official trying a town ordinance case is prohibited from suspending sentence in all cases except where the possession of ardent spirits does not exceed one pint.

I should add that I am of the opinion that a mayor or police justice trying for a town ordinance offense similar to sections 17 and 18 of the prohibition law can, upon a plea of guilty or the conviction of the accused, suspend a jail

sentence. In other words, though ordinarily a person must be sentenced to confinement in lieu of the payment of a fine, I do not think that jail sentence is compulsory when tried under ordinances similar to sections 17 and 18.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

REFORMATORIES—Authority to send wards to State Farm for defective misdemeanants.

RICHMOND, VA., *October 21, 1929.*

MR. JAMES A. GARLAND,

760 N. Union Street,

Danville, Virginia.

MY DEAR MR. GARLAND:

Acknowledgment is made of your letter of October 18, 1929, in which you request me to advise you what right the authorities of the State Reformatory for Boys have to send a boy 17 years of age from that institution to the State Farm for Defective Misdemeanants.

The authority for this is found in section 5058(10) of the 1926 supplement to the Virginia Code of 1924, also, in the Acts of 1926, pages 399-400. It provides that the governing boards of the reformatories may, when it appears to them that a ward "is dangerous to the morals of the school because of his behavior and advanced age," transfer such ward to the State Farm for Defective Misdemeanants, provided the consent of the superintendent of such farm is obtained.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

REPEAL OF OLD LAWS—Commission of Game and Inland Fisheries.

RICHMOND, VA., *May 20, 1930.*

HON. L. W. TYUS, *Fiscal Secretary,*

Commission of Game and Inland Fisheries,

106 State Office Building,

Richmond, Virginia.

DEAR SIR:

I beg to acknowledge receipt of your letter of May 16, in which you submit the following question:

"Under the provisions of the new Game, Inland Fish and Dog Code, which goes into effect on July 1, section 35 provides that 'Unless and until otherwise provided by a regulation of the Commission, after a public hearing in accordance with the provisions of this act, it shall be unlawful for any person to * * * hunt, trap, take, capture, kill, attempt to take, capture or kill, possess * * * any wild bird or animal or the carcass of any part thereof, except as specifically permitted by this act and only by the manner or means and within the number stated * * *.'

"We would like to have you advise us if the section above quoted does not repeal the following local acts:

"Chapter 308, Acts of 1928, page 848;
 Chapter 306, Acts of 1928, page 847;
 Chapter 75, Acts of 1927, page 172;
 Chapter 133, Acts of 1928, page 543;
 Chapter 138, Acts of 1928, page 546;
 Chapter 317, Acts of 1924, page 477;
 Chapter 193, Acts of 1928, page 628;
 Chapter 497, Acts of 1924, page 99;
 Chapter 497, Acts of 1926, page 846."

In my opinion, the special acts enumerated will not be repealed by the Game, Inland Fish and Dog Code of Virginia, adopted at the last session of the General Assembly.

There was also adopted at the last session of the General Assembly an act repealing "all special laws of local application relating to game, inland fish and dogs passed by the General Assembly of Virginia which adjourned March 19, 1920, and all such laws passed prior thereto; and certain other laws of local application relating thereto." This last mentioned act enumerates and specifically repeals a large number of local laws adopted in 1922, 1923, 1924, 1926, 1927 and 1928. In that enumeration none of the special acts to which you refer is included. Were the language of the Game, Inland Fish and Dog Code intended to repeal local laws, a specific act repealing such local laws would be necessary.

It, therefore, appears that the effect of the legislation referred to will be to repeal only those local laws to which the repealing act has reference.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**SCHOOLS—Board of supervisors cannot make a cash appropriation—
School board cannot borrow funds.**

RICHMOND, VA., February 21, 1930.

MR. JOHN H. CROWGEY,
*Superintendent of Schools,
 Wytheville, Virginia.*

DEAR MR. CROWGEY:

I am in receipt of your letter of the 18th instant, in which you ask to be advised as to whether your county board of supervisors is authorized to make a cash appropriation to the schools of the county when the school levy is at the limit and when the board would have to borrow money to make the appropriation.

I am of the opinion that the board of supervisors has no such authority.

Under the provisions of section 698, the board of supervisors is authorized to make an appropriation from "any funds available." Other provisions of law limit expenditures for current years to current levies.

You also ask to be advised as to whether the school board can borrow funds to finish out a school session after all available funds have been spent.

In my opinion, they cannot.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Board of supervisors may make cash appropriation.RICHMOND, VA., *February 27, 1930.*

MR. JOHN H. CROWGEY,
Division Superintendent of Schools,
Wytheville, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, in which you write:

- "We would like to have you advise us whether or not the county board
- of supervisors can make the county school board a cash appropriation over
and above the funds derived from the maximum school levy. It appears
that some think a cash appropriation cannot be made if the school levy
is set at the limit. Personally, I cannot see how one can arrive at that
interpretation of the section pertaining to this matter."

Under the provisions of section 698 of the Virginia School Code, the board of supervisors make whatever levy they deem sufficient for the operation of the county schools. In addition to the levy, the supervisors of the county or the council of the city may appropriate "from any funds available" such sums as in the judgment of the board or council are necessary or expedient for the "establishment, maintenance and operation of the public schools of such county or city." The levy must be within the limitations contained in this section.

In my opinion, even though the school levy limit has been reached, the board of supervisors of your county are authorized to appropriate additional amounts out of funds on hand. The board cannot borrow money or otherwise incur indebtedness.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—County school boards—Consolidation of schools and transportation of pupils left to their judgment and discretion.RICHMOND, VA., *September 24, 1929.*

HON. F. B. WATSON,
Chatham, Virginia.

MY DEAR MR. WATSON:

You have just stated to me that it is the purpose of the county school board of Pittsylvania county, in connection with the conduct and management of schools in that county, to offer seventh grade work at Sandy Level School, and transport children in the high school grades to the Climax Agricultural High School. You then desire to be advised whether or not the county school board has such authority, and whether or not, if it so acts, it is a case which is appealable under the provisions of section 667 of the School Code.

In this connection I beg leave to call your attention to section 18 of the Regulations of the State Board of Education, which reads as follows:

"School boards are required to furnish to all eligible children facilities for elementary training either through schools conveniently located, or through the transportation of pupils to consolidated schools. The consolida-

tion of schools and the transportation of pupils under the county unit act is left to the *judgment* and *discretion* of the county school board, but no elementary school of legal attendance shall be closed unless means are provided at public expense for transporting the pupils to another school."

It is my opinion that the county school board has a perfect right to do what has been done, it being a matter left to the discretion and judgment of the board.

Section 667 of the Code (School Code) provides in part as follows:

"Any five interested heads of families, residents of the county, who may feel themselves aggrieved by the action of the county school board, may, within thirty days after such action, state their complaint, in writing, to the division superintendent of schools who, if he cannot within ten days after the receipt of the said complaint, satisfactorily adjust the same, shall, within five days thereafter, at the request of any party in interest, grant an appeal to the circuit court of the county, or to the judge thereof in vacation. The proceedings on such an appeal shall be informal, and no pleading shall be required, other than the complaint hereinabove provided for. The court, or judge in vacation, shall decide finally all questions at issue."

It is my opinion that if your board takes the contemplated action that any five interested heads of families, residents of your county, who feel themselves aggrieved by this action would have a right to appeal the matter under the above quoted section of the Code.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—County school budget—Board of supervisors budget publication.

RICHMOND, VA., *February 4, 1930.*

MR. JOHN H. CROWGEY,
Division Superintendent of Schools,
Wytheville, Virginia.

DEAR MR. CROWGEY:

I am in receipt of your letter of the 31st ultimo, and note what you have to say concerning the question of the publication in tact of the budget furnished the board of supervisors of your county by your school board.

Your budget and that of the board of supervisors are two entirely separate and distinct things.

Under the provisions of section 657, the division superintendent of schools annually prepares and furnishes the board of supervisors estimates of the money needed for the next scholastic year. On the basis of these estimates, the division superintendent requests the board of supervisors to levy a tax to return the net amount necessary for the operation of the schools, or, in lieu thereof, make a cash appropriation from the general county levy.

Should the board of supervisors refuse to include in their budget any part of the amount requested, an election may be asked for by fifty members of the county qualified to vote. There is no provision in the school laws for publishing the budget as asked for by the school board.

In my opinion, the board of supervisors considers the school budget, increases or diminishes the amount asked for, and includes in its budget as a part thereof, which it must prepare and publish under the provisions of chapter 37 of the Acts of 1927, a brief synopsis of the budget including, of course, provisions for the county schools.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—County may borrow money to build school house.

RICHMOND, VA., May 16, 1930.

MR. GUS E. MITCHELL,

Nathalie, Virginia.

MY DEAR MR. MITCHELL:

I beg leave to acknowledge receipt of your letter of May 14th in reply to mine of May the 10th.

In your former letter you stated that your county school board had passed a resolution requesting a loan of \$4,000 from the Literary Fund, \$2,500 of which was to be used in putting an addition on the Rosa High School; that the clerk of your board wrote you that the board was acting beyond its authority and this appropriation or loan must be chargeable to the magisterial district in which the school was located.

I call your attention to section 673 of the Virginia School Code, which provides:

"Whenever it shall be necessary for a county to erect a school house, it shall be lawful for the school board of such county to contract a loan for said purpose, on the credit of the county, * * *."

This section further provides that where an election is held in a school district for the purpose of erecting a school building, then the tax which is levied to take care of the interest on said bonds, and the sinking fund to redeem the same, shall be levied in the school district only.

I am of the opinion that your board was acting within the scope of its authority and in full compliance with the law. Applications for loans from the Literary Fund are always made by the county school board, and not by one of the district school boards.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Deed conveying land to school board.

RICHMOND, VA., August 20, 1929.

MR. W. A. CHAMBERS, *President,*
The Williams Slate Company,
Arvonnia, Virginia.

In re: School Deed.

MY DEAR MR. CHAMBERS:

I am in receipt of your letter of the 17th instant, in which you write:

"I am enclosing herewith a deed to some land that was purchased by private subscription by citizens of Arvonnia, Virginia, for additional land for school purposes at Arvonnia, Virginia. This land was adjoining the land already owned by the school board on which the building stood.

"The land was purchased and deeded direct to the school board with the understanding that the school board would make a deed as the enclosed, which they did immediately after the first deed was made. You will note this deed was made while the districts were separate and three trustees to a district.

"I would be glad to have your opinion as to the legality of this deed also if a school building could be erected on this land under the conditions set out in the deed.

"If the deed was or is not proper, what steps would be necessary to get the matter straight and further if the school board should endeavor to sell this land owing to the fact that the deed was not legal, could they be required to pay the donators the amount they paid for the land?"

An examination of the deed recites the fact that the conveyance to the school board was made on the 17th day of January, 1922, while the date of the deed enclosed is the ----- day of June, 1922. However, you write that it was the understanding that the deed from the school board should have been made simultaneously with the deed to the school board and that the conveyance to the school board was with the understanding that it was to be held as provided for in the deed from the school board to A. H. Williams and others, trustees.

This being so, it is my opinion that the land conveyed to the school board would be held by the school board upon the terms agreed upon and that, in case of any question, a court would reform the deed to the board to comply with the agreement between the private donors and the board.

The best way would have been for the deed to have incorporated the terms upon which the conveyance was made to the board. This having been done, there could have been no mistake or misunderstanding. The title to the land having once vested in the district board, it became vested by sections 676 and 677 in the county school board. I do not understand that the district board is authorized to make the conveyance contained in the deed of June, 1922. At least, there is no specific provision of law by which they can convey property away under the circumstances in connection with this deed.

It would certainly be very unwise to erect a public school building upon land held as you say this land is held, as, if at any time the school board determined to discontinue teaching, it would have lost the value of the land and buildings and would be out the entire amount spent upon the buildings.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Loans for erection of public school buildings contracted only by school board.RICHMOND, VA., *June 30, 1930.*

MR. JOSEPH F. WISMAN, *Supervisor,*
Madison Magisterial District
Edinburg, Virginia.

MY DEAR MR. WISMAN:

In reply to your two letters of recent date, I beg to advise that a loan for the purpose of erecting a public school building can be lawfully contracted only by the school board (Acts 1928, page 210). I further beg to advise that, pursuant thereto, the procedure set forth in sections 2738, 2739, 2740 and 2741 of the Code must be complied with and that the first of these sections requires that the loan shall not be contracted for, unless the same be approved by the judge of the circuit court and by the qualified voters at an election held for that purpose.

The above is written without reference to loans from the Literary Fund.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Local taxation for school purposes.RICHMOND, VA., *August 15, 1929.*

W. A. CHAMBERS, ESQ., *President,*
The Williams Slate Co., Inc.,
Arvonla, Virginia.

MY DEAR MR. CHAMBERS:

Acknowledgment is made of your letter of August 14, 1929, in which you say:

"Under the new law for schools being a county unit, I desire to know if a levy can be laid by supervisors on one district for erecting a building in a certain district. This would be for a literary fund loan."

Section 653 of the Code (School Code) provides in part:

"For the purpose of representation and the levying of a tax sufficient to pay the present existing school district indebtedness and for future capital expenditures only, each magisterial district shall constitute a separate school district, but for all other school purposes, taxation, management, control and operation, the county shall be the unit, and the school affairs of such county managed as if the county constituted but one school district. * * *"

Section 698 of the Code (School Code) provides in part:

"* * * For capital expenditures and for the payment of existing district indebtedness, the board may levy a district tax in the magisterial district in which the money is to be spent, or the debts exist, not exceeding twenty-five cents on the one hundred dollars of the assessed value of the property in the magisterial district in any one year, to be expended for the purpose for which the tax is laid, but no other district tax for schools for any purpose other than herein expressly authorized shall be laid. * * *"

I have recently had to conclude, however, in view of provisions of section 673 of the Code (School Code), that, where a district school bond issue is had pursuant to the authority of that section and sections 2738-2741 of the Code, that the district tax levied for the purpose of providing the necessary interest and sinking fund may exceed the amount of twenty-five cents, if necessary to meet the requirements of the last cited sections, as to the sinking fund and interest. In view of section 644 of the Code, I am also of the opinion that the twenty-five cents limitation contained in section 698 of the Code would not be applicable to a loan from the literary fund where a larger levy is required in order to pay the interest and to repay the loan.

While I think that the above quoted language of section 698 of the Code is broad enough to authorize a district levy not in excess of twenty-five cents for literary fund debts, I am frank to say that section 644 of the Code appears to contemplate a general county levy for the purpose of meeting literary fund obligations.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Pupils not required to pay tolls, regardless of whether or not they travel in school bus.

RICHMOND, VA., *October 31, 1929.*

HON. R. MOORE WILLIAMS,
Superintendent of Schools,
Suffolk, Virginia.

MY DEAR MR. WILLIAMS:

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

"The Norfolk-Portsmouth Bridge Corporation claims that, as there is a bus provided by the Nansemond county school board for the transportation of pupils from Driver to Chuckatuck and return, all pupils should ride in this bus, and that section 694 of the Code cannot be construed to pass them if they are riding in any vehicle other than such bus. My contention is that, according to section 694, any vehicle which is taking a pupil to the Chuckatuck School over the Norfolk-Portsmouth Corporation bridge is entitled to be passed.

"Please let me have this ruling just as soon as you can, as they are charging this particular girl, which I spoke to you about yesterday, thirty-five cents each way per day."

I owe you an apology for my delay in answering your letter, but I have been so pressed with work in connection with the preparation of the Commonwealth cases for the approaching term of the Court of Appeals I have been unable to attend to any correspondence until today.

Section 694 of the Code (School Code) provides in part as follows:

"It shall hereafter be unlawful for any county, road district, municipality, corporation, public or private, or any person to collect toll for the use of any of the roads or highways or bridges in this State by any pedestrian or any horse or horse-drawn vehicle, or motor vehicle, when such pedestrian is a pupil going to or returning from immediate attendance upon

any school, college or educational institution in this State, or when such horse is being ridden by, or such vehicle is carrying any pupil or student to or from immediate attendance upon any school, college, or other educational institution in this State."

The language of this section is not limited to school buses provided for the transportation of pupils to and from school, but it applies to pedestrians and all vehicles, when such vehicles are used in carrying any pupil to or from immediate attendance upon any school, etc.

You are, therefore, entirely correct in your contention that any vehicle, which is carrying a pupil to a school, is entitled to pass over the Norfolk-Portsmouth Corporation bridge without the payment of toll. If any toll has been collected by the corporation in such a case, it was collected in violation of section 694 of the Code (School Code) and should be refunded.

Sincerely yours,

LEON M. BAZILE,
Assistant Attorney General.

SCHOOLS—School bonds—Levy for interest on sinking fund—Amount of.

RICHMOND, VA., July 25, 1929.

HON. HARRIS HART,
*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR MR. HART:

Acknowledgment is made of your letter of July 22, 1929, with which you enclose a letter written by you to Mr. George P. Cridlin, attorney at law, Jonesville, Virginia, dated July 23, 1929, and a letter from Mr. Cridlin to you under date of July 19, 1929, with reference to the issuance of \$65,000 worth of district school bonds by Jonesville District, Lee county, Virginia. In his letter to you Mr. Cridlin says in part:

"* * * the division superintendent has submitted to me letter of Thompson, Wood & Hoffman, attorneys, raising the question that under the new School Code, section 698, only 25 cents on the \$100.00 assessed valuation can be laid as a district levy, and that such a levy would not be sufficient to pay interest and sinking fund on this issue of bonds.

"They refer also to section 2741 of the Code, which provides that the board of supervisors shall annually levy a sum sufficient to pay the interest and sinking fund to pay bonds. These attorneys, who are to pass upon the validity of our bonds and upon whose opinion they must stand or fall, say that there is a discrepancy between these two laws and that it is impossible to tell whether or not unlimited tax is authorized or the tax limited to 25 cents.

"Attorneys ask to be referred to some statutory provision or some decision of the Supreme Court which will clear this matter up."

Section 673 of the Code (School Code), which was enacted in 1928, provides as follows:

"Whenever it shall be necessary for a county to erect a school house, it shall be lawful for the school board of such county to contract a loan for said purpose, on the credit of the county, in the manner other loans are authorized to be contracted by sections twenty-seven hundred and thirty-

eight, twenty-seven hundred and thirty-nine, twenty-seven hundred and forty and twenty-seven hundred and forty-one of the Code of Virginia; provided, that when such school house is erected at the expense of the school district, the election provided for by the Code sections referred to in this section shall be held only in the district against which such building will be a charge; and provided, further, that in such case the tax sufficient to pay the interest on said bonds, and the sinking fund to redeem the same, shall be levied in the school district only. In all other respects the procedure shall be as required by said Code sections."

In my opinion, the purpose of this section was to incorporate as a part thereof the provisions of sections 2738-2741 of the Code. It is clear, however, from a reading of this section that, even if this has not been done, when a school house is erected at the expense of a school district, a "tax sufficient to pay the interest on said bonds and the sinking fund to redeem the same" is authorized without limit by this section, as will be the case where county bonds are issued under sections 2738-2741 of the Code.

I note the reference made to section 698 of the Code (School Code). This section, which is the general school tax section, authorizes the levying of a tax not in excess of \$1.00 on the \$100.00 of the assessed value of property in any one year for the establishment, maintenance and operation of schools in the several counties and cities.

This section then provides in part:

"* * * For capital expenditures and for the payment of existing district indebtedness, the board may levy a district tax in the magisterial district in which the money is to be spent, or the debts exist, not exceeding twenty-five cents on the one hundred dollars of the assessed value of the property in the magisterial district in any one year, to be expended for the purpose for which the tax is laid, but no other district tax for schools for any purpose other than herein expressly authorized shall be laid. * * *"

Prior to 1928 school bonds were issued under authority of sections 769-773 of the Code of 1919 or under special acts. Section 673 of the Code (School Code) was intended to replace sections 769-773 of the Code of 1919, which were repealed by the same act that enacted section 673 of the Code (Acts 1928, page 1226) and special acts authorizing bond issues have been prohibited by section 115a of the Constitution, ratified on June 19, 1928.

Sections 673 and 698 of the Code were enacted into law at the same time as a part of the same bill, viz: chapter 471 of the Acts of 1928, and, therefore, must be construed and examined together so as to make them harmonious, if possible. *Chalmers v. Funk*, 76 Va. 717; *Matthews v. Commonwealth*, 18 Gratt. 989.

In my opinion, the provisions of section 698, limiting the maximum tax levy for county and district school purposes, do not apply to bonded indebtedness authorized by section 673 of the same Tax Code when authorized and issued under the provisions of sections 2738-2740 of the Code of Virginia, and that such bonds must be provided for by levies pursuant to section 2741 of the Code of Virginia, and there is no tax levy provided in the last named section for the purposes enumerated in that section.

I note that you take the position that the matter can be cared for under the special act authorizing a tax of not less than 50 cents, nor more than \$2.00, in the county of Lee (chapter 438, Acts 1928), or under the special provision

contained at the end of section 698 of the Code authorizing the levy of not less than 50 cents, nor more than \$1.75, in that county.

In my opinion, chapter 438 of the Acts of 1928 governs in the matter of the maximum levy in Lee county, and you are correct in your conclusion that a district levy may be imposed which, in addition to the county school levy, does not exceed in the aggregate the \$2.00 school levy authorized by that chapter of the Code.

There has been no decision covering the question raised in Mr. Cridlin's letter. While neither his letter nor your reply refers to the authority for the issuance of \$65,000 bond issue for Jonesville District in Lee county, I take it that that issue was authorized under the provisions of section 673 of the Tax Code and sections 2738-2740 of the Virginia Code. If so, in my opinion, the issue of bonds is legal and the board of supervisors of Lee county are authorized, pursuant to the provisions of section 2740, to levy a sufficient tax, without a maximum limitation, to provide a sinking fund to pay interest and retire the bond issue.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Temporary loans.

RICHMOND, VA., July 17, 1929.

W. H. BAKER, ESQ.,

*Chairman of School Board,
Cambria, Virginia.*

MY DEAR SIR:

Acknowledgment is made of your letter of July 16, 1929, in which you request my opinion on the following questions:

"Can our board borrow \$2,000 now, and in another month borrow \$3,000 without paying up the first \$2,000?"

"Will all previous loans apply to the school year, or does it apply to the previous year?"

Section 675 of the School Code, which authorizes a school board which finds it necessary to make a temporary loan to borrow a sum of money not in excess of one-half of the amount produced by the county school levy in which the loan is negotiated, or one-half of the amount of the cash appropriation made for schools for the preceding year, provides in part:

"* * * No additional temporary loan shall be made until all prior temporary loans shall have been paid. * * *"

Your first question must, therefore, be answered in the negative. You cannot borrow the additional \$3,000 without paying the \$2,000 theretofore borrowed.

In response to your second question, I am of the opinion that this section applies to a previous loan regardless of when it was made. If at the time the loan is sought there is an outstanding temporary loan, regardless of when it

was made, no additional temporary loan can be made until the prior loan has been paid.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Treasurer's commission on school levies.

RICHMOND, VA., *February 21, 1930.*

MR. E. B. HUGHES, *Clerk,*

Cumberland County School Board,

Farmville, Virginia.

DEAR MR. HUGHES:

I am in receipt of your letter of the 17th instant, in which you ask to be informed as to the source of the county treasurer's commissions on county and district school funds and on State funds, and I note that you say the board of supervisors have been paying the commissions on county and district funds and the school board on State funds. By State funds, I assume you include money appropriated to your county for school purposes by the General Assembly and amounts apportioned from the literary fund.

By the provisions of section 2431 it is provided that for the purpose of computing the treasurer's commission for receiving and disbursing local levies, collections of revenues for county purposes and for school purposes shall be treated as one fund. In the same section it is also provided that the treasurer shall receive certain commissions for local levies and, further, that local levies shall include assessments on all subjects of taxation and, I take it, for all purposes. Necessarily, if all money collected by him is treated as one fund, the commission is paid out of one fund and, of course, that commission is allowed by the board of supervisors.

As to State funds, the same section provides that the treasurer shall receive for his compensation such commission as the school board allows, but not to exceed one per centum of the State funds received by him.

In my opinion, therefore, the treasurer and the board of supervisors and the school board of your county have settled the treasurer's commissions upon a proper plan or basis.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Trustees—Appointment of.

RICHMOND, VA., *June 14, 1930.*

HON. CHARLES T. MORRIS,

City Attorney,

Hopewell, Virginia.

MY DEAR MR. MORRIS:

I am in receipt of your letter of June 13, in which you ask for a construction of chapter 412 of the Code, as approved March 25, 1930, and contained in the 1930 Acts of the Assembly, page 873, at page 889, section 780.

The particular question might be considered as follows:

Are the appointments of school trustees made pursuant to said section 780 to begin on July 1, 1930, or to begin on July 1, 1931?

The first sentence of this section requires that "The council of each city except as otherwise provided by the city charter shall except where the charter of the city provides otherwise, on or before July first, nineteen hundred and thirty, appoint three trustees for each school district in such city," etc. It is then provided that the appointments shall begin on July 1, 1930.

The last sentence of this section provides that all trustees now in office shall continue in office until July 1, 1931, and thereafter until their successors have been appointed and qualified.

Full effect cannot be given to each of the above mentioned provisions. In view of the fact that the last provision is contained in the paragraph of this section, the first sentence of which refers solely to the city of Winchester, it would appear that the proper interpretation to be placed upon it is that the last sentence thereof refers only to the school trustees of the city of Winchester and that in the other cities of the Commonwealth the trustees appointed pursuant to this section shall begin their terms of office on July 1, 1930.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOL BOARD—District tax.

RICHMOND, VA., May 5, 1930.

HONORABLE J. WALTON HALL,
Superintendent of Schools,
Ashland, Virginia.

DEAR MR. HALL:

Acknowledgment is made of your letter of May 1, 1930, in which you say in part:

"I am authorized by the Hanover County School Board to ask that you give to the School Board of Hanover County and Ashland Town your opinion as to whether the act of 1926, approved March 18, 1926, page 337, has been repealed by express legislation contained in the Acts of 1928 and 1930, and if it has, does the present law allow the cooperative building of a school in the town of Ashland by the school board of said town, and the county of Hanover."

Chapter 193 of the Acts of 1926 authorizes the laying of a special district school levy in the several magisterial districts of Hanover county. In my opinion, the act of 1926 is hopelessly in conflict with sections 653 and 698 of the Code (School Code).

It is true that the act which enacted the School Code sections did not specifically repeal chapter 193 of the Acts of 1926, but so great is the conflict between the acts referred to in your letter and the statutes passed at the session of 1928, which are contained in the School Code, that certainly they both cannot stand and the latter acts, in my judgment, by implication, repeal the act referred to in your letter.

I know of nothing in the present law which would prevent the cooperative building of a county school in the town of Ashland by the school board of Hanover county, to be used for the instruction of children residing anywhere in Hanover county. Of course, before the building is erected, the county school board should acquire title to the land on which the building is to be erected.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOL BOARD—Member of legislature not eligible for.

RICHMOND, VA., November 16, 1929.

HON. J. H. SUTHERLAND, *Superintendent,*
Dickenson County Public Schools,
Clintwood, Virginia.

MY DEAR MR. SUTHERLAND:

I am just in receipt of yours of the 15th.

In this you state that the county of Dickenson has elected the chairman of your school board as a member of the Legislature. You then desire to be advised as to whether or not this party can continue to serve as a member of your school board while a member of the Legislature.

In this connection, I beg to call your attention to the Acts of Assembly, 1928, page 1925, which provides that no Federal, State, or county officer, or any deputy of such officer, and no supervisor shall be chosen or allowed to act as a member of the county school board. Of course, a member of the Legislature is a State officer. It, therefore, follows that he cannot serve as a member of the county school board.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SHERIFF—Commissions on civil and criminal executions.

RICHMOND, VA., December 27, 1929.

HON. W. W. G. DOTSON,
Commonwealth's Attorney,
Wise, Virginia.

DEAR MR. DOTSON:

I am in receipt of your letter of the 26th instant, in which you request my opinion as to the commission of a sheriff upon execution of a *capias pro fine*, and I note that you call my attention to sections 2561 and 3487 of the Code, and suggest that there is conflict as to a sheriff's commission under these sections.

In my opinion, section 2561, providing a commission of five per cent on a writ of *fire facias* or *capias pro fine* on a judgment for a fine, applies to proceedings to collect fines in criminal cases.

Section 3487, allowing certain other commissions to officers, applies to the collection of judgments in civil cases.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATE BOARD OF EDUCATION—Expiration of terms of members.

RICHMOND, VA., March 27, 1929.

His Excellency, HARRY F. BYRD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

Acknowledgment is made of your request that I give you my opinion as to the legal situation which will result from the expiration of the terms of office on April 1, 1929, of Honorable E. C. Glass and Honorable F. B. Watson as members of the State Board of Education, and what your duties are in the premises.

Under section 130 of the Constitution, as it existed prior to June 19, 1929, the State Board of Education was composed of the Governor, Attorney General, Superintendent of Public Instruction, three experienced educators elected quadrennially by the Senate, and two division superintendents of schools, one from a county and the other from a city, selected by the State Board of Education for a term of two years. Under this section, prior to its amendment, vacancies occurring during the term of any member of the board were filled for the unexpired term by the State Board of Education.

The situation at present is as follows: the terms of the two division superintendents will expire on April 1, 1929, the terms of the Governor, Attorney General and Superintendent of Public Instruction will expire in 1930, and the terms of the three educators will expire in 1931. On June 19, 1928, section 130 of the Constitution was amended so as to read as follows:

"The general supervision of the school system shall be vested in a State Board of Education, to be appointed by the Governor, subject to confirmation by the General Assembly, and to consist of seven members. The first appointment under this section shall be one member for one year, two members for two years, two members for three years, and two members for four years, and thereafter all appointments shall be made for a term of four years, except appointments to fill vacancies, which shall be for the unexpired terms."

This section was included in proposal No. 1 for the general revision of the Constitution (chapter 205, Acts of 1928, page 699). Included in proposal No. 1 was a new section designated as section 195-a of the Constitution, which reads as follows:

"All incumbents of offices shall serve the term for which they have been previously selected, subject to all the contingencies which affect officials of a similar class hereafter selected."

This last quoted section was, of course, incorporated into the Constitution at the same time that section 130 was amended as a part of the

same proposal. In May, 1928, Hon. Harris Hart, Superintendent of Public Instruction, requested my opinion as to the effect of section 195-a on section 130 of the Constitution, if proposal No. 1 carried in the approaching election. On May 11, 1928, I replied to his request and expressed the opinion that section 195-a of the Constitution, if proposal No. 1 carried, would apply to the members of the State Board of Education, for the reason that the members of the board were all incumbents of offices with a definite term.

This construction of section 195-a of the Constitution is manifestly correct, and, therefore, reaffirms my opinion of May 11, 1928, to the Superintendent of Public Instruction. Therefore, Messrs. Glass and Watson continued as members of the State Board of Education for the terms for which they had been previously selected. When their terms of office expire on April 1, 1929, however, they cannot continue to discharge the duties of such offices thereafter until their successors have qualified as provided by section 33 of the Constitution, for the reason that the offices which they at present occupy will no longer be in existence. Indeed, it is only by virtue of section 195-a of the Constitution that they were permitted to continue in office until April 1, 1929.

It is my opinion, from an examination of sections 130 and 195-a of the Constitution, that on April 1, 1929, section 130 of the Constitution will become effective for the first appointment to be made thereunder by the Governor and that it is your duty to make such appointment.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATE BOARD OF EMBALMING—Reciprocity of licenses.

RICHMOND, VA., April 8, 1930.

MR. L. T. CHRISTIAN, *Secretary,*
State Board of Embalming,
Richmond, Virginia.

DEAR MR. CHRISTIAN:

I am in receipt of your letter of recent date. In this letter you say that the State Board of Embalming desires to know if, under section 1720, a resident of Virginia may, upon receiving a license from the boards of embalming of other states, apply for and receive a license from the Virginia State Board of Embalming to practice embalming in Virginia.

The answer to your question depends upon whether or not it is the wish of the State Board to follow such a course. Section 1720, as amended, limits licenses from the State board to residents of Virginia, with the proviso that the board may license residents of adjoining states and the District of Columbia upon examination. This does not, in my opinion, include residents of Virginia who go to another state for the purpose of evading the Virginia law and who in such other state secure licenses to practice embalming, but only allows actual bona fide residents of adjoining states to secure reciprocity licenses.

However, it is provided in section 1721:

"* * The State Board of Embalming is empowered to recognize, in this State, licenses issued in other states to practice embalming, under such requirements and regulations as may be prescribed by said board."

This is more comprehensive than the reciprocity provisions of section 1720 and would, in my opinion, authorize the Virginia State Board of Embalming in its judgment to issue licenses to those who are then licensed in other states, irrespective of the fact that they were then residents of the State of Virginia. This is entirely discretionary with the Virginia State Board.

Whenever the State Board of Embalming is of the opinion that it is necessary to employ counsel to protect its interests, the board has authority to do so.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

**STATE COLONY FOR EPILEPTIC AND FEEBLE-MINDED—Not
required to receive persons charged with felony.**

RICHMOND, VA., May 16, 1930.

DR. J. H. BELL, *Superintendent,*
State Colony for Epileptics and Feeble-minded,
Colony, Virginia.

MY DEAR DOCTOR:

I am in receipt of your letter of the 15th instant, in which you ask to be advised upon two questions:

"Will you please look up section 4909 of the Code and advise me whether or not, under this section, we would be required to receive into this institution for observation a person charged with murder and suspected of having epilepsy or mental defectiveness, or rather should he be sent to the Criminal Insane Department of the Southwestern State Hospital for said observation? This institution, as you know, has no Criminal Insane Department as specified in this section of the Code.

"Also will you please give me your interpretation of section 1085 of the Code relative to mentally defective persons and tell me whether, under this section, we would or would not be authorized to receive any mentally defective felon?"

In reply to your first paragraph, I am of the opinion that, since you have no department for criminal insane in your institution, you should not be required to receive as a patient a person charged with murder, although suspected of epilepsy or mental defectiveness.

My opinion is strengthened by an examination of section 1085 of the Code, applying largely to the question you ask, and in which it will be noted that there is a decided difference made as to the place of confinement of persons charged with felonies and misdemeanors.

You will note, however, that section 4909, to which you refer me, gives judges of courts discretion in the matter of the place of confinement of those suspected of being feeble-minded, although I do not consider that section

to authorize a commitment to your institution of a person charged with felony when you have no criminal insane department and are not prepared to care for dangerous criminals.

Answering your second question, under the provisions of section 1085 of the Code, persons guilty of or charged with misdemeanors only may be committed to your institution. This section does not authorize the commitment of felons to your institution.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATE HOSPITALS—Duty of hospitals to send for patients.

RICHMOND, VA., August 26, 1929.

HON. E. E. SKAGGS,
*Commonwealth's Attorney,
Pennington Gap, Virginia.*

MY DEAR MR. SKAGGS:

Acknowledgment is made of your letter of August 22, 1929, in which you say:

"The board of supervisors requested me to write you whether or not the authorities in charge of the insane asylums had a right to refuse to take inmates properly assigned to them, unless their expenses were paid to the institution."

The answer to your question is governed by the provisions of sections 1024 and 1025 of the Code, the former as amended. You will see that the only transportation charges which the county is required to pay are those incurred in delivering a person to the agent of a hospital, or calling at the nearest or most convenient railroad station or steamboat landing designated by the superintendent.

You will see that this section further provides that such railroad station or landing shall not involve a travel at the expense of a county or city of a greater distance by rail or boat than 25 miles from the nearest railroad station or boat landing at the court house of the county or city of commitment or the residence of the person committed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATE INSTITUTIONS—Officials and employees—Purchases from prohibited.

RICHMOND, VA., March 13, 1930.

MAJOR J. W. MCCLUNG,
*Virginia Military Institute, -
Lexington, Virginia.*

MY DEAR MAJOR:

I am in receipt of your letter of the 11th instant, in which you explain your connection with and interest in the Rockbridge Hardware Company,

Incorporated, of Lexington, and I note that a question has been made as to the propriety of the Virginia Military Institute continuing to purchase from the hardware company.

You ask my opinion upon the question.

Your inquiry is covered by section 998 of the Code, which reads as follows:

"No person who is a member of any board of visitors of any State institution, or an employee or agent thereof, or a trustee of any public trust or fund, or a salaried officer of any such State institution, or of any such public trust or fund, shall contract, or be interested in any contract, with such institution, or with the governing authority of such public trust or fund in any manner or form, for furnishing supplies, or for performing any work for said institution, or for said governing authority of said trust or fund. Any person violating the provisions of this section shall be fined not exceeding five hundred dollars."

The Virginia Military Institute should not make purchases from the Rockbridge Hardware Company so long as you are an officer of the Institute and are interested in that company.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SUNDAY LAWS—Baseball.

RICHMOND, VA., July 12, 1929.

HON. E. PEYTON TURNER,

*Attorney for the Commonwealth,
Emporia, Virginia.*

MY DEAR MR. TURNER:

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

"Complaint is made to me as Commonwealth's attorney of this (Greensville) county with respect to Sunday baseball at Slagle's ball park in said county.

"Mr. Slagle has his own baseball team which plays other teams at his park on week days and Sundays. Three or four of Slagle's sons are members of the team; the rest are high school and college boys, amateurs, whom Slagle employs for fifteen dollars a week. I mean, of course, each man gets \$15.00 a week. Mr. Slagle says the agreement is these young men are to play on his ball team and, also, render such services as may be required of them at his grist mill, near the ball park, and at the bathing pavilion also near the park. Slagle's mill pond adjacent to the ball park is largely patronized for the fishing as well as a bathing resort. My candid opinion is Slagle employs these young men to play baseball, although they quite probably render other services when they feel inclined to. Under the agreement the men cannot be compelled to play baseball on Sunday unless they so desire.

"No admission fee is charged, but voluntary contributions or donations are accepted from the patrons of the Sunday games."

On receipt of your letter I wired you to read *Crook v. Commonwealth*, 147 Va. 593 (1927), which in my opinion controls this matter. The court held in that case that one who engages in a pure game of sport is not amenable

to our Sunday statute, section 4570 of the Code, for the reason that the amateur who plays baseball on Sunday is not laboring at his trade or calling within the meaning of the statute; that not being his occupation or vocation.

The court said, 147 Va. 599:

"Unlike the professional player, whether he plays on Sunday or a week day, the amateur engages in the game as a sport and not for the purpose of procuring a livelihood."

On the other hand, the court held that professional baseball players violated the Sunday statute when they engaged in a baseball game on Sunday, even though they received no extra compensation, and no charge was made for admission.

You had evidently not read this case when your letter was written, as you would not have stated that the people employed by Mr. Slagle were amateurs, if you had considered this case. An amateur is defined as "one who practices an art, not professionally, but for the love of it." "An athlete who has not engaged in contests open to professional athletes, or *used any athletic art as a livelihood.*" Standard Dictionary.

As you state in your letter that all of these men receive \$15.00 per week for their services as baseball players and grist mill operators, it is my opinion that they are professional ball players and, as such, they fall within the decision of our Court of Appeals in the case of *Crook v. Commonwealth*, 147 Va. 593.

As to the contribution box, I call your attention to the case of *People v. Demerest*, 107 N. Y. S. 549, 550 (1905), in which the court said:

"The placing of the contribution box at the single gate of entrance, although unaccompanied by any sign asking for contributions, was actually a silent invitation for contributions, and shows that the game was played for gain, * * *."

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SUNDAY LAWS—Sale of gasoline—Flying in aeroplanes—Slot machines.

RICHMOND, VA., January 14, 1930.

MR. D. L. BUCHANAN, *Secretary,*
Danville Ministers' Association,
Danville, Virginia.

DEAR SIR:

I am in receipt of your letter of the 8th instant, written me at the request of the Ministers' Association representing Danville and adjoining counties, and I note that you ask concerning certain matters of interest to the association.

1. You ask concerning the sale at service stations of merchandise other than gas, oil and other automobile supplies.

Under the law, persons are only permitted to sell necessities or to perform certain household or other necessary work on Sundays.

2. You speak of a flying field just outside of Danville at which it is made a business on Sunday to carry passengers on rides for compensation.

I very much doubt the right of a person to engage in carrying passengers on pleasure rides in flying machines on Sunday for compensation.

3. Your association desires to know the law regarding the penny or nickel-in-the-slot machines showing pictures, vending merchandise, or making music on Sundays, and you say that some of the members are of the opinion that music machines operated in drug stores have had a demoralizing influence.

There is no law exactly covering the matter of show pictures or the playing of musical devices nor as to the vending of merchandise, unless the latter comes within the general prohibiting of doing a man's usual occupation on Sunday. I do not think it would be lawful for a merchant to sell in a store through a vending machine articles which he could not sell over his counter.

I desire, however, to qualify all I have written by saying that the enforcement of a criminal law is largely in the hands of attorneys for the Commonwealth of the cities and towns, and, so far as enforcement is concerned, it is the right and proper thing to do to lay each case as it arises before the local attorneys for the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—Amount of school tuition paid not deductible from legally assessed local taxes.

RICHMOND, VA., July 3, 1929.

DR. L. H. APPERSON,
1109 Bainbridge Street,
Richmond, Virginia.

DEAR SIR:

I am in receipt of your letter of the 28th of June, enclosing a copy of your letter of the 26th of June to Mr. W. I. Wheary, collector of taxes, of Petersburg, Virginia, together with the reply of Mr. Wheary under date of the 27th of June, and I note that you desire my opinion as to whether or not you are entitled to a deduction upon your tax bill due the city of Petersburg of the sum of \$13.00 paid by you to the school board of Petersburg for the tuition of your children after you had moved from that city to Colonial Heights, Chesterfield county.

I do not think you are entitled to a deduction of the amount paid by you to the school board.

The payment of taxes upon land or tangible personal property and the right and privilege to send children to local schools are entirely different. Local taxes on tangible personal property are assessed because of the location of the property in the taxing locality and in no wise depends upon the actual residence of the taxpayer. The privilege of having one's children attend public schools depends entirely upon the residence of the parent where the child is supported by the parent. Persons without any property at all, living within the local school jurisdiction, are entitled to free tuition for their

children, while persons paying large real estate tangible personal property taxes, who live outside of that jurisdiction, are not entitled to free school tuition. In no event is a parent paying school tuition entitled to a deduction of the amount paid from legally assessed local taxes. Your right to have your children receive free tuition in the Petersburg schools cannot be decided by way of a refusal to pay all of the taxes assessed against you.

In your case the personal property upon which taxes are claimed for the year 1926 was assessed because of the fact that the property was at the beginning of the 1926 tax year located within the city of Petersburg and subject to taxation. For all of the time that you lived within the city of Petersburg your children were entitled to free tuition, but not so after you had removed from the city.

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

TAXATION—Authority to levy on personal property for taxes on real estate.

RICHMOND, VA., *June 14, 1930.*

HON. L. C. PULLEY, *Mayor,*
Ivor, Virginia.

MY DEAR SIR:

I am in receipt of your letter of the 6th instant, in which you ask:

“Can the taxes on real estate be collected by levy and sale of the party’s personal property?”

Under the provisions of section 2439 of the Code, now carried into section 378 of the Tax Code (Acts 1926, page 1006), personal property may be levied upon for taxes due on real estate.

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

TAXATION—Chain stores—Constitutionality of statute relating to.

RICHMOND, VA., *February 12, 1930.*

HON. JOHN W. McCAULEY,
House of Delegates,
Richmond, Virginia.

MY DEAR MR. McCAULEY:

Acknowledgment is made of your request of this morning that I examine the House Bill introduced by Honorable Wilbur C. Hall, entitled “A bill to amend and re-enact section 188 of the Tax Code of Virginia, in relation to merchants’ licenses,” and advise you whether, in my opinion, this bill, if enacted into law, could be sustained as a constitutional exercise of power vested in the General Assembly of Virginia.

This bill, which is commonly known as the “Chain Store Bill,” first prescribes the license tax that shall be paid by a merchant “for the first *

store or definite place of business heretofore or hereafter established in this State." It then provides in part:

"* * for the second and every other such store or definite place of business heretofore or hereafter established in this State, the amount of the annual State license tax to be paid for such second and every other such store or definite place of business shall be graduated as follows:

In the latter case the tax is \$50.00 for each store in excess of that prescribed for a merchant who operates only one store.

The General Assembly of 1928 had before it a somewhat similar bill. Honorable Wilbur C. Hall, Chairman of the House Finance Committee, requested the opinion of the Attorney General as to the validity of that bill. On February 15, 1928, the Attorney General expressed the opinion that, from his examination of the decision of the Court of Appeals in *Standard Oil Company v. City of Fredericksburg*, 105 Va. 82 (1906), and the decision of the Court of Appeals of Kentucky in *City of Danville, et al. v. Quaker Maid, Incorporated*, 211 Ky. 677, 43 A. L. R. 590 (1925), and the note to that case in A. L. R., "it would appear almost inevitable that the courts would hold the proposed bill, if enacted into law, to be invalid."

On February 1, 1930, a Federal court consisting of three judges, constituted under U. S. C. A. section 380, Jud. Code section 266, held in the case of *Jackson v. State Board of Tax Commissioners of the State of Indiana, et al.*, that a statute similar in principle to the bill referred to me for consideration was in conflict with the Constitution of the United States and, therefore, invalid. A similar conclusion was reached by the Supreme Court of North Carolina in the case of *Great Atlantic and Pacific Tea Company, et al. v. Doughton*, 144 S. W. 701. In the first cited case Baltzell, D. J., speaking for the Federal court, said, as quoted in the United States Daily for February 7, 1930:

"All persons engaged in the operation of one or more stores or mercantile establishments within the State of Indiana belong to the same class, for occupational tax purposes, as plaintiff, and should pay the same license fee, regardless of the number of stores owned and operated by them. Any other classification is arbitrary and is in violation of the constitutional rights of the plaintiff. Many persons within the State of Indiana, who own but one store, handle the same line of goods as the plaintiff. In fact, many single store owners are his competitors.

"The mere fact that one such person reaches his trade by the establishment of more than one store located in various parts of a community, city, etc., does not place him in a different class, for occupational tax purposes, from the person who owns but one store and reaches his trade by means of delivery or requires it to call at his store for the merchandise handled by him. There is no real and substantial difference between such persons, within the law, granting to the legislature the authority to classify occupations for the purpose of taxation. The difference is simply in the detail in which such business is conducted, and does not create a different class.

"Such classification, if enforced, will deny the owner of more than one store of the equal protection of the law, as guaranteed by the Constitution of the United States, and will deprive him of his rights under the constitution of the State of Indiana. Such classification is not reasonable, and, as stated by the Supreme Court of the United

States in *Louisville Gas & Electric Co. v. Coleman, Auditor, supra*, does not 'rest upon a ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' It is arbitrary, and the act in question is void and in violation of both the Constitution of the United States and of the State of Indiana."

In the recent case of *McKenney v. Alexandria*, 147 Va. 157, 164 (1927), our Court of Appeals, in discussing the principles applicable to this bill, said:

"The discrimination between classes, in order to avoid the pitfalls of unconstitutionality, must rest upon some reasonable ground of difference which has some relation to the business or occupation. The tax must bear equally and uniformly upon all persons engaged in the same class of business."

Examination of the bill under consideration shows that the tax imposed does not bear equally and uniformly upon all persons engaged in the same class of business.

It is my opinion that the decisions above referred to are sound and are applicable to the proposed amendments to section 188 of the Tax Code of Virginia. I am, therefore, of the opinion that, if enacted into law, the bill above referred to could not be sustained as a valid exercise of the legislative power vested in the General Assembly of Virginia for the reasons stated in the opinion of Baltzell, D. J., above quoted.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

TAXATION—Contractors having paid State and local licenses not required to pay an additional license.

RICHMOND, VA., May 14, 1930.

HON. P. W. COLEMAN, *Town Manager,*
Appomattox, Virginia.

DEAR MR. COLEMAN:

I am in receipt of your letter of the 13th, in which you write:

"Appomattox, as you know, is an incorporated town, and as such imposes a license tax on all contractors, local and foreign. Contractors from other towns and cities frequently claim that they have a State license, which gives them authority to do business anywhere in the State, regardless of local laws. We claim that there is no State law, under which licenses are granted, that prohibits a municipality from collecting a license tax for the same business. Kindly inform me if I am correct."

In my opinion, you are mistaken as to the right of an incorporated town to impose a corporation license fee or tax on contractors from other towns or cities that have paid a State and local license in the city or county in which the principal office of the contractor is located.

Under the provisions of section 176 of the State Tax Code, contractors are required to secure an annual license on the first day of January in

the city or county in which he has an office. In the same section there is a proviso that "when a contractor or a plumbing and steam fitting contractor shall have paid the aforesaid State license and local license required by city, town or county in which his principal office or branch offices are located, no further license shall be required by the State or other city, *town* or county for conducting any such business within the confines of this State."

In my opinion, therefore, contractors having their principal office in some other city or town and paying the State and city or town license tax cannot be required by the town of Appomattox to pay an additional contractor's license.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

TAXATION—Delinquent taxes—Land sold for—In whose name purchased, when not sold to individual.

RICHMOND, VA., November 26, 1929.

HON. W. R. DOOLEY, *Treasurer,*
Bedford, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of November 23, 1929, in which you say:

"I am writing to inquire—in making sale of real estate for delinquent tax, penalty and interest thereon for year 1927—whether lands not redeemed or sold to individuals should be taken in for the Commonwealth or county. As you know there is no State tax on land for 1927, I am uncertain as to this."

Section 391 of the Tax Code provides in part as follows:

"This chapter shall not be construed as repealing or in any manner affecting the provisions of chapter ninety-nine of the Code of Virginia on the subject of delinquent lands and lots, except as in this section stated, that is to say:

* * * * *

"3. Wherever the words 'Auditor of Public Accounts,' or other words denoting that officer, appear in the said chapter ninety-nine, the same shall be construed as meaning the Comptroller."

Section 2489 of the Code of 1919 is in chapter 99 of that Code. This section provides in part as follows:

"When any real estate is offered for sale as provided in section twenty-four hundred and sixty-one and no person bids the amount chargeable thereon, the treasurer shall purchase the same in the name of the Auditor of Public Accounts for the benefit of the State and county, city, or town, respectively. * * *"

It is, therefore, my opinion that, when real estate is offered for sale for delinquent local taxes, there being no State tax thereon, and no person bids the amount chargeable thereon, the treasurer is required to purchase the same in the name of the Comptroller for the benefit of the county, city, or town, as the case may be.

This is one of the matters which will no doubt be corrected shortly in view of the change in the Constitution. Until the law is amended, I am of the opinion that the procedure must be as above outlined.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—District-county school levies.

RICHMOND, VA., August 27, 1929.

MR. W. A. CHAMBERS, *President,*
The Williams Slate Company,
Arvon, Virginia.

In re: District-County School Levies.

MY DEAR MR. CHAMBERS:

I am in receipt of your letter of the 17th instant, in further reference to the matter of levying taxes in districts and in counties for school purposes.

For practically all purposes local school districts have been abolished and each county is authorized to lay a levy of not less than 50 cents nor more than \$1.00 on each \$100.00 of the assessed value of property in the county for the purpose of establishing, maintaining and operating such schools as in the judgment of the board of supervisors the public welfare may require. In addition, for the purposes of capital expenditures and for the payment of existing district indebtedness, the board may levy a district tax in which the money is to be expended, or the debts exist, not exceeding 25 cents on each \$100.00 of the assessed value of the property in the district, and with the further provision that no other district tax for schools for any purpose than herein expressly authorized shall be laid. Section 698 of the School Code. This would seem to limit the total levy at \$1.25.

However, a doubt is cast upon this conclusion by section 673 of the Code read in conjunction with sections 2738, 2739, 2740 and 2741 of the Code, the first three sections providing for an election upon the question of issuing school bonds and section 2741 providing that the board of supervisors shall levy a sum sufficient to pay the interest on bonds authorized by the election and to create a sinking fund to pay the bonds at or before maturity.

A further doubt is thrown upon the correctness of the proposition that the total maximum levy may not exceed \$1.25 on each \$100.00 of the assessed value of property in a school district by the provisions of section 638 and the following sections up to and including section 644 of the school tax laws, the first sections providing for borrowing money from the Literary Fund and section 644 providing that, where money has been borrowed, the board of supervisors *shall* include in their levy or levies, or appropriate, a sum sufficient to meet the liabilities on the contract with the literary board, with the further provision that, should the school board fail to pay any installment of interest or principal, the county treasurer shall pay such past due interest or principal out of the funds in his hands belonging to the county.

The further drastic provision is made for the removal of members of the board of supervisors for the failure to provide for the payment of the interest and the loan.

It is necessary, under the budget law, for the board of supervisors to advertise the fact of all levies, giving the public an opportunity to be present and to be heard upon the question of the levy, but there is no provision that a levy must be approved by a majority of the citizens present at the meeting. At such meeting they are only entitled to be heard in an advisory capacity.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Levy on personal property—No levy on property in hands of bankruptcy trustee.

RICHMOND, VA., March 19, 1930.

HON. R. L. BURKE, *County Treasurer,*
Appomattox, Virginia.

DEAR MR. BURKE:

I am in receipt of your letter of the 17th instant, in which you state certain facts concerning your levy upon personal property for taxes on personal property and upon real estate of the owner of the personal property.

The situation as explained by you is rather complicated. However, I conclude that your questions cover two dissimilar cases:

1. Levy was made on the personal property on a farm owned by the person owing both personal property and real estate taxes.

Assuming that the personal property levied on was in the possession of the person owing both personal property and real estate taxes, I am of the opinion that, under the provisions of sections 378 and 381 of the Tax Code, the levy was properly made.

2. In the other case cited by you I understand that levy was made on personal property then in the hands of a trustee in bankruptcy.

In my opinion, levy upon such property is not warranted by law.

Taxes due the Federal and State governments are preferred in bankruptcy proceedings.

I advise you to file with the referee in bankruptcy the claim of the State for taxes due by the bankrupt.

If I have not sufficiently covered the thought you had in mind, let me hear from you and I shall be pleased to advise you further. In the meantime, I suggest that you consult with the attorney for the Commonwealth of your county, and I am sure that he will be pleased to see that the claims which should go before the bankruptcy court are properly proved.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Methods of assessment upon funds of a bank while in the process of liquidation.RICHMOND, VA., *September 26, 1929.*

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR MR. COMBS:

I am in receipt of your letter of yesterday, in which you write me that Honorable B. D. White, Judge of the Circuit Court of Isle of Wight County, has refused to authorize the payment by Honorable George F. Whitley of State taxes amounting to \$102.37 assessed by the Commissioner of the Revenue for Isle of Wight County upon the assets of the Bank of Windsor, at the rate provided for the taxation of money under the provisions of section 96 of the State Tax Code, 1928.

I am of the opinion that Judge White misconstrues section 96, has reached an erroneous conclusion, and that the receiver of the Bank of Windsor should pay the assessment mentioned in your letter, provided, of course, that the assets in his hands as receiver are of sufficient amount to account for the amount of taxes assessed.

Section 96 provides for two separate methods of assessment upon funds of a bank while in the process of liquidation:

1. Until the payment of depositors and creditors has been made in full, the assets of a bank are declared to be and constitute the capital of the bank, but that no tax as capital shall be assessed upon such assets; that, instead of the assets being assessed as capital, such assets, while they remain capital, are to be assessed at the rate provided for the taxation of money, and the tax on the assets is in lieu of all taxes against all of the parties beneficially interested therein; or, in other words, the stockholders, depositors and creditors are relieved of taxation, the stockholders upon their capital stock, the depositors from a personal tax on money in bank, and creditors from a personal taxation upon the debt due by the bank to them.

This method of taxation continues until depositors and creditors are paid in full and assessments are made as of the first day of January of each year during this period of time.

2. The depositors and creditors having been paid in full, the receiver of the bank then holds the remaining assets of the bank in trust for the stockholders, and the Commissioner of the Revenue assesses as against each stockholder a proportionate tax on the surplus at the rate prescribed in section 91 of the Tax Code, or, in other words, at the rate of \$1.10 on the \$100.00 of the value of the stock of each stockholder.

The assessment upon funds in the hands of fiduciaries, including those in the hands of commissioners and receivers of courts, both upon money on deposit and evidences of debt, have been assessed and collected by the State of Virginia for a long number of years and the legislation authorizing such assessment has never been declared unconstitutional.

While the amount in dispute in the matter of the Bank of Windsor is small, I think that you should test the ruling of Judge White, and especially so, as he intimates that the provisions of section 96 of the Tax Code may be unconstitutional as taking the property of one person for the payment of taxes due by another, and I cannot see how this reason can be applied

to the present case, as both depositors and creditors are relieved from the payment of all manner of taxes upon the amounts on deposit so far as depositors are concerned and the amounts due them by the bank so far as creditors are concerned. In fact, creditors are given a much lower rate of assessment, while depositors pay the rate otherwise provided for assessment on money.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Penalty for false return of property.

RICHMOND, VA., *January 10, 1930.*

HON. JOSEPH A. BILLINGSLEY,
*Attorney for the Commonwealth,
King George Court House, Virginia.*

DEAR MR. BILLINGSLEY:

I am in receipt of your letter of the 8th instant, in reference to the prosecution in your county of a taxpayer for an unlawful and false return of his taxable property to the Commissioner of the Revenue, and I note your reference to the claim that section 2397 of the Code has been repealed and your further reference to section 307, page 175, of the Tax Code, and sections 2314 and 2393 of the Code.

Section 2397, under which you were proceeding, has undoubtedly been repealed. I do not think that section 307 of the Tax Code applies. In fact, I find no section making a false or fraudulent return a criminal offense.

In my opinion, the situation is covered by the second paragraph of section 418 of the Tax Code, page 226. You will see from reading this paragraph that no fine is imposed and the only penalty now put upon a taxpayer is the addition of 100 per cent of the tax which should have been levied on the omitted property.

I called upon Honorable C. H. Morrisett, State Tax Commissioner, and he agrees that section 418 of the Code is the only law governing a fraudulent tax return.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Recordation tax not applicable to mechanic's lien.

RICHMOND, VA., *December 28, 1929.*

MR. O. B. CHILTON, *Clerk,
Lancaster, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 20th instant, in which you ask concerning the propriety of the recordation tax of 12 cents upon each \$100, or fraction thereof, of the amount claimed by way of mechanics' liens upon

the filing and recordation of such claim, and I note you say that it has been your custom to collect this recordation tax.

In this I think that you have made an improper charge. The statute providing for the filing and recording of a lien makes no provision for a tax. I have this morning consulted with Honorable C. H. Morrisett, State Tax Commissioner, and he agrees with me that no State tax should be imposed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Tax deed free of lien.

RICHMOND, VA., January 2, 1930.

HON. A. B. RICHARD, *Treasurer,*
Leesburg, Virginia.

MY DEAR SIR:

I am in receipt of your letter of the 28th ult., in reference to the title of a purchaser of land sold at a delinquent land sale, and I note that you ask whether a deed of trust on land sold for delinquent taxes remains thereon, or the purchaser receives title free of the lien.

In my opinion, a purchaser receives his title free of liens.

Under the provisions of section 2475 of the Code any person having the right to charge real estate with a debt may redeem the same.

Under the provisions of section 386 of the Tax Code, beneficiaries in a trust deed may require treasurers to furnish them with statement of taxes due on the lands on which they hold liens.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—United States government bonds—Decedent's estate.

RICHMOND, VA., September 12, 1929.

HON. C. T. GUINN, *Clerk,*
Culpeper, Virginia.

DEAR MR. GUINN:

I am in receipt of your letter of the 10th instant, in which you write:

"We have today qualified an executor who gave the estate of the deceased party as consisting of \$10,000.00 in U. S. Government Bonds. Please advise if the tax of 10 cents per hundred should be charged on this estate. The executor claims that Government bonds are exempt."

In my opinion, and I have consulted with Honorable C. Lee Moore, Auditor of Public Accounts, the executor of the estate to which you refer is required to pay upon the \$10,000.00 in U. S. Government Bonds as a part of his decedent's estate.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TOWNS—Power to enact zoning ordinance—Prosecution for violation of town ordinances.RICHMOND, VA., *August 2, 1929.*

HON. HARRY^a L. SNEAD, *City Attorney,*
Union Trust Building,
Petersburg, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 27, 1929, with which you send me a copy of your previous letter which reads as follows:

"As attorney for the town of Colonial Heights, I wish you would give me your opinion with reference to the following:

"Does the zoning ordinance of 1926, known as chapter 122A of the Code, sections 3091(1)-3091(26), inclusive, give the power to towns to enact ordinances regulating zoning, etc.? It is true that section 3091(1) provides that the council or other governing body of any city or town may, by ordinance, etc., but my trouble is with section 3091(7) where it says 'such local hustings or corporation court body may provide for the appointment of a board of zoning appeals,' etc.

"Please also advise me whether, in your opinion, the Commonwealth's attorney of the county or the town council should prosecute the town ordinances of Colonial Heights which is operating under the court charter."

I have examined chapter 197 of the Acts of 1926, especially sections 1 to 7 inclusive. While it is true that sections 1 and 4 would appear to confer zoning authority upon the councils of towns as well as cities, they must be read in connection with sections 6 and 7 of the act, especially section 6 thereof. This section provides as follows:

"In order to avail itself of the powers conferred by this chapter the hustings or corporation court shall appoint a commission to be known as the zoning commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall submit its final report, and such council or other governing body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission."

You will see that this section prohibits the council or other governing body of a city or town from taking any action until it has received the final report of the commission to be appointed by the hustings or corporation court. Inasmuch as a town has no such court, I am of the opinion that, notwithstanding sections 1 and 4 of the act, due to the provisions of section 6 thereof this act cannot be applied to towns in its present shape.

In response to your second question, I am of the opinion that the attorney for a town should prosecute violations of all town ordinances except violations of prohibition ordinances, which must be prosecuted by the Commonwealth's attorney of the county in which such town is located (see section 34 of the Prohibition Law).

Sincerely yours,

LEON M. BAZILE,
Assistant Attorney General.

TREASURER—County—Distribution of automobile license tags.

RICHMOND, VA., June 10, 1930.

HON. E. R. LAINE, *County Treasurer,*
Isle of Wight, Virginia.

DEAR MR. LAINE:

I am in receipt of your letter of the 9th instant, in which you ask to be advised as to whether or not county treasurers may be required to distribute an account for automobile license tags, and I note that you ask that I cite the law containing that provision.

Subsection (d) of section 3 of the Motor Vehicle Law, as amended by the Acts of 1928, provides:

"The treasurer of each county, except the counties of Henrico, and Chesterfield, or a county wherein there is a branch office of the motor vehicle commissioner, shall act as the agent of the commissioner in receiving applications for the registration of titles of motor vehicles, the issuance of number or license plates for vehicles, in the issuance of chauffeurs' licenses."

You will, therefore, see that treasurers of all of the counties except Henrico and Chesterfield can be required by the Motor Vehicle Commissioner to issue automobile license tags.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURERS—County and city, bonds of—Premiums—How paid.

RICHMOND, VA., June 19, 1930.

HONORABLE E. R. COMBS, *Comptroller,*
Richmond, Virginia.

MY DEAR MR. COMBS:

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

"Please advise me if in your opinion the State is liable, when corporate surety is given, for one-third of the amount of the premiums on the official bonds of county treasurers for that part of the year 1930 Code section 2698 as amended by Acts of Assembly, 1930, p. 921, is in force.

"Also please advise if the clause exempting Pittsylvania county from payment of two-thirds of the premium on the official bond of its treasurer is constitutional."

In reply to your letter, I would state that I have very carefully examined section 2698 of the Code of Virginia, as amended by the Legislature at its session of 1930. Several material changes have been made in this section by amendments thereto.

The old law prior to the amendments provided that "The penalty of said bonds shall be such as the court or judge may require, but not less than fifty per centum of the amount to be received annually by" the treasurer.

The new law reduces this penalty from fifty per centum to thirty per centum.

A new provision is contained in this section which was not contained in the old law. This provision is as follows:

"The premium on such bond, if the surety be a corporate surety, shall be paid in the proportion of one-third by the State and the remaining two-thirds by the county or city of which the principal is a treasurer, provided that the county of Pittsylvania shall not be required to pay any part of the premium of the bond of its treasurer."

The following provision, which was contained in the old law, has been entirely eliminated in this section as amended:

"Nothing in this section shall be construed as requiring the Commonwealth or any county in this State to pay the cost of said security when given by such guaranty or security company."

Taking into consideration the amendments referred to above, in my judgment, it was evidently the purpose of the Legislature to require the State and the localities to pay the premium on the bonds of the treasurers, where the surety of a treasurer was a corporate surety—the State to pay one-third of the premium and the localities two-thirds. The amendments to section 2698 did not become effective until June 17, 1930.

The question then arises, which is submitted in your letter, whether or not the State is liable for one-third of the premium on the bonds of county treasurers for that part of the year 1930 after the act becomes effective, and your other question is "if the clause exempting Pittsylvania county from payment of two-thirds of the premium on the official bond of its treasurer is constitutional."

Unquestionably, there is no obligation on the part of the State, or the localities, to pay any part of the premium on the treasurer's bond which had been paid prior to the 17th of June, 1930. Premiums paid upon bonds previous to the 17th of June, 1930, were properly paid by the treasurers and no refund should be made on account of such payments.

The premiums paid upon all bonds given after the 17th of June, 1930, should be paid for by the State and localities in the proportion above set out. Should any treasurer appear and execute a new bond according to law at any time during his present term of office, then, I am of the opinion, the State and localities should pay the premium upon his new bond.

In answer to your second question as to whether or not that part of the act is constitutional which exempts the county of Pittsylvania from paying any part of the premium of the bond of its treasurer, I would state that this in no way affects the obligation of the State to pay one-third of the premium.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

**TREASURERS—Required to account for interest received on public funds
—Apportionment of such interest.**RICHMOND, VA., *August 7, 1929.*

HON. DAVID NELSON SUTTON,
*Attorney for the Commonwealth,
West Point, Virginia.*

MY DEAR MR. SUTTON:

Acknowledgment is made of your letter of July 25, 1929, in which you say:

"I would like your opinion on the following question:

"Is a county treasurer required to account for the interest which a bank may pay on the funds which he deposits as treasurer in the said bank? These funds are those which are collected from all sources and which are deposited by him as treasurer. Would section 363 of the Tax Code be applicable to such a state of facts?

"In the event you should be of the opinion that the treasurer should be required to account for the interest which he receives on his general balance in bank, how should this amount be distributed?"

Section 363 of the Tax Code reads as follows:

"Whenever the treasurer of any county or city in this State shall receive interest on funds belonging to the State, or to any political subdivision thereof, such interest shall become a part of the principal of the particular fund on which such interest accrued, and shall be accounted for by the treasurer in the same manner as he is required by law to account for the principal. Any treasurer violating this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars."

This section clearly requires the treasurer to account for any interest received by him on public funds. It then provides "such interest shall become a part of the principal of the particular fund on which such interest accrued, and shall be accounted for by the treasurer in the same manner as he is required by law to account for the principal."

In my opinion, the total of each particular fund included in the treasurer's account should be ascertained and the interest computed on each item and allocated to the principal of each particular fund.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TRADING STAMPS—Legality of—License tax required.RICHMOND, VA., *July 13, 1929.*

HON. R. KENT SPILLER,
*Commonwealth's Attorney,
Roanoke, Virginia.*

MY DEAR COLONEL SPILLER:

Acknowledgment is made of your letter of July 11, 1929, in which you say:

"We have operating in the City of Roanoke five filling stations known as the Harvey System Service Stations. At each of these sta-

tions are given away with purchases, profit sharing certificates similar to the one enclosed herewith. These certificates are redeemable at either one of the five stations in the purchase of certain articles of merchandise kept at the stations for the purpose of exchange for such certificates as holders may desire to use for the purpose of purchasing merchandise. These certificates are given away with each purchase of 25 cents or more of gasoline, oil, tires or accessories. The Harvey System pays the regular city and state merchant's license for doing business within the city. Under the City Tax Ordinance they refused to pay license tax of \$50.00 per annum for the separate transaction of issuing and redeeming profit sharing coupons. Our ordinance is as follows:

"A license is hereby imposed on each person or corporation for the privilege of selling or redeeming trading stamps, trading checks, coupons or other like things to be used as evidences of purchases made. Any person or corporation who shall sell or redeem such stamp, checks or other things to be used as evidences of purchases made at any place of business in this city, shall pay for such privilege the sum of \$500.00, which shall not be prorated. And a license tax of \$50.00 per annum is hereby imposed on any person, firm or corporation for the privilege of selling, giving away or redeeming profit sharing or other like coupons."

"Under this ordinance the Commissioner of Revenue has assessed this company \$50.00 on each filling station. Upon refusal to pay the license the commissioner obtained a warrant for doing business without a license, and the case is with the hustings court for decision. The facts are admitted as stated above, and the only question arising is the constitutionality of the ordinance."

"The court is inclined to believe under various authorities throughout the United States, that the act of issuing profit sharing certificates is simply a method of advertising in the regular course of a merchant's business, and has indicated to me that he is of the opinion that our ordinance is invalid, or at least so much of it as imposes a special license tax upon a merchant giving away and redeeming profit sharing coupons in his own establishment."

"I thought perhaps this proposition had been dealt with in your office heretofore, and am writing to ask that you let me have your opinion as to the constitutionality of this ordinance, taking it into consideration as a matter of revenue only. I have been unable to get it into the police regulation class of laws, and feel that it will have to be determined from the standpoint of revenue."

The only authority in Virginia which I have been able to find with reference to this subject is *Young v. Commonwealth*, 101 Va. 853 (1903). In this case the Court of Appeals held that the General Assembly had no authority to prohibit the use of trading stamps. While the ordinance referred to in your letter does not attempt to prohibit the use of trading stamps, it does attempt to impose a license tax on any person for the privilege of selling, giving away or redeeming trading stamps or profit sharing coupons.

The Supreme Court of Georgia in *Hewin v. Atlanta*, 121 Ga. 723, 49 S. E. 765, 67 L. R. A. 795, held an ordinance similar to the ordinance referred to in your letter invalid.

In *Ex Parte Hutchinson*, 137 Fed. (C. C. D. Oregon) 950 (1905) the court held that a city ordinance making it unlawful for any person to sell goods and merchandise by selling trading stamps to merchants for delivery to their customers with purchases, without paying an annual license tax of \$200.00, whether or not authorized by the city's charter, is in violation of the rights secured to citizens affected thereby by the fourteenth amendment to the

Constitution of the United States, and void; being neither a legitimate exercise of the taxing power, nor a reasonable police regulation.

On the other hand I call your attention to the case of *Fleetwood v. Read*, 47, L. R. A. (Wash.) 205 (1899).

The last cited case was distinguished in *Hewin v. Atlanta*, *supra*, and was disapproved in *Montgomery v. Kelly*, 142 Ala. 599, 70 L. R. A. 212, 110 A. S. R. 43, 38 Sou. 67, in which the court held a license tax imposed by ordinance on merchants issuing trading stamps in addition to the regular license tax was invalid.

Sincerely yours,

JNO. R. SAUNDERS,

Attorney General.

TRIAL JUSTICES—Fees not payable by Commonwealth.

RICHMOND, VA., May 28, 1930.

HON. E. R. COMBS, *Comptroller*,
Richmond, Virginia.

DEAR MR. COMBS:

In a personal conference several days ago you asked my opinion as to the legality of a claim of Mr. G. M. Rogers, trial justice of Buckingham county, against the Commonwealth of Virginia, for fees in misdemeanor, felony and prohibition cases amounting to the sum of \$41.00.

From your file I see that Mr. Rogers is paid a salary as trial justice by the county of Buckingham.

I also see from your file that Mr. Rogers contends that the Commonwealth should pay fees to trial justices receiving regular county salaries under the provisions of paragraph 4 of section 4988 of the Code, as amended by chapter 255, page 761, of the Acts of 1928. It is true that this section provides that a trial justice is authorized to "charge and collect all fees which justices of the peace for counties are authorized to charge and collect, and which have not been paid in advance, and all fees collected by the trial justice shall be paid into the county treasury, * *."

Under the provisions of this section, Mr. Rogers construes the law to obligate the Commonwealth to pay his fees in criminal cases, with the provision that such fees, when collected, shall be paid into the county treasury of Buckingham county.

Section 3511 of the Code, as amended by chapter 258, page 768, of the Acts of 1928, provides that "no justice * * who receives a salary or allowance for general service out of the treasury of his county * * shall receive any fees for services in a criminal case from the State * * but all such fees to such officers shall be paid by the party against whom judgment is rendered; * *."

In construing the two sections the intent of the legislature should guide.

In construing paragraph 4 of section 4988 other sections of the Code must be reverted to in order to ascertain what fees justices of the peace are entitled to charge and collect from the Commonwealth. A justice of the

peace who receives no salary is entitled to certain fees from the Commonwealth.

Section 3511 expressly provides that "no justice * * who receives a salary or allowance * * shall receive any fees for services in a criminal case from the State, * * *." He is, however, allowed fees from private litigants.

In my opinion, therefore, section 3511 governs the allowance of fees to trial justices who receive a salary, and no fees should be paid by the Commonwealth to any such justice for services in criminal cases.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TRIAL JUSTICES—Fees not payable by Commonwealth.

RICHMOND, VA., June 10, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR MR. COMBS:

Mr. S. C. Day, Jr., chief clerk of the expenditure section of your office, has called my attention to the request of the board of supervisors of Augusta county for a ruling as to whether the comptroller is authorized to pay to a county having a trial justice the fees allowed by statute to justices of the peace, payable out of the State treasury.

On May 28, in answer to your request for an opinion upon the claim of Mr. G. M. Rogers, trial justice of Buckingham county, for fees in misdemeanor, felony and prohibition cases, I wrote you that section 3511 governed the allowance of fees to trial justices who receive a salary and that no fees should be paid by the Commonwealth for services in criminal cases.

Mr. Rogers claimed that, as he did not personally receive the benefit of fees paid him as trial justice, but the same were turned over to the county treasurer, his claim for services should be allowed; that he collected this money and turned it over to the county treasurer.

Therefore, it would seem that it was not even claimed that trial justices' fees should be paid directly to a county, but that, as the trial justice did not himself receive the benefit of his fees, it should be allowed him and that, upon receipt thereof, he would convert it into the county treasury.

The proposition submitted by the board of supervisors of Augusta county would accomplish the same object as in the Buckingham case, but in a direct way, i. e., the direct payment to the county of Augusta of the fees due a trial justice.

In my opinion, there is no warrant in law for the payment of fees indirectly to a county, as in the Buckingham case, or directly, as is suggested in the inquiry from Augusta county. I do not think that fees can be paid, either directly or indirectly, to a trial justice or to a county having a trial justice receiving a salary.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

UNIVERSITY OF VIRGINIA—Right of women to attend.

RICHMOND, VA., January 27, 1930.

MRS. B. B. MUNFORD,
Member Board of Visitors of the University of Virginia,
329 North Harrison Street,
Richmond, Virginia.

DEAR MRS. MUNFORD:

You have requested me to advise you whether or not women are entitled, as a matter of right, to attend the several departments of the University of Virginia.

I have examined chapter 37 of the Code of 1919, as amended, with care. I have also referred to the original act establishing the University, and to such contemporaneous documents and subsequent acts of the General Assembly as throw light on the subject.

Unquestionably, Jefferson's idea was to found a Southern university for men (see his letter of February 15, 1821, to General Breckenridge; Jefferson's Complete Works (1855), Volume 7, pages 204-5). In a letter dated March 14, 1818, to N. Burwell, Esquire (Id. 7, page 101), Jefferson said:

"A plan of female education has never been a subject of systematic contemplation with me. It has occupied my attention so far only as the education of my own daughters occasionally required. * *"

As Jefferson had in contemplation the establishment of the University of Virginia as early as 1800 (Id. Volume 4, page 312), it would seem clear that it was not intended as an institution for women, although there is nothing in the law relating to the University, so far as I have been able to find, which specifically limits the student body to men.

The University is a corporation under the style of "the Rector and Visitors of the University of Virginia" (section 806 of the Code). Subject to the control of the General Assembly (section 806 of the Code), the University is governed by its Board of Visitors (sections 811-813 of the Code). Section 811 of the Code, referring to the Board of Visitors, provides in part:

"* * They may * * regulate the government and discipline of the students, and the renting of the hotels and dormitories, and, generally in respect to the government and management of the university, make such regulations as they may deem expedient, not being contrary to law. * *"

The Board of Visitors of the University has, in the past, construed this language as giving to the board the power to determine who may, or may not, be admitted to the University. The limitations on the powers conferred by section 811 of the Code, formerly contained in section 819 thereof, were removed by the repeal of the last mentioned section in 1928.

The Board of Visitors has construed section 811 of the Code as authorizing the board to provide for the admission of women to the several departments of the University, subject to certain conditions and restrictions set forth in the entrance requirements as follows (Catalogue 1927-1928, page 129):

"1. General Requirements: The applicant must be at least twenty years old on the birthday preceding matriculation; must present a certificate showing graduation from an accredited public high school, or not less than four years' attendance in an accredited private-school, with credit for not less than 15 college entrance units obtained at least two years before admission to the University; and must in addition show by proper certificate the completion in a standard college, subsequent to the credit obtained for 15 entrance-units, of at least 30 session-hours (60 semester hours), of course of college grade, in not less than eighteen calendar months.

"2. Specific Departmental Requirements: These will be found in the requirements for admission to each of the several departments."

The above quoted language from section 811 of the Code is of doubtful meaning. The Board of Visitors of the University is that department of the State government charged with the administration of the laws embraced in chapter 37 of the Code, in which chapter is included section 811. The board has already given to this section a practical construction which the General Assembly has not seen fit to interfere with.

The Court of Appeals has decided that, if a statute is of doubtful import, it will consider the construction put upon the act when it first came into operation, and that construction, after lapse of time, without change either by the legislature or judicial decision, will be regarded as the correct construction. The court has further decided that the practical construction given to a statute by public officials, and acted upon by the people, is not only to be considered, but, in cases of doubt, will be regarded as decisive and allowed the same effect as a course of judicial decision.

Smith v. Bryan, 100 Va. 199 (1902);

Virginia Blue Ridge Ry. v. Kidd, 120 Va. 426 (1917).

In *City of Richmond v. Drewry-Hughes Co.*, 122 Va. 178, 192, 194 (1918), the court held that, while this rule was usually applied to cases in which such construction had continued and been acquiesced in for a long period of time, it was not confined to such cases, but would be applied to a case where the practical construction had been given only a short time prior to the institution of the case before the court.

The only thing contained in chapter 37 of the Code which would lend color to the view that women were entitled to attend the University of Virginia, as a matter of right, was the provision contained in section 819 of the Code that the University should give instruction "to all white students of the State of Virginia over the age of sixteen years, who shall be matriculated under rules and regulations prescribed by the board of visitors, without charge for tuition in the academic department."

With the question already agitated as to the right of women to attend the University of Virginia, the General Assembly in 1928 repealed this section of the Code. It is unnecessary to determine whether this section, if still in force, would permit women to attend the University of Virginia as a matter of right. It nevertheless removes from chapter 37 of the Code the only thing therein which lent color to the claim that women could attend the University as a matter of right.

I am, therefore, of the opinion that notwithstanding the fact that chapter 37 of the Code does not in words prohibit women from attending the

University of Virginia, it is my conclusion, in view of the foregoing, that under the present law:

1. Women are not entitled, as a matter of right, to admission to the several departments of the University.

2. The Board of Visitors has the power, under section 811 of the Code, to provide for the admission of women to the several departments of the University, upon such conditions as to the board may seem proper.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

WAR MEMORIAL—Subscriptions to carillon fund.

RICHMOND, VA., *December 4, 1929.*

HON. BOLLING H. HANDY,
207 N. Foushee Street,
Richmond, Virginia.

MY DEAR MAJOR HANDY:

Acknowledgment is made of your request of this morning that I examine chapter 522 of the Acts of 1928 and advise you whether the requirements of section 2 thereof, with reference to the raising of additional funds by popular subscription or otherwise, would be complied with by the securing of legal and binding obligations from solvent parties pledging the payment of the amount required by the act.

Section 2 of the act referred to makes the appropriation contained in the first section subject to the following qualifications:

"That no appropriation hereby made shall become available for expenditure unless and until the said war memorial commission shall have raised or caused to be raised, by popular subscription or otherwise at least the sum of seventy-five thousand dollars for the purchase of the bells for the carillon; and unless and until provision for the perpetual upkeep and maintenance of the war memorial shall have been made by the city of Richmond or by private persons or associations, either or both giving such guarantees as shall be satisfactory to the Governor, approved by the Attorney General."

The case nearest in point is the recent case of *Livingston v. Lenox College*, 192 Iowa 579 (1921). In that case Archibald Livingston, the testator, devised his estate of the value of about \$30,000 as follows: First: to certain named trustees to provide a hospital for the city of Monticello. The devised then contained the proviso that if the city failed to meet the condition of the will that the estate was devised and bequeathed to Lenox College "for the purpose of an experimental station in farming and domestic science * * *, upon the condition that said Lenox College shall, within one year after the expiration of the time or the refusal of Monticello to raise funds as required, * * * raise \$25,000 to equip said Archibald Livingston Home and to be added to the gift herein given and to be known as the Archibald Livingston Home and made an experimental home for college students. On failure to comply with this condition, the estate was to go to testator's legal heirs."

It appears that the town refused to accept the gift, thereupon the college inaugurated a drive to raise a fund sufficient to meet the conditions of the devised and for other purposes. Within the year's time the college had obtained pledges and subscriptions in excess of that required by the will. Thereupon the trustees appropriated \$25,000 of said subscriptions to meet the condition of the gift and notified the executor of the acceptance of the devise.

It was contended that the condition required the fund to be raised in dollars, and was not satisfied by subscriptions or pledges, no matter how good, or by obtaining the required sum in the form of more promises or choses in action. In denying this contention, the court said:

"But this proposition, we think, is entirely too sweeping. The testator's language is to be construed according to its usual or popular signification, taking into consideration the subject-matter of the devise which he was then framing. The man who is sent out to 'raise' \$1,000 or any other given sum by popular subscription, in support of a named charity, or for the erection of a church, or the relief or endowment of a college, and comes back with his subscription paper signed by a list of responsible men and women, pledging themselves to pay the desired amount within a reasonable limit of time, has accomplished the work committed to him as fully and completely as if he had received the subscribers' bank checks. He has 'raised the money.' It is a matter of familiar knowledge that gifts to some public charity are frequently offered on condition that additional money be raised, to increase the proposed benefits or to make the original gift more effective for its designed purpose. It is equally well known that, as a rule, these conditions are met by popular subscriptions payable in the future, and such raising of the money is universally taken and considered as a compliance with the prescribed condition. It is, of course, possible for a testator or other donor to make his gift conditional upon the actual receipt and possession by the donee of the additional sum; but unless that intention is expressed in words more restrictive than are used in the Livingston will, the condition attached to such gift should not be thus narrowly interpreted."

It is true that the court calls attention to the fact that in the devise to Monticello, the will had required the raising of \$50,000 in cash, while in the devise to Lenox College, it only required the raising of \$25,000. However, the decision was not put on that ground, but on the ground that the condition was fully met by obtaining bona fide subscriptions to the required amount from financially responsible subscribers.

"Black's Law Dictionary defines 'Raising money' as follows: 'To raise money is to realize money by subscription, loan or otherwise,'" said Parker, C. J., in *N. Y. & Rosendale Cement Co. v. Davis*, 173 N. Y. 235, 239 (1903).

St. Paul's Episcopal Church v. Fields, 81 Conn. 670, 676, is sometimes cited as holding a contrary view. I have read this case with care, and in my opinion the decision in that case is not in conflict with the decision in *Livingston v. Lenox College*, *supra*. The trial judge in that case instructed the jury that in order to find that the plaintiffs had raised the \$10,000 required by the testator's will, "they must at least find that the money had been paid to the mission, or that good substantial, bona fide subscriptions or obligations had been made to it for that sum within the year."

In this instruction the appellate court said:

"The plaintiffs did not and cannot complain of these instructions. In determining whether the verdict should have been set aside, the evi-

dence must be viewed, as the jury must have viewed it, in the light of the instructions given. But, so viewed, it does not support the verdict."

In that case the court held that no binding obligation had been obtained, and, therefore, the condition had not been complied with.

In *Bates College v. Bates*, 135 Mass. 487-488 (1883), the Massachusetts court declined to pass on the question, saying:

"If promises were enough, it was at least necessary that they should be absolute and unconditioned."

A part of the fund raised being conditional, the court held that the condition of the offer had not been complied with. To the same effect was the holding of the court in *New York Exchange Company v. DeWolf*, 31 N. Y. 273 (1865).

After a careful consideration of the question submitted by you, the cases above cited, and the conditions set forth in section 2 of the act referred to in this letter, I am of the opinion that if unconditional and binding obligations are obtained from solvent and responsible persons to the amount required by the act, namely, \$75,000, the War Memorial Commission has complied with that part of the provision contained in the act, which reads as follows:

"Shall have raised or caused to be raised, by popular subscription or otherwise at least the sum of seventy-five thousand dollars for the purchase of the bells for the carillon; * * *."

Of course, you will understand that until some provision has been made for the perpetual upkeep and maintenance of the war memorial, either by the city of Richmond or by private persons or associations, the money appropriated by the State cannot be withdrawn from the treasury. I would suggest that these guarantees be submitted to the Comptroller before any attempt is made to withdraw the amount of the appropriation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WARRANTS—Officer may serve criminal warrant anywhere in State.

RICHMOND, VA., May 16, 1930.

MR. OSCAR BOYER,
Shackelfords, Virginia.

DEAR SIR:

I am in receipt of your letter of May the 15th.

You state that you have a criminal warrant in your hands against a party issued upon complaint by Mr. Crittenden, a justice of the peace in your county; that the accused is now in King William County. You then desire to be advised whether or not you have the authority to arrest this party.

In reply I call your attention to section 4825 of the Code of Virginia, which provides:

"If a person charged with an offense shall, after or at the time the warrant is issued for his arrest, escape from or out of the county or corporation in which the offense is alleged to have been committed, the officer to whom the warrant is directed, may pursue and arrest him anywhere in the State; or a justice of a county or corporation other than that in which it was issued, on being satisfied of the genuineness thereof, * * *."

This section further provides that the warrant can be endorsed by a justice of the peace in the county where the accused is, but that is only necessary where an officer in that county is to make the arrest. So far as you are concerned, you have a perfect right to make the arrest in King William without the endorsement on the warrant by either the mayor or a justice of the peace.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WEST FEE BILL—Allowances from counties subject to.

RICHMOND, VA., January 23, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, in which you call my attention to the status of the account of Honorable A. B. Carney, clerk of Norfolk county, and ask for my opinion as to whether the item in the account for the year ending December 31, 1928, "compensation paid by county \$6,176.52," should, subject to a deduction of \$2,500.00, under the provisions of paragraph 5 of section 3516 of the Code of Virginia, as amended, be included in the amount of fees, compensation, etc., upon which Mr. Carney should, under the West Fee Bill, settle with your office.

Under the provisions of section 110 of article 7 of the Constitution of Virginia, under the head of "Organization and Government of Counties," provision is made for the election of a county clerk for each of the counties of the State.

Under the provisions of section 2770 of the Code of Virginia, the county clerk is made ex-officio clerk of the board of supervisors.

Under the provisions of paragraph 1 of section 3516, as amended, every county clerk is required annually to "file with the Auditor of Public Accounts a full and accurate statement showing all such fees, allowances, commissions, salary or other emolument of office, derived from the State, or any political subdivision thereof, or from any other source whatsoever, collected or received by him or her * * *"

Under the provisions of paragraph 5 of section 3516, in determining the excess to be paid into the State treasury by a county clerk, "all fees, allowances, commissions, salary or other compensation or emolument of office, derived from the State, or any political subdivision thereof, or from any source whatever, shall be included and enter into the determination of the excess to be paid * * *"

Paragraph 8 of section 3516 fixes, on the basis of population, the maximum net salary of officers. Norfolk county, having a population of fifty thousand, the salary of the clerk is fixed at seven thousand dollars. This amount may be increased by virtue of the proviso:

"* * that in determining the compensation allowed to such city or county officers hereunder any compensation allowed to such city or county officers by their respective city councils or county board 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, board of supervisors of the county, or laws of this State shall be disregarded only to the extent of twenty-five hundred dollars in cities or counties having a population of fifty thousand or more * *."

As the clerk of Norfolk county is ex-officio clerk of the board of supervisors of that county, he holds both positions, by virtue of his election as clerk of Norfolk county and compensation paid him for his services as clerk of the board of supervisors should be included in the statement to the Comptroller of his total fees, compensation and emoluments as county clerk.

Mr. Carney should account to the Comptroller for the aggregate amount received by him as clerk of the board of supervisors and clerk of the county, and the statement furnished him by you on the 18th day of January, 1929, is correct in principle and, unless erroneous in fact, settlement should be made with him on the basis of that account.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WEST FEE BILL—Commissions on school funds subject to.

RICHMOND, VA., *January 23, 1930.*

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday, in which you request my attention to the matter of the claim of Mr. J. H. Frantz, treasurer of the city of Roanoke, as to whether commissions on school funds received and disbursed by Mr. Frantz during the year ending December 31, 1927, should be excluded from his report to you of all fees, allowances, commissions, salary and other emolument of office derived from the State, or any political subdivision thereof, or from any other source whatever, collected or received by him.

Under the provisions of paragraph 5 of section 3516, in determining the excess to be paid into the State treasury by a city treasurer, "all fees, allowances, commissions, salary or other compensation or emolument of office derived from the State, or any political subdivision thereof, or from any source whatever, shall be included and enter into the determination of the excess to be paid * *."

Paragraph 8 of section 3516 fixes, on the basis of population, the maximum salary of city treasurers. The net amount which Mr. Frantz is entitled to receive and retain is controlled by that paragraph and the provision I am now quoting:

"* * that in determining the compensation allowed to such city or county officers hereunder any compensation allowed to such city or county officers by their respective city councils or county board 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, board of supervisors of the county, or laws of this State shall be disregarded only to the extent of twenty-five hundred dollars in cities or counties having a population of fifty thousand or more
* *"

Treasurers are allowed a commission on all funds received from the State including allotments from the Literary Fund, to be fixed by the board of supervisors, not to exceed one per cent on the amount received and disbursed. You will notice that the proviso allows treasurers to retain amounts of money received from city councils or county boards of supervisors, according to schedule fixed in paragraph 8, but such amounts which they are allowed to exclude from their reports are amounts other than commissions allowed by the State law for collecting, disbursing, or in any other 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, or laws of the State.

It is very difficult to get at the intention of the legislature after a careful consideration of this proviso. It evidently intends to exclude from the treasurer's report certain items received from cities and counties. Just what these items are, it is very difficult for me to say. The language of the proviso certainly excludes commissions on all taxes and levies, and is equally plain in excluding from the amount the treasurer is entitled to retain, and for which he is not compelled to account for, commissions received by him on account of the discharge of duties imposed by the laws of the State. The law of the State undoubtedly allows the commission, although it is true that the council of the city fixes the amount within the limits provided by the State law. The amount received for handling State school funds is undoubtedly a commission fixed by the city council by virtue of authority vested in the council by the State law.

This being my construction, I am of the opinion that the treasurer of the city of Roanoke should include in the statement required by paragraph 1 of section 3516 of the Code of Virginia commissions allowed him for receiving and disbursing State school funds and allotments of money from the State Literary Fund.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

WEST FEE BILL—Commissions on school funds subject to.

RICHMOND, VA., February 10, 1930.

HON. E. R. COMBS, *Comptroller,*
Richmond, Virginia.

DEAR SIR:

I am in receipt of your letter of January 22, in which you request my attention to the matter of the claim of Mr. J. H. Frantz, treasurer of the city of Roanoke, as to whether commissions on school funds received and disbursed by Mr. Frantz during the year ending December 31, 1927, should be excluded from his report to you of all fees, allowances, commissions, salary and other emolument of office derived from the State, or any political subdivision thereof, or from any other source whatever, collected or received by him.

As Mr. Frantz's account is for the year ending December 31, 1927, and he was serving for the term beginning previous to the date upon which chapter 198 of the Acts of 1926, amending the law in reference to commissions, took effect, section 3516a of the Code controls the matter of his salary and fee allowances and receipts exempt from his fee report.

Under the provisions of section 3516a of the Code, in effect for the year ending December 31, 1927, so far as Mr. Frantz's commissions are concerned, it is provided:

"* * 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, * *."

By this section, compensation paid city treasurers for services 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, are disregarded.

Just what construction is to be placed upon the language "or for the discharge of any other duties imposed upon such officers by the councils of such cities" is problematical, and it is difficult to ascertain for what services rendered a city or county treasurer may receive compensation which he is not obligated to account for in his excess fees account. The language of the statute expressly requires the treasurer to include in his fee account all commissions received on taxes and levies and all amounts received by him on account of duties imposed upon him by the laws of the State.

Allotments from the literary fund are undoubtedly handled under the State law. The State law fixes the commissions between certain limits with a definite maximum and no minimum. It is true that the city council itself is authorized to fix the amount of commissions, the maximum thereof being limited to one per centum.

In my opinion, both the duties of the city treasurers and their compensation by way of commissions are fixed by State law. Therefore, Mr. Frantz should

account to you in a settlement of his excess fee account with the commission received by him upon State school funds and allotments of money from the State Literary Fund.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**WESTERN STATE HOSPITAL—Inebriates—Payment for treatment—
Exemptions.**

RICHMOND, VA., *September 17, 1929.*

DR. J. S. DEJARNETTE, *Superintendent,*
Western State Hospital,
Staunton, Virginia.

MY DEAR DOCTOR:

I am in receipt of your letter of the 13th instant, in which you enclose a letter from Mr. William C. Thomas, attorney at law, of Wytheville, Virginia. The two letters concern the payment for the care of a Mr. Crockett committed to your hospital for treatment as an inebriate.

If Mr. Crockett has, at the time he was committed to your institution, sufficient funds over and above exemptions, you have a right to charge him at the rate of \$25.00 per month while in your institution. The fact that the commission committing him knew of his financial condition and stated upon the commitment papers that he owned no property does not relieve him from paying the expenses covering his treatment. I take it that Mr. Crockett is a married man and is entitled to a homestead exemption.

If he cashed his U. S. compensation checks and deposited that money with you, I think that you are within your rights in retaining enough to pay for his treatment. If you were simply keeping the money for him with either an express or implied promise to return it to him, you should do so.

I do not exactly understand Mr. Thomas' reference to the \$3,000 in bonds which Mr. Thomas says was left in his hands as trustee, with interest to be applied to Mr. Crockett's support. He says that there is nothing due him from this fund and will not be for some time. This is not very explicit.

As a married man, \$2,000 would certainly be exempt, but the other \$1,000, or at least the interest from \$1,000, is likely subject to pay for the treatment in your institution.

Mr. Crockett may, or may not, be able to offset the claim of the hospital by the value of his services performed in mixing concrete.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WESTERN STATE HOSPITAL—Feeble-minded persons not admitted as patients of.RICHMOND, VA., *January 21, 1930.*

HON. E. C. LACY, *Secretary,*
Board of Directors of the District Home,
Chatham, Virginia.

DEAR MR. LACY:

I am in receipt of your letter of the 6th instant, in reference to the refusal of Dr. J. S. DeJarnette, Superintendent of the Western State Hospital at Staunton, to receive certain persons, inmates of the District Home, Chatham, Virginia, who have been committed as insane persons to the Western State Hospital, your letter being accompanied by correspondence between you and Dr. DeJarnette.

From this correspondence I find that a commission of lunacy was duly appointed and that commission found certain inmates of your home insane; that the papers in the cases were sent to Dr. DeJarnette and that he refused to accept these people because of the fact that he found upon examination of the commitment papers that all of those committed to his institution were feeble-minded and, as such, not entitled to admission to the Western State Hospital.

I note that you are directed by a resolution of your board to obtain my opinion as to the law governing this situation.

The law governing this situation is very plain. However, just what should be done with the persons whose mental condition has been inquired into depends upon the facts of each individual case. The conflict between the Commission examining the patients or persons and Dr. DeJarnette is one in which the question arises as to whether the persons or patients are feeble-minded or insane. If feeble-minded, according to the provisions of section 1022 of the Code, they should be committed to the State Colony for Epileptics and Feeble-minded, while, if insane, they should be committed to the Western State Hospital.

The Commission inquiring into their mental condition has the duty of the first determination in each case. Should the Commission find the person or patient feeble-minded or insane, each person or patient should be committed to the appropriate colony or asylum. In the instant case the Commission has found all of the persons or patients insane and they have been committed to the Western State Hospital.

However, pursuant to the provisions of section 1026 of the Code, the Superintendent of the Western State Hospital has examined the papers sent him and has notified your home that in his opinion all of them are feeble-minded and not eligible for commitment to his institution. In this section it is provided that, if the commitment papers do not conform to law and do not contain satisfactory and sufficient evidence as to the insanity, epilepsy, feeble-mindedness or inebriacy of the person committed, the superintendent shall return such papers to the sheriff or sergeant for correction or amendment as to additional evidence by the court or justice or the proper members of the Commission.

Even should persons be admitted to the Western State Hospital, the superintendent shall observe and examine them and, if upon examination the superintendent is of the opinion that said persons are not insane, epileptic, feeble-minded or inebriate, unless such person is charged with a crime, he shall discharge the persons committed to his institution.

Under the provisions of section 1039, if a feeble-minded person not insane, is sent to or received in any hospital for the insane, the superintendent shall notify his committee or legal representative, who shall promptly remove him or her from the asylum and have him or her committed to the appropriate colony for the feeble-minded. The cost of transportation of such person to and removal from the hospital shall be paid by the county or city in which he was committed.

You will see that the disposition of each of the persons committed to the Western State Hospital as insane depends entirely upon their real condition. If, as is intimated in Dr. DeJarnette's letter of November 18, 1929, your institution is endeavoring to get rid of its inmates by sending them to an asylum, Dr. DeJarnette is right in refusing to accept them. If they are feeble-minded within the legal definition of that term, they should be sent to the Colony for Epileptic and Feeble-minded at Colony P. O., near Lynchburg, Virginia.

Only in the event that each of the persons referred to in your correspondence with Dr. DeJarnette is insane within the meaning and definition of insanity, is he under obligation to receive him or her as a patient at the Western State Hospital.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

WESTERN STATE HOSPITAL—Title of purchaser and right of hospital in land sold.

RICHMOND, VA., *January 30, 1930.*

MR. E. H. DEJARNETTE, JR.,
Attorney at Law,
Orange, Virginia.

DEAR SIR:

I am in receipt of your letter of yesterday with enclosed copy of a deed from the Western State Hospital to Clem Brothers, and I note that you request my opinion upon paragraph 3 of the same in reference to the question as to whether the provision allowing the hospital to repurchase at any time violates the law relating to perpetuities.

A reference to the act approved March 25, 1908, by virtue of which the hospital is selling the land which the deed purports to convey, does not seem to authorize a deed of the character of the one by which it is proposed to convey the land to Clem Brothers. The authority provides for a straight-out deed without reservation or limitation of the right of repurchase, while the proposed deed contains any number of conditions, rights and limitations.

I do not think that anyone could give a very definite and positive opinion as to the provision allowing the hospital to repurchase the land, so far as the doctrine of perpetuities is concerned, but I am of the decided opinion that the hospital authorities could not, without further legislation, provide for a right to repurchase, and certainly upon the terms specified in the deed.

I advise either a straight-out deed or legislation covering the many provisions which you are incorporating in the deed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WITNESSES—Out of State, allowance to.

RICHMOND, VA., May 17, 1930.

HON. CHARLES H. FUNK,
Commonwealth's Attorney,
Marion, Virginia.

MY DEAR MR. FUNK:

I am just in receipt of yours of the 16th and, as requested, will reply at once.

In this you state that sometime last January a homicide was committed in your county at a filling station. It so happened that the eye witnesses to the crime were two women from Tennessee and one young man from New York; that due to the fact that they were unable to give bond for their appearance at your term of the court, they were held in jail to await trial. You then ask if compensation can be allowed these witnesses.

Unquestionably it can and should be allowed. In this connection, I call your attention to the latter part of section 4957 of the Code of Virginia, which provides for the payment of witnesses, and which reads as follows:

"* * * and a person residing out of this State, who attends a court therein as a witness, shall be allowed by said court a proper compensation for attendance and travel to and from the place of his abode, the amount of the same to be fixed by the said court."

In my judgment, this provision in the law clearly gives the judge the right to fix the compensation of these witnesses at what he may deem proper. It will only be necessary, therefore, for the judge to make this allowance and certify it to the Comptroller for payment. Should any question be raised about it, I will advise the Comptroller.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

WITNESS—Compensation in civil case.

RICHMOND, VA., August 27, 1929.

HON. JOE W. PARSONS,
Attorney for the Commonwealth,
Independence, Virginia.

MY DEAR MR. PARSONS:

I beg leave to acknowledge receipt of yours of August 24th, in which you desire to be advised the amount of compensation to be allowed a witness in a

civil case summoned to Wythe county in your court, a distance of about twenty miles.

In reply I would call your attention to section 3529 of the Code which provides:

"A person attending as a witness under a summons shall have fifty cents for each day's attendance and four cents per mile for each mile beyond ten miles necessarily travelled to the place of attendance and the same for returning, besides the tolls at the bridges and ferries, which he crosses or turnpike gates he may pass. * * *"

Trusting this will give you the desired information, and with kindest personal regards, I am

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

WORLD WAR VETERANS—Education of orphans of—Chapter 375 of Acts 1930—What institutions referred to in.

RICHMOND, VA., June 30, 1930.

HON. THOMAS D. EASON, *Secretary,*
State Board of Education,
Richmond, Virginia.

MY DEAR MR. EASON:

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

"I shall be obliged to you if you will interpret on page 810, Acts of Assembly, 1930, House Bill 331, chapter 375, entitled 'An act to provide educational opportunities for the orphans of soldiers, sailors and marines who were killed in action or died during the World War,' the following expression: 'a State educational or training institution of secondary school or college grade.'

"Does State institution, as written above, refer to high schools and colleges directly under the control of the State, such as, for example, the John Marshall High School, of Richmond, the Maury High School, of Norfolk, the Virginia Polytechnic Institute, and the State Teachers College, Farmville, or does the expression State institution refer to any institution of secondary or college grade conducted in the State of Virginia? For example, would Roanoke Business College, Roanoke, Virginia, a private institution, be considered under the terms of the above act a State institution?"

In my opinion the language quoted by you from the act to which you refer is not broad enough to include private institutions located in the State, but refers to those which are directly under the control thereof.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

Statement

Showing the Current Expense of the Office of the Attorney General from June 30, 1929, to July 1, 1930.

General repairs	\$ 27 50
Telegrams	11 25
Telephone service and tolls.....	420 97
Subscriptions to and purchase of law books.....	257 26
Postage	221 00
Towels, drinking water, furniture, office supplies.....	268 19
Office equipment	486 20
Insurance premiums	12 67
Additional stenographic service	222 50
	<hr/>
	\$ 1,927 54

Statement

Showing Amounts Expended from the Appropriation for Traveling Expenses from June 30, 1929, to July 1, 1930.

1929	
Sept. 12. Edwin H. Gibson, expenses to Staunton, attending Court of Appeals	\$12 28
Sept. 27. Leon M. Bazile, expenses to Staunton, attending Court of Appeals	26 82
1930	
June 5. Edwin H. Gibson, expenses to Wytheville, attending Court of Appeals	30 21
	<hr/>
	\$69 31

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