

REPORT  
OF THE  
ATTORNEY GENERAL

TO THE  
Governor of Virginia

*From July 1, 1930, to June 30, 1931*

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RICHMOND:  
1931



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# LETTER OF TRANSMITTAL

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COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *July 31, 1931.*

*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 June 30, 1931.

The opinions included in this report and statements of suits pending and disposed of by no means represent all of the work of this 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.)

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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

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### Attorneys General of Virginia

*From 1776 to 1930*

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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	1918-1931

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\*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. *Akers, Lewis L. v. Commonwealth.* From Circuit Court of Franklin County. Seduction. Reversed.
2. *Anderson, Atwater v. Commonwealth.* From Hustings Court of the City of Richmond. Narcotics. Dismissed.
3. *Ballard, Willard v. Commonwealth.* From Circuit Court of Nansemond County. Murder. Affirmed.
4. *Board of Supervisors of King and Queen County v. W. A. Cox, et als.* From Circuit Court of King and Queen County. Authority of Board of Supervisors to borrow money from the Literary Fund without vote of the people. Reversed.
5. *Boyd, W. E. v. Commonwealth.* From Hustings Court of City of Portsmouth. Embezzlement and grand larceny. Affirmed.
6. *Breeden, Ashby v. Commonwealth.* From Circuit Court of Madison County. Burglary. Error confessed.
7. *Brown, Melvin v. Commonwealth.* From Circuit Court of New Kent County. Prohibition. Affirmed.
8. *Brown, Robert v. Commonwealth.* From Circuit Court of Brunswick County. Attempt to murder. Reversed.
9. *Commercial Credit Company v. Commonwealth.* From Circuit Court of Bath County. Forfeited automobile. Affirmed.
10. *Fentress, Alonzo v. Commonwealth.* From Circuit Court of Norfolk County. Involuntary manslaughter. Reversed.
11. *Frazier, C. A. v. Commonwealth.* From Circuit Court of Pittsylvania County. Prohibition. Reversed.
12. *Fugate, Charles D. v. J. M. Weston.* Petition for a writ of mandamus. Constitutionality of statute conferring on Governor power to suspend officers. Mandamus denied.
13. *Goode, Charles v. Commonwealth.* From Circuit Court of Scott County. Prosecution under section 3195 of the Code for the unlawful pollution of a stream. Affirmed.
14. *Hillman, Mont v. Commonwealth.* From Circuit Court of Scott County. Seduction. Reversed.
15. *Holmes, Raymond v. Commonwealth.* From Circuit Court, Part Two, of City of Richmond. Robbery. Affirmed.
16. *Jennings, W. W. and Herbert Glazebrook v. Commonwealth.* From Circuit Court of Surry County. Prohibition. Reversed.
17. *Jones, Willie v. Commonwealth.* From Circuit Court of Norfolk County. Prohibition. Reversed.
18. *Livingston, William v. Commonwealth.* From Circuit Court of Scott County. Prohibition. Error confessed.
19. *Macke, G. B. v. Commonwealth.* From Circuit Court of Arlington County. Slot machine (cigarettes). Partly reversed. Partly affirmed.
20. *Seay, Leon v. Commonwealth.* From Circuit Court of Essex County. Prohibition. Reversed.
21. *Slade, Lester v. Commonwealth.* From Circuit Court of Southampton County. Prohibition. Affirmed.

22. *Smith, Garland v. Commonwealth.* From Circuit Court of Mecklenburg County. Murder. Reversed.
23. *Spicer, J. W. v. Commonwealth.* From Circuit Court of Henrico County. Prohibition. Reversed.
24. *Sprouse, E. B. v. Commonwealth.* From Circuit Court of Buckingham County. Slot machine. Dismissed.
25. *Tate, William v. Commonwealth.* From Hustings Court of City of Roanoke. Murder. Affirmed.
26. *Trent, W. B. v. Commonwealth.* From Circuit Court of Buckingham County. Prohibition. Affirmed.
27. *Vance, Henderson v. Commonwealth.* From Circuit Court of Russell County. Rape. Reversed.
28. *Warren, George v. Commonwealth.* From Circuit Court of Pittsylvania County. Prohibition. Error confessed.
29. *Weatherman, J. D. v. Commonwealth.* From Circuit Court of Patrick County. Bribery. Affirmed.
30. *West, M. L. v. Commonwealth.* From Circuit Court of Southampton County. Prohibition. Reversed.
31. *Winckler, Hanie v. Commonwealth.* From Circuit Court of Mecklenburg County. Malicious wounding of cow. Reversed.
32. *Young, Harry v. Commonwealth.* From Circuit Court of Elizabeth City County. Prohibition. Affirmed.

#### 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. *Ayres, Stanley v. Commonwealth.* From Circuit Court of Fairfax County. Robbery.
3. *Cox, Randolph v. Commonwealth.* From Circuit Court of Richmond County. Murder.
4. *Grinnelle, Leon v. Commonwealth.* From Circuit Court of Mathews County. Rape.
5. *Hagood, J. L. v. Commonwealth.* From Circuit Court of Mecklenburg County. Assault and battery.
6. *Hicks, Lee v. Commonwealth.* From Circuit Court of Fairfax County. Larceny.
7. *Hurdle, J. M. v. Commonwealth.* From Circuit Court of Accomac County. Prohibition.
8. *Livingston, William v. Commonwealth.* From Circuit Court of Scott County. Prohibition.
9. *McCallister, J. R. v. Commonwealth.* From Circuit Court of Alleghany County. Prohibition.
10. *Nelson, Thomas v. Commonwealth.* From Circuit Court of Albemarle County. Murder.
11. *Puckett, Slemp v. Commonwealth.* From Circuit Court of Tazewell County. Murder.

12. *Richmond, W. M. v. Commonwealth.* From Circuit Court of Scott County. Prohibition.
13. *Steel, Erna v. Commonwealth.* From Circuit Court of Wise County. Murder.
14. *Sullivan, Eugene v. Commonwealth.* From Hustings Court of City of Roanoke. Breaking and entering.
15. *Tester, Hillman v. Commonwealth.* From Circuit Court of Buchanan County. Murder and malicious shooting.
16. *Thacker, James v. Commonwealth.* From Circuit Court of Buchanan County. Murder.
17. *Wilson, Charlie v. Commonwealth.* From Corporation Court of City of Norfolk. Malicious shooting.
18. *Wilson, Norwood v. Commonwealth.* From Corporation Court of City of Hopewell. Ouster proceedings.

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

1. *Jones, James P. v. Commonwealth of Virginia.* On petition for a writ of certiorari to Supreme Court of Appeals of State of Virginia. Embezzlement.

#### Cases Decided by the Supreme Court of the United States

1. *Railway Express Agency, Incorporated v. Commonwealth of Virginia.* Appeal from the Supreme Court of Appeals of Virginia. Right of foreign corporation to do business in Virginia without first domesticating. Affirmed.

#### 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.*
16. *Appalachian Electric & Power Company v. Commonwealth.*
17. *Virginia Electric & Power Company v. Commonwealth.*
18. *Atlantic States Transit Corp. v. Division of Motor Vehicles.*

## 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 More, Auditor of Public Accounts.*
10. *W. P. Weaver v. State Live Stock Sanitary Board.*

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# OPINIONS

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## APPROPRIATIONS—Miscellaneous—Acts 1930—When available.

RICHMOND, VA., *December 2, 1930.*

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,  
Richmond, Virginia.*

MY DEAR GOVERNOR:

I am in receipt of your letter of the 21st ultimo, in which you desire an opinion concerning the construction of the appropriations for the years 1930-31 and 1931-32, found on pages 324-326 of the Acts of 1930. Your letter, which I quote in full, clearly indicates the subject of the inquiry upon which my opinion is desired:

"By reference to the appropriation act contained in 1930 Acts, p. 324, you will see that certain conditional appropriations were made aggregating \$1,500,000, which appropriations were not to be made available either in whole or in part unless and until the Governor had certified to the Comptroller in writing that the payment of the said appropriations will not in his judgment create a deficit in the general fund of the State treasury, etc.

"You will observe that \$1,300,000 of the appropriations is for the year ending June 30, 1931, and \$200,000 for the year ending June 30, 1932.

"I would like to have your official opinion as to whether the Governor can make available the appropriation for the first year provided that in his opinion the same will not create a deficit in the general fund of the treasury for that year. Or whether the Governor must wait until facts develop which will enable him to form a judgment as to whether the payment of said appropriations will create a deficit in the general fund in the treasury at the end of the second year. In short, can the Governor treat the two years as entirely separate and distinct and release the appropriations for the first year provided he is of the opinion that this will create no deficit for the first year though he may be doubtful as to whether the release of these appropriations will create a deficit in the second year."

The appropriations for the years 1930-31 and 1931-32 are made available upon certain conditions. These conditions, or rather the event in which they became certain and definite and upon the happening of which the beneficiaries are entitled to payment, are set out in the following language (Acts 1930, p. 324):

"The following appropriations payable from the general fund of the State treasury, amounting to a total for the two years ending respectively on June 30, 1931, and June 30, 1932, of \$1,500,000, are made upon the condition that the said appropriations shall not be available, either in whole or in part, unless and until the Governor has certified to the Comptroller in writing that the payment of the said appropriations will not, in the judgment of the Governor, create a deficit in the general fund of the State treasury, and it is further provided that any partial reduction which may be made under this paragraph in the aforesaid appropriations shall be applied on a uniform percentage basis to each of the items included in this total of \$1,500,000

for the two years ending respectively on June 30, 1931, and June 30, 1932."

The total amount appropriated for the two years is \$1,505,000; much the larger part of which or \$1,305,000 is appropriated for the year 1930-31, leaving only the sum of \$200,000 appropriated for the year 1931-32.

The express language of the statute bases the appropriations upon the judgment of the Governor as to the condition of the State treasury, and only makes these appropriations available in case the Governor shall certify to the Comptroller that, in his judgment, the payment of the appropriations will not create a deficit in the general fund of the State treasury, with the inferential provision that, where, in the opinion of the Governor, the payment of the entire amount of the appropriations would create a partial deficit, the appropriations are to be prorated upon the basis of the amount which, in the Governor's judgment, will be available for distribution among the beneficiaries.

The question then arises as to whether, if the Governor is of the opinion that there will be a surplus of \$1,305,000, or any part thereof, at the end of the fiscal year 1930-31, he should certify that fact to the Comptroller, and the total of the appropriations for the year 1930-31, or for the estimated amount of the surplus to which the Governor certifies, will be immediately available and payable, although the conditions of the State treasury would not at the time justify the Governor in reaching the conclusion that the condition of the treasury at the end of the fiscal biennium 1930-32 would leave a surplus to cover the total appropriation, or even leave a surplus of any amount in the State treasury.

In my opinion, it was the intention of the General Assembly to make the appropriations referred to in your letter available only in the event that you should be of the opinion that the general fund of the State treasury would show a surplus at the end of the biennium. I do not think, however, that the Legislature intended that there should be an absolute certainty that there would be a surplus, but that a reasonable probability of a surplus at the end of the biennium 1930-32 would authorize you to certify that fact to the Comptroller at any time during the fiscal year 1930-31 and that the Comptroller would then be authorized, under the provisions of the appropriation bill, to pay in full the appropriations made for the year 1930-31. In the event that the appropriations for the year 1930-31 are certified by the Governor and paid by the Comptroller and the Governor cannot certify to the Comptroller that, in his opinion, there will be a surplus for the year 1931-32, the beneficiary would, of course, lose the full amount of the appropriation or proportionate part, as the case might be, but I see no other way in which the appropriations for the two years 1930-31 and 1931-32 can be taken care of.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**APPROPRIATIONS—Validity of.**RICHMOND, VA., *December 5, 1930.*HON. E. R. COMBS, *Comptroller,*  
*Richmond, Virginia.*

Attention Mr. Gathright

DEAR SIR:

I am in receipt of your letter of the 12th ultimo, in which you quote from chapter 300, page 728, of the Acts of 1930, and from section 186 of the Constitution of Virginia.

That part of chapter 300 quoted by you reads as follows:

"Be it enacted by the General Assembly of Virginia, That there be appropriated from the moneys of the Commonwealth of Virginia, out of the State treasury, not otherwise appropriated, the sum of two hundred dollars per year, for the next ensuing four years beginning on the first day of October, nineteen hundred and thirty. \* \* \* And in addition thereto, that there be appropriated out of the funds of the State of Virginia two hundred and forty-six dollars to pay to said guardian to pay the hospital expenses that occurred in the treatment of the said Gale McGuire Turner and incident thereto when he received said injury."

That part of section 186 of the Constitution quoted by you reads as follows:

"No money shall be paid out of the State treasury except in pursuance of appropriations made by law; and no such appropriation *shall be made* which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same; \* \*"

You then wish to be advised as to whether or not chapter 300 of the Acts of 1930, making certain annual appropriations for four years beginning October 1, 1930, for the relief of Gale McGuire Turner, is in conflict with section 186 of the Constitution.

The act for the relief of young Turner provides for four annual payments, so that, as to two of the payments due respectively October 1, 1930, and October 1, 1931, they being payable within two years and six months from the adjournment of the General Assembly of 1930, the appropriations therefor are unquestionably valid, unless the further payments provided for as of October 1, 1932, and October 1, 1933, render the whole appropriation invalid, because of the fact that the Legislature has undertaken to appropriate money by a bill making the payments available more than two years and six months from the adjournment of the General Assembly of 1930.

In my opinion, that part of the act making appropriations for the years 1930 and 1931 is valid and binding, and the amounts appropriated for such payments should be payable to the beneficiary; that the appropriations for the years 1932 and 1933, being made payable more than two years and six months after the adjournment of the General Assembly of 1930, cannot be paid.

Should a guardian qualify for Turner, so that the amount of \$246.00 appropriated for hospital and incidental expenses may be paid within two years

and six months from the adjournment of the General Assembly, then that sum should also be paid, but, if such guardian does not qualify within that time, the payment of that sum should not be made.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**AUDITOR OF PUBLIC ACCOUNTS—Authority of Governor to increase appropriation for.**

RICHMOND, VA., November 17, 1930.

HON. J. H. BRADFORD,  
*Director of the Budget,*  
*Richmond, Virginia.*

DEAR MR. BRADFORD:

I am in receipt of your letter of the 5th instant, in which you write that the Governor has been informed that the Auditing Committee of the General Assembly has directed the Auditor of Public Accounts to put into effect an accounting system for county treasurers; that this is contemplated, and that the Auditor has been further directed to proceed with the installation of the system and has, for that purpose, designated Mr. A. L. Van Name, of the Auditor's staff, and fixed his salary at \$4,000 per year; that in addition a considerable expense has already been incurred and that other expenses will be necessary in completing the installation of the accounting system. You further write that the Auditor has requested the Governor to have the Comptroller increase by \$8,000 the appropriation made to the Auditor of Public Accounts for the year ending June 30, 1931. You then say that you have been requested by the Governor to obtain an opinion as to his authority in the premises.

Section 115 of the Constitution requires the General Assembly to provide for an examination of the books, accounts and settlements of county and city officers charged with the collection and disbursement of public funds.

Section 552 of the Code, as amended by an act approved March 26, 1926, being chapter 543, page 899 of the Acts of 1926, requires the State Accountant (Auditor of Public Accounts) to provide a system of bookkeeping and accounting for the use of county, city and town officials handling public revenues.

Neither the Department of the Budget nor the Appropriation Bill took into account the expense necessary to carry into effect the mandates of the Constitution and the General Assembly, and the appropriation made for the Auditor of Public Accounts is totally inadequate to take care of the expenses necessary to be incurred in installing the accounting system.

Under the second paragraph of section 19 of the Budget Bill, page 335, Acts of 1930, the Governor is given authority in the case of an emergency to authorize a department of government to create a deficiency by exceeding the appropriation provided for that department. His Excellency has authority, under this section, to allow the Auditor of Public Accounts to create a deficiency for the purpose of installing the system.

The provision to which I have referred is the limit of the authority of the Governor and, in my opinion, the Governor is not authorized to instruct the Comptroller to place any sum at the disposal of the Auditor of Public Accounts.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**AUTOMOBILES—Bonds not required of u-drive-it car for hire.**

RICHMOND, VA., January 7, 1931.

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 31st ultimo, with which you enclosed a letter from Mr. George I. Vogel, Attorney at Law, of Roanoke, Virginia, counsel for Rent-a-Car Corporation, and I note what Mr. Vogel has to say in reference to the law covering bonds for automobiles for rent or hire.

I am of the opinion that no bond is required of a u-drive-it car for hire. The owner of such a car is not responsible in damages for the negligence resulting in injury to the public or for damages to property of the public, and is certainly not liable for injury to the person renting the car or for damages to his property occasioned by the negligence of the person who hires the automobile.

In my opinion, the provision for insurance or indemnity is to take care of the negligence resulting in injury to passengers or damage to property where cars are driven by agents of the owner, such, for instance, as for hire taxi automobiles.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**AUTOMOBILES—Chauffeur's license.**

RICHMOND, VA., January 30, 1931.

HON. JOHN B. DEY,  
*London Bridge, Virginia.*

DEAR MR. DEY:

I beg to acknowledge receipt of yours of the 28th instant, in which you ask the following question:

"As you well know, I am located in the trucking section of Virginia; the farmers employ colored laborers who work regularly on these farms in any capacity, they also drive trucks when there is any produce to haul to terminals or docks for shipment. I would like to know if

the law classes these farm laborers strictly as chauffeurs and requires them to have chauffeurs' licenses because they drive a truck when the business demands such service in time of shipment. In order to make myself clear, I wish to state that these men are never hired with the distinct understanding to do nothing but drive a truck, but they do any and all kinds of farm work along with the truck driving."

Perhaps no other matter has given me more difficulty than the questions which arise under section 19½ of the motor vehicle registration act, originally found on page 271 of the Acts of 1926, amended by Acts of 1930, page 927. I have given heretofore a number of opinions on these questions, which are found on pages 5-10 inclusive of my report covering the period from July 1, 1928, to June 30, 1929. The pertinent portion of the act reads as follows:

"Any person other than the owner of a motor vehicle or a member of his family, which has been registered and licensed to be operated in this State, whose principal duty or occupation requires him to drive a motor vehicle, and any person, other than the owner, 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; \* \*."

The question, therefore, becomes one of fact in each particular case and the solution depends upon the question whether the principal duty of the employee is to drive a motor vehicle. If a man is employed as a farm laborer and in connection therewith on occasions drives a truck, I do not think he needs a chauffeur's license.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### **AUTOMOBILES—Chauffeur's license—Who exempt.**

RICHMOND, VA., *April 18, 1931.*

HON. E. N. HARDY, JR., *Counsel*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR SIR:

I am in receipt of your letter of April 15, in which you ask my opinion upon the construction of the provisions of the Motor Vehicle Law contained in a paragraph of the letter which I quote in full:

"The question has been widely raised that the phrase 'any person other than the owner of a motor vehicle or a member of his family' exempts those chauffeurs who own an automobile, but who are engaged as chauffeurs and actually operate as chauffeurs automobiles belonging to their employers, from the necessity of having the chauffeur's license.

"It seems quite clear to me that this is not the purpose which the Legislature had in view in amending this statute, but that on the other hand the Legislature intended by this Act that persons who otherwise fall within this classification and who actually operate a vehicle as a chauffeur for another party, should obtain a chauffeur's license regardless of whether the chauffeur himself actually owns an automobile.

"Will you please give me your opinion on this question?"

In my opinion, you are entirely correct in your construction of the law you have quoted to the effect that the owner of a motor vehicle, or the member of a family of the owner of a motor vehicle, who operates an automobile of another is not exempt from the payment of a chauffeur's license.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**AUTOMOBILES—Licenses required.**

RICHMOND, VA., May 18, 1931.

MR. E. N. HARDY, JR., *Counsel,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. HARDY:

I beg to acknowledge receipt of your letter of May 6, in which you inquire whether a TH license is required by section 29, subsection (f), of the Motor Vehicle Act of a carrier who operates exclusively within the corporate limits of one city or town. That section refers to the "transportation of specific loads or commodities for one person or firm on a single trip, to or from the city, town or location from which said carrier operates to such other cities, towns, or locations, over any highway of the State, or between cities and towns thereof."

Under the head of "definitions" preceding the first section of the Motor Vehicle Act, in subsection (t) under the head of "highway" is found the following definition:

"Every way or place of whatever nature open to the use of the public for the purposes of vehicular traffic in this State, including the streets and alleys in incorporated towns and cities."

In section 6, chapter 419 of the Acts of 1930, practically the same provision is included as to the transportation of loads or commodities to or from the city, town or location from which said carrier operates to any other city, town or location, over any improved public highways and/or between incorporated communities of the State, or any of the highways, streets and/or alleys of the State, as is found in subsection (f) of section 29.

You will notice that in the last paragraph highways, streets and alleys are spoken of as of the State instead of as of a city or town.

The evident intention of the Legislature was to require a license of all persons operating motor vehicles for hire over the public highways of the State, including the streets and alleys of a city or town.

In my opinion, a person coming within the provisions of subsection (f) of section 29 is required to obtain the license provided in that section where such person operates from one location to another in the same city or town over any highway of the State.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**AUTOMOBILES—License required on trucks with semi-trailers.**RICHMOND, VA., *April 15, 1931.*

HON. W. FRANCIS BINFORD,  
*Trial Justice,*  
*Prince George, Virginia.*

DEAR MR. BINFORD:

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

"The State traffic officers havee arrested several defendants and brought them before me for using a semi-trailer without a license.

"After searching the statute I can find where the law provides a license for a trailer, but not for a semi-trailer.

"I would appreciate it very much if you would give me your opinion as to whether a semi-trailer should have a license, and please cite me the Code section."

In my opinion, section 29 of the motor vehicle law, of which you doubtless have a copy, covers the registration fees charged owners of trucks operating with both trailers and semi-trailers.

Subsection (c) provides a schedule of fees based upon the capacity of a truck or trailer. The capacity referred to in the section is based upon the total carrying capacity of the vehicle or vehicles and should be applied according to the capacity of the truck and trailer or semi-trailer. For instance, a truck may be of two-ton capacity and coupled with it may be a trailer of the same capacity, in which event the fee is based upon an aggregate four-ton capacity. It may be that, in addition to a two-ton capacity truck, it carries a two-ton capacity semi-trailer. In this event, although a part of the weight of the load on the semi-trailer is borne by the truck, it is my opinion that the registration fee should be based upon an aggregate four-ton carry capacity.

You will notice that the first paragraph of section 29 provides for the registration fee on motor vehicles, trailers and semi-trailers, and that thereafter, as in subsection (c), it speaks of trucks and/or trailers and likewise speaks in the same way, under subsection (f). I do not think that the omissions in subsections (c) and (f) to include in the registration fee provisions the word "semi-trailers" was intended to exempt semi-trailers from the operation of the registration fee provision of section 29 of the motor vehicle law.

I understand that this is the construction placed upon the law by Mr. Frazier, and that the registration of trailers and semi-trailers has been and is now being conducted under this interpretation.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**AUTOMOBILES—Motor vehicle carriers—Class of certificate required.**

RICHMOND, VA., July 29, 1930.

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

*In re: Virginia Beach Bus Line and Coastal Coach Line.*

I am in receipt of your letter of the 24th instant, in which you enclose a letter under date of July 17 to you from Mr. P. W. Bogert, President, Virginia Beach Bus Line, Incorporated, in which letter Mr. Bogert requests that you register certain vehicles he enumerates in the joint name of Virginia Beach Bus Line and Coastal Coach Line, and I note that he explains that the Virginia Beach Bus Line operates the Coastal Coach Line.

In your letter you ask for my opinion as to your authority to comply with Mr. Bogert's request.

I have been unable to find any provision of the motor vehicle carrier's law authorizing you to register vehicles, some of which are used and owned by one line and some by another line, in the joint names of the two companies.

The provision of law under which you register motor vehicles used in the transportation of passengers is contained in section 5, paragraph 1, of chapter 222, page 330, of the Acts of 1924, as amended. That act provides that, before a vehicle may be used in the transportation of passengers, a certificate must be obtained from the State Corporation Commission and that such certificate must include the seating capacity of the vehicle, the route on which the vessel is to be used, the number of reserve and substitute cars and a complete description of each.

In section 6 it becomes your duty, upon presentation of the certificate provided for in section 5, to issue license plates, and it is provided in that section that no motor vehicle carrier holding a certificate A, B or C shall change said route of the motor vehicle during any year for which a license has been issued without a permit in writing from the Commissioner.

I assume from Mr. Bogert's letter that some of the vehicles enumerated are owned by the bus line and others by the coach line. While I express no opinion upon this phase of the matter, I suggest that, as the bus and coach lines are owned by the same parties, co-operate and connect, each of these lines may obtain a permit from the Corporation Commission allowing the use of vessels of each on the lines of the other, and that thus the object sought by the registration of the vehicles in the joint names may be accomplished.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**AUTOMOBILES—Motor vehicle carriers—Insurance or bond required.**

RICHMOND, VA., July 23, 1930.

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your two letters, one of July 10th, and the other of July 22nd, both in reference to the construction of paragraph G, section 29, chapter 430 of the Acts of 1930, in reference to insurance or bond required of motor vehicle carriers before you are authorized to grant a license to such carriers.

The paragraph to which you refer has been maturely considered, after interviews with you personally and with the representative of one of the taxi companies coming within the provisions of the paragraph. In the first place, I must say that the meaning of this paragraph is not perfectly clear. In one part of the same sentence, it authorizes the director to require insurance or bond not in excess of five hundred dollars per revenue producing seat as liability insurance on passengers and property, while further on it provides a minimum penalty of two thousand dollars for personal injury, and five hundred dollars for damage to property,

“such policy or bond to contain such conditions, provisions and limitations as the director may prescribe, and shall be kept in full force and effect, and failure to do so shall be cause for the revocation of such license; \* \* \*.”

with the provision that:

“where such a bond is required by the municipality in which the applicant operates, no further or additional bond shall be required hereunder.”

Of course, where there is no provision by a city or town covering the requirement of a bond, or other character of insurance, you have full authority in the premises, and it is only where an applicant for license has complied with the municipal requirement as to bond that your authority to require a bond is taken away. I understand, however, that instead of requiring a bond, some of the municipalities in the State have provided alternative requirements by which taxi companies may,

First—Require liability insurance.

Second—Require a liability bond.

Third—Require the taxi company to maintain net assets in a certain amount over and above gross liability.

The purpose of the law is evidently to protect the public from personal injury to individuals, and to their property, and to provide security to cover all damages recovered against passenger and property carriers.

You have ample discretion as to the amount of bond you can require of taxi companies. I construe paragraph G to authorize you to require a maximum bond of five hundred dollars per revenue producing seat of those companies where the number of cabs are such that the minimum bond re-

quired of them would not be less than two thousand dollars for personal injury, and five hundred dollars for property liability; that where a company operates more than five taxicabs, the minimum bond or security you can require would amount to not less than two thousand five hundred dollars, and the maximum not exceeding five hundred dollars per revenue producing seat, or in lieu thereof, personal and property damage insurance covering the amounts as above specified.

Where a company in a municipality has been allowed to carry self-insurance on the basis of minimum net assets over liabilities, and that amount has been fixed in such a sum as to offer reasonably ample protection to the public, I am of the opinion that the purpose of the law will be carried out should you require a reasonable bond within the limits I have indicated of all companies meeting the municipal requirements, and carrying self-insurance.

Necessarily, where companies have not met municipal requirements, or the municipal requirements are not sufficient to protect the public, I should advise against concessions to operating companies. But, in those instances where the assets are such as to reasonably protect the public, I should advise a more liberal policy upon your part.

In my opinion, a bond of ten thousand dollars would be ample to protect the public where a taxicab company has qualified under municipal ordinances as a self-insurer, but would insist upon a provision in the bond that, whenever the net assets of the company fell below the municipal requirement, the bond given you should be null and void, and a new bond given in such amount as you may thereafter deem necessary.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**AUTOMOBILES—Non-resident students of University of Virginia required to obtain license for current year.**

RICHMOND, VA., *April 16, 1931.*

MR. E. N. HARDY, JR., *Counsel,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. HARDY:

I am in receipt of your letter of the 10th instant, which I quote in full:

“Will you please give me your opinion as to whether this Division may require that non-resident students of the University of Virginia and other institutions of learning in this State, who own and operate, or cause to be operated, and who have owned and operated, or caused to be operated for a period exceeding six months, any foreign vehicle which has been duly registered for the current calendar year in the State, county or other place of which the owner is a resident, and which at all times when operated in this State has displayed upon it the number plate, or plates, issued for such vehicle in the place of residence of such owner, shall register such vehicle in this State and obtain therefor Virginia license?”

"If so, would not a student entering the University of Virginia in September and owning and operating an automobile under the conditions above set forth for a period beginning in September and extending over a period exceeding six months, be required at the end of such period to procure registration and license from time he first began to operate in this State? In other words, would he not be required to procure a Virginia license for the balance of the calendar year, i. e. from September to the first day of January, and in addition thereto a Virginia license for the calendar year beginning on the first day of January?"

"You are respectfully referred to section 20, subsection (a) of the Virginia Uniform Motor Vehicle Registration and Certificate of Title Act, and to an opinion given by you to Mr. W. Allen Perkins, of Charlottesville, Virginia, under date of January 25, 1928."

In my opinion, the provision of subsection (a) of the Virginia Uniform Motor Vehicle Registration and Certificate of Title Act, allowing the use of motor vehicles of foreign registration in the State of Virginia, without requiring State licenses, only applies to the current year when the period of time foreign licenses are used does not exceed six months. I do not think that a license which has been issued say for the year 1930 less than six months before the first of January, 1931, entitles the resident, or temporary resident, to obtain a second foreign registration license for any part of the year 1931.

In my opinion, the practical operation of that provision means that a current year's license can be used for a period of six months or less, but that, if the owner of a car of foreign registration undertakes to use the license for a period say of seven months during any one year, the Division of Motor Vehicles can require such a person to take out a Virginia license for a period covering the entire time the car was used under the foreign registration license.

A person could only use a car for parts of two years in violation of the principles laid down in this opinion and, if he undertook to do so, while I do not think that the law would allow the Division to require the payment of any license fee for the past year, the person undertaking to use the second year's foreign registration license could be prosecuted for operating a motor vehicle in Virginia without the proper Virginia license.

I understand that this opinion meets with the approval and is in line with the construction placed upon your inquiry by Honorable T. McCall Frazier, Director of the Division of Motor Vehicles.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**AUTOMOBILES—Property damage insurance required of for-hire trucks.**RICHMOND, VA., *December 6, 1930.*

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 12th of last month, in which you quote in full subsection (g) of section 29, chapter 420, page 924, of the Acts of 1930.

I note that you are of the opinion that no public liability and property damage insurance is required before issuing for-hire licenses for trucks operated for the transportation of property.

In this I think you are in error.

It is true that subsection (g) is not at all clear, but the general purpose of that section is to require public liability and property damage insurance as well as personal injury insurance. You will notice that subsection (g) provides that "in the granting of a license" the director shall require the applicant to procure "liability and property damage insurance." It is true that further on the section provides that the insurance, which shall be in such amount as the director may determine, shall not be in excess of \$500.00 for each revenue producing seat, and in that part of the section there is a restriction to personal injury, but following a semi-colon it is further provided that the insurance shall be for damage to property of any person other than the assured, with a minimum of \$2,000 for personal injury and a minimum of \$500 for property damage.

It would seem, therefore, that you should require of a licensee of trucks for hire in the transportation of property either liability and property damage insurance or bond with surety.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**AUTOMOBILES—Truck and trailer license fees.**RICHMOND, VA., *June 6, 1931.*

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 4th instant, in which you write your construction of the law covering the licensing of trucks, trailers and semi-trailers. I quote your letter in part:

"1. Tractors with trailers used on the public roads should be classed as trucks and should pay a fee at the truck rate based on the tonnage of the trailer or semi-trailer which it draws.

"2. Tractor-trucks should be classed as trucks and should pay a fee at the truck rate as provided in subsections c and f of section 29

of chapter 430 of the Acts of 1930 in those instances in which they are licensed under that Act and should pay a fee at the truck rate as provided in subsection g of section f of chapter 419 of the Acts of 1930 in those instances in which they are licensed under that Act.

"3. Trailers should pay a fee based on their rated carrying capacity at the rate provided in subsections c and f of section 29, chapter 430 of the Acts of 1930 in those instances, in which the trailers are licensed under that Act and at the rate provided in section 8, subsection g of chapter 419 of the Acts of 1930 in those instances in which the trailers are licensed under that Act.

"4. Semi-trailers should pay a fee based on their rated carrying capacity at the rate provided in subsections c and f of section 29 of chapter 430 of the Acts of 1930 in those instances in which the semi-trailers are licensed under that Act, and at the rate provided for trailers in subsection g of section 8 of chapter 419 of the Acts of 1930 in those instances in which the semi-trailers are licensed under that Act.

"Will you please advise me if, in your opinion, this construction of the law is correct."

In my opinion, you properly construe the law covering the license provisions for trucks, trailers and semi-trailers, and I advise that you uniformly enforce your conclusions whenever applications are made for licenses for trucks, trailers and semi-trailers.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### BAIL COMMISSIONER—Fees of.

RICHMOND, VA., *September 23, 1930.*

HON. H. PRINCE BURNETT,

*Attorney for the Commonwealth,*

*Independence, Virginia.*

DEAR MR. BURNETT:

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

"I will appreciate it if you will advise me just what, in your opinion, a bail commissioner is allowed for taking bonds. Has a justice of the peace authority to take bond in felony cases and, if so, what are the fees?"

The fees of a bail commissioner are fixed at double those of a justice of the peace. (Section 4835 of the Code.)

The fee of a justice of the peace for admitting a person to bail is fixed at \$1.00. (Section 3507 of the Code.)

The authority of a justice of the peace to take a bond in a felony case is governed by section 4828 of the Code and in felony cases is limited in those cases in which there is a slight suspicion of guilt against the accused. Where the felony charged is clearly proved, or there is a grave suspicion of guilt, a justice of the peace has no authority to take a bond.

Of course, the limitation on the authority of a justice of the peace to take a bail bond from a person accused of a felony is largely, if not entirely, within his discretion, as he may say there is only a slight suspicion of guilt

where you, for instance, would claim that the proof of the felony was overwhelming.

The opinion I have expressed applies to cases of ordinary justices of the peace where there is no trial justice in the county. In counties having trial justices, all proceedings other than the issue of warrants are held before such trial justice, and the ordinary justice of the peace has no jurisdiction except to issue warrants.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BILLS—Signature of governor required, when.**

RICHMOND, VA., September 9, 1930.

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,*  
*Richmond, Virginia.*

MY DEAR GOVERNOR:

In the absence of Colonel Saunders, I beg to acknowledge yours of the 3rd instant, reading as follows:

"Records in my office and in the office of the Keeper of the Rolls show that on March 26, 1930, I signed an act passed by the General Assembly for the Relief of Pennington Gap Bank, Inc. (S. B. 385). The Act has been printed in the Acts of Assembly for 1930.

"It is now reported to me that said bill does not in fact bear my signature and I am now requested to sign it nunc pro tunc. Have I the right to do so?"

I have this morning had an opportunity to talk to Colonel Saunders regarding this matter and he concurs in the following opinion:

I do not think that you now have the right to sign the bill nunc pro tunc. Section 76 of the Constitution specifically requires that before a bill becomes a law it shall be signed by the Governor. I think this requirement is mandatory. If the General Assembly adjourns within the period of five days from the time a bill is sent to the Governor, he has ten days after adjournment within which he may sign the bill. The last clause of that section provides in part that the bill shall become a law "if approved by the Governor in the manner and to the extent above provided." The manner of approval must be by signature. I can further find no authority whatsoever by which a signature now executed could relate back to the ten day period.

Respectfully yours,

COLLINS DENNY, JR.,  
*Assistant Attorney General.*

**BOARD OF EQUALIZATION—Increasing assessment.**RICHMOND, VA., *September 29, 1930.*

MR. ZANNIE B. GIORUS,  
R. F. D., Box 69,  
Newport, Virginia.

DEAR SIR:

I beg to acknowledge receipt of your letter of September 19, in which you ask whether the board of equalization has the right to raise the assessed value of property without first giving the owner thereof notice.

In reply thereto, I refer you to section 346 of the Tax Code which provides, in part, as follows:

“\* \* provided, however, that no assessment shall be increased until after the owner of the property has been notified and given an opportunity to show cause against such increase, unless such owner has already been heard.”

It, therefore, appears that, if at one of the regular hearings the owner has not already been heard on his assessment, he must be notified before it is increased.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BOARD OF SUPERVISORS—Authority to pay forest wardens' expenses.**RICHMOND, VA., *September 12, 1930.*

HON. J. E. PARROTT,  
*Commonwealth's Attorney,*  
*Stanardsville, Virginia.*

DEAR SIR:

In the absence of Colonel Saunders there has come to me your inquiry of September 8, which reads as follows:

“The law as contained in Acts 1926, page 855, provides for the duties, among other things, of local forest wardens. Such a warden, under section 541 of Acts 1926, page 855, as amended by Acts 1930, pages 741-742, is authorized to employ certain persons to aid in extinguishing forest fires as in his judgment seems expedient and necessary for such purpose, but within the limits of such expense as he may be authorized to incur in his instructions from the State forester. The said section of Acts 1926 goes on to provide that such local forest warden shall keep an itemized account of his expenses and send such account, verified by affidavit, immediately to the State forester for his examination. It is then provided that upon approval the State forester shall send such accounts to the Board of Supervisors of the county in which the fire occurred, and, upon approval by it of the correctness of such accounts, it shall then be the duty of that board to issue warrants on the county treasurer for the payment of such accounts.

“There seems to be some confusion among the members of the Board of Supervisors as to the duty of the board to issue such warrants and just when such duty to so issue arises. It is my opinion, and I have so told the Board of Supervisors, that it is the duty of the board

to provide for such payments when it approves of the 'correctness' of the accounts, after being returned to it as approved by the State forester. It is not my belief that the board has any discretion in the matter, but that it is made mandatory that it should so issue the county warrants as soon as the matter of the 'correctness' of the items of expenditure in the accounts is determined."

I am of the opinion that the conclusion you have reached is sound, and that the section referred to makes it mandatory upon the Board of Supervisors to issue a county warrant as soon as the correctness of the items in the account has been determined.

Yours very truly,

COLLINS DENNY, JR.,  
*Assistant Attorney General.*

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**BOARD OF SUPERVISORS—Authority to pass ordinance concerning coroners' fees.**

RICHMOND, VA., *December 9, 1930.*

HON. A. F. DIZE, *Mayor,*  
*Cape Charles, Virginia.*

DEAR MR. DIZE:

I am in receipt of your letter of the 7th—Sunday, in which you enclose copy of a resolution of the board of supervisors of your county.

I note that the board has resolved not to pay for holding a coroner's inquest unless such inquest is ordered by the attorney for the Commonwealth. You write that, in your opinion, the ordinance is clearly illegal.

Chapter 190 of the Code, sections 4806-4818 inclusive, covers the law pertaining to coroners' inquests. By this chapter certain duties are imposed upon coroners as to the holding of inquests, and provision is made therein for the expenses thereof. I do not find that the board of supervisors has authority to pass a resolution circumscribing or curtailing the duties of a coroner.

The coroner is required to make his report to the circuit court. In this report, I should say, he should certify as to the expenses of the inquests and that the court, if it thinks the costs proper, should allow them.

The validity of the action of the board of supervisors may be determined by the judge of your circuit court.

As requested by you, I am returning copy of the ordinance adopted by the board of supervisors.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**BOARD OF SUPERVISORS—Clerk of—Duties and salary.**

RICHMOND, VA., December 1, 1930.

HON. W. W. G. DOTSON,  
*Commonwealth's Attorney,*  
*Wise, Virginia.*

DEAR MR. DOTSON:

I find that I overlooked your letter of the 3rd ultimo, in which you asked my advice and a prompt reply concerning the authority of the board of supervisors paying the clerk of the county and others for recording the treasurer's settlements in the supervisor's books; and I note that your board pays the clerk \$20.83 monthly for "waiting" on the board.

By the provisions of section 2770 of the Code, the county clerk is officio clerk of the board of supervisors, and under paragraph 4 he is required to record the reports of the county treasurer containing his receipts and disbursements. By section 2773 authority is given the board to pay the clerk of the county of Wise a salary not exceeding \$720.00 per annum.

In my opinion, the clerk should discharge all of the duties imposed upon him by section 2770 and the board of supervisors should pay him reasonable compensation for his services.

Had I been asked by any person other than yourself for an opinion upon the matter contained in your letter, I should have referred them to you as the official advisor of the board.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BOARD OF SUPERVISORS—May not regulate school budget.**

RICHMOND, VA., May 7, 1931.

HON. JOHN H. COLE,  
*Commonwealth's Attorney,*  
*Stony Creek, Virginia.*

MY DEAR MR. COLE:

I have for reply your letter of yesterday, in which you submit the following question:

Has the Board of Supervisors a right to disprove a specific item in the school budget prepared in accordance with the provisions of section 657, or must the board consider the budget as a whole?

Section 657 of the Code directs the division superintendent of schools, with the advice of the school board, to prepare an estimate of the sum needed for the support of the schools during the next scholastic year. This estimate must show in detail the purposes for which the money is needed, and it is to be presented to the Board of Supervisors who shall be requested "to fix such school levy as will net an amount of money necessary for the operation of the schools, or in lieu of such levy to make a cash appropriation from the general county levy for operation of the schools." The Board of Supervisors

is confined by this language, and under it all it may do is either to lay or refuse to lay a levy. If the board refuses to lay such levy as is requested, then, pursuant to the last sentence of that section, fifty taxpayers may request of the circuit court that an election be held to determine whether such levy shall or shall not be fixed.

The Board of Supervisors may state its readiness to lay a levy or make a cash appropriation of a sum less than that estimated by the division superintendent of schools, in which case, if he and the school board so desire, they may scale down their budget, but I do not think that under the law the Board of Supervisors is authorized to strike out a specific item.

Very clearly the county board has no authority to check on the county treasurer, nor has the county treasurer authority to pay any item not included in the school budget.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BOARD OF SUPERVISORS—No authority to lease part of public landing.**

RICHMOND, VA., April 29, 1931.

HON. C. S. TOWLES,  
*Attorney for the Commonwealth,*  
*Reedsville, Virginia.*

MY DEAR MR. TOWLES:

I am in receipt of your letter of the 27th instant, in which you write concerning proceedings for the condemnation of a road and landing at Glebe Point in your county, and I note you say that the ferry across the Great Wicomico River from Tippers to Glebe Point has been taken over by the State Highway Commission, that the landing embraces one-third of an acre, and that the Commission's ferry uses a very small part of this landing.

You then say that individuals desire to lease a small part of the landing from the Board of Supervisors for a location of a service station. You then ask whether, under the circumstances, the Board of Supervisors has the right to lease a part of the public landing to a private party for commercial or other purposes.

Under the provisions of chapter 85a of the Code, public roads and landings may be acquired for public purposes. Neither can be acquired for personal or private use.

Without passing upon the question as to whether the Board of Supervisors have authority over the landing which was acquired along with the road leading thereto for public use after the road and the ferry have been taken over by the Highway Commission, which I very much doubt, I am of the opinion that the Board has no authority to lease any portion of a public road or ferry landing to private individuals for any use whatsoever. If not needed for public use, a road or landing may be discontinued, under the provisions of the chapter quoted, in which event the road or landing discontinued

reverts to the original owner and is no longer public property for any other use than that for which it was originally condemned.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BOARD OF SUPERVISORS—No authority to regulate running at large of licensed dogs.**

RICHMOND, VA., May 7, 1931.

HON. M. D. HART, *Executive Secretary,*  
*Commission of Game and Inland Fisheries,*  
*Richmond, Virginia.*

MY DEAR SIR:

I have for reply your letter of May 6, in which you ask whether the boards of supervisors are empowered, under section 2743 of the Code and that portion thereof which provides "To prevent trespassing by persons, animals and fowls," to prohibit dogs from running at large during certain seasons of the year.

I do not think that the boards of supervisors have authority to make any such prohibition.

Acts 1928, page 708, provide:

"It shall be unlawful for any owner to permit a dog to run or roam at large at any time without a license tag, except as herein provided. \* \*"

The necessary implication from this language is that a licensed dog may run at large. The boards of supervisors may take such steps as will penalize a person whose dog trespasses, but, so long as a dog is not trespassing, I know of no authority under which the owner may be compelled to keep that dog chained.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BOARD OF EQUALIZATION—No authority to assess property.**

RICHMOND, VA., May 6, 1931.

MR. JAMES CHESLEY BEALE,  
*Franklin, Virginia.*

DAR MR. BEALE:

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

"Kindly let me know if it is the duty under the laws of Virginia for the Board of Equalization for Southampton county to assess improvements made on property during June, 1930, or is it the duty of the commissioner of the county. Or is the duty of the Board of Equalization to only equalize values after the assessment is made?"

Under the provisions of section 259 of the Tax Code, the commissioner of the revenue is directed to assess all omitted buildings, whether old or new, as of the fair cash value on the day of assessment.

In my opinion, the duty of boards of equalization is limited to the equalization of values after assessments have been made. As to whether or not the board of your county has been doing its duty, I advise you to consult with the attorney for the Commonwealth of your county.

At my request, the office of the State Tax Commission is mailing you a copy of all laws relating to the assessment of property and the duty of equalization boards.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**BOARD OF SUPERVISORS—Not authorized to use road or gas fund for Literary Loan purposes, nor road funds for lighting county buildings.**

RICHMOND, VA., *February 9, 1931.*

MR. J. E. HONAKER,  
*Rocky Gap, Virginia.*

DEAR MR. HONAKER:

I am in receipt of your letter of the 6th instant, in which you write:

"The school board of this county has in its hands plans and specifications for the construction of an additional school building at this place. The levy of this district is at this time 25 cents, which is, as I understand the law, the maximum amount that can be levied for district school purposes without a special act. The 25 cents levy is now being used and will be used for several years to retire present school indebtedness of this district. Under these conditions, would it be lawful for the board of supervisors to appropriate sufficient amounts each year from the district road funds or gas funds coming to this district to retire and pay interest of a Literary Loan to construct this building? I shall appreciate very much your opinion in this matter.

"Again, I would appreciate your opinion in regard to the board of supervisors having the right to contract with a power company to construct and maintain a lighting system to light a county seat, the payment of which would be made from the general county fund or the district road fund in the district in which the county seat is located."

In answer to the first question contained in the first paragraph of your letter, I would say that the board of supervisors are not authorized to use district road funds or district gas funds for the purpose of paying interest and retiring Literary Loans.

In answer to your second question, I am of the opinion that, while the board of supervisors has authority to contract with a power company to construct and maintain a lighting system to light the public buildings at your county seat, they cannot use district road funds of the district in which the county buildings are located for the purpose of paying for the construction of the system.

I might add, however, though you do not ask it, that they have authority to pay for all necessary lighting of the public buildings of the county out of the general county fund.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**CARNIVALS—Are voluntary fire companies exempt from tax on.**

RICHMOND, VA., July 21, 1930.

MR. H. C. MANUEL, *Secretary,*  
*Sarah Zane Fire Company,*  
*Winchester, Virginia.*

MY DEAR SIR:

I am in receipt of your letter of July 15, in which you state that you have booked a carnival and wish to know whether your organization, which is a voluntary one and is supported by the city, is exempt from the tax placed by the State on carnivals.

In reply thereto, I beg to state that in my opinion, which is based primarily on next to the last paragraph of section 153 of the Tax Code, you are not exempt, but that the tax will have to be paid.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**CITIES AND TOWNS—Authority to levy license tax on pool rooms and bowling alleys.**

RICHMOND, VA., January 22, 1931.

HON. H. M. TODD,  
*Town Manager,*  
*Galax, Virginia.*

DEAR SIR:

I am in receipt of your letter of January 21 in reference to the authority of your town to require licenses for pool rooms and bowling alleys and to charge for such licenses a higher license tax than is fixed by State law.

Cities and towns are authorized, under the provisions of section 296 of the Tax Code, to levy a license tax upon any business or amusement which is taxed by the State. Pool rooms are taxed by the State \$50.00 for the first table and \$25.00 for each additional table under the provisions of section 195 of the Tax Code, and bowling alleys are taxed \$25.00 for the first alley and \$10.00 for each additional alley under the provisions of section 167 thereof.

There is nowhere in the Tax Code, or any other law, a provision limiting the amount at which a locality may fix a tax for pool tables or bowling alleys. It is, therefore, my opinion that your town has authority to fix its taxes at a higher rate or more than is fixed by State law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**CITIES AND TOWNS—Conflict between charter and general statute.**RICHMOND, VA., *February 17, 1931.*

HON. HARRY L. SNEAD,  
*Town Attorney,*  
*Petersburg, Virginia.*

DEAR SIR:

In response to your question whether the town council of Colonial Heights may fix the salaries for the members thereof not to exceed the sum of \$10.00 per month, as provided by section 47, Acts 1930, chapter 186, I beg to advise as follows:

Section 2951 of the Code, as amended by chapter 47 of Acts 1930, provides in part that no salary shall be paid the members of any council of any town or city, unless the same shall have been authorized by the electors of such town or city in the manner provided by law. That portion of the section to which I have just made reference has been the statutory provision with us since 1914 (see Acts 1914, page 173).

There is unquestionably an irreconcilable conflict between section 47 of the charter and that portion of section 2951 of the Code to which I have just referred.

It will be noted that chapter 47 of Acts 1930, wherein section 2951 was amended, was adopted February 21, 1930, and, being a general act, did not become effective until June; whereas chapter 186 of Acts 1930 (the chapter providing a new charter for the town of Colonial Heights) was an emergency act and became effective from the date of its passage. If the 1930 Act, whereby section 2951 was amended, had for the first time brought into the general statute the provision that no salary should be paid the members of any town or city council, save as the same might be authorized by the electors, it being a later enactment, my view is it would govern; but that provision of the general law which requires an election has been the law since 1914 and it was the law on the date the new charter of Colonial Heights became effective.

The question, therefore, seems to me to resolve itself to this: If there be a conflict between the provisions of an earlier general law and those of a later specific charter, which governs? The question seems to be answered by the cases of *Chambers v. City of Roanoke*, 114 Va. 766, and *Fonticello Co. v. City of Richmond*, 147 Va. 355. In the latter of these cases the court quotes from the former one as follows:

"The prior statute is general in its terms and applies to all cities and towns of the Commonwealth, while the latter is limited in its operation alone to the city of Roanoke. In such case the latter statute must be construed to be a qualified amendment of the general law, and controlling in the locality to which it applies."

In my opinion section 47 of the charter of the town of Colonial Heights is a qualified amendment of the general provision which has been the law of this State since 1914 and controlling in the locality to which it specifically applies.

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

**CITIES AND TOWNS—Liability of town to pay for board of prisoners while confined in jail.**RICHMOND, VA., *January 9, 1931.*HON. R. W. KIME, *Mayor,*  
*Salem, Virginia*

DEAR MR. MAYOR:

I am in receipt of your letter of the 3rd instant, in which you ask me to express an opinion as to whether the town of Salem or the Commonwealth should pay the jailor's fees for town prisoners sentenced to a fine and to the State convict road force.

I understand it to be a fact that in such cases the town gets the fine and that the question is as to the liability for the board of prisoners after they have been sentenced to the convict road force and before they are taken from jail.

Under the provisions of the law allowing cities and towns to pass prohibition ordinances and providing that they shall receive the fines, the cities and towns are required to pay all of the costs incident to criminal prosecutions for violations of town ordinances.

In my opinion, towns are liable to pay for the board of prisoners sentenced to the convict road force so long as they remain confined in jail. Having obtained the benefit of the fines, the town is under obligation to pay all costs and these costs include board while in jail awaiting transportation to State convict road camps.

If this were not so, all prisoners including those who are physically unable to perform work on the roads could and most probably would be sentenced to the roads and the towns and cities thus relieved of liability for their board.

I am enclosing copy of an opinion under date of October 19, 1928, to Honorable N. B. Hutcherson, Mayor of Rocky Mount, Virginia, covering the subject of your inquiry.

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

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**CITIES AND TOWNS—Workmen's Compensation Insurance required for men working on streets.**RICHMOND, VA., *April 6, 1931.*HON. E. D. COBURN, *Mayor,*  
*Narrows, Virginia.*

DEAR MR. MAYOR:

I have carefully noted the contents of your letter of April 3.

In this you state that your town has raised funds for the purpose of helping the unemployed, and at present you have working on your streets an average of twelve men per day at \$1.25 each. You also state the manner in which they are paid.

You then ask if your town will be required to carry workmen's compensation insurance under these conditions.

I am of the opinion that the town is required so to do.

I will further state that I have discussed the matter with the Industrial Commission and they concur in this view. They also advise me that some of the other towns and cities which are doing a similar class of work have taken out compensation insurance.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**CITY COUNCILS—Authority re: State officers.**

**CLERKS OF CIVIL JUSTICE COURTS—Appointments of assistants and employees.**

RICHMOND, VA., *September 15, 1930.*

MR. JOSEPH E. ALLEN, *Clerk,*  
*Civil Justice Courts,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 12 to the Attorney General, which has come to me for reply, reading as follows:

"Under date of August 30 the city council of the city of Richmond passed an ordinance, a copy of which is hereto attached. The effect of this ordinance was to add to the appointees of the clerk of the civil justice courts 'a clerical assistant,' and contains this language:

"The clerical assistant authorized to be appointed by authority of this ordinance must be twenty-one years of age, a voter, and a resident of the City of Richmond."

"In an opinion under date of June 6, 1930, Mr. James E. Cannon, the City Attorney of Richmond, advised one of the members of the city council as follows:

"Notwithstanding the fact that the civil justices of Richmond and all persons connected with the clerk's office are compensated out of the city treasury, they are State officers or employees and their qualifications are regulated by State law. In the absence of any delegation of such authority by the General Assembly to the council in section 3118 of the Code, as amended, and above set forth, I am of opinion that the council has not the authority to adopt the amendment referred to in your request."

"In view of the opinion thus expressed that such clerical assistant is a State employee and the council has not the authority to adopt the amendment referred to, I am respectfully requesting your opinion as to whether there is any State law which would make it improper to appoint as such clerical assistant a person who is not twenty-one years of age, or a voter, or a resident of the city of Richmond."

I beg to advise that I am heartily in accord with the opinion of the city attorney, to which you refer, to the effect that section 3118 of the Code prevents the city council from adding any qualifications which must be possessed by one to be appointed a clerical assistant.

It appears that the ordinance of August 30, to which you refer, provides for the appointment of three deputy clerks and one clerical assistant, and that it is only as to the clerical assistant that the additional qualifications have been added.

Since section 3118 of the Code, and no other section thereof of which I am advised, requires that a clerical assistant to the clerk of the civil justice court be twenty-one years of age, or a voter, or a resident of the city of Richmond, there is only the constitutional provision found in section 32 of the Constitution which could have any bearing on this question. That section sets forth the qualifications of a person who "shall be eligible to any office of the State," etc.

I am of the opinion that a clerical assistant is not an officer. Under the ordinance referred to by you, a clerical assistant is given power to perform none of the duties of a clerk, nor is he required to qualify, nor to enter into bond, nor is he empowered to do any official act whatsoever.

I am, therefore, of the opinion that you may appoint as such clerical assistant a person who is not twenty-one years of age, or a voter, or a resident of the city of Richmond, that portion of the ordinance of August 30 quoted by you to the contrary notwithstanding.

Very truly yours,

COLLINS DENNY, JR.,

*Assistant Attorney General.*

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**CLERKS—Fees of—Qualifying as administrator, etc.—World war veterans.**

RICHMOND, VA., August 6, 1930.

MRS. CARRIE S. HUBARD, *Clerk,*  
*Buckingham, Virginia.*

DEAR MRS. HUBARD:

I am in receipt of your letter of yesterday, in which you ask to be advised as to whether or not you are entitled to the usual clerk's fees for qualifying administrators, executors, trustees, etc., of World War veterans, and I note your reference to chapter 173 of the Acts of 1930, requiring clerks to furnish, free of charge, copies of decrees, orders appointing administrators, etc.

I have carefully noted this law and do not think that the qualifications of fiduciaries come within its provisions.

I called up Honorable Frank Bane, Commissioner of Public Welfare, and was informed by his office that Mr. John R. Goodwin, Regional Attorney for the United States Veterans Bureau, Virginia Division, had expressed the opinion that there was no law requiring clerks to give free service in the matter of qualification of fiduciaries.

Under these circumstances, I see no reason why you should not make your regular charges for services mentioned in your letter.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**CLERKS—Supplies not furnished by State.**RICHMOND, VA., *April 27, 1931.*HON. WILLIAM HODGES BAKER, *Clerk,*  
*Portsmouth, Virginia.*

DEAR MR. BAKER:

I am in receipt of your letter of April 20, in which you inquire whether the city or the State is to furnish the clerks of the Court of Hustings and the Circuit Court of the city of Portsmouth with office stationery, supplies, furniture, etc., or whether the State has to bear part of the cost and the city a part thereof.

That matter is governed by section 299 of the Tax Code from which you will note that the council of each city, at the expense of the city, shall provide books, stationery, furniture, etc., "in addition to supplies furnished by the State," for the use of the "clerks of all city courts of record." So far as I am aware, the State furnishes no supplies to clerks, nor is there any requirement that it shall do so. It, therefore, appears that such matters as are mentioned in your letter are to be furnished by the city.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**COMMONWEALTH'S ATTORNEYS—Fees—Appearance before justice of peace in misdemeanor cases.**RICHMOND, VA., *April 1, 1931.*HON. E. R. COMBS, *Comptroller,*  
*Richmond, Virginia.**Attention: Mr. S. C. Day, Jr.*

MY DEAR MR. COMBS:

I am in receipt of your letter of March 28, in which you ask to be advised whether or not an Attorney for the Commonwealth is entitled to fees allowed him by the circuit court of his county in misdemeanor cases prosecuted in the court of a justice of the peace of his county for violations of the following sections of the Code: 2154 (39)ii, 4403, 4440, 4478 and 4530.

1. Section 2154 (39)ii makes the offense therein specified a misdemeanor. This is not one of the misdemeanor offenses for which an Attorney for the Commonwealth is entitled to a fee payable out of the State treasury.

2. Offenses coming within the provisions of section 4304 of the Code are felonies, and an Attorney for the Commonwealth appearing at a preliminary examination in the court of a justice of the peace is entitled to a fee in each case.

3. Section 4440 covers both felonies and misdemeanors.

For robbery from a person or larceny of \$50.00, or more, a person is guilty of a felony, and where the prosecution is for such an offense an Attorney for the Commonwealth is entitled to a fee of \$5.00 in each case. If, however, the prosecution is for larceny from a person where the value is

less than \$5.00, or in other cases where it is less than \$50.00, the offense is a misdemeanor and an Attorney for the Commonwealth is not entitled to a fee payable out of the State treasury.

4. Section 4478 provides punishment for a certain class of misdemeanors for which no fee is payable out of the State treasury to an Attorney for the Commonwealth for appearing before a justice of the peace.

5. An Attorney for the Commonwealth is not entitled to a fee, payable out of the State treasury, for appearing in cases coming within the provisions of section 4530.

As you very well know, Attorneys for the Commonwealth are not entitled to fees for trying any misdemeanor cases before justices of the peace, unless there is a specific provision of law allowing such fees.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**COMMONWEALTH'S ATTORNEYS—Fees—Appearance before mayor or magistrate.**

RICHMOND, VA., April 23, 1931.

HON. CHARLES F. HARRISON, *Mayor,*  
*Leesburg, Virginia.*

DEAR MR. HARRISON:

I am in receipt of your two letters under date of March 26 and April 13. These letters were misplaced and thus inadvertently overlooked until today.

In your first letter you state that you have been advised that I have ruled that, in a prosecution in a mayor's court for a violation of a town ordinance, the attorney for the Commonwealth is entitled upon a plea of guilty to a fee of \$25, and you add that you desire me to advise you if this is correct, although you are not particular about an official opinion because of the fact that you are satisfied that I have made no such ruling.

I take it that your second letter desires the same information as that contained in the first, except for the fact that reference is made in the second letter to a plea of guilty "in a magistrate's or mayor's court."

There is a decided difference as to the law governing fees for attorneys for the Commonwealth upon pleas of guilty in a magistrate's court and upon pleas of guilty in a mayor's court for a violation of a town ordinance.

Under the provisions of section 37 of the Layman Prohibition Act, officers charged with the enforcement of town ordinances are entitled to the same fees upon final conviction as in a prosecution had by the Commonwealth.

Under the provisions of section 46, attorneys for the Commonwealth are entitled to fees of \$10 in preliminary hearings when taxed against the accused and \$5 when taxed against the Commonwealth, and in all cases of final hearing the attorney is entitled to a fee of \$25 when taxed against the accused and to \$10 when taxed against the Commonwealth.

A hearing before a mayor for a violation of a town ordinance is a final hearing. The mayor has authority in all prohibition cases to give final judg-

ment, and in all such cases, with the exception of offenses under sections 17 and 18 of the prohibition law, I have ruled that attorneys for the Commonwealth are entitled to fees of \$25 in each case.

A plea of guilty is as much a final hearing as a formal trial and conviction. You will notice that, under section 46, where a person pleads guilty before a justice of the peace, the fee of the attorney for the Commonwealth is \$10. This provision was made, I understand, as an inducement to persons to plead guilty before a justice of the peace. Such a plea can only be accepted under the provisions of section 33 of the act.

If I have not fully answered your inquiry, I shall be pleased to hear from you further and assure you of a very much more prompt reply.

At your instance, I am sending a copy of this opinion to Honorable John Galleher, Attorney for the Commonwealth, of your county.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**COMMONWEALTH'S ATTORNEYS—Fees of—Collection of forfeited  
recognizance.**

RICHMOND, VA., December 29, 1930.

HON. M. B. BOOKER,  
*Attorney for the Commonwealth,  
Halifax, Virginia.*

DEAR MR. BOOKER:

I am in receipt of your letter of the 27th instant, in which you write:

"I am writing to you for an opinion. A man by the name of Wilmouth went on a bond for a man by the name of Moseley for \$500.00, for Moseley's appearance at the July term of the Court. Moseley failed to appear and on my motion the bond was declared forfeited. At Wilmouth's request this matter was continued from time to time. At the next term of the court I will proceed to collect the money. Am I entitled to a fee for my services?"

There does not seem to be a specific provision for the payment by the Commonwealth of a fee for services rendered by attorneys for the Commonwealth in litigations covering the collection of a forfeited recognizance.

However, the third paragraph of section 3505 provides for taxation as costs and attorney's fee of \$10.00 and five per cent of the amount of the judgment. This provision unquestionably adds a \$10.00 fee and five per cent of the amount of the bond upon the judgment of scire facias, so that in the case to which you refer, in addition to the other costs incident to the recovery of the \$500.00 bond from the obligors, there should be a fee of \$10.00 and five per cent or \$25.00, so that the recovery would be for the principal of the bond and, in addition to other costs, \$35.00 costs in your favor.

If this does not fully answer your inquiry, I shall be pleased to hear further from you upon the subject.

Yours very sincerely,

JNO. R. SAUNDERS,

*Attorney General.*

**COMMONWEALTH'S ATTORNEYS—Fees in prosecution of misdemeanor cases before trial justice.**RICHMOND, VA., *February 9, 1931.*

HON. WILLIAM M. SMITH,  
*Commonwealth's Attorney,*  
*Cumberland, Virginia.*

MY DEAR MR. SMITH:

I am in receipt of your letter of February 5, in which you request an opinion as to whether or not a fee may be allowed an attorney for the Commonwealth in misdemeanor cases heard by a trial justice where he is not required by law to appear, but is requested to attend by the trial justice.

I have been unable, so far, to find any statute authorizing such payment.

There may be some section of the Code or some law which I have overlooked which may entitle attorneys for the Commonwealth, when called in by trial justices, to have a fee taxed against an accused who is convicted. If you can find such a law, I shall be pleased for you to let me have it.

There is no general statute allowing fees to attorneys for the Commonwealth in misdemeanor prosecutions before trial justices or justices of the peace. Only in three cases are such attorneys paid fees out of the State treasury, to-wit: for appearances in prohibition cases, forestry cases and in game and dog law violation cases. Wherever the Commonwealth is liable for fees to attorneys for the Commonwealth, the trial justice, or other justice, may tax the costs against the accused, he being convicted. The attorney for the Commonwealth must thus to a large extent trace his claim to fees through the Commonwealth, and, where there is no liability on the Commonwealth for his fees, I find no authority for a justice to tax a fee against a person convicted of a misdemeanor, even though he is called into the case and asked to appear by a trial justice.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**COMMONWEALTH'S ATTORNEYS—Fees of when fine and costs not paid.**RICHMOND, VA., *February 6, 1931.*

HON. M. L. WALTON, JR.,  
*Attorney at Law,*  
*Woodstock, Virginia.*

MY DEAR MR. WALTON:

I am in receipt of your letter of the 4th instant, in which you write that the attorney for the Commonwealth of Shenandoah county has prosecuted two violators of the prohibition law in the town of Woodstock, that both have been convicted, but have paid no fines and costs and have nothing out of which they may be made. You further say that the attorney for the Commonwealth has presented a bill to the town for fees in each case. You then

write that you have examined the general law, particularly sections 3504, 3505 and 4675, subsection 47, and that you find no provision for the payment of these fees other than by the defendant or the State, and you quote section 4966 of the Code to the effect that no fee shall be paid to the attorney for the Commonwealth unless expressly provided by law.

In my opinion, your inquiry is covered by the last paragraph of my letter of May 18, 1928, to the Honorable S. L. Walton, Attorney for the Commonwealth, Luray, Virginia. I quote this paragraph:

"Where the prosecution is before a mayor, or other officers, for violation of the town ordinances, section 37 provides for the payment of all costs by the town or cities, and I should say that the attorney for the Commonwealth would be entitled to the same fees as to which he would be entitled in trials in circuit and corporation courts."

The reference is to section 37 of the Layman Prohibition Act.

The town should pay the fees of the attorney for the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### COMMONWEALTH'S ATTORNEY—Fees in prohibition cases.

RICHMOND, VA., *September 11, 1930.*

HON. J. H. HINES, *Mayor,*  
*Abingdon, Virginia.*

DEAR MR. HINES:

I am in receipt of your letter of yesterday, in which you state that a man was tried for driving a car while under the influence of intoxicants, *submitted his case*, and was fined \$100 and costs, and that you taxed a \$5.00 fee for the attorney for the Commonwealth and he claimed a fee of \$25.00.

I assume that you tried this man under a town ordinance which gave you the right to make final disposition of the case. If this is so, under the provisions of section 33 of the Layman Prohibition Law, the attorney for the Commonwealth is entitled to the same fees as he would have been allowed in a court of record. By the provisions of section 46 of that law, the attorney for the Commonwealth is allowed a fee of \$25.00, this being the fee allowed him in every case where there is a conviction in a court of record.

I note you state that you fined the man charged with a violation of what is section 25 of the prohibition law \$25.00 and costs. If your town ordinance does not also provide a jail sentence, I do not think that it is a proper ordinance, as, under the provisions of section 37 of the prohibition law, cities and towns are authorized to pass prohibition ordinances provided the penalties for violations of such ordinances shall be the same as those provided under the prohibition law of the State for similar offences.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**COMMONWEALTH'S ATTORNEYS—Jurisdiction in prohibition cases.**RICHMOND, VA., *October 13, 1930*

HON. JOHN GALLEHER,  
*Attorney at Law,*  
*Leesburg, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of October 9.

You ask whether the Commonwealth's Attorney of Loudoun count is the person who should prosecute prohibition cases under section 37 of the prohibition act, or whether the attorney for an incorporated town is the person to prosecute these cases before the town officials.

In my opinion the Commonwealth's Attorney is the prosecuting attorney for the whole county, unless there be located in such county a special jurisdiction which has its own Commonwealth's Attorney; and, further, it appears to me that this opinion is strengthened and made certain by the fact that under the provisions of section 37 it is expressly made the duty of all officials named in section 46 to enforce the provisions of the former section. The Attorney for the Commonwealth is one of the officials mentioned in section 46 and no mention is therein made of any town attorney or person occupying a similar position.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**COUNTIES—Consolidation of.**RICHMOND, VA., *June 9, 1931.*

MR. J. W. MCGAVOCK,  
*Max Meadows, Virginia.*

DEAR MR. MCGAVOCK:

I am in receipt of yours of June 8, to which I will reply at once.

In this you ask whether the Constitution of Virginia, as amended, gives the Legislature authority to consolidate two or more counties.

In this connection, I call your attention to the last paragraph of section 61 of the Constitution, which section deals with the formation, division and consolidation of counties. This paragraph is as follows:

"The General Assembly may provide for the consolidation of existing counties on a vote of a majority of the qualified voters of each of such counties voting at an election held for that purpose."

You will see from a reading of this that the question must first be submitted to the people of the counties concerned, and must receive the favorable vote of the majority of the qualified voters of each of the counties, otherwise there can be no consolidation.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**COSTS—Fees to be included in costs taxed against a person convicted.**RICHMOND, VA., *March 24, 1931.*MRS. CARRIE S. HUBARD, *Clerk,*  
*Buckingham, Virginia.*

MY DEAR MRS. HUBARD:

I am in receipt of your letter of March 21, in which you state that you have instructions from the Comptroller's office to include jail fees, boarding, clothing, etc., furnished a prisoner, in bill of costs. I note that you cite section 4964 of the Code as authority to the effect that, as a person is only subject to such costs which the Commonwealth is bound to pay, items of clerks' fees, sheriffs' fees and fees for the Commonwealth's attorneys are not included in those costs.

This was at one time the law, because quite awhile ago the courts held that the salaries of clerks, sheriffs and Commonwealth's attorneys covered everything to which they were entitled by way of costs and, as the Commonwealth did not have to pay this character of fees, they could not be recovered from a person convicted.

This is no longer the law, as the Commonwealth now pays the fees of clerks, sheriffs and Commonwealth's attorneys. Therefore, at the present time these fees should be included in costs taxed against a person convicted.

This may be a hardship upon a poor person, but, as the law requires it, I see no way for you to avoid taxing all the fees which you are by law required so to do.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**CRIMINAL CASES—Payment of expenses of deputy sheriff.**RICHMOND, VA., *July 23, 1930.*HON. E. R. COMBS, *Comptroller,*  
*Richmond, Virginia.*

MY DEAR MR. COMBS:

I have considered with care your inquiry concerning an account recently submitted to you by Mr. John H. Hatcher, deputy sheriff of Halifax county. It appears from the file which you left with me that Mr. Hatcher, in gathering certain evidence regarding a stolen automobile, made trips to North Carolina and has rendered an account for \$55.00 which shows on its face that it has been approved by the Commonwealth's Attorney, and the correspondence would indicate that the circuit court of Halifax county entered an order approving the same.

It likewise appears that the trips were not taken pursuant to a warrant issued for the arrest of the accused, but were taken in the interest of investigating a crime which had been committed. Under this state of facts, I do not think that section 4825 of the Code is applicable.

There appear to be two sections which are applicable to this situation. One is section 4960 which, in part, provides that the court may allow such

compensation as it deems reasonable to an officer, or any other person who renders any service in a criminal case, for which no specific compensation is provided, and "such allowance shall be paid out of the treasury from the appropriation for criminal charges on the certificate by the court stating the nature of the service." The other is section 2176 which provides that, where services are rendered or expenses incurred in the arrest of a criminal, or about a criminal prosecution for which no particular provision is made by law, the Comptroller (formerly the Auditor) may pay for the same, if he thinks it should be paid, subject to the approval of the Governor.

I think that this gentleman can proceed under either section of the Code and that, if he presents a proper certificate of the court in accordance with the provisions of section 4960, you are then authorized to pay the claim.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**DAIRY AND FOOD—Colleges and boarding schools—Display of cards designating grade of milk used not required.**

RICHMOND, VA., *April 27, 1931.*

HON. F. C. BREAZEAL, *Director,*

*Dairy and Food Division,*

*Department of Agriculture and Immigration,*

*Richmond, Virginia.*

DEAR MR. BREAZEAL:

I am in receipt of your letter of today, in which you quote section 1211-e of the Code of Virginia, relating to the production of milk, which section reads as follows:

"Every grocery store, restaurant, cafe, soda fountain or similar establishment selling or serving milk or cream shall display in a place designated by the inspector a card furnished by the State Dairy and Food Division stating the grade of the milk or cream and whether same is raw or pasteurized."

You then ask whether or not the provision quoted includes boarding schools and colleges.

I do not think so. The section specifically names grocery stores, restaurants, cafes, soda fountains or similar establishments. The enumerated places of business of which requirement is made are places for the public sale of milk. In order for boarding schools or colleges to come within the law, such places must be of like character with those specifically named, and I do not think that a boarding house or a college is of the same character as the establishments which are specifically named in that section.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**DENTISTRY—Practice of—Powers of State Board of Dental Examiners, etc.**

RICHMOND, VA., December 20, 1930.

DR. JOHN M. HUGHES, *Secretary-Treasurer,*  
*Virginia State Board of Dental Examiners,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of December 2 in which you propound the following six questions:

"1. Is it legal for one who is not a licensed dentist in Virginia to operate an incorporated body for the practice of dentistry, such as 'Dixie Dentists' or 'Southern Dentists'?"

"2. Is it legal for anyone to use any name in combination with his own name, except as provided in the second paragraph of section 1653 which is as follows: 'provided, that nothing herein contained shall prohibit the practice of dentistry by a partnership under a firm name containing nothing but the name of every member of said partnership?'"

"3. Is it legal for anyone to insert his photograph in the newspaper with the statement that he is the best in his specialty in the south?"

"4. Is it legal to advertise that one can perform operations without pain?"

"5. Has the Virginia State Board of Dental Examiners authority, under section 1649 of chapter 184 of the Acts of 1930, to cause a licensed dentist to be notified by the secretary to appear before the board and show cause why his license should not be revoked for reasons assigned in the notice, or can the board act only upon the filing of an accusation by a third person, under section 1650 of said act?"

"6. In case a provision of the dental law has not been complied with by a dentist, and it becomes necessary to bring legal action, what procedure should the board take in bringing the offender to justice, and what city or State officials should handle the case from beginning to end?"

Answering your questions in the order in which they are asked, I am of the following opinion:

1. It is not legal for one who is not a licensed dentist in Virginia to operate an incorporated body for the practice of dentistry. The last paragraph of section 1652 (Acts 1930, page 485) provides that any person who is manager, proprietor, operator, or conductor of a place for performing dental operations of any kind shall be deemed to be practicing dentistry, and the act regulating the practice of dentistry (chapter 184, Acts 1930) provides that no one shall practice in this State without a license.

2. It is not legal for anyone to practice dentistry under any other name than his own true name, save in two cases in which provision is made in section 1653. One of those provisions you have quoted. The other provision, which is found in that section, provides that "nothing herein 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," etc.

3. The question you here propound is a difficult one to answer with finality. There are two provisions of the dentistry law found in section 1649

which would affect it. One of those provisions is that no dentist shall advertise in any manner "with a view of deceiving or defrauding the public," and the other is that no dentist shall "be guilty of any unprofessional conduct likely to defraud or deceive the public." If I correctly understand the ethics of the dental profession, such advertising as that mentioned by you would certainly be unprofessional and I should judge that its tendency would be to mislead the public and that its purpose would be that end.

4. Section 1649 expressly makes it illegal to advertise to practice dentistry "without causing pain."

5. Section 1649 enumerates those things for which the State Board of Dental Examiners may revoke the license of a licensed dentist. Section 1650 provides for a hearing when an accusation is filed with the secretary. I can find no authority for the State Board of Dental Examiners of its own motion instituting any proceeding.

6. The dental law provides that, if a licensed dentist do certain acts, he shall be guilty of a misdemeanor. The proper procedure is to report any violation of the law declared to be a misdemeanor to the Commonwealth's attorney of the city or county in which the act has taken place and he will attend to the prosecution before the appropriate court.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### DIVISION OF MOTOR VEHICLES—Access to files by individuals.

RICHMOND, VA., July 29, 1930.

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 25th instant, in which you ask to be advised as to your authority to refuse information requested of your office, and I note the number of instances cited in your letter about which you especially desire my opinion.

The right of persons to information concerning public documents was very carefully considered in connection with a letter from Honorable Eppa Hunton, Jr., Chairman of the Board of Visitors of the Medical College of Virginia, in his letter of September 8, 1928, in which he asked to be advised as to the right of Dr. Willis as a taxpayer and a citizen, or any other taxpayer and citizen, to unlimited access to all of the files of the Medical College of Virginia and, if so, under what circumstances and conditions.

In my reply under date of September 13, 1928, I expressed the opinion that, even though documents are public, only such persons as have some personal interest in an inspection of the files or records were entitled to an inspection thereof unless the matter was of considerable public interest.

I am of the opinion, therefore, that you should first be satisfied as to whether the information desired is of public concern or of peculiar personal

interest to the party asking for the information, and that, unless you are satisfied as to the inquiry being of public interest or of personal interest to the applicant, you have a right to refuse the information sought.

If I have not satisfactorily answered the thought you had in mind, I shall be pleased to be of further service to you.

I am enclosing herewith copy of my letter to Mr. Hunton.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**DOG LAW—Compensation for live stock killed by dogs.**

RICHMOND, VA., July 17, 1930.

HON. JOHN GALLEHER,  
*Attorney for the Commonwealth,  
Leesburg, Virginia.*

*In re: Compensation for Live Stock Killed by Dogs.*

DEAR MR. GALLEHER:

I am just in receipt of your letter of the 15th instant, in which you write concerning a matter about which you desire an opinion:

"Mr. Nagle, a sheep owner of Loudoun county presented a claim for several sheep killed by a dog, which sheep were appraised at \$7.00 per head, but were assessed at \$15.00 per head. The board of supervisors awarded him the amount of \$7.00. Mr. Nagle claims that, under section 74, chapter 247, of the Acts of Assembly of 1930, 'that any person taxed by the State, who shall have any livestock or poultry killed or injured by a dog, shall be entitled to receive compensation therefor of the assessed value of livestock and fair value for unassessed lambs or poultry.' This section appears to be mandatory, whereas section 80 of the same act provides how the dog fund shall be disposed of and states 'that after payment of treasurer's fees, treatment of persons for rabies, advertising notices, freight and express or postage, and if the remainder is sufficient, all damages to livestock or poultry.'"

Under the old dog tax and damage law, all money received for dog licenses remaining after the payment of a certain percentage to the Game Department, and costs and expenses of operating, was converted into what was commonly called a dog fund, for the payment of damages to stock and more recently to stock and poultry. Allowances for damages were, under the old law, based upon the fair value of the stock killed, but not exceeding the assessed value. Under section 74 of the codified game, fish and dog statutes, comprised in chapter 247 of the Acts of 1930, the compensation to owners of livestock killed or injured by dogs is fixed at their assessed value. You will note the difference, the old law providing for the fair cash value, while the new law provides for the assessed value.

The next question to be considered is the fund out of which damages are paid. The only fund out of which damages have ever been paid is the dog fund. Under Mr. Nagle's construction of the law, damages to stock and poultry would constitute a claim against the general county fund as well

as against the dog fund. I do not think that this contention is tenable, and I agree with you that damages for injuries inflicted by dogs are payable only out of the dog fund.

Under the provisions of section 80, if, at the time an allowance is made by the board of supervisors, the dog fund is not sufficient to pay all allowances, each person receiving a warrant should file his claim with the treasurer and such claim would be thereafter payable in the order in which it was filed. The operation of this law, where allowances exceed the net fund, will necessarily result in postponing the prompt payment of damages inflicted by dogs. This, however, is the only provision made by the Legislature to take care of livestock and poultry damages inflicted by dogs.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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#### **ELECTIONS—Absent voters law.**

RICHMOND, VA., May 12, 1931.

HON. NORMAN R. HAMILTON,  
*Portsmouth, Virginia.*

DEAR NORMAN:

I am in receipt of your letter of the 8th instant, in which you write that a number of persons are sailing May 9 from New York for Europe to be gone through September, and I note that these persons desire the privilege of casting their ballots in the August primary.

These persons must, of course, cast their ballots as absent voters and their situation is covered by section 203 of the Code. This section provides that a person who is in territory over which the United States has no jurisdiction must make application for a ballot not less than sixty days nor more than ninety days before the election. The applications could have been handed the registrar in person, but, as they have now left this country, they can make application by mail. The applications must contain the necessary postage, or the correct amount in legal tender, for registering the ballot to the applicant, with full directions as to the address of the applicant.

The persons to whom you refer, if communicated with promptly, will have time to make application to the registrar of their precincts for an absent voter's ballot.

The most serious difficulty confronting you will be the printing of the official ballot. Many times official ballots are not printed until just a short time before an election. In order to supply persons who are out of the country with official ballots, the electoral board should have the ballots printed so as to allow a reasonable time for the ballots to be mailed to the applicants and for the applicants to prepare their ballots and return them to the registrar before the day of the election.

Section 208 of the Code provides that the envelope in which the registrar forwards the absent voter's ballot can only be opened in the presence of an

officer certifying as to the coupon which is enclosed for the registrar. American consuls are authorized to make the requested certificates.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Appointment of judges and clerks mandatory.**

RICHMOND, VA., *September 12, 1930.*

MR. J. M. WARE, *Secretary,*  
*Amherst County Electoral Board,*  
*Amherst, Virginia.*

DEAR MR. WARE:

I am in receipt of your letter of the 10th instant, in which you write that the electoral board of your county, in making appointments of judges and clerks of election, appointed three judges and one clerk, and you express a doubt as to the legality of an election held by these officers.

Under section 148, electoral boards are required to appoint three judges and two clerks of election for each voting precinct. There is no apparent discretion vested in the board to disregard this provision of law and to appoint only one clerk, even though their purpose of saving the expense of one clerk is very laudable.

I agree with you that an election held by three judges and one clerk is legal.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Appointment of commissioners.**

RICHMOND, VA., *June 26, 1931.*

MR. R. L. CARROLL,  
*Greenwood Forrest,*  
*Bluemont, Virginia.*

DEAR MR. CARROLL:

I am in receipt of your letter of the 24th instant, in which you write:

"In my county we have five commissioners of election appointed by the electoral board, for the general election, three Democrats and two Republicans, which, of course, is law, but what I want to know is this, shall the board appoint two more Democrats in the place of the two Republicans for the August Democratic primary? In counting the Democrat vote in the Virginia elections laws, p. 78, sec. 239, five shall be appointed, any three of them shall constitute a board. Now the question is this, shall the electoral board appoint two more, making five Democrats, or shall the three already appointed be the limit in counting the primary vote?"

As you will notice from an examination of sections 182 and 239 of the Code, there are two provisions of law for the appointment of commissioners of election. Section 182 applies to general elections, while section 239 applies to primary elections.

In my opinion, the appointment of commissioners of primary elections under section 239 restricts the electoral board to the selection of commissioners from among judges appointed for the primary.

Primary judges are appointed under the provisions of section 224 of the Code, providing that primaries 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 of the State.

As the primary in your county is, I assume, participated in by the Democrats only, all of the judges appointed under the provisions of section 224 are or should be members of the Democratic party and necessarily only Democrats may be selected by the electoral board as commissioners to canvass the votes of the primary election.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### **ELECTIONS—Call for primary irrevocable.**

RICHMOND, VA., June 18, 1931.

HON. FRANK P. MONCURE,  
*Stafford, Virginia.*

DEAR MR. MONCURE:

I am in receipt of your letter of the 16th instant, from which I quote at length:

"At a meeting of the Democratic Committee of Stafford county, Virginia, held on February 7, 1931, it was resolved that a Democratic primary election for the nomination of county and district officers be held in said county on August 4, 1931.

"Pursuant to that resolution certain Democrats in Stafford county, complying with the law, filed with the chairman of the Democratic Committee sixty days before August 4, the required petitions and notices of candidacy for the offices which each sought, and paid to the County Treasurer the primary fees required of them.

"On June 8, 1931, M. R. Reamy, chairman of the Democratic Committee and party, filed with the Stafford County Electoral Board, of which I am the clerk, the following:

"To the Electoral Board of Stafford County:

"I hereby certify that the following persons filed their declaration for the office as indicated in proper form and time with me as Chairman of the Democratic Party of Stafford County, as candidates in the Democratic primary to be held on August 4, 1931, to-wit:

For State Senate:	For Commonwealth's Attorney:
W. Worth Smith	G. B. Wallace
For House of Delegates:	For Treasurer:
Geo. W. Herring	N. N. Berry
Arthur S. Boatwright	Dan M. Chichester
For Commissioner of Revenue:	
R. C. L. Moncure, Jr.	

## District Candidates

## Aquia:

For Supervisor  
W. F. Powers  
G. K. Massie

## For Justice of the Peace:

W. G. Snead  
Powhatan Gallahan  
L. G. Stewart

## Hartwood District:

For Supervisor  
R. H. Estes

## Falmouth:

For Supervisor  
W. T. Peyton

## Rockhill District:

For Supervisor  
W. A. Franklin  
Clinton T. Heflin

(Signed) M. R. Reamy, Chairman  
Democratic Party Stafford County, Va.'

"On Saturday, June 13, the Democratic Committee of Stafford County met at Stafford Court House, and by a vote of six to five passed the following resolution:

"Whereas at a meeting of the Democratic Committee of the county of Stafford held on February 7, 1931, it was resolved that a Democratic primary for the nomination of county and district officers be held in said county on August 4, 1931, and

"Whereas for reasons appearing sufficient to this committee it now deems it best that no such primary be held;

"Therefore, be it resolved that the action of the Committee taken February 7, 1931, calling said primary for the nomination of county and district officers be and the same is hereby rescinded and it is ordered that no primary for nomination of such officers be held in this county;

"Be it further resolved that the chairman of this committee be and he is hereby directed to advise the chairman of the Electoral Board of this action by delivering to said chairman a certified copy of this resolution.'

"The Electoral Board of Stafford County will hold a meeting on Monday, June 22, next for the purpose of appointing the judges of the primary election which was called to be held in this county on August 4. I am the secretary of the Electoral Board and I presume that the chairman of the board will have with him and present to the board on that date the resolution above referred to.

"I desire from you an opinion as to what action the electoral board should take upon the above resolution."

An examination of your letter is conclusive of the fact that the provisions of the primary law were complied with by the Democratic committee of your county, and that a primary was decided upon by the committee for the nomination of county and district officers, to be held on August 4, 1931;

That after the call for a primary candidates have announced themselves for State Senate, House of Delegates and all of the county offices, and that a number of persons have declared their candidacy for district offices;

That, after the lists were closed pursuant to the provisions of the primary law, the chairman of the Democratic committee of your county certified the lists of candidates to the electoral board as having declared their candidacy for nominations according to law;

That subsequently the committee again met, undertook to annul the former action of the committee, and resolved to notify the electoral board that the committee had decided against the primary for Stafford county.

You ask my opinion as to the effect of the last meeting and as to the action the electoral board should take upon the resolution rescinding the call for a Democratic primary.

The primary law makes no provision for a county committee which has once decided upon a primary to rescind its action in that respect. The committee has acted according to law, candidates have in good faith notified the chairman of the committee of their candidacy, and the chairman has furnished the electoral board with a list of candidates.

In my opinion, the action of the committee, after all of the steps above recited have been taken, is without warrant of law; the committee had no authority to rescind its action of February 7, 1931, and the electoral board of the county should appoint judges of election for the primary, print the ballots, and in all other manner and ways see that the primary election is held according to law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Candidates ineligible to vote—Name not to go on official ballot.**

RICHMOND, VA., May 7, 1931.

MR. C. T. LARK,  
*Gate City, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 30th of April, in which you ask whether a candidate for a municipal office who could not vote in that election is entitled to have his name printed upon the official ballot.

Section 154 of the Code of Virginia provides:

“\* \* 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. \* \*”

Pursuant to this section, I have heretofore held that a person not entitled to vote in a municipal election is not entitled to have his name printed upon the official ballot.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Capitation tax.**RICHMOND, VA., *July 29, 1930.*

MR. CHARLES PICKETT,  
*Attorney at Law,*  
*Fairfax, Virginia.*

DEAR MR. PICKETT:

I am in receipt of your letter of the 25th instant, in which you write in part:

"The question has been asked whether or not a person who came into this State after January 1, 1929, and will have been here one year at the time of the general election of 1930, can register and vote without payment of any capitation tax. I will be obliged to you, therefore, if you will give me your opinion on this in order that I may transmit the same to persons who are interested."

In my opinion, a person coming to Virginia after the first day of January, 1929, is entitled to register and vote in the 1930 election without the payment of the capitation tax.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Capitation tax.**RICHMOND, VA., *April 23, 1931.*

MR. G. M. DILLARD,  
*Attorney at Law,*  
*Scottsville, Virginia.*

DEAR MR. DILLARD:

I am in receipt of your letter of yesterday, in which you desire to be advised as to whether or not capitation taxes, in order to make a person eligible to vote in a June election, must be paid six months before that election, or whether this applies only to the November election.

I note too that you say that an uncertainty has arisen because of the fact that, under section 2997 of the Code, it is provided that the electors of a town shall be actual residents thereof and qualified to vote for members of the General Assembly.

In my opinion, your inquiry is governed by section 21 of the Constitution providing that a person who is registered shall have the right to vote for members of the General Assembly and all other officers elected by the people, subject to the condition that, unless exempted by section 22 of the Constitution, he must have paid at least six months prior to the election all State poll taxes assessed or assessable against him during the three years preceding that in which he offers to vote.

Section 2997 is a statement of the general law that a person qualified to vote for members of the General Assembly is qualified to vote in city and town elections; but you will see that no person is qualified, under the pro-

visions of section 21 of the Constitution, to vote for members of the General Assembly or for any other officer elected by the people unless he has paid his capitation tax six months before the election in which he desires to vote.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**ELECTION—Capitation tax.**

RICHMOND, VA., May 12, 1931.

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

DEAR MR. FOGLEMAN:

I am in receipt of your letter of the 1st instant, in which you desire me to explain why a person may come into Virginia at such a time that he can register and vote without the payment of a capitation tax, and I note that you say that a number of persons are concerned about this apparent preference for persons coming into the State over other persons becoming of age.

This is all brought about by different provisions of the Constitution.

Section 20 of the Constitution requires a person becoming of age to pay one year's capitation tax before being permitted to register and vote. Under the old law, a person could not register and vote who had not been a resident of the State for at least two years. Under this law, coupled with section 20 of the Constitution, providing that persons shall be entitled to register and vote where they have paid all State poll taxes legally assessed or assessable against them for the three years next preceding that in which they offer to vote, no person was qualified to vote under the two years residence provision until after he or she was assessed or assessable with at least one year's capitation tax. Under the new Constitution, as a person is entitled to vote after having been a resident of the State for one year, such person may have come into the State at such a time that no poll tax was assessable against him or her for the year preceding the year in which the person offers to vote. And, as the payment of capitation tax is provided for by the Constitution, the failure of the framers of the present Constitution to make provision for the payment by a person coming into the State of at least one year's capitation tax, as in the case of a person becoming of age, relieves such person of the necessity for the prepayment of any capitation tax, as such person had already been given the right to register and vote upon the payment of such capitation tax only as was assessed or assessable against him or her.

A constitutional amendment is necessary before the Legislature can provide for the prepayment of a capitation tax by a person coming into the State.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**ELECTIONS—Capitation tax requirement as to new residents.**RICHMOND, VA., *October 9, 1930.*

MR. S. M. TILLER,  
*Rich Creek, Virginia.*

DEAR MR. TILLER:

I am in receipt of your letter of the 3rd instant, in which you write that on April 27, 1928, you and your family moved from West Virginia to Giles county, Virginia, and state that no capitation taxes have been assessed against you previous to 1930.

You ask whether or not you are entitled to vote in the November election if registered.

Having moved to Virginia before the first day of January, 1929, you and your wife were assessable with capitation taxes for that year and, not having paid your taxes six months prior to the November, 1930, election, you and she are ineligible to register and to vote. The fact that capitation taxes were not assessed for 1929 does not relieve you of the obligation under the Constitution and laws of Virginia to have yourself assessed and pay your capitation taxes before being entitled to register and vote.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Capitation tax—Residence.**RICHMOND, VA., *August 11, 1930.*

HON. JOHN McMILLAN,  
*Assistant Trial Justice,*  
*Waynesboro Park Station, Virginia.*

DEAR MR. McMILLAN:

The Attorney General's office has received your letter of the 8th instant and, as the Attorney General will not be in his office today and your inquiry covers a matter which should have immediate attention, I am answering it for him. You write:

"Several of the DuPont employees who have been living here in Waynesboro about one year are paying their capitation taxes on the 4th, 5th, 6th and 7th of this month, registering and expecting to vote on the 12th instant. The question is raised, are such as these qualified to vote or should not they have paid their capitation taxes not later than May 3 of this year to enable them to vote in this special election?"

If the persons to whom you refer will have resided in Virginia one year on or previous to the 12th day of August, 1930, and did not reside in this State prior to the 1st day of January, 1929, they are not required to pay their capitation taxes before they can register and vote. The law does not make the prepayment of a year's capitation tax a prerequisite to voting, unless the person was assessed or assessable with a capitation tax, and then such person must have paid his or her capitation tax for the three years preceding the year in which he or she offers to vote six months prior to the

election. This may have been a faulty omission in our last Constitution. This Constitution provides that a person who has been in this State one year can register and vote, while in another place it provides that a person must have paid the capitation tax assessed or assessable against him or her six months prior to the election in which he or she offers to vote. No capitation tax was assessable for the year preceding 1930 against a person who came into Virginia after the 1st day of January, 1929, and, therefore, the Attorney General has held repeatedly that a person coming into Virginia after the 1st day of January, 1929, could register and vote without the payment of any capitation tax provided, of course, such person has lived in Virginia one year prior to the election, in the city or town six months and in the precinct in which he offers to vote thirty days.

I hope this will reach you in time to be of service to you.

Yours very truly,

EDWIN H. GIBSON,

*Assistant Attorney General.*

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#### **ELECTIONS—Capitation tax—Residence.**

RICHMOND, VA., May 7, 1931.

MR. G. S. DELONG,

*Lithia, Virginia.*

DEAR MR. DELONG:

I am in receipt of your letter of yesterday in which you ask two questions:

First, you ask whether a man who moves into Virginia from another state in October, 1930, is required to pay a capitation tax in order to qualify to vote in the November, 1931, election.

A person moving into the State of Virginia at any time after the first day of January, 1930, is entitled to register and may vote without the payment of a capitation tax. As you say, the law requires that a person desiring to vote must have paid all poll taxes assessed or assessable against him. If the person came to Virginia after January 1, 1930, he has had no capitation taxes assessable against him for the year previous to the year in which he offers to vote, provided, of course, he offers to vote during the year 1931.

Second, you ask whether a person may choose his voting residence in Virginia wherever he so desires, and whether a person who has voted in one county all of his life and moves to another town or county can retain his voting residence in his first county by being assessed and paying capitation taxes in that county.

A person cannot arbitrarily choose his place of voting. He can only vote at the place of his legal residence. The location of this place depends upon both law and circumstances.

Where a person has had a legal residence in the county of Botetourt and moves to another county or town, his right to return to Botetourt and vote depends upon whether or not when he removed to the other town or county he permanently gave up his residence in the county of Botetourt. A person may be temporarily away from home or his voting precinct. That

does not amount to a giving up of his legal right to vote in his original place of residence provided that, when he removed, he did not intend to give up his residence in the old place and establish a new permanent residence.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**ELECTIONS—Capitation tax—Voting lists.**

RICHMOND, VA., *June 12, 1931.*

HON. LEWIS CRAWLEY,  
*Cumberland, Virginia.*

DEAR MR. CRAWLEY:

I am in receipt of your letter of yesterday, in which you cite three cases in which persons have been assessed and paid all of the capitation taxes with which they were assessed or assessable for the years 1928, 1929 and 1930, on or before the third day of May, 1931, and I note you say that the name of no one of the three appears upon the voters' list furnished you, I assume, by the treasurer of your county.

One of these was an elderly man who was assessable for the years 1928, 1929 and 1930. He should have been included in the treasurer's list of voters furnished you on account of having paid three years capitation taxes six months prior to the November election.

The two young men to whom you refer only having been assessable one for the year 1930 and the other for the year 1931, and having paid their capitation taxes six months prior to the November election, are entitled, under the decision of the Supreme Court of Appeals in *Zigler v. Sprinkel*, 131 Va. 408, to have their names included in the treasurer's list. I am quoting from the opinion of the court, which you may find upon page 415:

"A person who is chargeable with poll taxes for a lesser period than three years, and pays the same within the prescribed time, is as fully entitled to vote by virtue of section 21, if otherwise qualified, as the person who pays for the full three years. Hence, the same fundamental considerations which cause the names of voters in the latter class to be placed on the treasurer's list, which is evidence 'that the provisions of the Constitution have been complied with by the payment of poll taxes, so far as such payment is made a prerequisite to their right to vote,' indicate as compellingly that all other persons who have paid, as required by the Constitution for the purposes of voting, the poll taxes with which they are assessed or assessable, are entitled to a like inclusion in said list."

Their names not having already been included in the treasurer's list, they will have to apply to the judge of the circuit court, after five days written notice to the treasurer and within thirty days from the date the list was posted, to have their names included in the list.

It is not absolutely necessary that the young men have their names upon the list, although it should be done.

The law covering the duties of treasurers and the remedy of voters is found in section 38 of the Code of Virginia and on page 9 of the Virginia Election Laws.

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

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**ELECTIONS—Registration books—Change of name by person marrying.**

RICHMOND, VA., May 6, 1931.

MR. A. B. DUNTON,  
*Franktown, Virginia.*

DEAR SIR:

I am in receipt of your letter of yesterday, in which you write that a qualified voter who registered in your precinct under her maiden name has since married, has left the precinct and desires to be transferred to another.

You then ask whether or not you may change her name on the poll book or, if not, what name is to be used in issuing the transfer.

Under the last paragraph of section 98 of the Code it is provided:

"Whenever the name of any registered voter has been changed, either by marriage or order of the court, the registrar in whose district such voter is registered, shall upon the written request of such voter enter the change upon the registration books, and certify the same to the clerk of the circuit court of the county or the corporation court of the city, as the case may be, who shall record the change upon the books kept in his office."

I advise that Mrs. Grimmer request you in writing to change her name from that under which she registered to her married name. You can then make the change and issue her a transfer under her married name.

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

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**ELECTIONS—Declaration of candidacy—With whom filed.**

RICHMOND, VA., May 14, 1931.

HON. C. CARTER LEE,  
*Attorney for the Commonwealth,  
Rocky Mount, Virginia.*

MY DEAR MR. LEE:

I beg leave to acknowledge receipt of your letter of May 12, to which I will reply at once.

In this you state that the counties of Bedford, Franklin and Floyd are entitled to one member of the House of Delegates, and that the counties of Franklin, Floyd, Roanoke, Montgomery, and the cities of Radford and Roanoke are entitled to one senator. You further state that the proper party authorities have decided to hold a primary for the nomination of the candidates for these offices.

You ask whether one petition with fifty qualified voters, all from one county, is sufficient to meet the requirements of section 229 of the Virginia Election Laws, and does the petition have to be filed with each chairman of the Democratic party in each county, or will the filing of the petition with one chairman suffice. You, also, ask if the candidate is required to pay a filing fee in each county.

In reply to your first question, it is my opinion that it is only necessary that the candidate shall obtain the signatures of fifty qualified voters, either from his city or county, witnessed as the law requires, and he should file a copy of this petition with the other chairman of the district.

Section 249 provides that every candidate for any office at any primary shall, before he files his declaration of candidacy, pay a fee equal to two per centum of one year's salary attached to the office for which he is candidate. Of course, candidates for the House of Delegates and State Senate would pay a fee of \$15. This section further provides that this fee shall be paid to the treasurer of the candidate's county or city, and where the candidate's district is composed of more than one county or city, the fee must be equally divided among the counties and cities in the district, and paid to the *respective treasurers* by the candidate.

Yours very sincerely,

JNO. R. SAUNDERS,

*Attorney General.*

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#### ELECTIONS—Eligibility of registrars.

RICHMOND, VA., May 13, 1931.

MR. H. E. THOMPSON,  
*Honaker, Virginia.*

DEAR MR. THOMPSON:

I am in receipt of your letter of the 2nd instant, in which you write:

"Will you please give me your interpretation of the law in regard to a man who has been registrar for the last few years in regard to holding an office for which he might be elected at the next November election, having resigned only about a month ago? Does being registrar disqualify him?"

There are two sections of the Code of Virginia bearing upon your inquiry. Section 97 of the Code provides:

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

You will notice that this section refers to the election of a registrar at an election held following a time at which the registrar *acted*. I underscore *acted*, as I take it to mean that a registrar is certainly eligible to election to an office, even though he may have resigned a short time before an election, provided he has not *acted* since the last election held in his precinct.

The undoubted purpose of the law is to prevent a registrar padding the registration books, and its effect is to make a person ineligible who has performed the duties of a registrar preceding an election.

Section 86 of the Code confirms me in this opinion. That section, so far as it is necessary to quote, provides:

“ \* \* \* and such registrar shall not hold any office, by election or appointment, during his term. \* \* the acceptance of any office, either elective or appointive, by such registrar during his term of office shall, ipso facto, vacate the office of registrar.”

You will notice that this section does not make the registrar ineligible to election, but prevents him from holding an elective or appointive office during his term of office, or rather holding both offices at the same time, and it provides that, upon his election or appointment, the office of registrar is vacated.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Eligibility to be a candidate of office.**

RICHMOND, VA., *January 8, 1931.*

MR. G. D. GRONE,  
*Route 4,*  
*Gate City, Virginia.*

DEAR MR. GRONE:

I beg to acknowledge receipt of yours of January 4.

In this you state that a man left Virginia for California in August, 1927, remained in that State for three years, but returned to Virginia on September 16, 1930; that during the whole time he was in California he still maintained his citizenship in Virginia, voting by mail in every election, and continued to claim Virginia as his domicile and voting residence. You then ask if he is eligible to be a candidate for office in Virginia in 1931.

Unquestionably he is. Section 32 of the Constitution of Virginia provides that all persons who are eligible to vote are eligible to hold office.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Eligibility to vote in Democratic primary.**RICHMOND, VA., *March 2, 1931.*

MR. R. M. PERROW,  
*Route 1,*  
*Gladys, Virginia.*

DEAR MR. PERROW:

I am in receipt of your letter of the 26th ultimo, in which you write:

"Please inform me if a man has a right to participate in a Democratic Primary election when he voted a Republican ticket in the last presidential and gubernational elections."

Section 228 of the Code covers your inquiry. That section in part provides:

"No person shall be permitted to vote for the candidates of any party in any primary unless such person is a member of such party and in the last preceding general election, in which such person participated, he or she voted for the nominees of such party; \* \* ."

You will see from this quotation that a person, to be eligible to vote in a Democratic Primary, must be:

- (1) A member of the party in whose primary he desires to vote; and
- (2) He must have voted for the candidates of the party in the last preceding general election.

Neither the presidential election of 1928 nor the gubernatorial election of 1929 is the last general preceding election. That was the election held in November, 1930. If a person who desires to vote in the coming Democratic Primary is a member of the Democratic party and voted for the Democratic candidates for United States Senator and Congressman in the November, 1930, election, he or she is qualified to vote in the coming Democratic Primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Eligibility to vote—Transfers.**RICHMOND, VA., *May 7, 1931.*

MR. W. B. STONNELL,  
*Cumberland, Virginia.*

DEAR MR. STONNELL:

I am in receipt of your letter of yesterday, in which you ask certain questions. I am repeating each question and replying thereto.

"(1) Can a Republican vote in a Democratic primary?"

Both section 228 of the Code of Virginia and the primary plan of the Democratic party adopted June 11, 1924, provide that no person is entitled to vote in a Democratic primary unless he or she is a member of the Democratic party.

"(2) Can a person transfer from another state and vote in Virginia?"

There is no such thing as a transfer from another state to Virginia. A person coming into Virginia from another state must register in Virginia just as citizens of Virginia are required to register.

"(3) Has a voter the right to see the registration books any time he wishes to?"

It is impossible to answer this question yes or no. Registration books are public property and citizens who have either a personal or public interest in registration matters have a right to an inspection of them at reasonable times and under reasonable regulations and when convenient to the registrar.

"(4) Does a person who has been residing in Virginia less than three years have to show the registrar his tickets for taxes paid in the state in which he formerly resided in order to register?"

He does not. He is only required to show the registrar a receipt for taxes for any or all of the three years preceding the year in which he offers to register.

At your request, your letter is returned.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### **ELECTIONS—Eligibility to vote—Persons becoming of age.**

RICHMOND, VA., May 7, 1931.

HON. HARRY K. GREEN,

*Arlington Court House, Virginia.*

DEAR MR. GREEN:

I am in receipt of your letter of yesterday, in which you ask two questions concerning the qualification of voters. I will repeat your questions and my reply thereto.

"1. Can a person becoming of age after January 1, 1931, pay one year's head tax after May 2, 1931, and be qualified to vote in the general election in November, 1931?"

A person becoming of age after the first day of January, 1930, is entitled to pay one year's poll tax at any time up to and including the last day of registration in order to vote in the November, 1931, election.

"2. Can a person becoming twenty-one years of age after May 2, 1931, and paying a head tax before October 2 (time for registration), qualify to vote in the general election to be held November 2, 1931?"

My answer to the first question largely answers the second. I will add, however, as I may not have made it plain, that a person becoming of age even on election day may pay one year's capitation tax and register at any time previous to the regular registration day held thirty days prior to the November election. Such a person, if the tax is paid and he registered on or

before the day of the primary, may vote in the primary although not then twenty-one years of age, section 228 of the Code providing that all persons qualified to vote at the election for which a primary is held may vote at the primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Eligibility to vote—Residence.**

RICHMOND, VA., June 9, 1931.

HON. JAMES ASHBY, *Clerk,*  
*Stafford, Virginia.*

MY DEAR JAMES:

I am in receipt of your letter of June 4, in which you ask as to the right of suffrage in Stafford county of three specified persons.

So much depends upon the facts of a particular case that it is next to impossible to express a definite opinion upon a state of facts, unless I should know the inward intention and purpose of the individual.

There are certain general provisions of law which govern the right of a person as a voter in a particular locality. One is entitled to retain his citizenship and right of suffrage where it has been once established, until he has effected two purposes, first, he must have actually left the place of his home, or domicile, without an intention of returning and, second, have established another place of residence, or home, with the purpose of remaining at such other place. Where a person gives up his voting residence, with no intention of returning, and establishes a home in another place, his right of voting in his former voting residence is gone and he is not entitled to return and vote.

A person who has established a voting residence may leave temporarily and be entitled to return and vote, and his right to return does not depend upon the length of time he may have remained temporarily absent.

If the persons to whom you refer, who were residents of the county of Stafford, have moved away from that county without any present intention of returning thereto, and have established a place of residence in some other locality, they are not entitled to vote in the county of Stafford.

The law itself is plain, but it is very often difficult to apply the law to the facts of a particular case. Whenever there is a difference, or dispute, as to a person's right of suffrage, the only thing to do is to submit the question to the judges of election, whose decision, subject to review by the judge of the circuit court, upon an election contest is final.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Ineligible voter ineligible to office.**

RICHMOND, VA., May 13, 1931.

HON. G. STUART HAMM, *Treasurer,*  
*Charlottesville, Virginia.*

DEAR MR. HAMM:

I am in receipt of your letter of the 11th instant, in which you ask several questions concerning the election laws.

You first ask whether or not a person who is ineligible to vote in a municipal election may be a candidate for councilman.

Section 18 of the Constitution provides that every citizen who has paid his capitation taxes is eligible to vote for members of the General Assembly and all offices elective by the people, and section 32 of the Constitution provides that 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.

It would seem from these provisions that a person ineligible to vote is ineligible to hold an office filled at an election in which such person is ineligible to vote.

Section 154 of the Code provides:

"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 ballot provided for such election, unless he be a party nominee."

You will thus see that, where a party is ineligible to vote, he cannot even have his name printed upon the official ballot.

You then ask as to whether a person may be elected to the council of a city or town whose residence is outside of the corporate limits.

In my opinion, this depends entirely upon the question as to whether a person has once voted in the town and continues to claim the town as his domicile or residence to which he intends to return. If he has established a permanent residence outside of the corporate limits and has no intention of returning to the town, he is ineligible to office in the town. If he has never been an actual resident of the town, he is ineligible to hold a town office.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Judges—Payment of.**RICHMOND, VA., *April 25, 1931.*

MR. J. M. RICE,  
*Salem, Virginia.*

DEAR MR. RICE:

I beg to acknowledge receipt of your letter of April 21, reading as follows:

"This is to ask you to kindly give me your interpretation of a certain section of the election laws. Please tell me in plain figures what compensation is provided for a man who serves as judge of an election one day, the next day takes the returns to the clerk of the court and the day following serves on the board of election commissioners in canvassing the returns of the election in the county."

This matter is governed by section 200 of the Code. A judge of election receives \$5.00 for each day's service rendered. That judge who carries the returns and tickets to and from his voting place and to the clerk's office receives a mileage allowance of five cents per mile for each mile necessarily traveled, said allowance not to exceed \$2.00. A commissioner of election receives \$5.00 for each day's service rendered, plus a mileage allowance similar to that heretofore set forth.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Judges—Qualification of.**RICHMOND, VA., *November 17, 1930.*

HON. WILMER L. O'FLAHERTY,  
*Secretary of Electoral Board,*  
*1116 Mutual Building,*  
*Richmond, Virginia.*

DEAR MR. O'FLAHERTY:

I am in receipt of your letter of the 8th instant, written at the request of the Electoral Board of the City of Richmond, and I note that you ask three questions as to the qualification of judges of election for the precincts of the City of Richmond:

"(1) Under the election laws of the State of Virginia, can a qualified voter of one precinct in a ward in the City of Richmond, Virginia, serve as an election official in another precinct in the same ward?

"(2) Can a qualified voter of one precinct and ward in the City of Richmond serve as an election official in another precinct in another ward?

"(3) Does the law require that the qualified voters of a precinct are the only election officials who are eligible to serve in that precinct?"

Section 148 of the election laws, providing for the annual appointment of judges of election for each precinct in counties and cities, says that the electoral board shall appoint three competent citizens, being qualified voters,

without expressly limiting the appointment to qualified voters of the precinct for which they are appointed.

In my opinion, this provision limits the appointment of judges and clerks to the qualified voters of the precinct which they serve. If "qualified voters" does not limit the appointment to voters of the precinct, there is no limit at all imposed upon judges of election and qualified voters may be appointed from distant counties or cities as judges of election in the City of Richmond. I do not think that there is any limitation at all unless it applies to qualified voters of the precinct in which officials serve.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Names of candidates withdrawn from ballot.**

RICHMOND, VA., *April 30, 1931.*

MR. THOMAS W. BLACKSTONE,  
*Accomack C. H., Virginia.*

DEAR MR. BLACKSTONE:

I am in receipt of your letter of yesterday, in which you inform me that the names of candidates for the election to be held on June 9 have been furnished you as secretary of the electoral board by the clerk of your county and that following the receipt thereof one of the candidates has written you requesting you not to print his name upon the official ballot. You then ask as to whether or not, after he has once requested you to omit his name, he can again request his name to be printed on the ballot.

There is no statute covering the questions you ask. My advice is for you to require the candidate to notify the clerk of his determination not to become a candidate and request the clerk to officially inform you to this effect. In such an event, I advise you to omit his name from the official ballot.

I am further of the opinion that, having once taken the steps I have indicated to withdraw as a candidate, he cannot again announce his candidacy, as the time limit for announcing the same has expired. A candidate who has once withdrawn stands upon the same footing as a person who has never filed notice of candidacy and cannot avail himself of the fact that he has once before filed and, where the time has expired, he cannot get his name placed upon the official ballot.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Naturalization.**RICHMOND, VA., *June 1, 1931.*

HON. E. PEYTON TURNER,  
*Attorney for the Commonwealth,*  
*Emporia, Virginia.*

DEAR MR. TURNER:

I am in receipt of your letter of the 13th ultimo, in which you ask whether or not it is necessary for a woman born in Russia who married an American citizen and has resided in Virginia for the past nine years to comply with the naturalization laws in order to be entitled to vote in Virginia.

Women who married citizens of the United States on or before September 22, 1922, were not required to take out naturalization papers.

Women who married after that date must be naturalized, but they are not required to file a declaration of intention and may be naturalized after having lived continuously in the United States for one year.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Notice of candidacy.**RICHMOND, VA., *April 30, 1931.*

MR. FRED T. AMISS,  
*Syria, Virginia.*

DEAR MR. AMISS:

I am in receipt of your letter of the 28th instant, in which you desire certain information.

(1) A primary election, if held for the nomination of State Senator, member of the House of Delegates and such officers of the county as the Democratic or Republican county committee decides shall be nominated by a primary, is to be held on the 4th day of August.

(2) and (3) The law provides that notices of candidacy for all offices, except Congressional or State-wide offices, shall give at least sixty days notice to the chairman of the party in whose primary the person desires to become a candidate for nomination.

As August 4 is the date of the primary this year, notice must be given to a county chairman on or before the 4th day of June. No hour is specified so that it may be given any time before midnight on Thursday, June 4.

Candidates do not give notice to clerks of courts.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Offer to return part of salary illegal.**

RICHMOND, VA., May 15, 1931.

HON. WILLING BOWIE,  
*Bowling Green, Virginia.*

DEAR MR. BOWIE:

I am in receipt of your letter of yesterday, in which you enclosed clippings containing (1) your undated formal announcement as a candidate for nomination for attorney for the Commonwealth of Caroline county, subject to the Democratic primary of August 4, 1931; (2) a clipping of the *Caroline Progress* of March 19, 1931, in which you state in the form of "an open letter" your platform, and (3) a paid political advertisement appearing, I assume, in the *Caroline Progress*.

In your letter you refer to the fact that I have heretofore ruled that a candidate promising to refund a portion of his salary was guilty of bribery, and that an election of a candidate to an office upon such a platform was illegal and void, and, further, that, though elected, you could not qualify and hold the position to which you were elected.

You then ask six categorical questions and then add that my ruling has done you an injustice and that it is being used as political capital for the purpose of defeating you in the primary election.

Before undertaking to answer any of your questions, I think that I had best explain that as far back as April 11, 1927, I expressed an opinion to Honorable John B. Boatwright, Attorney for the Commonwealth, of Buckingham county, Virginia, upon practically the same question which has been asked me during the present year. It is true that in my letter to Mr. Boatwright I said that a promise by a treasurer to refund a part of the salary to be received by him as an inducement to the voters to nominate or elect him would be not only illegal but criminal. My opinion in that case then quoted at length from 9 Ruling Case Law, under the title "Elections," pages 1127-28. When I was asked by the Editor of the *Caroline Progress* as to the legality of an offer to refund a part of an officer's salary, I both expressed my opinion and enclosed a copy of my letter to Mr. Boatwright. My letter said that such an offer was, in my opinion, not only illegal, but criminal. I did not say that it constituted bribery. However, the authority which I quoted did say that it had been "held in a number of cases that a promise by a candidate, made to the electors generally, to serve, if elected, for less than the fees or salary prescribed by law, constitutes bribery." The letter in which this quotation was made may have been shown by the Editor of the *Caroline Progress* or may have been published in that paper.

In my letter to the *Progress* I quoted from the case of *Frantz v. Davis*, 144 Va. 320. In the opinion in this case Frantz is reported to have promised while a candidate for the office of treasurer of the city of Roanoke "to return to the city of Roanoke, or some department thereof, all the fees and emoluments of the office in excess of \$7,500 per year." His election was adjudged null and void by the corporation court of the city of Roanoke December 15, 1925, upon the ground that his offer was in violation of the pure election law.

So far, therefore, as the authorities quoted are applicable, an offer to return a part of the salary of an office made generally to the voters of a constituency is a violation of the pure election law and makes an election void.

My letter to the *Caroline Progress* was in no wise intended to reply to any particular case, but was a general statement of what had already been held in the State of Virginia and laid down as a general principle of law in a textbook of high authority.

It has been the custom of my office, as a matter of courtesy, to answer general questions concerning principles of law. I do not undertake to pass upon the violations of a statute in a particular case, nor do I undertake to express an opinion as to who is or who is not eligible to hold office. I regret that you consider that my opinion has done you an injustice. It was not so intended.

Upon a consideration of the paid political advertisement under date of April 9, 1931, I see that you have stated that you withdraw the offer to refund any portion of your salary and that, in lieu thereof, you will advocate reasonable reductions in the salaries of all county and State officers, whether or not you are elected attorney for the Commonwealth, and further ask all persons who intended to vote for you on account of your offer alone to vote against you.

This offer on your part, which is given the same publicity as the original offer, is certainly all you could do under the circumstances. While I am not in a position to judge the effect on your case, if the contest is made, of the original offer or the withdrawal thereof, I think that you have adopted a manly and straightforward course.

If your offer is the subject of a criminal prosecution, you will undoubtedly be entitled to a trial by jury; if it is the subject of a contest for the office, it will be a question to be determined by the judge of the circuit court of your county without a jury.

As the subject matter of our correspondence is of public importance, I have no objection to your using my letter in any way you desire. In justice to us both, however, I think that, if it is published or circulated, the full context should be given.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### **ELECTIONS—Persons must pay capitation taxes before registering.**

RICHMOND, VA., *March 12, 1931.*

MR. T. S. JOHNSON,  
*Narrows, Virginia.*

DEAR MR. JOHNSON:

I am just in receipt of your letter of the 10th instant, in which you ask to be advised as to whether it is necessary, before a person may register, for him or her to have paid his or her capitation taxes; or whether the person may first register and then pay the capitation taxes.

Under the provisions of section 20 of the State Constitution, persons are entitled to register provided:

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

It will thus be seen that a person must first pay his capitation taxes before registering.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Poll tax list, names to be included—Person in United States Navy not exempt from payment of poll taxes.**

RICHMOND, VA., *April 25, 1931.*

HON. C. G. AVERY, *Treasurer,*  
*Holdcroft, Virginia.*

DEAR SIR:

I am in receipt of your letter of April 22, in which you submit the following three questions:

"1. Should I, as treasurer, put on the poll list, as required by section 109, persons who have become of age since January 1, 1930, and have since been assessed with 1931 poll taxes and paid the same?"

"2. Should a person who has been a resident of the county one year only, but of the State three years or more, and has paid his 1930 poll tax six months prior to the election to be held in November of this year, be put on the list, as required by section 109, if the treasurer does not know whether his 1928 and 1929 taxes have been paid?"

"3. Is a man in the United States Navy in any way exempt from the payment of his poll taxes as a prerequisite to voting?"

In reply thereto, I beg to advise that in my opinion the answers to those questions are:

1. A treasurer should not put on the list a person who has become of age since January 1, 1930, and who has since been assessed with and paid his 1931 poll tax.

2. A treasurer should not put on the list a person under the facts outlined in question 2.

3. A person in the United States Navy is not exempt from the payment of poll taxes as a prerequisite to voting.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Primary—Eligibility of voters.**RICHMOND, VA., *July 21, 1930.*

MR. B. F. LONGACRE,  
*Purcellville, Virginia.*

DEAR MR. LONGACRE:

I am in receipt of your letter of July 14th, in which you ask to be advised:

First—"Is a voter who cast his ballot for Hoover as against Governor Smith in the election of 1928, and who has not voted since, eligible to participate in the coming primary?"

Second—"Is a voter who cast his ballot for Hoover as against Smith in the election of 1928, and who cast his ballot for Brown as against Governor Pollard in the general election of 1929, eligible to participate in the coming primary?"

As the last general election in which a person participated is the first test of a person's right to participate in the August primary, and that election was the one in which Governor Pollard was a candidate for governor, I shall answer your second question first.

The right of a person to vote is judged by whether or not he is a member of the party in whose primary he offers to vote. Applying this test to the August primary of the Democratic party, I would say that no person is entitled to vote who is not a member of the Democratic party. In addition to this requirement, he must, at the last preceding general election in which he participated, have voted for the nominees of the Democratic party. By nominees is meant all of the nominees of the party who were chosen in the direct primary, including those who entered as candidates in the direct primary, but who having no opposition were declared the nominees of the party.

Applying this test, no person who voted for Brown against Governor Pollard is eligible to participate in the coming primary. Not only is this so, but the person offering to vote must have cast his ballot for all of the nominees of the party in the November election of last year.

You ask as to the right of persons to participate in the primary who voted for Hoover in the 1928 election. As the law applies only to candidates of the party who were nominated by a direct primary, it does not apply to candidates for president and vice-president, as these candidates are nominated by conventions. However, at the same election Senator Swanson was a candidate for reelection, and in a number of districts there were candidates for Congress. Unless a person voted for Senator Swanson, and the local candidate for Congress, he is not eligible to vote in the Democratic primary this year. This, of course, applies only to persons who voted in the 1928 election and who did not vote in the 1929 election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Primary—Judges of.**RICHMOND, VA., *June 19, 1931.*HON. J. F. WOODHOUSE,  
*Princess Anne, Virginia.*

DEAR MR. WOODHOUSE:

I am in receipt of your letter of the 16th instant, in which you desire to be advised as to whether or not Republicans or Independents should be appointed as judges of election in the August primary.

Under the provisions of section 224 of the Code of Virginia, it is provided:

"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, one of which judges so appointed shall act as clerk in the conduct of such primary so held \* \*."

From this you will see that only members of the Democratic party should be appointed judges of the August primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Printing of names on ballots.**RICHMOND, VA., *September 4, 1930.*HON. PETER SAUNDERS,  
*Secretary of the Commonwealth,  
Richmond, Virginia.*

DEAR SIR:

I have examined the papers reporting the minutes of the convention of the Communist party of the Third Congressional District, of the First Congressional District and "State Senatorial Nominating Convention," all held in Richmond, Virginia, on Sunday, August 30, in which it appears that T. J. Stone was nominated as Congressional candidate from the Third Congressional District, A. J. Hauser as Congressional candidate from the First Congressional District and J. D. Davenport as candidate for United States Senate.

In my opinion these records and the fashion in which they are executed do not constitute a compliance with section 154 of the Code, and on the strength of that alone these gentlemen are not entitled to have their names printed on the ballots to be used in the November election.

Very truly yours,

COLLINS DENNY, JR.,  
*Assistant Attorney General.*

**ELECTIONS—Registrar not ex-officio judge.**

RICHMOND, VA., May 8, 1931.

MR. L. C. GARRETT, *Registrar,*  
*Cumberland Court House, Virginia.*

DEAR MR. GARRETT:

I am in receipt of your letter enclosing a clipping which you say you cut out of the News Leader, and I note this clipping informs the reader that a registrar "is, by virtue of his office, one of the judges of the election."

In reply to your request for an opinion as to your right as registrar to act as judge of the primary and general elections at your precinct, I will say that the electoral board of your county annually appoints judges of election both for primaries and general elections. While the board is not prohibited from appointing a registrar as judge of an election, it is not required to do so, and no registrar is entitled to act by virtue of his office as registrar.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Registration of voters—Persons becoming of age.**

RICHMOND, VA., March 19, 1931.

MR. HUGH CAMPBELL, *Registrar,*  
*Ashland, Virginia.*

DEAR SIR:

I am in receipt of your letter of March 16, in which you ask the following four questions concerning your duties as a registrar:

"1. Does the registrar have to post notice, and how many, of those registered since the November election for both primary and general elections, and does he have to send the names of all those registered to the county clerk and how many days before the election?"

"2. Can one register on the day of a primary, and does he have to pay his poll tax six months before the November election in order to vote in such primary?"

"3. Does a man becoming of age after January 1, 1930, and up until the November election, 1931, have to pay more than one tax in order to register?"

"4. Does one becoming of age between January 1 and the November election have to pay his tax six months before the November election in order to vote in the primary, or to register?"

1. By the provisions of section 98 of the Code it is made the duty of a registrar, within five days after each sitting, to have posted at three or more public places in his election district a written or printed list of the names of all persons admitted to registration, and at the same time to certify a true copy of such list to the clerk of the circuit court of the county, or the corporation court of the city, and to post a like list on the day of election at the place of voting in his election district.

2. There is no law covering the right to register on the day of a primary. The registration books should be placed in the hands of the judges

of election by the registrars not later than sunrise on the day of election. Some judges allow registrars to register persons on primary days and some do not. It seems to be permissible for registrars to act on registration days, but they are not compelled to do so, nor are judges compelled to turn the books over to them for registration purposes.

With certain exceptions, a person must pay his capitation tax so as to qualify him to vote in the election following a primary in which such person desires to vote. Answering your specific question, to entitle a person to vote in a primary election, the candidate selected therein to be voted for in the November election must pay his capitation tax at least six months prior to the November election. Incidentally, I would say that a person becoming of age after January 1, 1930, is not required to pay this tax six months prior to the primary election.

3. A young man becoming of age after the first day of January, 1930, is only required to pay one year's capitation tax in order to be eligible to vote. This tax should be credited on his 1931 capitation tax. This person is not required to pay his capitation tax six months prior to the election.

4. A young man becoming of age after January 1, 1931, may pay his capitation tax any time up to and including the regular registration day previous to the November election. Of course, if he desires to vote in the primary, he must have paid his tax and registered prior to the date of such primary.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### **ELECTIONS—Registrars—When required to sit.**

RICHMOND, VA., *December 11, 1930.*

MR. A. G. TAYLOR,  
*R. F. D. No. 1,  
Gladys, Virginia.*

MY DEAR MR. TAYLOR:

I am in receipt of your letter of the 9th instant, in which you desire to be advised as to whether or not, in my opinion, registrars in the voting precincts of the State are required by law to sit on the third Tuesday in May of each year for the purpose of registering voters not already on the registration books.

Registrars in the precincts of counties are only required to sit one day each year, that day being thirty days previous to November elections.

The provision requiring registrars to sit on the third Tuesday in May applies only to registrars in cities and towns and is based upon the assumption that there will be municipal elections in June of each year. City and town registrars should sit on the third Tuesday in May even should there be no June municipal elections.

You will notice that, under the provisions of section 98 of the Code, registrars in cities and towns are required to sit *annually* on the third Tues-

day in May at their voting places, while, as to fall registration days, it is provided that registrars, thirty days previous to the November elections, shall sit one day for purposes of registration.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Right of registrar to hold other office.**

RICHMOND, VA., May 13, 1931.

MR. A. J. WOLFE,  
*Big Stone Gap, Virginia.*

DEAR SIR:

I am in receipt of your letter of yesterday, in which you ask certain questions concerning the right of a registrar to hold other offices.

All of your inquiries are covered by sections 86 and 97 of the Code. Section 86 provides:

“ \* \* and such registrar shall not hold any office, by election or appointment, during his term. \* \* The acceptance of any office, either elective or appointive, by such registrar during his term of office shall, ipso facto, vacate the office of registrar.”

Section 97 of the Code provides:

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

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Registration of voters—Residence.**

RICHMOND, VA., May 16, 1931.

MR. W. J. HORSLEY,  
*Big Stone Gap, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 14th instant, in further reference to the registration of voters in the town of Big Stone Gap.

1. A person moving into Big Stone Gap from any other place in the State of Virginia must have lived in Big Stone Gap six months prior to the day of election and, if he desires to register and vote upon a transfer, he must have registered with the registrar of the town on or before the third Tuesday in May, that being the last registration day in the town of Big Stone Gap before the June municipal election. The thirty day provision as to the sitting of the registrar before an election applies only to November elections.

2. A person becoming of age on or before June 9 is required to register on or before the third Tuesday in May. While, under the provisions of section 98, he may register and vote at any time, I have held that that provision is to be construed as meaning at any time that the registration books are open, and, in my opinion, the registration books of the town are closed from the third Tuesday in May until after the municipal election.

3. Transfers from another county have to be registered with the local registrar on the last registration day or the third Tuesday in May.

4. I quote this question:

"Can a man who voted in Tennessee last November and who has lived in Big Stone Gap, Virginia, more than one year vote in our June 9 election?"

I do not like to answer a question covering a particular case, so I will not reply to this question yes or no. The law provides that a person must have resided in Virginia one year prior to an election in order to be entitled to register and vote. This provision refers to a technical residence in the sense that a person moving into Virginia from another State has given up his permanent home in that state for the purpose of acquiring a new home or place of residence in this State. The fact that a person voted in November in another state is evidence that he had not given up his residence there in November, although such evidence is not conclusive, as he may have voted in Tennessee without having been entitled to vote there or the Tennessee law may allow him to return and vote even though he has given up his residence there and acquired a new residence in Virginia.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**ELECTIONS—Registration of voters where books were destroyed by fire.**

RICHMOND, VA., *October 29, 1930.*

MR. H. H. GARTH,

*Judge of Election,*

*Ivy, Virginia.*

DEAR MR. GARTH:

I am in receipt of a letter from Mr. R. L. Jackson, Chairman of the Democratic Committee of Albemarle county, Virginia, in which he writes that, the registration books of Ivy precinct having been destroyed by fire, the registrar held a new registration. He also writes that some of the registered voters failed to reregister and that it is believed that a number of them will offer to vote on election day. Mr. Jackson asked in his letter that I write you my opinion as to the status of the persons who were once registered but who failed to reregister.

In my opinion, no person is entitled to vote unless his or her name is upon the registration books of the precinct in which he or she offers to vote.

Provision is made in sections 19 and 20 of the Virginia Constitution for the registration of voters. Section 21 provides:

"Any person registered under either of the last two sections shall have the right to vote," etc.

Section 162 of the Code provides that "every elector qualified to vote at a precinct shall, when he so demands, be furnished with an official ballot," etc.

Section 90 of the Code provides for a new registration of the voters of any district or precinct where the registration books have been destroyed by fire or otherwise.

I am not unmindful of the provisions of section 175 of the Code, allowing a person who is challenged to swear in his ballot, but I do not construe that part of the oath providing "that in such name you were duly registered as a voter of this election district" to mean that a person who has once been registered, where there has been a reregistration, can demand a ballot and have it sworn under the provisions of section 175. That provision was intended, in my opinion, to cover the case in which a person is challenged as not being the same person whose name appears on the registration books of the precinct and whose name the person offering to vote uses in requesting an official ballot.

It does not seem that anyone can reasonably complain if he or she has not made an effort to get his or her name on the new registration books, although, of course, such a person may have overlooked the notice of registration or have found it inconvenient to attend to the matter of reregistration.

You will notice that a person does not have to go through the regular registration form, but only has to apply to the registrar for reregistration and, where the fact is unknown to the registrar, prove that he or she was previously registered as a voter of the precinct.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### **ELECTIONS—Re-organization of committees.**

RICHMOND, VA., June 11, 1931.

HON. C. W. CARTER,

*Attorney for the Commonwealth,  
Warrenton, Virginia.*

DEAR MR. CARTER:

I am in receipt of your letter of the 8th instant, in which you desire my opinion as to the necessity for the election of county committees every two years, as provided for in the plan of county and city organization, adopted by the Democratic party in convention at Norfolk, Virginia, June 11, 1924, and I note that you quote that section of the plan which provides:

"County and city committees must re-organize in 1925, and every two years thereafter."

Let me call your attention to the fact that in your letter quoting from the plan of the party you use the word "organize," while the plan provides that the committees must re-organize.

It is my opinion, therefore, that the plan of the party provides for an election of a committee every two years beginning with the year 1925. However, there is no necessity under the first paragraph of the plan for a primary, as the county committee is authorized to decide upon the time, place and method for the election of county committees.

With this large latitude, I advise that your committee would be following the law if it should decide upon the selection of committeemen by a mass meeting in the county at the county seat or some other point, or the committee may call for mass meetings of party members in each magisterial district, or, in fact, provide for a meeting in each precinct.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Republicans may not vote in Democratic primary.**

RICHMOND, VA., May 7, 1931.

MR. J. R. TRUEHEART,  
*Clerk of Electoral Board,  
Amelia, Virginia.*

DEAR MR. TRUEHEART:

I am in receipt of your letter of the 1st instant, in which you ask to be advised as to my ruling as to the right of Republicans to vote in a Democratic primary.

Both section 228 of the Code of Virginia and the platform of the Democratic party adopted June 11, 1924, provide that a person must be a member of the Democratic party in order to be eligible to vote in the Democratic primary.

The judges of election must, upon challenge or upon their own motion, hear evidence and decide as to whether a person who offers to vote is or is not a member of the Democratic party.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Residence.**

RICHMOND, VA., September 11, 1930.

MR. R. D. CRAWFORD,  
*Eheart, Virginia.*

DEAR SIR:

I am just in receipt of a letter from Honorable J. E. Parrott, of Greene county, in which he requests my opinion as to your right to cast your ballot in Greene county. In this letter he states:

“Mr. Crawford lived in Greene county all his life and has always voted and paid all of his taxes in this county. In February Mr. Crawford moved to Orange county, where he is now living on a farm which

he rents. He still owns his home in Greene and considers that he is only in Orange county temporarily. He has no intention now, nor has he had any such intention at any time, of abandoning his legal residence in Greene county to acquire a new one in Orange county. Mr. Crawford tells me that all of the taxes on the whole tract of land which he is renting are paid in Greene. The situation is that the line between Orange and Greene splits this farm and, in fact, the line splits the dwelling, leaving the chimney on the Greene side and the balance in Orange. He has also left some furniture and reserved a room in Greene.

"Under the law as stated in *Williams v. Commonwealth*, 116 Va. 272, I am clearly of the opinion that Mr. Crawford has still retained his legal residence in Greene and has a perfect right, so far as such residence is concerned, to return and vote in the fall election in Greene county, as he has done in years preceding."

I have repeatedly held that, in order for a person to lose his domicile and right to vote in one place, he must have left that place for the purpose of establishing a permanent residence in some new place.

Mr. Parrott says that, when you left Greene county and rented a farm in Orange county, you only went to that county temporarily and that you had no intention of abandoning your legal residence in Greene county and acquiring one in Orange county.

If this statement is correct, you are a legal voter in Greene county.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### ELECTIONS—Residence.

RICHMOND, VA., *September 11, 1930.*

MR. W. A. RENALDS:

*Criglersville, Virginia.*

DEAR MR. RENALDS:

I am just in receipt of your letter of the 9th instant, in which you state the case of a person who desires to register and vote in Madison county. I quote your letter in full:

"There is a man who was born in Halifax county, Virginia, some 46 years ago and was moved from there in infancy and grew up in Danville and other parts of the State. He also worked for a while in North Carolina, but has for the last twelve or fifteen years been in Washington, D. C., and is still working there. He married one of our Criglersville girls about seven years ago, and has since made frequent visits here, staying thirty days or more at a time, and calls this home. He has paid his capitation tax regularly and in the required time for the last four or five years. He has never registered or paid capitation tax anywhere else.

"Has he the right to register and vote at Criglersville?"

In my opinion, a person does not have to live any particular length of time in a new place to become a citizen thereof. It all depends upon his or her intention. Where a person leaves one home with the intention of establishing a residence in another place and actually goes to that place, without any intention of returning to the former place as a permanent residence, then he has acquired a residence in the new place. He does not have to own

property there, neither does he have to remain there all the time. He can establish a residence in Madison or Culpeper or Orange by removing from some other place to his new place of residence and establishing a home there, even though he may return to his old place of residence to continue his employment or occupation.

Carter A. Saunders, a very wealthy man, bought a farm in Culpeper county and a house in the town of Culpeper. His former home was, I think, in Baltimore. He claimed his farm as his home, although he never spent but one night on the farm. The town of Culpeper undertook to levy a tax on him as a resident of the town, he living a large portion of the time in the town. The court refused to allow the tax levied to stand, and he became a legal resident of the county, with his place of residence on his farm, although he never spent but one night there, he having declared his intention of making his home on his farm.

The man you refer to has a right to make and claim Madison county as his home and, of course, he has a right to register and vote wherever his home is.

If he meets all other qualifications and the registrar refuses to allow him to register, he can appeal to the circuit court, or to the judge thereof in vacation, within ten days after he has been denied registration.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

#### ELECTIONS—Residence.

RICHMOND, VA., May 6, 1931.

MR. E. T. WHITWORTH,  
*Front Royal, Virginia.*

DEAR MR. WHITWORTH:

I am in receipt of your letter of yesterday, in which you state the following case and ask my opinion thereon:

"A married woman who was born and raised in this county is the wife of a captain in the United States Navy. She has always lived here and owns, in her own name, a residence in the town of Front Royal. Her children attend school here and she resides here when her husband is on ship duty in foreign waters.

"She has registered and paid all taxes necessary to entitle her to vote. Is there any law which would prevent her voting on account of the fact that she is the wife of a United States Naval officer?"

The lady to whom you refer is unquestionably a resident of the town of Front Royal and, as such, is qualified and entitled to vote in all elections.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Residence.**

RICHMOND, VA., May 7, 1931.

HON. G. W. MITCHELL, *Treasurer,*  
*Culpeper, Virginia.*

MY DEAR MR. MITCHELL:

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

"A party in this county has paid capitation tax for the year 1930. She was living in Washington, D. C., in 1928 and 1929, but previous to that time was a resident of Culpeper county. In the fall of 1929 she returned to this county and has been living here ever since. Please advise if she is eligible to go on voting list this year."

The answer to your question depends upon the intention of the lady who, having once lived in Culpeper, removed to Washington, D. C., and had her residence there during the years 1928 and 1929. As she removed back to Culpeper in 1929, she was assessable for a capitation tax for the year 1930, even though she had given up her residence in Culpeper and established a permanent residence in Washington for the years 1928 and 1929. If, however, she did not give up her residence in Culpeper, she is not only assessable for the year 1930 capitation tax, but was assessable for the 1928 and 1929 capitation taxes, and she must have paid you for all three of the years 1928, 1929 and 1930, or for 1930 alone, according to the foregoing explanation.

If she has paid such taxes as she was assessable with during the years 1928, 1929 and 1930, although she does not pay for all three of such years, she is entitled to be included on the voters' list.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ELECTIONS—Residence.**

RICHMOND, VA., June 4, 1931.

MR. J. O. WATKINS,  
*South Boston, Virginia.*

DEAR MR. WATKINS:

I am in receipt of your letter of the 1st instant, in which you ask my opinion as to the right of a person who, having lived in the city of Hopewell for a number of years, has made his home in South Boston for the past four or five years, and who has had his transfer from Hopewell to South Boston, but has paid his capitation tax for the year 1930 in the city of Hopewell.

Such a person is not disqualified as a voter in South Boston because of the fact that he paid his capitation tax for 1930 in the city of Hopewell. He may have been a citizen of Hopewell at the time he was assessed and even at the time he paid his capitation tax, but, if he will have been a resident of South Boston, within the meaning of the election laws, six months prior to the November general election and has transferred from Hopewell to South

Boston, he is eligible to vote in the county of Halifax, as only six months residence in the county is now required to entitle a person to vote therein.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Residence.**

RICHMOND, VA., *June 16, 1931.*

MR. WILLIAM G. VANSANT,  
*Chatham, Virginia.*

DEAR MR. VANSANT:

I am in receipt of your letter of the 11th instant, in which you refer to the provisions of section 18 of the new Constitution of Virginia and to sections 82 and 228 of the Code of Virginia, and I note the conflict between the Constitution and section 82 of the Code.

In my opinion, section 18 of the Constitution governs the right of a person to vote in the State of Virginia, and a person is qualified to vote, all other provisions of the law having been met, if he or she has been a resident of the State one year, of the city or town six months, and of the precinct in which he or she offers to vote thirty days.

Replying to your question, I am of the opinion that a person otherwise qualified, who removed from Campbell county to Pittsylvania county on the 3rd day of April, 1931, with the intention of changing his domicile from the former to the latter county, is entitled to vote in the August 4, 1931, primary, as such person will have been a resident of Pittsylvania county for six months prior to the November, 1931, election.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Residence.**

RICHMOND, VA., *June 19, 1931.*

MR. ELLIOT E. HENLEY,  
*1214 Jackson Street,  
South Norfolk, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 15th instant, in which you ask certain questions concerning the Virginia election laws.

"1. Can a voter moving from Richmond, Virginia, to South Norfolk, Virginia, last October vote in the June 9, 1931, councilmanic election? Section 100 says he must be a resident of the city for one year."

Under the new Constitution, a person may vote in a city who has removed thereto from another city or county and resided therein for six months prior to an election. The old Constitution provided that a person should have resided one year in a city or county. The voter to whom you refer, therefore, was entitled to vote in the June election in South Norfolk.

"2. Can a voter who has never lived in South Norfolk, Virginia, transfer from Norfolk to South Norfolk and vote just because he owns property in South Norfolk?"

No person has a right to vote in a locality simply because he owns property there. He must have been a legal resident of the locality in which he offers to vote.

"3. Does the fact that a party receives his mail in a place constitute his gaining a residence in that city which would entitle him to vote there, although living in another city?"

My answer to your second question covers your third.

"4. The law says the registration books close on the third Tuesday in May, and, if a party becomes 21 after the books close, can he be assessed, register, and vote after that day, or will he have to do this before the third Tuesday in May?"

The registration books in a city closing on the third Tuesday in May, no person is entitled to register prior to the municipal election, not even a person becoming 21 years of age, after the third Tuesday in May and on or before election day. Such a person was entitled to have himself assessed and registered prior to the third Tuesday in May.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### ELECTIONS—Residence.

RICHMOND, VA., June 19, 1931.

MR. R. T. LOFTIS,  
*Alton, Virginia:*

DEAR SIR:

I am in receipt of your letter of the 15th instant, in which you desire my opinion as to the legal voting status of a citizen moving from one magisterial district to another during the year 1931, and you ask in which of these two districts he should vote.

A person removed from one district to another within the same county may, if he has not been a resident of the new district for thirty days, return to his old district and vote. If he shall have been a resident of the new district for thirty days, he should apply to the registrar of the old district, secure his transfer, apply to the registrar of the new district and have his name put upon the registration books of the new district.

This opinion assumes, of course, that it is the intention of the voter to give up his residence in the old district and to establish a permanent residence in the new district.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Residence.**RICHMOND, VA., *June 20, 1931.*

MR. C. M. JORDAN,  
*South Norfolk, Virginia.*

DEAR MR. JORDAN:

I am in receipt of your letter of the 16th instant, in which you give a brief summary of your residences for the last several years prior to the June 9, 1931, municipal election, and you ask my opinion as to your legal residence and eligibility to vote in the city of South Norfolk.

For the purpose of my reply, I quote two paragraphs of your letter:

"On June 30, 1930, I married Miss Mary Louise Baker, who has resided in South Norfolk for the past seven years, teaching Latin in the South Norfolk High School.

"In 1930, prior to my marriage and the death of my brother, it became my intention and I determined to reside in the city of South Norfolk, and soon thereafter, in the early part of 1930, carrying out my intention so to do, I took up my legal residence in the First Ward of the city of South Norfolk."

Having declared your intention early in 1930 to make your residence in South Norfolk and having established a legal residence in that city, you were unquestionably eligible to vote there. My opinion as to your legal residence is, of course, based entirely upon your statement that you established a legal residence in the city of South Norfolk. Your legal residence having previous to 1930 been in the city of Norfolk, two things must have occurred for you to have changed your residence:

(1) You must have entertained an intention to change your legal residence from Norfolk to South Norfolk;

(2) You must have actually removed from Norfolk to South Norfolk.

With your letter you enclose a certificate of the treasurer of the city of Norfolk that you had paid your State capitation taxes for the years 1928, 1929 and 1930 not later than December 5, 1930. That certainly complies with the law as to the payment of your capitation taxes.

You also enclose a copy of the transfer issued to you on the 27th day of April, 1931, from the registrar of your precinct in the city of Norfolk, and you state in your letter that the transfer was presented to the registrar of the first ward of the city of South Norfolk on the same day. This transfer was sufficient for the purpose of placing your name upon the registration books of South Norfolk.

I trust that I have fully answered the questions contained in your letter.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Residence.**

RICHMOND, VA., June 22, 1931.

HON. JOE W. PARSONS, *Clerk,*  
*Independence, Virginia.*

DEAR MR. PARSONS:

I am in receipt of your letter of the 18th instant, in which you ask to be advised upon several questions.

"1. A person who has lived in the State of Virginia one year, in Grayson county six months and in Independence precinct thirty days, and now lives in Wythe county, and claims Independence, Grayson county, as his residence, but who has never voted, is temporarily in Wythe county making a crop. Can he come back to Independence, register and vote? I know your ruling on residence and understand that. The question that bothered me was whether or not he was entitled to register although he was temporarily out of the precinct."

The person to whom you refer is entitled to return to Grayson county, register and vote provided, of course, all other qualifications exist.

"2. A person who has been a registered voter at one precinct and goes out of the State and stays for some three or four years and returns to the place where he is registered, and has only paid the 1930 tax; would he be entitled to vote at his original precinct unless he registered?"

Under the law, registration books should be regularly purged and, where a voter leaves the State with the intention of making a permanent home elsewhere, his name should be stricken from the registration books. If he leaves only temporarily, although he may have been gone several years, his name should remain on the books. I have heretofore held that, although a person who had duly registered in Virginia established a permanent residence elsewhere, and subsequently re-established a residence in Virginia, but whose name was not stricken from the registration books, he need not and could not re-register.

However, a person who has not permanently removed from Virginia, but who has been temporarily absent, and whose voting residence has remained in Virginia, is required to have paid not only the 1930 capitation tax, but capitation taxes for 1929 and 1928 as well, to entitle him to vote in this fall's election, as a capitation tax for all three years was assessable against a person who, though temporarily absent, claims to have retained his voting right in Virginia. If he left the State and established a permanent residence elsewhere and returned during the year 1929, he would only have been assessed or assessable with the 1930 capitation tax in order to entitle him to vote.

You can see by this that an answer to your question is very much influenced by the facts in the case.

"3. We have some people in this county that the Board of Supervisors allow a certain amount for their family each month for their support; they have not been committed to the county alms house, but the supervisors allow them a small amount each month, on account of their age or health, for their support; they do not depend altogether on this allowance. Would these people be considered paupers and be disqualified from voting?"

Under the provisions of section 23 of the Code, *paupers* are among persons who are excluded from registering and voting, so that the answer to your third question depends upon whether or not the persons to whom you refer as receiving public assistance are or are not paupers. I quote from a Massachusetts case, 124 Mass. 596, 597:

"The word 'paupers,' in Const. Amend. art. 3, providing that every male citizen of 21 years and upwards, except paupers and persons under guardianship, who shall reside, etc., shall be entitled to vote, etc., means persons receiving aid and assistance from the public for themselves or their families under the provisions made by law for the support and maintenance of the poor."

As there has been no official adjudication of the term "pauper" by the Supreme Court of Appeals of Virginia, I cannot express a decided opinion.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**ELECTIONS—Residence—Eligibility to vote.**

RICHMOND, VA., January 21, 1931.

HON. W. E. LAINE, *Treasurer,*  
*Isle of Wight, Virginia.*

DEAR SIR:

I am in receipt of your letter of January 20, which reads as follows:

"I understand that you have ruled that a person who has come into this State from another since January 1, 1930, is eligible to register and vote in the elections this year without the prepayment of any capitation tax since he or she was not assessable for the year 1930 and 1931 taxes will not be due until November 1, and without complying with the restrictions as to length of residence in the State, county, and precinct. If I understand this correctly, please confirm my opinion by sending me a copy of your ruling in pamphlet or mimeograph form if you have it that way, or write me a letter setting forth the same.

"Similarly, a person who has come into this State since January 1, 1929, but prior to January 1, 1930, would be eligible to register and vote upon the payment of a poll or capitation tax for the year 1930 only. If this be true, I take it that the registrar would be authorized to register such person and the treasurer authorized to place the name on the list of qualified voters for 1931 without the payment of any capitation tax in the first case and upon the payment of one capitation tax for the year 1930 in the second case. I will greatly appreciate your ruling opinion on these matters in whatever form you may have it."

You are entirely correct as to my ruling relative to the qualifications of persons to register and vote who have come into Virginia from some other State since January 1, 1929, and prior to January 1, 1930, and who have come into this State after January 1, 1930, with the exception of that part of your letter contained in the first paragraph in which, after quoting my opinion as to the prepayment of capitation taxes, you say, "and without complying with the restrictions as to length of residence in the State, county, and precinct."

The new Constitution makes no provision for the prepayment of the capitation taxes of those persons who come into this State where otherwise

no capitation taxes are due previous to the succeeding election. However, all other requisites of age and residence must be complied with.

No person coming into Virginia after January 1, 1930, is required to prepay a capitation tax before registering and voting. A person who has come into this State after January 1, 1929, and prior to January 1, 1930, must have paid the capitation tax for the year 1930 six months in advance of an election before being eligible to vote and must have paid it previous to registration.

Having paid any one tax with which a person is assessable, where only one is assessable, his or her name should go upon the list of qualified voters.

I am sending you a copy of an opinion given to Mr. Thomas R. Mechem, Clarendon, Virginia, under date of August 2, 1929, which covers the subject matter of your inquiry.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**ELECTIONS—Residence of candidate.**

**COMPATIBILITY OF OFFICES—Member of House of Delegates serving as secretary to Commission for the Blind.**

RICHMOND, VA., May 27, 1931.

HON. L. L. WATTS,

*Charlottesville, Virginia.*

DEAR MR. WATTS:

I am in receipt of your letter of yesterday, in which you state certain facts concerning your work and residence. I think it best to copy your letter in full:

"In following up our conversation of this morning, I take pleasure in giving you the following information. I wish you would advise me if I am a legal resident of the legislative district comprised of Albemarle and Greene counties and the city of Charlottesville. At the present time I pay taxes and own property both in the county of Albemarle and in the city of Charlottesville, and have always considered it my residence and have been voting at Charlottesville for many years.

"It is true that my wife and family reside in Richmond the major portion of the time. However, I am out of the city of Richmond on business almost as much as I am in the city. While the main office of the Virginia Commission for the Blind, of which I am executive secretary, is now located at 3003 Parkwood Avenue, Richmond, I have an office at the Virginia Workshop for the Blind, our industrial plant for the blind men, in Charlottesville. I also have activities going on in Lynchburg, Roanoke, Norfolk, Newport News, Portsmouth, Hampton, and there are innumerable blind persons scattered throughout the State that I visit and give such assistance as I am capable of.

"In reality I spend almost as much time at my office at the Virginia Workshop for the Blind as I do at my office in Richmond. It is true that I am executive secretary of the Virginia Commission for the Blind with headquarters in Richmond, but I am not appointed by the Commission for a definite period of time, and my term of employment is subject to their will.

"In view of the foregoing facts, will you, therefore, give me your opinion as to whether I am qualified to be a member of the Legislature from the legislative district I have above set forth."

You will remember that you asked my opinion as to eligibility to serve as a member of the House of Delegates as far back as May 17, 1923, and that at that time I quoted you section 44 of the Constitution and expressed the opinion that, as you were not a salaried officer of the State of Virginia, but were an employee of the Virginia Commission for the Blind, you were eligible to serve in the General Assembly.

In your present letter you not only ask as to your eligibility on account of your employment, but refer to facts covering a question as to your residence in the district including Albemarle county and the city of Charlottesville.

In my opinion, there is no question of your eligibility. As I understand from our personal conversation and your letter, you had a residence in Albemarle before you were employed by the Commission for the Blind, that you have retained that residence and are only temporarily living in the city of Richmond while discharging the duties of your position.

This question as to the temporary residence of employees has been before the Attorney General's office upon a number of occasions and I have repeatedly held that a temporary residence, no matter how long it may continue, does not deprive a person of his legal voting residence at the place of his original domicile, so long as he has an intention to return to his original domicile and consequently has not adopted or selected a new place of domicile with the purpose of making the new place his permanent home.

In *Williams v. Commonwealth*, 116 Va. 272, the Court of Appeals said:

"The true test in cases of the kind under consideration seems to be this, that 'If a person leave his original residence *animo non revertendi*, and adopt another (for a space of time, however brief, if it be done) *animo manendi*, his first residence is lost. But, if in leaving his original residence, he does so *animo revertendi*, such original residence continues in law notwithstanding the temporary absence of himself and family. Such is the uniform language of the books, as well as the clear conclusion of common sense. *Cadwallader v. Howell*, *supra*."

If when you left Charlottesville you had no intention of giving it up as your home, you are still a legally qualified voting resident of Charlottesville and are eligible to serve as a member of the House of Delegates. In order for a person to effect a change of domicile or voting residence, two things must occur. He must have given up his original place of domicile or voting residence without the intention of returning and must have actually removed to a new place of residence with the intention of remaining at that place.

However, you must understand that this is my opinion as to your eligibility. Under section 47 of the Constitution, each house of the General Assembly is the sole judge of the election and qualification of a member, and, while I do not apprehend that there is the slightest reason to suppose your seat will be contested, the House of Delegates alone can finally pass upon your eligibility.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**ELECTIONS—Residence of county and district officers.**RICHMOND, VA., *March 19, 1931.*

MR. J. B. DAVIS,  
*Martinsville, Virginia.*

MY DEAR SIR:

I am in receipt of your letter of the 17th instant, in which you write:

"Since our county election in 1927, the city of Martinsville has been made a city of the second class, which makes the city and county have separate treasurer and commissioner of the revenue. Will a voter living in the city of Martinsville, Virginia, which is a city of the second class, be eligible to run for county treasurer or commissioner of revenue in the county?"

The statute providing as to the residence of county and district officers requires them, subject to an exception hereafter quoted, to reside within the county or district in which they hold office; the provision as to a county officer reading:

"Every county officer shall, at the time of his election or appointment, have resided one year next preceding his election or appointment, either in the county for which he is elected or appointed, *or in the city wherein the courthouse of said county is: \* \* \*.*"

You will see from this exception to the general law that a person otherwise qualified who lives in the city of Martinsville is qualified to hold the office of treasurer or commissioner of the revenue, or any other county office for the county of Henry.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Residence of married woman.**RICHMOND, VA., *June 24, 1931.*

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

DEAR MR. FOGLEMAN:

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

"Professor W. D. Saunders and I have discussed the question as to whether or not his wife can register and vote in Blacksburg precinct. Professor Saunders pays his taxes in Franklin county and votes there, but Mrs. Saunders has never qualified to vote. Please let me know if the law permits her to qualify in Blacksburg precinct and vote here. You know, of course, that Professor Saunders lives in Blacksburg."

Under the provisions of section 1 of the act extending the right of suffrage to women, Acts 1926, page 462, it is provided:

"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."

Under the provision quoted, Mrs. Saunders may register and vote in Blacksburg.

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

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**ELECTIONS—Right of colored persons to vote in Democratic primary.**

RICHMOND, VA., *June 30, 1931.*

MR. O. M. PRICE,  
*Bealeton, Virginia.*

DEAR MR. PRICE:

I am in receipt of your letter of yesterday, in which you ask to be advised as to whether colored persons have a legal right to vote in Democratic primary elections.

The plan of the Democratic party adopted June 11, 1924, at Norfolk, Virginia, restricts participation in Democratic primaries to white persons qualified to vote at the election for which the primary is held.

A year or more ago certain colored persons, who claimed to be Democrats, offered to vote in a Richmond City Democratic Primary. The judges of election refused to furnish them ballots. These persons brought suit in the Federal court, and the District court decided that, as the Democratic primary was held under provisions of general law, it was official, and that it was a violation of the Constitution of the United States to refuse persons otherwise qualified the right to vote in the primary because of their color.

This judgment of the District court was appealed to the United Circuit Court of Appeals and there affirmed. No appeal having been taken from such judgment, the decision of the Federal court is the law of the particular case in which it was decided. Apparently other cases would be decided by the lower courts in the same way until a case involving the same question has reached the Supreme Court of the United States, it cannot positively be said that colored persons are entitled to vote in Democratic primaries.

However, judges of primary elections who refuse colored persons the privilege of voting, where they have all other qualifications to participate in a Democratic primary save that of color, are liable to suit for damages in the United States courts.

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

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**ELECTIONS—Residence—Transfer.**

RICHMOND, VA., *May 7, 1931.*

MR. C. L. DAVIS, *Registrar,*  
*Ivor, Virginia.*

DEAR MR. DAVIS:

I am in receipt of your letter of the 30th of April, which has been inadvertently overlooked until today. You ask several questions:

"1. A young man leaves his parental home, goes to another county, and becomes of age. Can he claim his native county as his home and register therein?"

A minor retains his domicile or residence at the home of his parents until he becomes of age. After reaching twenty-one, he may select his own domicile or place of residence, provided, however, his selection may not be arbitrary, but must depend upon his intention of making some place his permanent home or residence. If, when in another county he becomes of age, he clings to the county of his parents as his home and has an intention, though temporarily absent, to return thereto, I am of the opinion that he can register in the home county of his parents. If, however, he intends to make the place where he lives his permanent home or place of residence, then he cannot claim the home of his parents and must register and vote at the place of his actual residence.

"2. A man comes from another state and lives in Virginia the required length of time. Should he register here or get a transfer from the state from which he came?"

A person coming into Virginia from another state cannot transfer from that State to Virginia. He must register in Virginia just as any other citizen of Virginia must register.

"3. Should the registration books be closed thirty days prior to the November election?"

Registrars are required to sit one day prior to the November election and may register all persons up to and including that day. He cannot register persons after his regular registration day until after the November election.

"4. Can a voter vote on a transfer at the November election?"

No person is entitled to vote who has not been registered and, in order to vote in the November election, such person, if he transfers from one city or county to another city or county, must have registered his transfer on or before the regular October registration day. If transferred from one precinct to another in the same county, he can register any time up to and including the day of election, provided the judges of election allow the registrar to have temporary possession of the registration books for the purpose of registering such transferred voter. The election judges, however, are not compelled to allow the books to go back into the hands of the registrar on election day.

A voter can transfer and register at any time up to and including the day of the August primary, provided the judges of election allow the books to go into the hands of the registrar, as has already been explained.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**ELECTIONS—Right of person to vote where name appears on registration books and voting list differently.**RICHMOND, VA., *November 1, 1930.*MR. W. O. BRISTOW,  
*Franklin, Virginia.*

DEAR MR. BRISTOW:

Your letter of yesterday was received in the Attorney General's office this morning in the absence of Colonel Saunders.

As you desire an answer not later than Monday, I have looked into the matter of the inquiries contained in your letter. You ask two questions:

1. As to whether or not, where the name of a person appears on the registration books as "James H. Smith" and his name appears on the voting list as "J. H. Smith," he is entitled to vote.

Provided James H. Smith and J. H. Smith are one and the same person, he is unquestionably entitled to vote. The law does not contemplate depriving a citizen of his right of suffrage upon any such technicality. If his right to cast his ballot is challenged, he should be sworn and his affidavit taken under the provisions of section 175 of the election law. Should he take the oath that he, James H. Smith, is the same person whose name is included in the voting list as J. H. Smith, and he is otherwise eligible, he should be allowed to vote.

You further ask as to whether or not a mistake in the initials of the person offering to vote, such as, for instance, where a person is registered as J. C. Smith and his name appears on the voters' list as J. O. Smith, would deprive him of his right to vote.

Such a mistake does not deprive a qualified voter of his right to cast his ballot. He should, as suggested in the answer to your first inquiry, if challenged, make oath that he, J. C. Smith, is the same person whose name appears on the voting list as J. O. Smith. Should he make such affidavit and be otherwise eligible, he should receive his ballot and be allowed to vote.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.***ELECTIONS—Student—Right to register.**RICHMOND, VA., *September 24, 1930.*MR. HENRY F. B. MARTIN,  
*7 Peters Hall,*  
*University, Virginia.*

DEAR MR. MARTIN:

I am in receipt of your letter of the 18th instant, in which you make a statement concerning the refusal of the registrar of your precinct to register you on account of the fact that you had not acquired citizenship in his precinct, and I note the letter from Mr. George B. Eager, Jr., Assistant Dean of the University, in reference to your citizenship.

Under the law, as you have already been advised, a student does not acquire a residence simply by being in attendance at the University, nor does he lost his old residence when he goes to the University to study. However, where one moves to a new place of residence with the purpose of making it his permanent home, and gives up his old place of residence, he acquires a residence for the purpose of voting at his new place.

I should say that, when you paid your capitation tax in February, 1929, at Chatham, it was an act indicating that Chatham was your home and that you desired to qualify to vote in the 1929 fall election at Chatham. However, this action on your part does not preclude you from changing your intention at some subsequent time, and, if you actually gave up your residence in Chatham six months previous to the November, 1930, election, with the purpose of establishing yourself as a resident of the University of Virginia, you had a perfect right to do so and, if that is a fact, you are entitled to register and vote in the University of Virginia precinct.

Your change of residence is a fact which the registrar of your precinct must pass upon. If you can satisfy him that you changed your residence, he should register you. If he is not satisfied and holds under the evidence that you are still a resident of Chatham, then it is proper for him to refuse to register you.

Within ten days after your application has been refused, you can apply by petition to the judge of the circuit or corporation court and have him pass upon the propriety of the action of the registrar.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### **ELECTIONS—Tie vote—Election booths—Absent voter's law.**

RICHMOND, VA., June 16, 1931.

MR. C. G. MASON,  
*Luray, Virginia.*

DEAR MR. MASON:

I am in receipt of your letter of the 13th instant, in which you ask several questions concerning the operation of the State election laws. You ask:

"1. Section 184—the latter part of this section reads as follows:

"'But if two or more persons have an equal number of votes for any county, city, town or district office, and a higher number than any other person, the commissioners aforesaid shall proceed publicly to determine by lot which of the candidates shall be declared elected.'

"Does this mean that notice shall be given the public or merely that the drawing must be done in a public place? If that the drawing must be held in a public place only, would notice of the place and hour be required to be given by the commissioners to the two candidates concerned and the two representatives of each party who had witnessed the count of the ballots?"

In my opinion, the section to which you refer only means that the determination by lot by the commissioners of election must be made openly and before the public, and is contradistinctive from the withdrawal of the

commissioners from their public meeting place to some place from which they bar the public and in which place they undertake to determine by lot to whom a certificate of election shall be awarded.

"2. Section 161 reads in part as follows:

"'Except as hereinafter provided for, save the judges of election and clerks, no person other than the elector offering to vote shall be within forty feet of the ballot box.'

"Under the provisions of the above section, would it be permissible for workers to approach the judges or clerks merely for the purpose of obtaining from them the information as to whether or not certain men or women residing within the precinct were on the registration books, or would this be in violation of the section referred to?"

I doubt if it possible to answer your question in such a way as to cover every situation which may arise under the provisions of the section you have quoted.

In my opinion, it was the intention of the Legislature to keep a certain space surrounding the polling booth free of the presence of the public generally and to allow a person desiring to vote an uninterrupted opportunity to appear before the judges, obtain a ballot, mark the same in a private booth, and to hand the ballot to the judges and have it deposited in the ballot box.

Persons desiring to challenge a voter for any reason have an undoubted right to appear before the judges within the enclosure, state their ground of challenge, and have such challenge promptly heard and determined.

There is no provision in law allowing persons, simply because they are workers, to approach the judges for the purpose of securing information as to whether or not certain persons residing in the precinct are on the registration books. I cannot say that it would or would not be a violation of the law, as I think much would depend upon the manner in which such persons approached the judges and the disposition of the judges as to whether or not they would furnish information to such workers.

In answer to your postscript, I will say that the law does not require a recount of the ballots before determining by lot which one of the candidates shall be declared elected. The judges of election themselves count the ballots, certify the count, seal and return the ballots with the poll book.

I am also in receipt of yours of the 10th instant, in which you ask two other questions concerning the election laws:

"1. In case where a man, who desires to vote by mail and makes application in person to the registrar for a ballot, fails to sign the affidavit, which is a part of the application, although the notary executes his certificate as if the applicant had signed, is the man entitled to have his vote counted?"

I do not know of any case in which this question has been determined. It is apparent, however, that only an inadvertent mistake or error was made by the person making application for a ballot, that the notary went ahead with his part as if the application had been signed and, I assume, the ballot was returned and offered by the notary to the judges as the ballot of the person making application therefor.

The question you put to me must first be passed upon by the judges of election and can only be definitely decided by a court where there has been an election contest. I hesitate to express the opinion that an immaterial omission to fulfill all of the steps provided in the absent voter's law would deprive a voter of one of his most cherished constitutional rights.

"2. In case of a mail ballot, the voucher fails to show the precinct, county, or name of the notary in the body of the voucher in the spaces provided therefor. Should the vote be counted?"

This question is largely of the same order as the one I have just answered and candidly I have no fixed opinion as to whether or not the omissions recited in your letter are sufficient to justify the judges of election in rejecting the person's ballot.

You must realize that there are some questions which I can answer positively and there are others which, never having been contested in court, I hesitate to rule upon. It is not because I seek to evade the responsibility of an answer, but because of the fact that, where there is no provision of law covering an inquiry and no judicial determination, there is no positive rule of law which justifies a positive answer.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### **ELECTIONS—Time within which to file notice of candidacy.**

RICHMOND, VA., *September 8, 1930.*

HON. PETER SAUNDERS,

*Secretary of the Commonwealth,  
Richmond, Virginia.*

DEAR SIR:

You have asked me to give an opinion upon that portion of section 154 of the Code (Acts 1927, page 153) wherein it is provided that "Any person who intends to be a candidate for any office, State or national, to be elected by the electors of the State at large or of a congressional district, shall, at least sixty days before such election, if it be a general election, \* \* notify the Secretary of the Commonwealth \* \* of such intention." This provision does not apply to a party primary nominee. You desire to know whether, in determining the sixty day period, the day on which the election is to be held shall be counted. In my opinion that day must enter into the computation.

Section 5 of the Code provides in part as follows:

"In the construction of this Code, and of all statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature:

\* \* \* \* \*

"Eighth, Computation of time.—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 proceeding, but the day on which such notice is given or such act is done, may be counted as part of the time." (Italics supplied.)

The Court of Appeals in *Kelly v. Trehy*, 133 Va. 160, said of section 5 that "it applies to all statutes."

That court has repeatedly held in its interpretation of the statute, which requires that bills of exceptions be filed within sixty days from the time when judgment is entered that the day on which judgment is entered must be considered. *Kelly v. Trehy*, *supra*; *Thrift v. Commonwealth*, 133 Va. 800; *Timmons v. Commonwealth*, 149 Va. 464.

It is further to be noted that section 154 of the Code reads "at least sixty days before such election," and that the eighth subsection of section 5 provides that the above interpretation shall be adopted "Where a statute requires a notice to be given \* \* a certain time before."

It is true that the eighth subsection of section 5 refers to a motion or proceeding which in themselves would probably not be broad enough to cover an election, but it is expressly provided elsewhere in section 5, as quoted above, that the several rules therein enumerated shall be observed in the construction "of all statutes."

I am, therefore, of the opinion that in computing the sixty day period of time you must begin the counting with the day on which the notice is filed and such day must be at least sixty days prior to the day of the election, the day of election not to be counted at all. In the particular case before you notice was given to you on September 6. There are twenty-five days in September, counting the sixth day; there are thirty-one days in October and three days which may be counted in November, the election being held on November 4. Therefore, only fifty-nine days' notice was given you and the notice was not filed within the time prescribed by the statute.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### **ELECTIONS—Transfer of voters—Eligibility to vote.**

RICHMOND, VA., October 27, 1930.

MR. D. W. CHAPMAN,  
*Smithfield, Virginia.*

DEAR MR. CHAPMAN:

I am in receipt of your letter of October 23, in which you ask the following questions:

"Can a person vote in the November election on his or her transfer, if otherwise qualified? Can a person who became twenty-one years of age on and after December 11, 1929, pay his poll tax now and vote in the November election?"

First: A different law applies to a transfer from a precinct in one county to a precinct in another county.

Where the transfer is from one precinct to another precinct in the same county, the transfer may be obtained from the registrar of the old precinct and placed upon the registration books by the registrar of the new precinct up to election day. I have held that it is optional with judges of election, to

whom registration books must be delivered not later than sun-up on the day of the election, to allow these books to go back into the possession of the registrar for the purpose of registering a voter.

Where the transfer is from a precinct in one county to a precinct in another county, the transfer must be obtained from the registrar of the old and put upon the registration books by the registrar of the new precinct not later than the fall registration day, which is by law fixed at thirty days preceding the November general election.

Second: A person becoming twenty-one years of age at any time on or after the first day of January, 1929, can pay his poll tax and vote in the November election; provided, however, that he shall have done so and registered prior to the last registration day, thirty days before that election.

Under separate cover I am sending you a copy of the Virginia Election Laws.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**ELECTIONS—Use of prepared blanks in registering prohibited.**

RICHMOND, VA., April 18, 1931.

MR. THOS. W. BLACKSTONE,

*Accomack Court House, Virginia.*

DEAR MR. BLACKSTONE:

I am in receipt of your letter of April 14, in which you enclose a letter from Mr. J. T. Sharpley, registrar of Greenbackville, Virginia, of April 13, and I note that you ask me to read Mr. Sharpley's letter and give you my opinion upon the matter of his inquiry.

Mr. Sharpley writes in part:

"Recently I have been advised that many are registering in the county using prepared blanks for the purpose."

He then asks your advice as to whether such practice is legal.

The inquiry is covered by subsection 2 of section 20 of the Constitution of Virginia. I quote that section in full:

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

You will see from the section quoted that every person is required to make application to register in his own handwriting, without aid, suggestion, or memorandum, and in the presence of the registrar.

I am, therefore, of the opinion that no person may use a blank of any kind while registering.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**ELECTIONS—Validity of absent voter's ballot.**RICHMOND, VA., *June 4, 1931.*

MR. C. M. DAUGHERTY,  
*Big Stone Gap, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 1st instant, in which you write concerning the right of persons who have received absent voters' ballots from a registrar of a district in your county who was for several years a deputy county treasurer and who, upon the advice of the judge of the circuit court, resigned as registrar on account of the fact that he was ineligible to hold both positions, under the provisions of section 86 of the Code of Virginia.

At the time that the former registrar acted, he was at least a *de facto* registrar, if not a *de jure* officer, and his acts as registrar until his resignation or removal were valid.

It, therefore, follows that, in my opinion, ballots which were issued by him to absent voters, marked and returned to him, should be handled by the new registrar just as if they had been issued by and returned to him. If some of the ballots have been returned to the former registrar, they should be turned over to the new registrar.

It is not the purpose of the law under any circumstance to deprive a voter of his right of franchise, and, in my opinion, any question of his right in this case is a mere technicality and should not prevail over the undoubted right of a citizen to cast his ballot according to his wishes.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Voting list.**RICHMOND, VA., *November 14, 1930.*

MR. E. G. SAUNDERS:  
*Goodview, Virginia.*

DEAR MR. SAUNDERS:

I am in receipt of your letter of yesterday, enclosing correspondence between you and former Governor E. Lee Trinkle and telegrams between you and Honorable E. C. Burks, Commonwealth's Attorney of Bedford County, and I note that you desire to be advised as to whether or not a person who has paid all of his capitation taxes for the three years preceding the year in which he offers to vote six months before election day, and whose name has been left off of the voting list, is entitled to vote upon presentation of his receipts to the judges of election.

In my opinion, no person is entitled to vote who has been assessable within the county in which he offers to vote for three years, whose name does not appear upon the voting list, although he has paid his poll taxes as required by law. To entitle him to vote, his name must be upon the voting list.

This does not apply to persons moving from one county to another. If their names appear upon the voting list of the county in which they offer to vote, showing the payment of their taxes for one or two years, they are

entitled to vote upon a certificate of the treasurer of the county or city from which they moved, showing the payment of the other one or two years' capitation taxes six months prior to the election.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**EMBALMING—Employment of instructor by board of—Embalmer's license  
—Residence.**

RICHMOND, VA., July 15, 1930.

MAJOR L. T. CHRISTIAN, *Secretary,*  
*State Board of Embalming,*  
*Richmond, Virginia.*

MY DEAR MAJOR CHRISTIAN:

I am in receipt of your letter of July 7, in which you submit the following questions:

"First: The question has arisen as to what constitutes residence in this State of a person applying for an embalmer's license under section 1720 of the Code.

"Is a person, who has taken up his permanent residence in this State and has resided herein, say six months, eligible to be licensed, or will he have to establish a residence by being in the State one year, as provided by the Constitution, before he can be classed as a citizen under section 1720 of the Code?

"Second: Section 1719 gives the board authority to adopt rules, regulations and by-laws. Cannot this be construed to imply that the board has authority to require an applicant for license to have completed a definite length of tuition in an embalming school in order to properly qualify said applicant for practice? Under this section also, has not the board the power to employ an instructor and supervisor of the practice of embalming, for such time and consideration as it may determine, to be paid from the funds of the board?"

Answering your questions in the order in which they are asked, I beg to advise that under section 1720 of the Code residence is a question of fact. If a man moves into Virginia with the intention of making it his permanent home, he thereupon becomes a resident thereof. The clause of the Constitution referred to by you relates to the qualifications of voters and reads, "Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year," etc., and can in no way be construed to make, as a requirement of residence, any specific period of time.

In reply to the first part of your second question, I am of the opinion that section 1719 of the Code does not authorize your board to require of an applicant that he shall have completed a definite length of tuition in an embalming school. Section 1720 of the Code enumerates all the requirements which may be demanded of an applicant and your board can neither add to nor subtract from it.

In reply to the question contained in the last sentence of your letter, I beg to refer you to the last sentence of section 1719 of the Code which reads as follows:

"The board may conduct, or aid in the conducting of, schools for teaching embalming, and scientific branches relating thereto, out of its own funds; but shall not thereby reduce the funds in the treasury of said board below the sum of three hundred dollars."

If you propose to employ an instructor in connection with some school, this sentence gives to you the necessary authority. If, on the other hand, his duties would not be those of conducting or assisting in the conducting of such a school, I can find no authority in the statutes which would give to your board power to employ such a person as that mentioned.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**FEES—Attorneys for the Commonwealth to include county fees—West Fee Bill.**

RICHMOND, VA., June 23, 1931.

HON. E. R. COMBS, *Chairman,*  
*State Fee Commission,*  
*Richmond, Virginia.*

DEAR MR. COMBS:

I beg to acknowledge receipt of yours of the 11th instant, in which you enclose a letter of the 3rd instant to Hon. C. H. Morrissett, State Tax Commissioner, from Hon. M. A. Cogbill, Attorney for the Commonwealth, of Chesterfield county.

From these letters it appears that Chesterfield county has an ordinance providing as follows:

"The board of supervisors of this county shall pay the same fees and rewards to officers who are charged with the enforcement of this ordinance (except when paid by the defendant) as provided in like cases under the prohibition laws of this State."

You desire to know whether the Commonwealth's attorney can call upon the board of supervisors for such fees as may be due under this ordinance, and whether or not the Commonwealth's attorney should list these fees in his report made pursuant to section 3516 of the Code.

As to the first question, I am of the following opinion:

The ordinance of Chesterfield county is in mandatory terms. It provides that such fees "shall" be paid. I, therefore, think that the Commonwealth's attorney should call upon the board for the payment of these fees.

In response to your second question, I am of the following opinion:

Subsection 1 of section 3516, as amended by Acts of 1926, provides that attorneys for the Commonwealth shall annually file a full and accurate statement showing all fees "derived from the State or any political subdivision thereof, or from any other source whatever collected or received by him or her, and a like statement of all such fees, allowances, commissions and salaries chargeable under the law, but not collected by him or her," etc. It appears to me that this subsection expressly provides that all fees, no matter from what source derived, are to be reported; and it further appears that, if there

are any fees which have not been paid, but which are "chargeable under the law," then they also must be reported. Since these fees are chargeable and, if not paid, should be reported as such, they should very clearly be reported if paid.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**FEES—Officers, fees of—West Fee Bill.**

RICHMOND, VA., July 15, 1930.

HON. ARCHER L. JONES,

*Attorney at Law,*

*210-12 Municipal Building,*

*Hopewell, Virginia.*

MY DEAR MR. JONES:

I am in receipt of your letter of July 12, in which you ask whether, in my opinion, the third paragraph of section 3516-b of the Code, as amended by the Acts of 1930, page 944, which provides penalty in the event any officer mentioned in the West Fee Bill, as amended, fails to make report as required by that bill, can be construed as applicable to a Commonwealth's Attorney whose term ended December 31, 1929, no penalty having heretofore been prescribed by law.

I am of the opinion that this provision, which was first incorporated into the law by the acts of this year, has no application to officers whose terms ended prior to the date on which this law became effective.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**FEES—Officers, fees of—West Fee Bill.**

RICHMOND, VA., September 26, 1930.

HON. ELLIOTT F. HOFFMAN, *Clerk,*

*Corporation and Circuit Courts,*

*Alexandria, Virginia.*

MY DEAR SIR:

I beg to acknowledge receipt of your letter of September 25 in which you ask whether under the 1926 amendment, section 3516 of the Code, your compensation is to be governed by that amendment, you having been in office at the time the amendment was adopted and your term of office not expiring until February 1, 1931.

I wish to state that subsection (12) of that act specifically refers to your situation, for it is therein provided that the provisions of subsections (5) and (8) (referring to compensation and payment of excess into the

treasury) shall not be effective as to any office or officer, except as to examiners of records, until the expiration of the term of such office.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**FEES—Officers, fees of—West Fee Bill—Penalty.**

RICHMOND, VA., *December 29, 1930.*

HON. HUGH T. BIRCHETT,  
*City Treasurer,*  
*Hopewell, Virginia.*

MY DEAR MR. BIRCHETT:

I beg to acknowledge receipt of your letter of December 19 relative to the penalty provided by the third paragraph of Acts 1930, page 944 (section 3516-b of the Code).

Prior to 1930, the West Fee Bill required certain reports, and not until the Act of 1930 was any penalty imposed upon officers failing to make such reports. As the 1930 Act did not become effective until after the date set for making the reports covering the year 1929, I am of the opinion that the penalty provision can have no application to the failure of an officer to make report for that year. This, however, does not mean that the reports required by law for that year should not be made.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**FEES—Reports of officers under West Fee Bill.**

RICHMOND, VA., *May 4, 1931.*

HON. E. R. COMBS, *Chairman,*  
*State Fee Commission,*  
*Richmond, Virginia.*

DEAR SIR:

Since receiving your letter of April 21, bringing to my attention the correspondence had between the State Fee Commission and the Honorable John E. Rose, Jr., Commissioner of the Revenue for the City of Richmond, with reference to excess fees for the year ended December 31, 1930, and the contention of the Commission that an excess of \$11,099.73 should be paid by Mr. Rose to it, I have been giving considerable thought to the matter.

The city of Richmond, by section 58 of its charter, may fix the compensation of the commissioner of the revenue for services rendered the city. This act was approved on March 24, 1926, and contained an emergency provision. On March 18, 1926, the West Fee Bill was amended and re-enacted so as to provide in the case of the particular office in question that the maximum compensation should be \$7,500.00, provided, however, that this compensation might be raised by the sum of \$2,500.00 by the locality for

services rendered to such locality. This act did not become effective until June, 1926, and by special provision contained therein the compensation features did not apply to any office until the then existing terms had expired. By its express terms, therefore, those matters mentioned in the fee legislation of 1926 had no bearing on the compensation of this office until January 1, 1930, when a new term began.

Under the provisions of Acts 1920, page 827, an amendment to the West Fee Bill of 1914, it was provided that in determining excess of fees the compensation paid any local officer by the locality for performing local duties should be disregarded. So far as the commissioner of the revenue for the city of Richmond and his compensation is concerned, the State, prior to January 1, 1930, was not interested in the question whether he was paid anything by the locality; and, since January 1, 1930, the same situation has existed up to the sum of \$2,500.00.

On March 19, 1929, the council of the city of Richmond approved an ordinance, under the authority of section 58 of its charter, providing for a commission of one-half of one per centum to the commissioner of the revenue. It seems to me that these various statutes and ordinance should be taken together and that under its charter provisions the city of Richmond may, if it sees fit, increase the compensation which her commissioner will actually receive by an amount not exceeding \$2,500.00. If the plan adopted by the city would bring to him from local sources more than that amount, any such excess will be deducted from the \$7,500.00 he will receive from the State for, as I construe the law, the maximum remuneration from all sources cannot exceed \$10,000.00.

I have had my attention called to Acts 1928, page 1344. The first section of this act prescribes the commissions of a commissioner for services in assessing and extending State taxes. The second section provides that the council of a city may, if it sees fit, provide commissions not in excess of those mentioned for services in assessing and extending local levies. The third section, in part, provides as follows:

“ \* \* nor shall this act apply to any city whose council, by virtue of power and authority conferred by the charter of such city, prescribes the salary or other compensation of the commissioner of the revenue for services rendered to such city in relation to its revenues.”

This act does not alter my opinion. The compensation features of the 1926 West Fee Bill, which became effective as to the office in question on January 1, 1930, may, I think, be read in conjunction with this act, and the two taken together will still restrict the benefit to be received by the official from the locality to the sum of \$2,500.00.

You ask what proceeding the Commission should take to collect this excess. Unless Mr. Rose will pay it of his own accord to the Comptroller, the proper step for the Commission to take is to request that suit be instituted for the recovery thereof.

I am sending a copy of this letter to Mr. Rose, and to the Honorable E. C. Folkes from whom I have also heard in regard to it.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**FORESTRY LAWS—Items of expense furnished board of supervisors.**RICHMOND, VA., *April 1, 1931.*

HON. CHAPIN JONES,  
*State Forester,*  
*Charlottesville, Virginia.*

DEAR SIR:

Through Mr. Pederson I received your request to advise you whether the State Forester is required to furnish the board of supervisors of any county with an itemized statement, which will show the funds expended on each tract of land in extinguishing forest fires.

As I understand the question, you desire to know whether it is necessary to itemize the statement so as to show the expenses incurred in connection with the land owned by each individual over which the fire may have swept. I am informed that such a statement in full detail would be a virtual impossibility, because of the fact that at the time the fire is being fought you do not know the location of the individual property lines.

I do not think it is necessary that such a statement be furnished. Section 541 of the Code requires that the forest warden "keep an itemized account of all expenses thus incurred," and this statement, having been approved by you, goes to the supervisors. On the other hand, because of the provisions of section 542, which gives to the supervisors the right to recover of any landowner the amount expended in fighting fires upon his land, I am of the opinion that so far as possible any charges which can be allocated such tract should be so allocated.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

**FORESTRY LAWS—Proper method of fighting fires—Payment of expenses thereof.**RICHMOND, VA., *March 4, 1931.*

HON. JAMES M. SETTLE, *Clerk,*  
*Washington, Virginia.*

DEAR MR. SETTLE:

I have your letter of the 2nd instant, in further reference to the proper method of fighting fires in your county and the payment of the expenses thereof, and I note that you say that the board of supervisors desire to know whether or not the payment of the accounts presented by the State Forester for fighting fires in your county is compulsory, and that you say further that your board of supervisors are of the opinion that they can handle the fire situation in the county without the aid of the forestry service, and ask whether it is lawful for the State Forester to employ wardens in a county where the county does not request their employment.

First, fire or forest wardens are designated by the Governor at the request of the State Geological Commission (Bureau of Geological Survey), and may be removed at any time by that Commission.

Should your county be dissatisfied with the present arrangement, I suggest that you get in touch with Honorable A. C. Bevan, State Geologist, University, Virginia, and make the pleasure of the board of supervisors known to him. I feel sure that he will respect your wishes. Should he not do so, however, you can take up the matter directly with the Governor. Code, sec. 540.

Second, forest wardens are authorized wherever a fire occurs to employ persons to extinguish the same. They are required to keep an itemized account of the expenses and send such amount, verified by affidavit, to the State Forester for his examination. Upon his approval, the accounts are sent to the board of supervisors of the county where the fire occurred and, upon approval by them of the correctness of the accounts, it is their duty to issue warrants on the county treasurer for payment. Code, sec. 541.

You will thus see that it is obligatory on the county to pay proper accounts which have been audited and placed before the board. The only discretion in the board is to see to the correctness of the account.

Under the provisions of section 542, boards of supervisors are authorized to levy and appropriate money for the purpose of fire protection. Should this be done, I see no reason why boards should not themselves undertake to control forest fires, and I am sure that, where a county sets up its own agencies and takes care of its fire situation, the State Forester will acquiesce in the arrangement and not undertake fire control.

If there is any further information I can give you, do not hesitate to call upon me.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**GAME AND INLAND FISHERIES—Carcass and hide of deer killed contrary to law are forfeited to the State.**

RICHMOND, VA., December 4, 1930.

HON. A. WILLIS ROBERTSON, *Chairman,*  
*Commission of Game and Inland Fisheries,*  
*Lexington, Virginia.*

DEAR MR. ROBERTSON:

I am in receipt of your letter of the 1st instant, enclosing letter to you from the Honorable Julian Bryant, Attorney for the Commonwealth of Alleghany county, Virginia, and your reply under date of the 1st instant; all of this correspondence covering the right of a person to the hide of a deer which was killed by such person contrary to law, the person having been fined, first, for the illegal killing and, second, for not having immediately reported such killing to the game warden of his county.

I note that Mr. Bryant construes section 47 of the game law as conferring title upon a huntsman who illegally kills a deer, after having been fined both for the killing and for failure to report the fact.

I note that you do not agree with Mr. Bryant and that, in your opinion, the deer, including the hide, after it has been removed from the carcass, is forfeit to the State.

The section under which the huntsman was fined does not clearly express the intention of the Legislature. However, applying the broad principle of law that no person can acquire title to property through an illegal act and the provisions of section 52 to the instant case, I am of the opinion that the carcass and hide of a deer which has been killed contrary to the provisions of section 47 are forfeit to the State if, in fact, the deer ever became under any circumstances the property of the huntsman.

You will notice that section 52 provides that wild birds, wild animals and fish are the property of the State and can only be reduced to personal possession according to law. Even if section 47 is ambiguous as to the ownership of a deer which has been illegally killed, it certainly does not convey the possession, or the right of possession, to the person illegally killing it, and remains the property of the State under the provisions of section 52.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**GAME AND INLAND FISHERIES—Dog law—Removal of tag by owner**

RICHMOND, VA., July 10, 1930.

MR. J. W. SINGLETON,

*Pamplin, Virginia.*

DEAR SIR:

I am in receipt of your letter of July 4 in which you ask whether the owner of a dog, who has purchased a license, is liable for a fine in the event he allows it to run around in his yard with the tag removed.

In my opinion this state of facts does not present a violation of the law. Section 66 of the new Game, Inland Fish and Dog Code of Virginia, which became effective on July 1, 1930, provides in part:

“ \* \* \* it shall be unlawful for the owner to permit any licensed dog four months old or over to run or roam at large at any time without a license tag, except that when engaged in lawful hunting  
\* \* \* ”

It would not appear that a dog within an enclosed yard was running or roaming at large.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**GAME AND INLAND FISHERIES—Dog law—Sheep killed by dogs—  
What county responsible for damages.**

RICHMOND, VA., *October 17, 1930.*

MRS. MILDRED M. COOPER,  
*Bramwell, West Virginia.*

DEAR MRS. COOPER:

Your letter of the 14th and 16th instant addressed to Honorable John M. Purcell, State Treasurer, have been referred to this office for reply.

In my opinion, the owners of sheep assessed in one county, but moved to another county, are entitled to claim damages for the killing or injuring thereof by dogs in the county to which they are removed, and that such damages are payable out of the dog fund of the latter county.

It is only as to those sheep which are not assessed for taxation that the law refusing compensation for damages by dogs applies. Claims are not presented in the circuit court of Tazewell county, but are presented to and passed upon by the board of supervisors of the county in which the sheep are killed.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GAME AND INLAND FISHERIES—Hunting—Halifax county.**

RICHMOND, VA., *September 29, 1930.*

HON. L. W. TYUS, *Fiscal Secretary,*  
*Commission of Game and Inland Fisheries,*  
*State Office Building,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 25 in which you call my attention to Acts 1928, page 848, wherein is contained the special Halifax county act prohibiting the trapping, capturing or killing of furbearing animals other than mink or weasel, and in which you refer me to section 38 of the new Game, Inland Fish and Dog Code.

You reached the conclusion that it is unlawful to trap, capture or kill any fur-bearing or hair-bearing animals, except mink or weasel, in Halifax county. In this conclusion I agree.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**GAME AND INLAND FISHERIES—Hunting and trapping—Amelia, Nottoway, Lunenburg and Franklin counties.**

RICHMOND, VA., September 29, 1930.

HON. L. W. TYUS, *Fiscal Secretary,*  
*Commission of Game and Inland Fisheries,*  
*State Office Building,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 25 in which you call my attention to the special act applicable to the counties of Amelia, Nottoway, Lunenburg and Franklin (Acts 1927, page 172), and in which you refer me to sections 36 and 38 of the new Game, Inland Fish and Dog Code. In your letter you reached the following conclusions:

1. It is lawful to hunt foxes with dogs in such counties from September 15 to March 15, inclusive.
2. It is unlawful to trap foxes in such counties at any time.
3. It is lawful to trap other fur-bearing and hair-bearing animals from September 15 to March 15, inclusive.
4. It is lawful to hunt such animals, except rabbits, from September 15 to March 15, inclusive.

I concur in the first three conclusions reached by you, but I do not think that the fourth conclusion is accurate for it seems to me, under the acts in question, that it is lawful to hunt all such animals, including rabbits, in those counties between the dates mentioned.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GAME AND INLAND FISHERIES—Hunting—Amelia, Nottoway, Lunenburg and Franklin counties.**

RICHMOND, VA., September 29, 1930.

HON. L. W. TYUS, *Fiscal Secretary,*  
*Commission of Game and Inland Fisheries,*  
*State Office Building,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 25 in which you call my attention to Acts 1927, page 172, wherein is contained a special act referring to Amelia, Nottoway, Lunenburg and Franklin counties, and in which you also call my attention to regulation 9 of the Commission.

It is your conclusion that in the above named counties it is lawful to hunt or trap (except that foxes may not be trapped) fur-bearing or hair-bearing animals between September 15 and March 15, inclusive. In this I think you are correct.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**GAME AND INLAND FISHERIES—Jurisdiction of above and in Tidewater counties.**

RICHMOND, VA., June 5, 1931.

HON. M. D. HART, *Executive Secretary,*  
*Commission of Game and Inland Fisheries,*  
*Richmond, Virginia.*

DEAR SIR:

I have for reply yours of today relative to the jurisdiction of your Commission in matters pertaining to the laws for the protection, propagation and preservation of fish.

The act creating your Commission and confining its jurisdiction gives to it a geographical jurisdiction; whereas that creating the Commission of Fisheries gives to that Commission a jurisdiction not determined by geography, but by subject-matter.

Section 8 of chapter 247 of Acts 1930 confers upon you jurisdiction in such matters, first, in all waters above tidewater; and, second, in the brackish and fresh water streams, etc., in the tidewater counties, which counties are enumerated in section 3162 of the Code. It, therefore, appears to me that below tidewater in the counties therein mentioned you have jurisdiction in all streams, creeks, bays, inlets and ponds which are either brackish or fresh, but that you have no jurisdiction in the waters which are salt.

In many matters the Commission of Fisheries is given jurisdiction in the geographical waters placed within your jurisdiction, as direct result of the fact that the Commission of Fisheries is given jurisdiction over certain subject-matters, such as crabs, etc.

In considering jurisdiction over fish, the power given to you and that given to the Commission of Fisheries must of necessity be reconciled. The only reasonable reconciliation would seem to be that you have jurisdiction within the geographical waters mentioned in section 8 of chapter 247 of Acts 1930, and that without those geographical waters the Commission of Fisheries has jurisdiction in matters pertaining to the fish laws.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**GAME AND INLAND FISHERIES—License to fish with seine.**

RICHMOND, VA., August 1, 1930.

HON. A. D. WATKINS,  
*Attorney for the Commonwealth,*  
*Farmville, Virginia.*

DEAR SIR:

I am in receipt of your letter of July 30, in which you asked to be advised as to whether a person, having obtained a permit to seine under subsection (d), section 32, chapter 247, Acts of 1930, is required to have an additional license to seine.

A license obtained under the provisions of section 19 of chapter 3 does not cover the privilege of seining. That section and chapter apply to fishing with hook and line and not to seining.

In my opinion, a person who has obtained a license to fish under the provisions of section 19 must obtain a permit to seine under section 32.

I understand from the Secretary of the Game and Inland Fisheries Commission that no permits have been or will be issued for seining in the inland waters of the State. He is also of the opinion that, even if licenses to seine were granted, each person who takes an active part in seining must procure a seining permit. In my own opinion, this is carrying the seining law rather to the extreme.

If I have not satisfactorily answered your inquiry, write me again.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GAME AND INLAND FISHERIES—License to buy from dealer not required of non-resident.**

RICHMOND, VA., *October 17, 1930.*

N. C. HIDE AND FUR COMPANY,  
*Rocky Mount, N. C.*

DEAR SIR:

Honorable M. D. Hart, Executive Secretary of the Commission of Game and Inland Fisheries, has referred your letter of the 4th instant to me for an opinion as to the inquiry contained in your letter.

In my opinion, section 30-a, while not clear, does not undertake to place a license upon a non-resident person or company coming into Virginia and buying hides and furs at wholesale, directly or from a dealer. The section referred to was evidently intended to cover the case in which a person established a place of business in Virginia for the sole purpose of buying and selling hides and furs, or for a canvass of the country for hides and furs.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GAME AND INLAND FISHERIES—Reward—For detection of violators of game laws.**

RICHMOND, VA., *September 16, 1930.*

HON. M. D. HART, *Executive Secretary,*  
*Commission of Game and Inland Fisheries,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of recent date, addressed to the Attorney General, reading as follows:

“At a meeting of this Commission, held on August 18, the following action was taken:

“It was moved, seconded and carried that the Commission offer a reward of twenty-five dollars to any person giving information leading to the apprehension and conviction of persons dynamiting fish. This shall not apply to any person connected with this Commission. The

opinion\* of the Attorney General is to be secured as to whether or not the Commission is authorized, in connection with its duty to protect fish life, to pay from the Game Protection Fund a reward of twenty-five dollars for the apprehension and conviction of fish dynamiters.'

"Please let us have your opinion in regard to this matter."

Having examined the question, I have discussed the conclusion which I have reached with Colonel Saunders and he concurs in it.

I can find nothing in the authority granted to the Commission which would authorize it to offer such a reward as is contemplated in your resolution. Those portions of the statutes which confer various powers upon your Commission do not seem to me to contemplate such an action as this. The right to offer a reward, where an offense has been committed, is specifically given to the governor by section 5068 of the Code. It is not such a power as is adherent in any person or body charged with the execution of the law, and I do not think that it is a power to be inferred but rather one which can be exercised only when expressly granted.

Yours very truly,

COLLINS DENNY, JR.,

*Assistant Attorney General.*

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**GAME WARDENS—Authority to enforce law in private fish pond.**

RICHMOND, VA., *August 5, 1930.*

MR. T. F. TOMLINSON,

*Route No. 1,*

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*Handsom, Virginia.*

DEAR SIR:

I am in receipt of your letter of recent date, in which you state that you have a private fishing pond and that you hire out boats to certain people whom you allow to fish therein. You wish to know whether a game warden may enforce the game laws of this State in your pond and whether persons who fish therein are required to pay a license.

I beg to advise that a duly authorized official of this State empowered to enforce the game laws has a right to see to their enforcement wherever they may be violated and that persons whom you allow to fish in your pond, save members of your family, must pay a license.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**GAME WARDENS—Fees—Violation of game laws.**

RICHMOND, VA., *October 27, 1930.*

HON. L. W. TYUS, *Fiscal Secretary,*

*Commission of Game and Inland Fisheries,*

*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of yours of the 9th inst., in which you call my attention to section 17 of the new Game Code wherein it is provided

that game wardens shall not be entitled to receive arrest and \*witness fees, or fees of any kind, for prosecuting violations of that act, and you ask whether, in view of this fact, these fees which would otherwise be taxed as costs against defendants should be so taxed.

The whole theory of the taxation costs is that the defendant, if convicted, shall bear the expenses which have been occasioned by his act. Section 3513 provides for the method in which costs shall be distributed by the officer collecting same. It therein appears that all such costs as have been allowed and paid out of the State Treasury shall be refunded thereto, and such costs as have not been allowed and paid out of the State Treasury shall be disbursed to the several parties entitled thereto.

I am, therefore, of the opinion that, as the game warden is no longer entitled to these fees, they should not be taxed as costs.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GASOLINE TAX—Application of by board of supervisors to streets within incorporated town.**

RICHMOND, VA., June 25, 1931.

HON. HARRY L. SNEAD,  
*Town Attorney,*  
*Petersburg, Virginia.*

DEAR SIR:

Your first letter to Colonel Saunders, addressed to my attention, was received just prior to the Wytheville term of the Court of Appeals, hence my reply thereto was delayed.

I enclose herewith a copy of the letter written by Colonel Saunders to Honorable Horace A. Holt, Matoaca, Virginia, on May 22, 1931. Mr. Holt's letter was in part as follows:

"We have in Matoaca District, Chesterfield county, the town of Colonial Heights. The town council and attorney for same argue that I have the right to spend gas tax on their streets and insist that, as the town of Colonial Heights is about one-third of Matoaca District in tax valuation, the town of Colonial Heights should have one-third of the gas tax that is allocated to Matoaca District.

"The supervisor has no supervision over the streets of Colonial Heights. The town of Colonial Heights makes its own tax levy for streets or roads, does its own collecting and uses it as it sees fit."

You wish to know the statutory authority upon which Colonel Saunders relied in his reply to Mr. Holt. The sections hereafter referred to are the section numbers in the Michie 1930 Code, and the acts referred to were adopted either in 1928 or 1930.

Section 2154 (25) deals with the distribution of gas tax. It in part provides as follows:

"Thirty per centum of the revenue derived from the tax levied as aforesaid, is hereby appropriated primarily for the maintenance of the roads and bridges of the several counties of this State, \* \* \*. \* \*"

Any balance of the amount so paid to any county, remaining after the maintenance by any county, of the roads and bridges embraced in its county highway system, may be used by such county in the construction or re-construction of such highways and bridges; and the counties shall be required to match the amounts so used, to the extent of one-third of such amounts.

"The boards of supervisors or the legally constituted road and bridge commissions or boards of the several counties, shall have exclusive authority to expend, in the manner aforesaid, the money distributed to the counties respectively, under the provisions of this act; \* \* \*."

From this section it appears that the boards of supervisors may expend gas tax money only as provided therein. This expenditure must be "primarily for the maintenance of the roads and bridges," of the counties, and it appears clear from the act that "the roads and bridges" of the counties on which funds may be expended for maintenance purposes are "the roads and bridges" embraced in the county highway system.

As I have understood the situation in Colonial Heights, the board of supervisors has no supervision over the streets in that town, and the town itself makes its own levy for streets and roads and uses it as it sees fit.

I note from your letter of June 3 that you imply that some of the streets in the town are comprised within the county highway system. That is, of course, possible, and it may be that some of those streets are under the supervision of the board of supervisors pursuant to the provisions of some act, such as Acts 1916, page 495, which was repealed in 1928, or section 2039 (1) of Michie's 1930 Code. However, you will note that, if a street in a town is a part of the county highway system, jurisdiction and authority over the same pass from the town officials into the hands of the county officials. Colonel Saunders' letter to Mr. Hart was, of course, premised upon the facts as stated in his letter, and, if the county officials have no supervision over the streets in Colonial Heights, it is a little difficult to understand how any of those streets can be within the county highway system.

You will understand that in this letter I am referring only to gas tax moneys. There are different provisions regarding moneys derived from county road tax, the district road tax and the additional district road tax, and in that connection I would refer you to sections 1987, 2039 (1), 2039 (11), 2039 (12), 2039 (13) and 2039 (34).

Yours very truly,

COLLINS DENNY, JR.,

*Assistant Attorney General.*

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**GASOLINE TAX—Area of cities included in area of counties in distribution of.**

RICHMOND, VA., July 2, 1930.

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

DEAR MR. COMBS:

I am in receipt of your letter of the 27th ultimo, in which you ask to be advised as to whether the land area of a city should be included in the

area of a county as one of the factors provided by chapter 45, page 41, Acts of 1930, as the basis of a distribution of the gasoline tax to counties of the State, and I note that in the United States census of 1920 the area of a city was included in the area of the county in which the city was located.

In my opinion, the area of the cities of Virginia should be included with the area of the counties in which they are located as one of the factors in the distribution of gas tax to counties.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**GASOLINE TAX—Distribution of.**

RICHMOND, VA., August 6, 1930.

HON. EDWARD MEEKS,  
*Commonwealth's Attorney,*  
*Amherst, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of July 25, in which you call my attention to Acts 1930, chapter 45, page 41, dealing with the distribution of the tax on motor fuels, and in which you also call my attention to Acts 1930, chapter 67, page 79, which is an act repealing the State Aid Statute of 1918, chapter 426.

You point out that chapter 67 of the Acts of 1930 (the statute which repeals the Act of 1918) went into effect on the usual date and that chapter 45 of the Acts of 1930 does not go into effect until January 1, 1931, and you ask the following two pertinent questions:

1. Under what law can there be a legal distribution of gasoline tax funds between the time of the actual repeal of chapter 426 of the Acts of 1918 (June 17, 1930) and January 1, 1931, when chapter 45 of the Acts of 1930 becomes effective?
2. What can be the effect of chapter 45 of the Acts of 1930 on and after January 1, 1931, in view of the repeal of chapter 426 of the Acts of 1918?

Chapter 426 of the Acts of 1918 apportioned the State aid fund to the several counties "according to the respective total amounts of State taxes paid into the treasury from such counties on real estate, personal property, income and capitation tax" of the next preceding fiscal year.

Acts 1926, chapter 137, page 237, provided that thirty-three and one-third per centum of the revenue derived from the gas tax should be apportioned to the several counties "in accordance with chapter four hundred and twenty-six of the Acts of Assembly of nineteen hundred and eighteen, and acts amendatory thereof, and shall be apportioned quarterly among the several counties of this State in the same proportion and in the same manner as the State aid money is now distributed to said counties under existing law." This Act of 1926, therefore, continued the method of apportionment adopted in 1918.

You will note that the method of apportionment adopted in 1918 depended partly upon the real estate and tangible personal property taxes. When tax

segregation became effective in the Commonwealth and when the State was no longer receiving any taxes from real estate and tangible personal property, a question arose as to the proper method of computing the State aid fund to which each county was entitled. That question was submitted to this office and its answer was given to Honorable E. R. Combs, Comptroller, under date of August 21, 1928, which is found in the annual report of this office, 1927-1928, page 44. I then stated that it was my opinion that, as no change was made in section 4 of chapter 137 of the Acts of 1926, it was the duty of the Comptroller, in making the apportionment, to take into consideration all the items mentioned in the Act of 1918 and, in so doing, he should include the taxes paid on real estate and tangible personal property for the last year in which such taxes were imposed by the State. This practice has been followed by the Comptroller.

Acts 1928, chapter 174, page 605, levied an additional tax of one-half cent per gallon on motor vehicle fuels, all of which additional tax was appropriated for roads and projects comprising the State highway system. The effect of this was that seventy per centum of the funds received from the motor vehicle fuels tax went to the State highway system and thirty per centum to the counties under the State Aid Statute.

Answering your questions in the order in which they are listed above, I beg to advise that I am of the following opinion:

1. Acts 1930, chapter 45, page 41, does not become effective until January 1, 1931. This act amends section 4 of the Acts of 1926, chapter 137, page 237, and, until January 1, 1931, the 1926 Act is effective. It prescribes a method of apportionment and the mere fact that the method therein provided is set forth by reference to the 1918 Act, which has now been repealed, does not in my opinion affect the apportionment of these funds for the period from June 17, 1930, to January 1, 1931, for that apportionment is made by virtue of the 1926 Act and not by virtue of the 1918 Act.

2. Acts 1930, chapter 45, page 41, which becomes effective January 1, 1931, provides that one-third of the thirty per centum appropriated to the counties "shall be distributed by the same method now being practiced for the distribution of motor vehicle fuel tax to the counties." In my opinion the meaning of this language is clear and it directs that the practice to which adherence has been given since segregation became effective, which practice is outlined in my opinion to which I have heretofore referred, shall be continued. That opinion was, of course, upon the 1918 Act as affected by the segregation law, and the mere fact that the 1918 Act has now been repealed does not, in my opinion, prevent reference to it since the 1930 Act prescribes that the practice inaugurated under it shall continue in effect.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**GASOLINE TAX—Distribution of to counties on basis chapter 45, Acts 1930.**RICHMOND, VA., *February 10, 1931.*HON. E. R. COMBS, *Comptroller,*  
*Richmond, Virginia.*

DEAR MR. COMBS:

I am today in receipt of your interesting letter of yesterday, in which you very fully cover the question as to the basis of distribution of the sales gas tax for November, 1930, collected by the Director of the Division of Motor Vehicles and paid into the State treasury in December, 1930, but which was not and could not have been, in the usual and ordinary process of accounting, distributed until January, 1931.

I note from your letter that gas tax payments for November, 1930, are not accounted for and paid into the State treasury until December and that no penalty attaches to the payment thereof until after the 20th day of that month, and I see that the Director of the Division of Motor Vehicles is required to report the amount collected by him for the preceding month between the 1st and 10th of the month after the tax has been paid into the State treasury.

The practical effect of the law results in the November gas tax not being paid to the Director of the Division of Motor Vehicles until on or before the 30th of December, and that the Director does not notify you of the amount of his collections until between the 1st and 10th of January.

From your letter I see that you did not receive the report from the Director of the Division of Motor Vehicles until the 3rd of January, 1931. Not having received such a report until that day, you could not have made distribution to the counties of the State until the new law covering distribution of the gas tax to the counties went into effect.

Therefore, it is my opinion that you very properly distributed the November, 1930, gas tax collected by the Director in December, 1930, and reported to you January 3, 1931, on the basis provided by chapter 45, page 41, of the Acts of 1930, which went into effect January 1, 1931.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.***GASOLINE TAX—Population of Lynchburg credited to Campbell county.**RICHMOND, VA., *May 1, 1931.*HON. EDWARD MEEKS,  
*Attorney for the Commonwealth,*  
*Amherst, Virginia.*

DEAR MR. MEEKS:

I am in receipt of your letter of April 29, in which you return memorandum of argument submitted to me by Honorable R. A. Russell, Attorney for the Commonwealth of Campbell county, and letters from Honorable Saxon W. Holt, Honorable Robert L. Jeffreys, Honorable W. O. Rogers, Honorable George A. Bowles, Honorable E. T. Humphries, Honorable A. E. Shumate and Honorable J. Sinclair Brown.

I note that you request a written opinion by Monday, the 4th day of May, for use before the board of supervisors of your county.

It is difficult to point out the exact basis of my opinion, as my conclusion was reached upon a consideration of—

(1) The construction of the law providing for the distribution of the gas tax among the counties of the State.

(2) The fact that the city of Lynchburg has been universally located as being within the county of Campbell. While the act provides that the population of cities between 25,000 and 50,000 population shall be divided between the counties in which such cities are located, the same act provides that population shall be based upon the last United States census. This census locates the city of Lynchburg as being within the county of Campbell.

(3) Weight was given to the fact that 84/85 of the area of the city is within the original boundary of the county of Campbell, while only 1/85 of the area of the city is within the original boundary of the county of Amherst; that the entire population is within the Campbell county area, there being no inhabitants of the Amherst county area; that the assessed value within the Campbell county area is at least \$46,000,000, while the assessed value within the Amherst county area is only \$142,000.

(4) The undisputed evidence that Lynchburg is always spoken of and referred to as being within the county of Campbell.

(5) While the law is plain that, where unambiguous, the literal language shall be followed, where it is ambiguous, resort may be had to outside information and especially the intention of the Legislature which passed the act.

Preceding the passage of the act, the Commission appointed by a previous session of the General Assembly to consider the future distribution of the gas tax allotted to counties reported to the General Assembly in House Document No. 4 a tentative provision for the distribution of the gas tax, with an estimate of the amounts allocated to each county. In a foot-note to this document, 1,000 copies of which were printed and generally distributed, it was shown to what counties the population of certain cities was allotted, where those cities either were located in two counties or there were two cities of certain populations located in one county. The fact that no mention was made of the city of Lynchburg, coupled with the other fact that the city has always been classed as a city within the county of Campbell, is certainly a very weighty circumstance as indicating the mind and intention of the Legislature in passing an act based practically entirely according to the provisions of the plan suggested in the House Document.

In addition to this document, which was or should have been notice to the authorities of the county of Amherst, letters were filed before me from Senators Holt, Jeffreys, Rogers and Shumate and Delegates Bowles, Humphries and Sinclair Brown, in all of which the writers positively and unequivocally certified to the fact that it was an intention of the Commission that Campbell county should be credited with the entire population of the city of Lynchburg.

It cannot be said that the law was unambiguous so far as the question of the allocation of the population of the city of Lynchburg is concerned, and,

if ambiguous and resort is had to the intention of the Legislature, there can be no doubt that the entire population of the city should be credited to the county of Campbell in the distribution of gas tax allotted to the counties of the State.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GASOLINE TAX—Refunds of.**

RICHMOND, VA., July 3, 1930.

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 1st instant, in which you refer me to chapter 470, page 1185, of the Acts of 1928, amending section 7 of chapter 107 of the Acts of 1923, and I note that you have refused to refund the tax on gasoline used in trucks and automobiles for the reason, as stated by you, that there is no provision in this amended section for such refund.

In my opinion, you are entirely correct in your construction of section 7 as applicable to gasoline used in trucks and automobiles. There is no provision in the section allowing refund on gasoline used in trucks or automobiles except those belonging to cities and towns which they use exclusively in municipal activities. It would seem that the language "except in motor vehicles operated, or intended to be operated, in whole or in part upon any of the public highways, streets or alleys of this State" is an exception to the provisions allowing a refund upon purchases of fuels used for spraying purposes or for cleaning, dyeing or other commercial use.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**GOVERNOR—Authority to place State museum under supervision of State Commission on Conservation and Development.**

RICHMOND, VA., October 27, 1930.

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,*  
*Richmond, Virginia.*

DEAR GOVERNOR:

I beg to acknowledge receipt of yours of recent date, in which you inquire whether you are empowered by Executive order to place the State Museum under the supervision of the State Commission on Conservation and Development. I beg to advise that, in my opinion, you are not so empowered.

I base my opinion on section 402 of the Code, Acts 1926, page 307, and Acts 1927, page 106. The 1927 Act, the reorganization of the government,

creates as one of the divisions of the Governor's Office, the Division of Grounds and Buildings, and it provides that the director thereof shall exercise such powers and perform such duties as have been heretofore conferred or imposed by law upon the Superintendent of Grounds and Buildings, except such as have been, or may be, *transferred by statute* to some other officer or department.

Section 402 of the Code placed under the supervision of the Superintendent of Grounds and Public Buildings " \* \* all other public property at the seat of government not placed in the charge of others, \* \* ." I have been unable to find any provision which places the State Museum specifically under the charge of any official and it would, therefore, appear that pursuant to the Code provisions it was under the supervision of the Superintendent of Grounds and Public Buildings, and that by virtue of the Reorganization Act it is placed under the supervision of the Director of that Division. It would appear that it can be transferred from his supervision only by statute.

An examination of the original act creating the State Commission on Conservation and Development, (Acts 1926, page 307), leads me to believe that that Commission is not empowered to supervise such a thing as the State Museum. The purposes for which it was created, and the powers which it was given, seem to me to be totally foreign from any such object as that suggested.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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**GOVERNOR—Power to authorize transfer of funds.**

RICHMOND, VA., *August 25, 1930.*

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,*  
*Richmond, Virginia.*

MY DEAR GOVERNOR:

I am in receipt of a letter from Honorable G. W. Koiner, Commissioner of the Department of Agriculture and Immigration, to which he attached the papers enclosed herein and in which he asks whether it will be permissible to transfer from the Lime Grinding Plant at Staunton to the Lime Grinding Plant in Washington county a sum sufficient to meet the deficit of \$2,500.00 or \$3,000.00 which confronts the latter, the sum so advanced to be returned eventually to the Staunton plant at such time as the condition of the Washington plant may justify it. He has asked that I send my opinion direct to you.

Under all the facts and circumstances as outlined in the enclosed papers, and in view of the authority vested in you by the appropriation bill, I am of the opinion that you are empowered to authorize this transfer under the conditions mentioned.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

**INSANE, EPILEPTIC AND FEEBLE-MINDED—When discharged.**

RICHMOND, VA., May 14, 1931.

MRS. E. E. HOLLAND,  
*Suffolk, Virginia.*

DEAR MRS. HOLLAND:

I am in receipt to your letter of the 7th instant, in which you write:

"A young colored woman was indicted for a felony in the corporation court of the city of Suffolk, and, upon the suggestion of the attorney for the Commonwealth, a jury was empanelled to investigate her mental condition before trial. This jury found that she was feeble-minded at the time of the alleged crime.

"The question has been raised as to whether, provided she is committed to the Central State Hospital, she may subsequently be furloughed or discharged.

"Will you not kindly investigate the law covering this matter and write me your opinion?"

Undoubtedly, the court had a right, under the provisions of section 4909 of the Code of Virginia, to have a jury inquire into the mental condition of the young colored woman about whom you write. It may be noticed that the section is headed "When sanity of accused to be tried; if sane, trial to proceed; if sane when offense committed, or at trial, what court to do." In my opinion, this section affords a speedy manner of determining the mental condition of an accused without, as is often done, having it incidentally determined by a jury upon a trial of a person for the crime charged when the defense is that of insanity, either at the time of the trial or as of the time the offense was committed.

If the person is found to be insane at the time the offense was committed, the accused cannot be criminally prosecuted, but may be committed to an asylum for the criminal insane.

If the jury finds the accused was sane at the time of the commission of the crime, but insane at the time of the trial, the accused is then committed to an asylum for the criminal insane and, upon restoration to sanity, is returned for trial.

If insane at the time of the commission of the offense and afterwards restored to sanity, such a person is entitled to a discharge.

Your inquiry seems to be directed to a person who was found to have been feeble-minded at the time of the alleged crime.

Section 4909 couples insanity and feeble-mindedness at the time of the offense and as of the time of the trial, thus putting both the insane and the feeble-minded in the same category.

Chapter 46 of the Code, in a number of sections under the general head of insane, epileptic, feeble-minded and inebriate, also couples the insane and feeble-minded.

Section 1045 of chapter 46 covers the discharge of persons charged with criminal offenses who are confined in the department of the criminal insane at the proper hospital, and provides a certain method or routine to be observed before such discharge. The language, it is true, is confined to insane persons, but I see no reason why it should not be extended to feeble-minded persons who are confined under the same circumstances as if they were insane.

While it is true that section 1040 allows feeble-minded persons who are not charged with crime and subject to trial therefor to be committed or delivered to friends, I do not think that this covers the case of a person who, though charged with a crime, has been found by a jury to have been feeble-minded at the time of the commission of the crime. For, if a person was found by a jury to have been in such a condition at the time of the crime, the finding is tantamount to a verdict that the accused was not mentally accountable for the crime.

It is difficult to conceive that the Legislature intended to provide for the release of an insane person charged with a crime, upon recovery, and intended to keep a feeble-minded person charged with a crime in indefinite confinement.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**INTOXICATING LIQUORS—Alcohol permit—Viscose corporation of Virginia.**

RICHMOND, VA., *December 5, 1930.*

HON. JAMES P. WOODS,  
*Woods, Chitwood, Coxe and Rogers,*  
*Attorneys at Law,*  
*Roanoke, Virginia.*

DEAR MR. WOODS:

I have followed with a great deal of interest your memorandum of argument as to the necessity for a laboratory to obtain a license from a court before such laboratory may buy ardent spirits, pure grain, ethyl, or pure fruit alcohol.

Undoubtedly, the provisions of sections 65 and 72 are somewhat in conflict. It is certain that they are ambiguous. A careful consideration of the two sections, with the principle of law in view that it is a duty to reconcile conflicts and to give force and effect to all parts of a statute, warrants, I think, the following conclusions:

There is no prohibition upon an individual connected with a laboratory, or some person on behalf of a laboratory, to purchase certain kinds of alcohol for scientific, pharmaceutical or mechanical purposes from wholesale and retail druggists, they, of course, being duly licensed, upon the terms provided in section 65 of the prohibition law. This section allows a purchase upon the affidavit of the purchaser, which a affidavit must contain the matter prescribed in the section.

Section 75 not only allows the purchase of these kinds of alcohol, but provides that the commodity purchased may be transported by common carriers and delivered to laboratories, a restriction being contained in this section that the laboratories ordering alcohol must have received a license from a court and a permit from the Commissioner of Prohibition.

It is true that there are many provisions of law applicable to druggists' licenses which cannot reasonably be applied to licenses obtainable by a

laboratory, but the Attorney General's office, before issuing permits for purchase to hospitals or laboratories, has required these institutions to obtain licenses from their local courts, and it is my purpose to adhere to this ruling unless and until sections 65 and 72 of the prohibition law are amended, modified or there shall have been a court construction allowing at the same time freedom of purchase to hospitals and laboratories.

Under the affidavit provisions of section 65, certain characters of purchases may be made, but, should a laboratory desire carte blanche, I am of the opinion that the laboratory should secure a permit under section 72, the court in cases of application for licenses applying the restricted provisions and conditions of section 72 to such licenses as such courts may deem applicable.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### INTOXICATING LIQUORS—Automobiles forfeited to the Commonwealth.

RICHMOND, VA., *June 9, 1931.*

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

*Richmond, Virginia.*

DEAR MR. COMBS:

I am in receipt of your letter of yesterday in which you inform me that the town of South Boston is proceeding to institute condemnation proceedings for the forfeiture of automobiles violating section 28 of the Layman Prohibition Act, and upon the sale of such automobiles converting the proceeds thereof, after payment of costs, into the town treasury. You then ask my opinion as to the legality of such proceedings.

Under the provisions of section 28 of the Layman Prohibition Act, automobiles seized while containing ardent spirits are forfeited to the Commonwealth.

Section 37 of the same act allows cities, towns, and certain counties, to pass ordinances embracing such provisions of the Layman Law as are applicable, and to provide punishment for the violation of such ordinances.

In my opinion, there is no authority vested in cities, towns, and counties, to incorporate into prohibition ordinances a provision for the forfeiture of automobiles guilty of violations of the prohibition law, and in all cases of guilty cars, proceedings must be undertaken by the Commonwealth and the cars, when forfeited, must be assigned for State use, or sold, and the proceeds thereof, after the payment of costs, paid into the State Literary Fund.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**INTOXICATING LIQUORS—Automobiles—Filing information for confiscation.**RICHMOND, VA., *March 3, 1931.*

HON. P. ST. GEORGE WILLCOX,  
*Commonwealth's Attorney,*  
*Newport News, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of recent date, in which you ask to be advised whether under section 28 of the prohibition law a Commonwealth's attorney may file information for the sale of an automobile within ten days of the date on which he has received the required information from the Director of the Division of Motor Vehicles.

Subsection (d) of section 28 provides for the filing of such information "within ten days after receiving notice of any such seizure." Subsection (b) requires of the officer making seizure that he report in writing to the Commonwealth's attorney, and subsection (c) requires the Commonwealth's attorney to notify the Director of the Division of Motor Vehicles who in turn is directed to furnish the name and address of the person in whose name such vehicle is registered, together with any information relating to any lien.

When subsection (d) requires certain action within ten days "after receiving notice of any such seizure," it seems to me that it relates to the notice given by the officer to the Commonwealth's attorney for that is the notice which informs the Commonwealth's attorney of the seizure.

You will recall that under date of August 22, 1928, I wrote you a letter, found on page 173 of my report for 1928-1929, in which I stated that it has always been my view that the authority given me to file information did not preclude an attorney for the Commonwealth, who had failed to file information within ten days after receiving the report of a seizure, from filing it after that time.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**INTOXICATING LIQUORS—Forfeited automobiles—Settlement of costs where relief is granted lienors.**RICHMOND, VA., *November 19, 1930.*

HON. C. CARTER LEE,  
*Attorney for the Commonwealth,*  
*Rocky Mount, Virginia.*

MY DEAR CARTER:

I am just in receipt of your letter of the 17th instant, in which you ask to be advised as to my opinion concerning the settlement of costs in forfeited automobile cases where relief is granted lienors. In this you write:

"It has been the practice in practically all of the surrounding counties to compromise automobile cases concerning the forfeiture of automobiles seized for the illegal transportation of ardent spirits, with the lienor, or lienors, paying the officers, and the Commonwealth's Attorney their full costs upon release of the car, when the statute only

allows \$12.50 in case an automobile is released to the lienor; also, to get a car released, as a matter of compromise, the lienor would pay into court for the sheriff, as his commissions, varying amounts, sometimes as high as \$20.00, in lieu of his commissions."

In my opinion, no officer is either entitled to, or should receive, fees in automobile forfeiture cases or, in fact, in any other class of cases, in excess of the amounts specifically provided by law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**INTOXICATING LIQUORS—Driving while intoxicated—Second offense misdemeanor.**

RICHMOND, VA., *September 11, 1930.*

HON. H. PRINCE BURNETT,  
*Attorney for the Commonwealth,  
Independence, Virginia.*

DEAR MR. BURNETT:

I am in receipt of your letter of the 9th instant, in which you inquire whether or not a second offence under the provisions of section 25 of the prohibition law is a felony or a misdemeanor, and I note you state that you have been under the impression that misdemeanors should not be punished by imprisonment for more than one year.

In my opinion, the distinction between a misdemeanor and a felony is settled more by the place of confinement than by the time, and that a second offence under section 25 of the prohibition law is a misdemeanor and not a felony. Felonies are those offences which may be punished by confinement in the penitentiary. There is no provision of law limiting the punishment of a misdemeanor to one year in jail. It can be for a longer period of time.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**INTOXICATING LIQUORS—Evidence necessary to convict.**

RICHMOND, VA., *July 9, 1930.*

MR. A. C. KIMLER, *Trial Justice,  
Waynesboro, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 7th instant, in which you state:

"The question has been raised in this court as to whether Home Brew made from malt preparation bought in stores must be analyzed and must show the required per cent of alcohol before conviction can be held.

"Two cases are now in the court and counsel have held that I cannot convict until proven that the brew found will intoxicate. One case I convicted on the definition given in section 4675 (1), where it states all malt beverages among the other things mentioned."

In my opinion, the evidence necessary to sustain a conviction must depend upon the facts in each case.

By the provisions of section 1 of the Layman Prohibition Act, the term ardent spirits embraces alcohol, brandy, whiskey, rum, gin, wine, porter, ale, beer, all malt liquors, all malt beverages, absinthe and all compounds or mixtures or any of them; all compounds or mixtures of any of them with any vegetable or other substance; all alcohol bitters, bitters containing alcohol.

If the article with the possession of which the party is charged comes within any of the definitions above quoted, the accused can be convicted without proof that the article will produce intoxication, or that it contained more than one-half of one per cent of alcohol by volume. If, upon the other hand, the accused is charged with the possession of some other kind of liquid, mixture or preparation, whether patented or otherwise, which will produce intoxication, or fruits preserved in ardent spirits, he may be convicted upon proof that such article will under ordinary circumstances produce intoxication, and he likewise may be convicted upon proof of the possession of any kind of a beverage containing more than one-half of one per centum of alcohol by volume.

In the event that the prosecution is for a beverage on account of the fact that it is alleged to have contained more than one-half of one per cent of alcohol, it is necessary to prove that it contained more than that amount of alcohol. In such case, it is necessary to have the beverage analyzed in order to prove its volume content of alcohol.

If the accused is really being prosecuted for making what witness can testify is beer, it is not necessary to prove that it is intoxicating or contains one-half of one per cent of alcohol.

However, if the charge is that the accused made "Home Brew," the Commonwealth should prove either that the brew would in fact produce intoxication or that, upon analysis, it contained more than one-half of one per cent of alcohol. You will note that the definition of ardent spirits does not include "Home Brew."

You say that you have convicted a party for having made "Home Brew." Under the opinion I have just given you, I do not think the conviction can be sustained upon appeal unless, upon the trial in the circuit court upon which the case is heard de novo, the Commonwealth is able to show that the brew came within some part of the definition I have given you or that it is in fact intoxicating or contains more than one-half of one per cent of alcohol.

The brew should be well cared for and, in case it is necessary to have it analyzed, Mr. Kerr, the Attorney for the Commonwealth of your county, can by complying with the law as to marking it for identification, send it to me and I will have it analyzed.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**INTOXICATING LIQUORS—Fees of Commonwealth's attorney and seizure officers.**RICHMOND, VA., *August 11, 1930.*HON. WILBUR C. HALL,  
*Leesburg, Virginia.*

DEAR MR. HALL:

I am in receipt of your letter of the 7th instant, in which you desire an official opinion covering the following question:

"A has sold a car to B, and B is arrested for transportation of ardent spirits. A, who reserves a lien on the car and had it properly recorded, filed his petition in court and establishes his lien. What fee does the Commonwealth's attorney get and what fee does the sheriff get?"

Assuming that the car seized for transporting ardent spirits was not stolen, your inquiry is covered by subsections (n), (j) and (h) of section 28 of the Layman Prohibition Law.

Under the provisions of subsection (j), the fees of both the Commonwealth's attorney and the seizure officer are \$25 for each officer; where, under the provisions of subsection (h), the car is what might be called guilty, while the lienor is innocent, and relief is granted under that subsection, the fees of the attorney for the Commonwealth and the seizure officers are one-half of the fees as provided for in subsection (j) or \$12.50 each to the attorney for the Commonwealth and the seizure officer.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**INTOXICATING LIQUORS—Fees of officers capturing stills.**RICHMOND, VA., *August 14, 1930.*MR. J. HAL SHAFFER,  
*Deputy Sheriff,*  
*Wytheville, Virginia.*

DEAR MR. SHAFFER:

I am just in receipt of your letter of the 11th instant, and I note you say that my letter to Mr. Settle, Clerk of Rappahannock County, does not answer the questions about which you were making inquiry.

1. In my opinion, the officer seizing a still and making an arrest is only entitled to a fee of \$50 when collected from the person convicted, and he is not entitled to the additional arrest fee of \$10 provided for in section 46 of the prohibition act.

2. You ask if an additional fee is allowed where two, three or more persons are arrested and convicted at the same still. In my opinion, officers are not entitled to an additional fee of \$50, but are limited to one fee of \$50 as against one of the persons convicted, and are entitled as against all others convicted to fees of \$10 against each.

3. In those cases in which the persons arrested and convicted do not pay the costs, officers making arrest are entitled to fees, payable by the

Commonwealth, for each of the persons arrested and not limited to one arrest fee for all of those arrested.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**INTOXICATING LIQUORS—Fees unclaimed by officers not taxable.**

RICHMOND, VA., *December 11, 1930.*

HON. WILSON M. FARR,  
*Attorney for the Commonwealth,  
Fairfax, Virginia.*

DEAR MR. FARR:

I am in receipt of your letter of the 9th instant, in which you make certain observations concerning the disposition of arrest fees taxed against persons convicted under the prohibition law in those cases in which officers are prohibited, either by law or their superiors, from receiving such fees.

You do not agree with me in the conclusions expressed in my letter of the 4th instant to Honorable F. W. Richardson, Clerk of your court.

In your opinion, even though fees cannot be accepted by the officers making arrests, they should be taxed against the accused. You further express the opinion that, where the fees would go to officers of the motor vehicle department, Mr. Frazier having declined to allow his officers to receive the fees, the same should be set apart for the payment of the salary of the officers in his department.

You further state that in Fairfax county, the traffic force being on a salary and not permitted to receive fees, costs are taxed against persons convicted and remitted by the clerk to the county treasurer for credit to the police fund.

Your conclusions are based upon the assumption that fees taxed in favor of officers making arrests are a part of the penalty imposed upon the person convicted and, as a part of the penalty, they should be collected and, if the beneficiary of the fee cannot receive it, it can be diverted for some other laudable use.

In my opinion, while fees are part of the costs and necessarily a burden upon a convicted person, they become the property of the officer and he alone is entitled to receive them. Where he is prohibited by law or by his superiors from receiving these fees, they should not be taxed and collected. There is certainly no authority anywhere in the law which allows fees to which an officer is entitled, but which he cannot receive, to be diverted to some other fund. The Legislature has not done so and, in the absence of legislation providing arrest fees as a part of the penalty with a further provision as to the disposition thereof, in case the officers entitled thereto are not permitted to receive them, I do not think that the fees should be taxed and, without warrant of law, diverted to some other use and purpose.

The fact that a person convicted, who has been arrested by a motor vehicle officer or a Fairfax county traffic officer, will be favored, cannot possibly operate to change the law.

However, should either traffic officers or motor vehicle officers receive and receipt for fees, no person has any right to question what becomes of those fees, and the fees can be disposed of by the officers.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### INTOXICATING LIQUORS—Fees of Commonwealth's attorneys.

RICHMOND, VA., July 15, 1930.

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

DEAR SIR:

I am in receipt of your letter of July 8, in which you enclose an account of Honorable H. H. Kerr, Attorney for the Commonwealth for Augusta county, in which there are five charges against the Commonwealth for convictions of persons charged with the possession of stills, in each of which cases \$20.00 was allowed by the court. You request my opinion as to whether or not the charges are proper.

Accompanying the account, is a letter from Mr. Kerr, in which he refers to fees allowed attorneys for the Commonwealth under sections 20 and 46 of the prohibition law.

It is true that under section 20 of the prohibition law a fee of \$10.00 is allowed and under section 46 thereof fees are allowed as provided for in section 3505 of the Code, the fee in each prohibition case, even a misdemeanor, being \$10.00. It would seem from Mr. Kerr's letter that for each prosecution he claims a fee of \$20.00, being the aggregate of a fee of \$10.00 allowed by section 20 and \$10.00 allowed by section 46.

In my opinion the fee allowed an Attorney for the Commonwealth for prosecutions of still cases is limited to \$10.00 for each case, and that the law upon the subject does not authorize the payment of two fees of \$10.00 each, or an aggregate of \$20.00, for each prosecution. I do not think that the Legislature intended to make the fee in still cases twice that in other prohibition prosecutions.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### INTOXICATING LIQUORS—Fees of Commonwealth's attorneys.

RICHMOND, VA., July 19, 1930.

HON. W. E. HOGG,  
*Commonwealth's Attorney,*  
*Yorktown, Virginia.*

MY DEAR SIR:

I am in receipt of your letter of July 16, in which you hand me your account against the Commonwealth embracing two items for the prosecution

of prohibition cases before the trial justice of York county, and I note what you have to say as to the correctness of this account.

In my opinion you are entitled to a fee of \$10.00 in each case instead of \$15.00 as charged by you.

Trial justices have final jurisdiction to hear and determine prohibition misdemeanor cases. Justices of the peace have no such jurisdiction. They can only examine such cases and dismiss the accused, or send him on to a grand jury. In prohibition cases in which Attorneys for the Commonwealth appear before justices of the peace, whether felony or misdemeanor, such attorneys are entitled to a fee of \$5.00, payable by the Commonwealth. Where an attorney appears before a justice of the peace and the case is sent on to a grand jury, and the accused is indicted and tried in the circuit court, he is entitled to a further fee of \$10.00, payable by the Commonwealth. In cases of a conviction the fee of an attorney for the Commonwealth is \$25.00, if it can be made out of the accused.

The proceeding before a trial justice is, unless an appeal is taken, final, and an attorney for the Commonwealth is entitled to a fee of only \$10.00 for a prosecution before such trial justice, provided of course such fee is not collected from the accused, in which case he is entitled to a fee from the accused of \$25.00.

In cases where there is an acquittal the fee is less than he would otherwise receive had he first attended a justice court and then tried the case in the circuit court, while he receives a larger fee in case of a trial before a trial justice. For every case tried before such trial justice, where the fee is made out of the accused, he is entitled to a fee of \$25.00, even upon a plea of guilty.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### **INTOXICATING LIQUORS—Fees of officers—Capture of stills.**

RICHMOND, VA., *August 6, 1930.*

HON. JAMES M. SETTLE, *Clerk,*  
*Washington, Virginia.*

DEAR MR. SETTLE:

Your letter of July 30 to your brother, Mr. George W. Settle, Jr., making inquiry as to the amount of rewards, fees and mileages allowed officers seizing stills, has been referred to this office for answer.

The provisions of the prohibition law covering fees or rewards for officers seizing stills and securing convictions of persons found thereat are not perfectly clear as to the amounts to which seizure officers are entitled.

In my opinion, under the provisions of section 20 of the Layman Prohibition Act, officers making a seizure of a still and securing a conviction of persons at the still are entitled to fees of \$50 for each still seized and mileage and court attendance allowances. The provision of the section limiting him \$50 for the arrest and conviction of the person and declaring that is

all the officer shall receive, although more than one person is arrested and convicted, has reference to the allowance of \$50 for the seizure of a still and the arrest and conviction of persons at the still. The evident purpose of the limitation was to prevent the taxing of the \$50 fee against each of the persons found at a still who were convicted. I do not think that the provision was intended to prevent the payment of the \$10 arrest fee provided for in section 46 of the prohibition law. I understand that most, if not all, of the courts allow a \$50 fee as against one of the persons convicted and a \$10 conviction fee for each of the other persons arrested and convicted, and that a number of courts allow the \$10 conviction fee even against the party assessed with the \$50 still conviction fee.

As there is no uniformity of decision as to the fees in still cases, I suggest that you take the matter of fees up with Judge Alexander and be guided by his opinion.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### INTOXICATING LIQUORS—Jurisdiction of justices.

RICHMOND, VA., May 13, 1931.

MR. PHILIP P. BURKS,  
*Attorney at Law,*  
*Bedford, Virginia.*

DEAR MR. BURKS:

I am in receipt of your letter of the 9th instant, in which you inform me of the trial of a person before a justice of the peace for the offense, under section 25 of the prohibition law, of driving an automobile while under the influence of intoxicants, and I note the result of the action of the justice, who, having fined the party \$100, sentenced him to thirty days in jail and suspended the sentence.

You then state that the attorney for the Commonwealth of Bedford county has expressed a purpose to have the same person indicted or presented to the circuit court, in order to test the jurisdiction of a justice of the peace to try an offense against the prohibition law and to suspend sentence.

You then at some length present your views as to the construction of section 25, and I note your conclusion that a justice is authorized, under that section, to try and finally dispose of a prohibition case and to suspend sentence.

If section 25 was the only section to be taken into consideration, there would be much merit in your argument and construction of the section. However, there are a number of other sections to which reference must be had in arriving at a determination of the meaning of some of the language used in section 25.

Section 35 confers upon the circuit, corporation and hustings courts exclusive original jurisdiction, except as otherwise provided, for the trial of all cases arising under the act.

Section 33 provides for preliminary examinations of persons charged with prohibition violations and, you will notice, expressly limits in the first paragraph thereof the examining magistrate to jurisdiction to dismiss or send on. The second paragraph of the section confers jurisdiction upon justices of the peace and is very restrictive in its provisions allowing justices authority to accept pleas of guilty for the highest offense charged in the warrant and then only when the attorney for the Commonwealth is present and consents to the plea in writing. Thereupon the only jurisdiction possessed by the justice is to determine the punishment within the limits prescribed for the particular offense charged. It further provides that no judge, justice or other officer shall suspend sentence in a case heard under the provisions of this section.

There is nowhere in section 25 a provision conferring jurisdiction upon a justice of the peace. His authority must be derived from the provisions of section 33.

The concluding sentence of section 25, upon which you lay considerable stress, was only intended for the purpose of taking care of reports on all prohibition cases. Justices have authority to try cases and give final judgments under sections 17 and 18 of the prohibition law. For offenses mentioned in those sections they have final jurisdictions upon pleas of not guilty and in the judging of cases arising under those sections they have full and complete jurisdiction and authority. In all misdemeanor cases which are brought before them and in which they fix the punishment upon pleas of guilty, under the provisions of section 33, they may be said to try such cases. In any event, the provision of section 25 requiring a report from the justice is simply for the purpose of providing a complete list of cases of drunken drivers.

No case has reached the Supreme Court of Appeals in which the question you raise has been decided or even proposed to the court. However, I have consistently expressed the opinion that justices of the peace have no final jurisdiction in any case arising under the prohibition law, except under sections 17 and 18, and have expressly ruled that justices do not have authority to try persons for driving automobiles under the influence of intoxicants, or to suspend sentence.

I have, moreover, advised attorneys for the Commonwealth to proceed against persons where justices have assumed jurisdiction and try and determine cases, and I very much hope that the attorney for the Commonwealth of your county will proceed with the case you mention, in order to secure final adjudication of the authority of justices of the peace to try violators of the prohibition law.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**INTOXICATING LIQUORS—Maximum time a female prisoner can be confined in jail for non-payment of fine.**RICHMOND, VA., *January 8, 1931.*MR. J. R. TURNER, *Jailor,*  
*Denbigh, Virginia.*

DEAR SIR:

I am in receipt of your letter of yesterday, in which you ask to be advised as to the maximum time a female prisoner can be confined in jail for the non-payment of her fine imposed in a prohibition case.

In my opinion, a female prisoner in confinement for the non-payment of fine and costs in a prohibition case is held subject to the provisions of section 4953 of the Code, the maximum term of imprisonment being three months.

While you do not ask the question, I refer you to the fact that persons sentenced to the State convict road force are held subject to the provisions of sections 2094 and 2095.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**INTOXICATING LIQUORS—Right of mayors and justices of the peace to receive fees.**RICHMOND, VA., *July 19, 1930.*MR. P. L. BARRETT,  
*Altavista, Virginia.*

MY DEAR MR. BARRETT:

I am in receipt of your letter of July 14, in which you ask to be advised "as to whether or not a mayor and a justice of the peace who try violators of the prohibition law may, for their services, collect the \$25.00 fee, retaining the same instead of allowing the Commonwealth's attorney to try such cases? The presumption seems to be that neither the mayor, nor a justice of the peace is allowed to try such cases; on the other hand, the Commonwealth's attorney must do so."

Under section 34 of the prohibition law, mayors of towns having prohibition ordinances may try prohibition cases. Before they do so, it is their duty to notify the attorneys for the Commonwealth when and where such cases are to be tried, and they should, I suggest, set the cases with reference to the convenience of such attorneys.

Justices of the peace cannot actually try a prohibition case, except under the provisions of sections 17 and 18 of the prohibition law relating to drinking or being drunk in public places. A justice of the peace can only examine cases and send them on to a grand jury except, with the consent of the attorney for the Commonwealth endorsed on the warrant, he may accept a plea of guilty and impose a sentence within the provisions of the law.

Under no circumstances may mayors or justices of the peace, or any other trial officer, receive the \$25.00 fee. Mayors and justices hear a case just like a judge does and try it on its merits. Attorneys for the Common-

wealth prosecute cases before mayors or justices, and it is for their services in prosecuting cases that they are allowed fees for these prosecutions.

No town can pass an ordinance in conflict with the State law, and no town can pass a law allowing a mayor or a justice of the peace to receive a \$25.00 fee for trying a prohibition case.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### **JAILS AND PRISONERS—Computation of time allowance.**

RICHMOND, VA., *March 18, 1931.*

MAJOR R. M. YUELL, *Superintendent,*  
*The Penitentiary,*  
*Richmond, Virginia.*

DEAR MAJOR YUELL:

I am in receipt of your letters, in which you desire my opinion as to the statute governing the computation of the time allowance of a person sentenced to confinement in the penitentiary in April, 1926, and received during the same year, your doubt arising as to whether his right to allowance for time served is governed only by section 5017 of the Code, or governed by section 5017 in conjunction with section 2860 of the Code.

In my opinion, section 5071 governs the time allowance of convicts sentenced to and received in the penitentiary, while section 2860 governs the allowance to be allowed persons sentenced to jail confinement and confined therein.

You will notice that the jail time allowance of four days a month of a person confined in jail does not automatically operate, but is dependent upon the report of the jailer to the judge and the affirmative action of the judge in allowing a jail prisoner the four day per month credit on his time. Unless the time has been allowed by the court, and that fact appears on the prisoner's record, or the order of the court under which he is confined by you, I do not think that he is entitled to such an allowance, whereas, if the record shows the allowance has been made, I advise you to give the credit allowed by the judge.

Under the provisions of section 5017, you are the person to determine whether or not the convict has so behaved as to entitle him to a good behavior time allowance.

There has been no judicial determination, so far as I know, of a claim of a jail time allowance by a person who is afterwards sent to the penitentiary. Should such a claim be made, I advise you to refuse the credit, in which event the person complaining may sue out a writ of habeas corpus and have a court adjudication.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**JAILS AND PRISONERS—Credit for time of confinement.**

RICHMOND, VA., June 11, 1931.

MAJOR R. M. YOELL,  
*Superintendent of Penitentiary,*  
*Richmond, Virginia.*

DEAR MAJOR YOELL:

I have just been asked by Mr. Hughes of your force whether or not a person who was in confinement in jail awaiting transportation to the penitentiary, under a sentence of a court for a felony, and who broke jail or escaped, is entitled to credit for the time he was actually in confinement prior to his escape.

In my opinion, the provision at the end of section 5019 of the Code, providing "No such credit, however, shall be given to any person who shall break jail or make an escape" precludes such person from receiving a credit for the time he was in confinement.

While section 5019 provides that the judge in his order shall specify the time for which the prisoner is entitled to credit, I do not think that the failure of the judge to do so prevents the prisoner from being allowed a credit for the time actually served in confinement, and that, if you can obtain correct information as to his confinement, it should be allowed as a credit on the prisoner's term of confinement.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**JAILS AND PRISONERS—Credit for payment of fines and costs.**

RICHMOND, VA., March 24, 1931.

CAPTAIN R. R. PENN.,  
*Superintendent State Farm,*  
*State Farm, Virginia.*

DEAR CAPTAIN PENN:

I am in receipt of your letter of March 20 in reference to the time of service of S. E. Pettigrew, a misdemeanor now held in confinement at the State Farm for the non-payment of a fine assessed against him by the corporation court of the city of Newport News, and I have carefully noted your file in further connection with this matter.

From Judge Barham's letter to you of March 17, I take it that he is of the opinion that the court fixes the time of confinement for the non-payment of fine and costs, provided the term of confinement is within the limits of three to six months. That was, indeed, the old law as contained in section 8 of the Layman Prohibition Act. Before the amendment of section 8, it was discretionary with the court to fix the term of confinement so that it would not be less than three nor more than six months.

Section 4953 of the Code limits confinement for the non-payment of fine and costs, where a person is sentenced to confinement in jail, to three months. However, where such a person is sentenced to the State Convict Road Force,

he is, under the amended section 8 of the Layman Act, held in confinement under the provisions of sections 2094 and 2095 of the Code. Section 2095 allows certain jail credits for work done and for confinement without work, and then provides that "no person shall be held to labor in any chain-gang for the non-payment of any fine imposed on him for a longer period than six months."

Under section 2095 of the Code, there is a note to the case of *May v. Dillard*, 134 Va. 707. This case holds that a person sentenced under this section is to be held for a period not exceeding six months.

I am, therefore, of the opinion that this man should be held in confinement for a period not exceeding six months for the non-payment of his fine and costs and that that part of the sentence, which provides for imprisonment for an additional period of three months on the State Convict Road Force, is inoperative.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### JAILS AND PRISONERS—Detainer of prisoners.

RICHMOND, VA., *September 16, 1930.*

CAPTAIN R. R. PENN, *Superintendent,*  
*State Farm, Virginia.*

DEAR MR. PENN:

Your letter of the 9th instant was duly received by this office during the absence of the Attorney General. He has not yet returned to the office and I am giving you my opinion upon the statement of facts contained in your letter and the general principle of law applicable to the detainer of prisoners awaiting the arrival of officers to take charge of such prisoners for other criminal charges pending against them.

There is no exact law as to the limit of time for which persons may be detained. You are authorized to detain them for a reasonable length of time. This depends largely upon the circumstances of each case. Applying my views to the specific case mentioned in your letter, I will say that I do not think that the fact that you detained the prisoner mentioned until 12:30 p. m. of the day after he was entitled to a discharge was unreasonable, even though you had notified the Newport News officials that you would hold him until 7 a. m. of that day.

I understand that it has been the practice to discharge a prisoner on the day preceding the anniversary of the beginning of his sentence, i. e., where his sentence began on the 12th of the month the previous year, he is entitled to a discharge after twelve o'clock midnight on the 11th of the month of the succeeding year, where the term of confinement is one year.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**JAILS AND PRISONERS—Disbursement of deceased convict's accumulations.**RICHMOND, VA., *September 9, 1930.*

MAJOR R. M. YOELL, *Superintendent,*  
*The Penitentiary,*  
*Richmond, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 5 to the Attorney General which, during his absence, has come to me for reply.

You wish to know what disposition must be made by you of funds aggregating less than three hundred dollars to which a deceased convict was entitled, when the person to whom such money should properly go is not a resident of this State.

With your letter you enclose a copy of Acts 1920, page 361. This act was amended by Acts 1928, page 965. The former act did not specify the procedure to be followed when the person entitled to a convict's money was a non-resident. The Act of 1928 does specify that procedure as follows:

"Whenever there is, accruing to any person, adult or infant, any sum of money from any source, not exceeding five hundred dollars, the same may be paid into the court of the county or corporation having jurisdiction in fiduciary matters, in which such fund accrued or arose, and, by said court, by an order entered of record, paid into the hands of such persons, if considered competent to expend and use the same in his or her behalf, by such court, or for some other person for him or her, who is considered competent to administer the same, for the benefit of such person, without the intervention of an administrator, guardian or committee, whether such person reside within or without this State. \* \* "

You will note that the 1928 Act raised the amount from three hundred to five hundred dollars. I am, therefore, of the opinion, when a convict for whose account there has accrued less than five hundred dollars, whether or not the person entitled to the fund be a resident of this State, that the fund is to be paid by you, pursuant to the terms of the 1928 Act, into the chancery court of the city of Richmond which is the court that has jurisdiction in fiduciary matters in the locality in which the fund accrued.

Yours very truly,

COLLINS DENNY, JR.,  
*Assistant Attorney General.*

**JAILS AND PRISONERS—Fines and costs.**RICHMOND, VA., *June 9, 1931.*

HON. R. R. PENN,  
*Superintendent State Farm,*  
*State Farm, Virginia.*

DEAR CAPTAIN PENN:

In reply to yours of yesterday, I call your attention to sections 2549, 2550, 2559, 4952 and 4953 of the Code.

Sections 2549 and 2550 provide that justices may commit a person convicted of a misdemeanor to confinement for the non-payment of a fine and costs, or costs alone.

Section 2559 provides for the committal of the defendant until the payment of costs alone, where there is no fine.

Section 4952 provides how a person who is being confined for the non-payment of a fine and costs, or costs alone, may be discharged by the judge.

Section 4953 provides the limit, where a person is confined for the non-payment of fine and costs, or costs alone.

It is true that section 4949 provides for the confinement of a person for the non-payment of fine and costs of prosecution without saying anything as to the confinement for the non-payment of costs alone.

In my opinion, sections 2549, 2550 and 2559 direct the confinement of a person for a limited time for the non-payment of costs alone where no fine is imposed in addition to costs.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**JAILS AND PRISONERS—Payment of costs of operation on prisoner.**

RICHMOND, VA., *April 29, 1931.*

HON. CHARLES H. FUNK,  
*Attorney for the Commonwealth,*  
*Marion, Virginia.*

DEAR MR. FUNK:

I am in receipt of your letter of the 27th instant, in which you write in part:

"Charles Gates, a prisoner in the Smyth county jail, serving a six months sentence to the convict road force for making ardent spirits, developed a case of acute appendicitis and had to have an immediate operation. He was taken to the Saltville hospital and was operated on and cared for there."

You then state that, in your opinion, Gates being a State prisoner sentenced to the convict road force, the State should pay the cost of the operation.

In my opinion, you are entirely correct. As he was a prisoner, however, the hospital should make a reasonable charge and file its claim upon the proper blanks to the circuit court of your county, under the provisions of section 4960 of the Code, and, when approved by the court, it will be paid by the Comptroller.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**JAILS AND PRISONERS—Prisoner not subject to confinement for costs alone.**

RICHMOND, VA., May 6, 1931.

CAPTAIN R. R. PENN,  
*Superintendent State Farm,  
State Farm, Virginia.*

DEAR CAPTAIN PENN:

I have for reply your letter regarding the commitment paper of one Armon Garrett, who was convicted in Amherst county for a violation of the prohibition law and sentenced to twelve months in jail. It appears that no fine was assessed against him and that the costs of the proceeding were \$85.35. The question has arisen whether, in the event he fails to pay the costs, he should be held until such time as that amount is worked out.

It is my opinion that his confinement is limited to the sentence and is not to be increased by any time by reason of the costs.

Section 8 of the prohibition law provides as follows:

“ \* \* whenever a fine is prescribed for the violation of the laws for the enforcement of prohibition in this State, and such fine and costs incident to the prosecution and conviction 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 \* \* for the non-payment of said fine and costs.”

It, therefore, appears that for the non-payment of costs alone a man is not to be held.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General*

**JAILS AND PRISONERS—Prisoners may be worked on county roads.**

RICHMOND, VA., April 30, 1931.

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,  
Richmond, Virginia.*

MY DEAR GOVERNOR:

Honorable J. H. Bradford, Director of the Budget, was in the office of the Attorney General today and handed me for attention a letter from Major R. M. Youell, Superintendent of the Penitentiary, under date of the 29th instant, directed to you, having reference to the proposal of the State Prison Board to establish one or more camps for the purpose of working jail prisoners on local county roads.

For the purpose of a more accurate understanding of my letter, I am quoting Major Youell's letter to you:

“The State Prison Board expects to try one or two camps working jail prisoners on county feeder roads. Under section 2098, we will receive fees now allowed the jailors and in addition the Board of Supervisors of the county in which these camps may be established have agreed to pay \$15 per day for the use of the prisoners. The fees and

the \$15 per day paid by the county will be credited to the State road force as revenues received.

"It is requested that the State convict road force be allowed to spend in maintaining these camps revenues received in excess of the \$9,000 revenue, which is received for boarders."

Section 2098, to which Major Youell refers, has been repealed. That and other preceding and subsequent sections of the old law had to do with the expenditure of direct appropriations of money known as State aid.

Projects to work jail prisoners upon county roads must be effectuated under the provisions of chapter 87, sections 2073-2077 inclusive. Section 2075 provides for the allotment of prisoners confined in jail for misdemeanors or for non-payment of fine and costs.

The expense of maintaining what may be called county convict road camps is provided for under section 2077 and allows to the superintendent of the penitentiary for such purposes the same per diem for prisoners as is allowed jailors under the provisions of section 3510 of the Code, the payroll for each camp to be audited and certified under the provisions of section 4961 of the Code and paid upon a warrant drawn by the Comptroller upon the State Treasurer. This expense account and payroll are payable out of the State treasury for the keep of prisoners sentenced to jail for violation of State laws.

If and when the system of county convict road camps is enlarged, it is respectfully suggested to Your Excellency to take into consideration that portion of section 2077, which provides that a separate monthly account shall be kept of convicts sentenced to jail for violations of city or town ordinances.

While the exact routine to be followed in taking care of the pay for the keep of city and town prisoners is not clear, cities and towns whose prisoners are allotted to and kept in county camps are required to pay for the keep thereof to the superintendent of the penitentiary amounts which would otherwise be paid to jailors for keeping their convicts in city or town jails.

I call your attention to this fact that you may take into consideration the economy of using available city and town prisoners in county camp road work. You will see that the expense to the State, where their upkeep is paid for by cities and towns, relieves the State treasury from practically the same burden as cities and towns assume and pay.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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**JAILS AND PRISONERS—Prisoner's fund may be secured by banks.**

RICHMOND, VA., March 17, 1931.

MAJOR R. M. YOEUELL, *Superintendent,*  
*The Penitentiary,*  
*Richmond, Virginia.*

DEAR MAJOR YOEUELL:

I am in receipt of your letter of March 13th, in which you enclose a letter of the 6th instant, addressed to you by Mr. S. P. Ryland, Vice-Presi-

dent of the First and Merchants National Bank, this city. I note from these two letters that a question has arisen as to the right, of a bank, under the Banking Code of Virginia, to give security, or pledge assets of the bank, on account of the deposit by you in said bank of money belonging to what is known as the Prisoner's fund, and handled by you as the agent of the State Prison Board of Virginia.

The question raised is as to whether or not the money now on deposit with the bank belonging to the prisoner's fund is a State fund, or the individual money of the inmates of the penitentiary.

The fund, which is the subject of this controversy, arises on account of an accumulation of appropriations made by the General Assembly of Virginia "For per diem allowance for prisoners, in accordance with the provisions of the act approved March 16, 1918 \* \* a sum sufficient, estimated at \$ \* \*."

The appropriations are disbursed and/or held under the provisions of section 5048-a of the Code providing:

"Every person sentenced to the penitentiary shall be allowed ten cents per day for each day he works, to be paid out of the appropriation hereinafter provided for, so long as the same is sufficient.

"The money earned by said prisoners shall accumulate and be paid over to the said prisoner at the time of his discharge, one-half may be drawn upon by said prisoner for the purchase of such things as the prisoner may desire, and for other purposes by and with the approval of the superintendent."

The allowance of five cents per day to each person sentenced to the penitentiary for those days the prisoner works is paid to the prisoner, or at his option allowed to accumulate, while the five cents per work day must be retained and allowed to accumulate to be paid upon the prisoner's discharge. The accumulation of money, while it belongs to the prisoners, is a fund which is not paid to them, but is held in trust by officers of the State and must be accounted for by these State officers. The fund is held without being segregated and no prisoner is entitled to any separate part or parcel of the money.

It is true that there is no specific provision which designates the superintendent of the penitentiary as the State custodian of the money, but the State Treasurer has for a long period of time paid over to the superintendent of the penitentiary the appropriations as they have been respectively provided by law and the superintendent of the penitentiary, as the agent of the State and more particularly the State Prison Board, has held and disbursed the appropriations largely in the character of a public administrator or trustee.

On account of the funds recited and the conditions and circumstances under which the money is held by public officials for what may be designated a public trust, the accumulations of money in the custody of the Prison Board, or in the hands of the superintendent of penitentiary, are really public funds and, when they are deposited in bank, the Prison Board or the superintendent of the penitentiary should require the depository to execute a bond with security, or place collateral with the State treasurer to secure the money on deposit and provide for its return upon demand, or when due and payable to the public custodian.

I trust that I have answered the question which has arisen and that you will have no difficulty in securing the security from the First and Merchants National Bank to cover deposits of prisoners' funds now or hereafter to be placed on deposit with that bank.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**JAILS AND PRISONERS—Sentences running concurrently or consecutively—When may be imposed.**

RICHMOND, VA., *December 5, 1930.*

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,*  
*Richmond, Virginia.*

MY DEAR GOVERNOR:

I am in receipt of a letter of the 20th ultimo from Miss Violet E. McDougall, your Executive Secretary, in which there is enclosed application filed with you on September 4, 1929, by Charles C. Wilkes, No. 18045 in the State Penitentiary, this petition having been filed with you by the late Honorable Charles T. Lassiter.

I note from Miss McDougall's letter that you desire my opinion upon the legal questions raised in the petition.

From the petition it will be seen that Wilkes and an accomplice, on the night of the 18th of November, 1919, broke and entered a bank at Glasgow and robbed the safe. These men were arrested and convicted in the City of Roanoke for the possession of burglarous tools, the petitioner being given a sentence of fifteen years in the penitentiary.

Afterwards and after sentence in the Roanoke case had been imposed, both of the accused were taken to the county of Rockbridge, in which Glasgow is located, tried and convicted upon an indictment charging two counts:

- (a), the first count, the felonious breaking and entering of a bank, and
- (b), the second count, grand larceny therefrom.

The record does not show that the petitioner Wilkes was ever sentenced in Rockbridge county upon his conviction. He is now in the penitentiary and he raises three legal questions as to the limit of time for which he should be confined in the penitentiary.

1. He claims never to have been sentenced in Rockbridge county.

This allegation is apparently true. However, my office has investigated questions of a similar character and I find that courts uniformly hold that, where there has been no valid sentence or no perfect sentence, the accused will not be discharged on habeas corpus, or a new trial granted, but he will be remanded to the trial court that the proper sentence may be imposed.

While this is usually done upon habeas corpus proceedings, I advise that, after the sentence has been served, Wilkes be returned to Rockbridge county for sentence by the circuit court.

2. Counsel calls your attention to the case of *Clarke v. Commonwealth*, 135 Va. 490, from which he quotes. The Clarke case was one in which there

was only one count in the indictment and the question now before you was not before the court. However, that court, quoting *Benton's Case*, 191 Va. 782, and *Speer's Case*, 17 Gratt. (58 Va.) 570, lays down the principle which was decided in the cases quoted that housebreaking with intent to commit larceny and grand larceny are distinct offenses under the law, that to each is affixed its own penalty and that when, as is often the case, they are one continuous act, both of these offenses may be charged in one count, in which event, the accused may be convicted of either breaking with intent to commit larceny or grand larceny and punished therefor, but, when it is charged in that way, only one punishment can be imposed. In those cases in which two offenses have been charged in separate counts of an indictment, it has been held that an accused may be convicted under each count and a separate punishment imposed for each offense.

On the third page of petitioner's brief this conclusion is admitted, a plea being urged, however, that executive clemency in such cases would be merciful.

3. Section 4786 of the Code is quoted. This provides:

"When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement."

Petitioner construes this section as authority for the principle of law that, where he has been sentenced in Roanoke for a felony and after such sentence is convicted and sentenced in Rockbridge for a felony, the Roanoke sentence and the Rockbridge sentence run concurrently.

I do not agree with this conclusion. In a number of states it has been held that, independent of statutes, sentences for one or more offenses in the same court run concurrently. To avoid this conclusion, a number of states, including Virginia, at an early date adopted statutes of like character. That statute appears to be solely remedial. It does not provide that sentences in certain events shall run concurrently, but does provide that, where a second conviction is had before a sentence for a first offense, the sentence for the second offense shall begin to run at the expiration of the first sentence.

Even though it may be said that, where one sentence has been imposed before a second conviction, sentences run concurrently, it is submitted that this applies to the same court, and that, where a conviction and sentence have been had in one court and the person is subsequently, tried, convicted and sentenced in another court, the two sentences run consecutively and not concurrently.

In a note to *Harris v. Lang*, 7 L. R. A. (N. S.) 124, 126, it is said:

"The rule requiring the sentence to state that the second term is to begin upon the expiration of the first has no application in a case where the different sentences were imposed by different courts. *Hightower v. Hollis*, 121 Ga. 159, 48 S. E. 969."

To the same effect is 8 R. C. L., sec. 243, page 242.

This being true, in the construction of a statute authorizing a judge to impose cumulative sentences, it may be held by analogy that, where sentences are imposed in different courts, the rule laid down in section 4786 of the

Code does not apply and that sentences of different courts run consecutively, even though the accused has been sentenced in one court before he is tried and sentenced in a second.

Upon the expiration of service of the Roanoke sentence, the accused can test his right to a discharge either upon the ground that he was not sentenced in Rockbridge and, therefore, cannot be held, or that the Roanoke sentence and the Rockbridge sentence run concurrently, upon habeas corpus. I recommend that the legal principles be contested in court.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### JAILS AND PRISONERS—Sentence.

RICHMOND, VA., *October 21, 1930.*

MR. H. H. CHEWNING,  
*State Farm, Virginia.*

DEAR MR. CHEWNING:

I am in receipt of your letter of the 19th instant, in which you write:

"If it is possible for you to do so, I would appreciate it very much if you would let me know whether or not a penitentiary sentence and a jail sentence can run concurrently.

"The case in question is one in which the party was sentenced to the penitentiary and immediately arraigned on another charge and plead guilty and immediately was sentenced to six months in jail. The judge said nothing about the sentences not running concurrently and I have been told that, unless he does specify that the sentences shall run consecutively, then they shall run concurrently. I would like to know if this is true and if the fact that one is a penitentiary sentence and the other a jail sentence, would affect this in any way."

Your inquiry is covered by section 4786 of the Code:

"In convictions for two or more offenses confinement to commence after previous term expires.—When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement."

Just how the sentences about which you write can be handled is problematical. I should say that, if the penitentiary authorities have been advised of the jail sentence, they will, after the expiration of the penitentiary sentence, hold the accused a reasonable length of time, in order to give the authorities of the county to whose jail the accused is sentenced an opportunity to send for him and convey him to jail, provided, of course, that the accused is such a one as cannot be used upon the State road force or has not been sentenced to confinement at the State Farm. In case the convict has been sentenced for his misdemeanor conviction to the State Farm, he can be immediately turned over to that institution. Those prisoners who are sentenced to the State convict road force are subject to the

control and placing of the penitentiary authorities, and I judge that in such a case it would not be necessary to have the prisoner remanded to his own county jail.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**JIM CROW LAW—Separation of races in passenger motor vehicles.**

RICHMOND, VA., *August 9, 1930.*

MESSRS. NELMS AND COLONNA,  
*Attorneys at Law,*  
*Schmelz National Bank Building,*  
*Newport News, Virginia.*

GENTLEMEN:

I am in receipt of your letter of August 7, asking my construction of that portion of section 3 of the Acts of 1930, page 343, relating to separation of races in passenger motor vehicles, which reads as follows:

“ \* \* but no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time \* \*.”

I think you are correct when you say that the word “contiguous” means “touching,” and it is my opinion that the act clearly means that persons of different races shall not be seated in seats which are next to one another.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**JUDGES—Authority to suspend execution sentence.**

RICHMOND, VA., *August 2, 1930.*

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,*  
*Richmond, Virginia.*

MY DEAR GOVERNOR:

I understand that you desire my opinion as to the authority of a circuit court judge under the following circumstances:

A person has been convicted of a felony in a trial before a judge of another circuit designated to sit in the place of the regular judge; the person convicted has been allowed bail to appear at a subsequent term of the court in which he was convicted to begin his sentence; the regular judge of the court is to sit during the term at which the person convicted is to appear and begin serving his sentence.

In my opinion, the regular judge has the same power and authority as the judge who presided at the trial of the case; and, while he has no power to suspend the sentence imposed upon the person convicted, he may tem-

porarily suspend the execution of the sentence, and this is so even though the term at which the person convicted was tried has ended and the sentence of the court has become final.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**JUDGMENTS—Commonwealth affected by limitation—Section 6474.**

RICHMOND, VA., *August 14, 1930.*

HON. R. A. FIFIELD,

*Remington, Virginia.*

DEAR MR. FIFIELD:

I am in receipt of your letter of the 12th instant, informing me that there are judgments of the circuit court of Fauquier county against certain persons, the title to whose real estate you are examining, and I note that these judgments were recovered one in October, 1893, and the other in November, 1893.

You also call my attention to section 5829 of the Code, providing that no statute of limitations, unless so expressed, shall apply to the Commonwealth; also to section 6474 having to do with the enforcement of judgment against land in the hands of grantees, and to section 6477 covering limitations of proceedings to enforce judgments.

In a note to section 6474, Judge Burks' address on the effect of the revision of this section by the Code of 1919 is referred to. I examined the quotation. It was no more extensive than the quotation in the note.

While I know of no case which has passed upon the three provisions as affecting each other, I am of the opinion, taking Judge Burks' address into consideration, that the Commonwealth is bound by the limitations provided for in section 6474, and that, although there is no limitation to the enforcement of judgments in favor of the Commonwealth as against the lands of the original judgment debtor while in his hands, a limitation of ten years applies to Commonwealth judgments against lands in the hands of a grantee.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**JUDGMENT—Duration of lien.**

RICHMOND, VA., *January 10, 1931.*

MR. C. A. JOHNSON, *Clerk,*

*Wise, Virginia.*

DEAR MR. JOHNSON:

I am in receipt of your letter of the 8th instant, in which you write:

"I would be very glad to have your opinion as to whether or not a lien of a judgment in favor of the Commonwealth ceases after the expiration of twenty years from the date of the judgment imposing the fine. See section 2443 of the Code 1930, which reads in part:

'No action, suit, or proceeding of *any nature*, however, shall be brought or had for the recovery of a fine or costs due the Commonwealth or any political subdivision thereof, unless within twenty years from the date of the judgment imposing the fine.' Also see footnote under section 6474 of the Code under heading 'In general' reciting the case of *Hutchinson v. Grubb*, and other cases in which the principle was settled 'that the lien of a judgment ceases with the life of the judgment.'

In my opinion, section 2543 of the Code of 1930 applies to judgments for fines payable to the Commonwealth.

Chapter 102 of the Code, of which section 2543 is the first section, is indexed as "Recovery of Fines," and all of the provisions of that chapter, and they are many, have to do with fines as contra-distinguished from judgments.

Chapter 271, of which section 6474 is a part, has to do with judgments or decrees for money and the docketing, the lien and the enforcement thereof, and the limitation of proceedings on judgments.

Section 6474, having to do with the enforcement of judgments, has no reference to judgments in favor of the Commonwealth, neither has the reference in the notes to that section beginning with "In general." Statutes of limitation, unless otherwise specifically provided, do not run against the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### JUDGMENTS—Fine and costs—Docketing.

RICHMOND, VA., April 30, 1931.

HON. JOHN H. POWELL, *Clerk,*  
*Suffolk, Virginia.*

DEAR MR. POWELL:

I am in receipt of your letter of yesterday, in which you inquire concerning the docketing of a judgment for fine and costs against a person convicted in a criminal case, and I note that you are of the opinion that the section of the Code ordering such docketing is erroneous because the person convicted does not pay the fine and costs assessed against him where he is confined in jail.

You are mistaken in your conclusion that judgment for fine and costs against a person convicted of crime should not be docketed where they are confined in jail for non-payment. All such judgments should be docketed. Section 2095 covers the thought you have in mind by providing certain credits amounting to 50 cents per day for each day the convict works and 25 cents per day for each day of confinement whether he works or not. The amount to which he thus becomes entitled as a credit should be certified by the person in charge of the working force to the clerk of the court of the county from which the prisoner is sent, and the clerk should credit the judgment by this amount, just as he would any other credit which is paid by a judgment debtor.

A foot-note to section 2095 refers to the case of *May v. Dillard*, 134 Va. 707, and I invite your attention to that case.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**JURY—Exempt from on account of age.**

RICHMOND, VA., *March 2, 1931.*

MR. A. H. JENNINGS,

*P. O. Box 714,*

*Lynchburg, Virginia.*

DEAR MR. JENNINGS:

I am in receipt of your letter of the 27th of February, in which you state that you are sixty-two years old and desire to know whether or not you are exempt from grand jury service and whether or not you can be compelled to serve.

Section 4852 of the Code in part provides:

“ \* \* provided, that no male citizen over sixty years of age shall be compelled to serve as a grand juror.”

Most of the judges, I understand, construe this section as requiring a person summoned as a petit or grand juror to appear in court pursuant to the summons and claim his exemption.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**JUSTICE—Special—Jurisdiction of.**

RICHMOND, VA., *August 28, 1930.*

HON. T. H. CRABTREE,

*Juvenile Judge,*

*Abingdon, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of August 25, in which you inquire whether a special justice, known as the Juvenile and Domestic Relations Judge of the county, appointed under authority of the Acts of Assembly 1922, page 835, in addition to the jurisdiction expressly conferred upon him by the five subsections of section 5 of that act, also has jurisdiction for the trial of civil and criminal cases where the defendants are over the age of eighteen years.

The provision of that section, which reads that “Said special justice shall, in all cases, possess the jurisdiction and exercise all the powers conferred upon justices of the peace and police justices by the laws of this State,” would seem to give some possible basis to the view that a special justice appointed under this act has the very wide jurisdiction to which you refer. I do not think, however, that this is the case. Where specific powers

are given, followed by what appears to be a general grant of power, it is well recognized that the general grant must be interpreted in the light of the specific grant. I, therefore, think that the provision quoted above simply confers upon a special justice, in such cases as are therein expressly mentioned, the full and complete powers and authorities of a justice of the peace and a police justice and, further, that the general power above quoted does not extend the jurisdiction of a special justice beyond the matters enumerated specifically in subsection (5).

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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#### JUSTICES OF THE PEACE—Fees of in lunacy proceedings.

RICHMOND, VA., *February 14, 1931.*

HON. CLAUDE R. WOOD;

*Commonwealth's Attorney,  
Dillwyn, Virginia.*

DEAR MR. WOOD:

I am in receipt of your letter of February 13 in further reference to the fee or fees allowed justices of the peace for their services in lunacy proceedings, and I note your argument to the effect that, in your opinion, a justice is only entitled to a fee of \$2.00 for all services in connection with such proceedings.

My opinion that a justice is entitled to \$3.00 is based upon the fact that, under section 3507 of the Code, he is entitled "For issuing warrant of arrest, one dollar." The fee of \$2.00 for his services under the provisions of section 1021 of the Code is confined to services rendered at the hearing by the commission.

My opinion is strengthened by the fact that under the provisions of section 3507, after allowing a fee of \$1.00 to a justice for issuing a warrant of arrest, he is allowed a further fee of \$2.00 for trying or examining a case of misdemeanor and a fee of \$2.00 for examining a charge of felony. The provisions of section 3507 differentiate the issuing of warrants from trying or examining cases. There are, as you know, quite a few other fees which a justice is entitled to, such as admitting a person to bail, etc. These are the fees which, in my opinion, are included in the provision that \$2.00 is to cover all the fees of a justice.

It may be noted that only a justice may issue a warrant of arrest, while another may sit in the proceedings of the commission. Of course the fee, whether \$1.00 or \$2.00, is payable by the county.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**JUSTICES OF THE PEACE—Jurisdiction of in towns.**RICHMOND, VA., *October 9, 1930.*

MR. W. H. SAUNDERS,  
*Justice of the Peace,*  
*Chase City, Virginia.*

DEAR MR. SAUNDERS:

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

"Please advise me if a justice of the peace can issue warrants of arrest and try same for violations of the criminal laws of the State of Virginia, in incorporated towns, or must all warrants for felonies and other violations be issued and tried by the mayor."

Except in those counties where there are trial justices, justices of the peace in towns of the State have the same jurisdiction as in counties outside of such towns and may issue warrants and try the same for violations of the State criminal laws. This jurisdiction does not apply to violations of town ordinances.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**JUSTICES OF THE PEACE—Jurisdiction of ordinary and trial justices in prohibition misdemeanors.**RICHMOND, VA., *August 14, 1930.*

HON. E. C. BURKS,  
*Attorney for the Commonwealth,*  
*Bedford, Virginia.*

DEAR MR. BURKS:

I am in receipt of your letter of the 12th instant, in which you ask my opinion as to the right of a justice to make final disposition of misdemeanor prohibition cases where there is no plea of guilty.

Elected or ordinary justices of the peace, as distinguished from trial justices, have no jurisdiction to try prohibition misdemeanors other than those embraced in sections 17 and 18 of the Layman Prohibition Act.

Section 33 was intended to cover cases where the trial officer had only jurisdiction to examine and to discharge or send on to the grand jury, and was not intended to enlarge the jurisdiction of justices of the peace or other officers whose only jurisdiction was to examine so as to allow them to try and make final disposition, subject, of course, to the right of appeal. In those cases in which the trial officer only has the jurisdiction of an examining magistrate, he has no authority to suspend sentence. With the consent of the Commonwealth's attorney, justices of the peace may accept pleas of guilty and fix the punishment. Section 25 of the Layman Prohibition Law comes within the foregoing opinion. Justices of the peace can neither try nor suspend sentences, though they may accept pleas of guilty and fix the punishment, the provisions as to a convicted person not being allowed to drive a car for one year being automatic.

Trial justices appointed by circuit courts under the trial justice act do not come within my opinion, as the act creating trial justices expressly gives them authority to try prohibition misdemeanor cases. While their authority to suspend sentence is not perfectly clear, I have expressed the opinion that they have such authority.

Section 33, providing for fees of officers, allows a justice of the peace to tax in the costs against a defendant the same fees as are allowed in courts of record.

Before the amendment to section 46, attorneys for the Commonwealth were entitled to fees of \$25 for each case finally disposed of by justices of the peace. You will notice, however, that that section has reduced the fees of attorneys for the Commonwealth in misdemeanor cases before a justice upon a plea of guilty to \$10 and to fees of \$5 in cases of violations of sections 17 and 18 of the prohibition law.

Attorneys for the Commonwealth are entitled to fees of \$25 in cases finally disposed of by trial justices.

Sincerely yours,

JNO. R. SAUNDERS,

*Attorney General.*

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#### JUSTICES OF THE PEACE—Local jurisdiction.

RICHMOND, VA., June 11, 1931.

MR. W. W. HASKINS,  
*Prospect, Virginia.*

DEAR MR. HASKINS:

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

"Please write me if it is legal for a case to be tried in any other district and by a justice in another district, than the one in which a crime was committed. A crime was committed in Prospect district and the deputy sheriff here swore out warrants before a justice here and a justice in another district issued copies of the warrant in another district and heard the case. Please let me know if this was according to law."

The local jurisdiction of justices of the peace to try cases is found in section 4824 of the Code. An examination for a felony may be had by any justice in any portion of a county. In cases of misdemeanor any justice may issue a warrant, but it must be made returnable in the district in which the offense was committed and tried by a justice of that district, with a further provision under section 4848 of the Code that a justice may associate another justice or other justices of the county with him, and this provision for other justices being associated with the justice issuing the warrant is made imperative by section 6022 of the Code, as amended by the Acts of 1930, page 682, when the defendant requests a full bench.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**LABOR LAWS—Number of hours women are permitted to work.**

RICHMOND, VA., July 14, 1930.

MR. A. H. JONES,  
*Blackstone, Virginia.*

DEAR SIR:

I am in receipt of your letter of July 7, in which you ask whether "there is a law on the statutes of Virginia, where women are employed in stores, that regulate the number of hours they should work per day and, if so, how many hours and what is the penalty for employers forcing them to work longer than prescribed by law."

I refer you to section 1808 of the Code, as amended by Acts 1926, page 895. Our statute applies to women working in any factory, workshop, laundry, restaurant, mercantile or manufacturing establishment, with the exception of those whose full time is employed as bookkeepers, stenographers, cashiers or office assistants, or who are employed exclusively in packing fruits or vegetables, or in mercantile establishments in towns of less than two thousand inhabitants. It is provided that no woman, who falls within the provisions of the act, shall be employed, or permitted to work, more than ten hours in any one day of twenty-four hours. Any person who employs a woman in such work as is covered by the act, and allows her to work more than the prescribed time, is guilty of a misdemeanor and may be fined not less than ten nor more than twenty-five dollars upon the first offense, and not less than twenty-five nor more than fifty dollars upon the second offense.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**LICENSES—Annual renewal fee required of engineers, architects and surveyors.**

RICHMOND, VA., January 20, 1931.

MR. G. BRICK SMITH,  
*Attorney at Law,*  
*Box 665,*  
*Newport News, Virginia.*

DEAR SIR:

I am in receipt of your letter of January 19, in which you desire to be advised whether the \$5.00 annual renewal fee, payable by engineers, architects and surveyors under the provisions of chapter 125A of the Code, is included in the yearly revenue license of engineers required by section 178 of the Tax Code.

In my opinion the annual renewal fee and the tax fee provided in section 178 of the Code are two separate and distinct fees, each of which must be paid annually.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**LICENSES—Marriage—Affidavit for.**RICHMOND, VA., *October 28, 1930.*

HON. G. C. ALDERSON, *Clerk,*  
*Hopewell, Virginia.*

DEAR MR. ALDERSON:

I am in receipt of your letter of the 24th instant, enclosing copy of application for a marriage license. You ask my opinion as to whether or not it is mandatory upon a clerk to require an affidavit of persons seeking a marriage license concerning their venereal disease conditions.

It is not obligatory upon you to require such an affidavit. I have just called up Dr. Plecker, Registrar of the Bureau of Vital Statistics, and he refers to section 5088a of the Code. Subsection 3 of that section makes it illegal for a clerk of the court to knowingly issue a marriage license where either of the prospective contracting parties is afflicted with any contagious venereal diseases. As you will notice, the clerk is authorized to accept an affidavit of the man that he is free of the disease and believes the woman to be, but he is not required to inquire of either party. If he knows that either is diseased, he should not grant a license.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**LICENSE—Peddlers.**RICHMOND, VA., *August 5, 1930.*

MESSRS. PLUNKETT AND PLUNKETT,  
*Attorneys at Law,*  
*Shenandoah Life Building,*  
*Roanoke, Virginia.*

GENTLEMEN:

I am in receipt of your letter of July 21, in which you ask whether, in my opinion, one who produces and sells bread by delivering the same from door to door is required by section 192 of the Tax Code to pay a peddler's tax.

In the case of *Corby Baking Co. v. Commonwealth*, 123 Va. 10, it was held that bread which was not purchased, but which was produced, was a family supply of a perishable nature.

It, therefore, seems to be clear that a concern doing a business as you outlined is not compelled to pay a peddler's tax.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**LICENSES—Required of sight-seeing buses engaged in interstate transportation.**RICHMOND, VA., *January 7, 1931.*

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 3rd instant, with which is enclosed a letter from Mr. E. D. Merrill, President and General Manager of the Washington Rapid Transit Company, of Washington, D. C., and I note the inquiries contained in Mr. Merrill's letter.

Section 7 of chapter 419 of the Acts of 1930, found on page 899, provides that every person, firm or corporation desiring to engage in interstate transportation of passengers shall apply to and receive a certificate from the Corporation Commission of Virginia granting such a privilege, and that the person receiving the certificate shall pay into the State road fund the same license fees as are now required by law to be paid by motor carriers engaged in the transportation of passengers wholly within the State.

The Honorable Lester Hooker, one of the members of the State Corporation Commission and who has general supervision on behalf of the Commission of the transportation laws affecting the Commission, informs me that the Commission has ruled that sight-seeing buses, such as are described in Mr. Merrill's letter, come within the provisions of the section I have quoted. He further informs me that a large number of persons and corporations operating buses such as the Washington Rapid Transit Company desires to operate in Virginia have already complied with the Virginia law as interpreted by the Commission.

Under these circumstances, I advise you to notify the Washington Rapid Transit Company that they will be expected to comply with section 7 of chapter 419 of the Acts of 1930 and pay into your office the same license fees as are required of motor vehicle carriers operating wholly within the State of Virginia.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**LICENSE—Town may impose on itinerant merchants.**RICHMOND, VA., *May 8, 1931.*

HON. E. D. COBURN, *Mayor,*  
*Narrows, Virginia.*

DEAR SIR:

I have for reply your letter of April 30, in which you ask whether your town has a right to levy a license tax on persons from other localities who come into your town and sell their products to the merchants thereof.

Prior to Acts 1930, page 829, a town had no such right so long as the person making the sale had paid his merchant's license tax to the State and to the city or town in which his place of business was located (see paragraph 16 of section 188 of the Tax Code).

By Acts 1930, page 829, it was provided:

"The council of each and every city and town in this State is hereby authorized to impose a city or town license tax on every person, firm and corporation other than a distributor and/or vendor of motor vehicle fuels and petroleum products, a farmer, a dealer in forest products, a producer or manufacturer, who or which shall sell and deliver at the same time in such city or town, other than at a definite place of business, goods, wares or merchandise, to licensed dealers or retailers. This act, however, shall not be construed as impairing in any way any existing power of any city or town to impose city or town license taxes. The council of each city and town may require that every vehicle used in the business aforesaid shall have conspicuously displayed thereon the name of the person, firm or corporation using the same, together with his or its post office address, and such licenses shall be conspicuously displayed in each vehicle."

This would seem to confer the right about which you ask.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**MARRIAGE—Right of chaplain in United States Navy to perform ceremony on government reservation.**

RICHMOND, VA., *August 4, 1930.*

REAR ADMIRAL G. H. BURRAGE,

*United States Navy,*

*Commandant, Naval Operating Base,*

*Norfolk, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of July 26 in which you ask the following three questions:

"Can a chaplain in the United States Navy, who is a non-resident and has not qualified according to the laws of Virginia, perform a marriage ceremony on a government reservation between two contracting parties that present him with a marriage license issued by the courts of this State?"

"Can a chaplain in the United States Navy, who is a resident of Virginia and has qualified according to the laws thereof, perform a marriage ceremony on a government reservation between two contracting parties that present him with a marriage license issued by the courts of this State?"

"Should your answer to one or both of the above queries be in the affirmative, what are the requirements, in so far as the law applies, as to their making a report of marriage ceremonies performed?"

Article I, section 8, of the Federal Constitution gives to the Federal government power to exercise "over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of

forts, magazines, arsenals, dock-yards, and other needful buildings," the same authority which it has over the District of Columbia.

It was held in *Fort Leavenworth Railroad Co. v. Low*, 114 U. S. 525, and in *Bank of Phoebus v. Byrum*, 110 Va. 708, that, if property had been purchased by the Federal government with the consent of the Legislature of the State in whose territorial bounds such property lay, the Federal government had exclusive jurisdiction within the bounds of that property. On the other hand, if property be otherwise acquired by the Federal government, the State gives up only so much of its jurisdiction over that property as may be necessary to permit the Federal government to use such property for the purposes for which it was purchased.

Whether or not, therefore, the marriage laws of the State of Virginia are effective within a government reservation depends, in my opinion, upon the method by which such reservation was acquired by the Federal government. If it was purchased with the consent of the State Legislature as was Fortress Monroe, I do not think that the laws of Virginia are applicable to a marriage celebration within such reservation; if, on the other hand, the property was acquired by any other method than purchase with the consent of the Legislature, I am of the opinion that the laws of this State relating to the celebration of a marriage, and the enforcing of those laws within such reservation, should in no way prevent the Federal government from using and controlling the property for the purposes for which it was obtained.

In answering your three questions, I, therefore, wish it to be understood that my answer refers only to such reservations as were acquired by some method other than purchase with the consent of the State Legislature. I take up your questions in the order in which they were submitted.

1. A chaplain in the United States Navy, either resident or non-resident, who has not qualified according to the laws of this State, cannot perform a marriage ceremony on a government reservation over which this Commonwealth has any jurisdiction.

2. A chaplain in the United States Navy, either resident or non-resident, who has qualified according to the laws of this State, may perform a marriage ceremony on a government reservation over which this Commonwealth has jurisdiction.

3. Before any minister, resident or non-resident, chaplain or not a chaplain, is authorized to celebrate a marriage ceremony he must comply with section 5079 of our Code which requires of him to "produce before the circuit court of any county or city or before the corporation court of any city in this State, or before the judge of either of said courts in vacation, proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member." Such circuit judge may then enter an order authorizing such minister to celebrate the rites of matrimony in this State, "upon the execution by such minister of a bond in the penalty of five hundred dollars, with surety, conditioned according to law, before either of such courts, or before the judge of either of such courts in vacation, or before the clerk of either of such courts." The order of such court and the execution of the bond give the minister the right to celebrate marriages in any county or city within the jurisdiction of this State.

Section 5074 of the Code provides for the issuance of a license to parties about to be married and makes it the duty of the minister or other person celebrating the marriage to take the license and, within thirty days after the marriage has been celebrated, to return it, together with his own certificate of the time and place at which the said marriage was celebrated, to the clerk who issued it. In the event the minister fails to do so, he is liable to a fine of not less than ten nor more than twenty dollars for each offense.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

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**MAYORS—Jurisdiction of.**

RICHMOND, VA., *September 26, 1930.*

HON. LEONARD H. BELL, *Mayor,*  
*Berryville, Virginia.*

DEAR SIR:

I am in receipt of your letter of September 24, in which you ask me how far your jurisdiction as mayor extends.

Section 3011 of the Code clothes you with the authority of a justice in civil and criminal matters within your town. It also gives you authority to try all prosecutions, cases and controversies which may arise under the by-laws and ordinances of the town. This last mentioned authority given to you is enlarged somewhat by section 3006 of the Code, which extends to the corporate authorities of each town jurisdiction in criminal matters one mile beyond the corporate limits thereof. In prohibition matters, by virtue of section 34 of the prohibition act, you are given jurisdiction over the territory within three miles of your town for the enforcement of liquor ordinances (Acts 1930, page 830).

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**MAYORS—Right to suspend sentence in prohibition cases.**

RICHMOND, VA., *November 3, 1930.*

HON. CHARLES H. FUNK,  
*Attorney for the Commonwealth,*  
*Marion, Virginia.*

DEAR MR. FUNK:

I am in receipt of your letter of the 30th ultimo, from which I quote:

"A few months ago one person was arrested within the town of Saltville for driving while intoxicated, and another within about a mile of Saltville. Both went before the Mayor and plead guilty. The Mayor fined them \$100 and costs and gave them a 30 day suspended sentence, feeling that he had a right to do so. Now, since that time, one of these men has been indicted by the grand jury for the same offense for which he was tried and fined."

In this letter you refer to sections 25, 33 and 34 of the Layman Prohibition Law, and ask my opinion as to whether or not the second prosecution of one of the persons heretofore convicted by the Mayor of Saltville, and punished by a fine and suspended sentence, should be held in your circuit court.

I have heretofore expressed an opinion in a letter to Honorable John H. Booten, a justice, of Luray, Virginia, under date of February 6, 1929, that a justice of the peace may not suspend sentence for a violation of any prohibition law; that a mayor or a town justice may suspend a jail sentence for the first offense for driving while drunk, but that there is no authority under the law for the suspension of that part of the punishment which provides for the automatic revocation of the right of a person to again drive an automobile within a year from the date of his conviction.

I am not altogether sure that I should have expressed the opinion that a mayor or other person trying an accused for a violation of a town ordinance could suspend sentence for a first offense.

Section 37 of the prohibition law, which gives to certain counties and all of the cities and towns of the State authority to pass prohibition ordinances, expressly provides that—

“ \* \* no mayor, police justice or other person having jurisdiction to try offenses against such ordinances shall have power to suspend the sentence of any person convicted of the violation of said city or town ordinances; provided that nothing herein contained shall be construed to prevent mayor, police justice or other persons having jurisdiction to try offenses against such ordinances from suspending the jail sentences in cases of transportation and possession of ardent spirits where the quantity does not exceed one pint.”

This provision of law clearly denies all trial officers the right of suspending violations of city or town ordinances, except in cases of possession or transportation, not exceeding one pint, of ardent spirits.

I do not think that section 34, to which you refer, has a bearing upon the authority of a mayor to suspend a city or town ordinance.

However, the second paragraph of section 6 of the State Prohibition Law, without expressly giving the power of suspension, provides that—

“ \* \* no court, nor the judge thereof, of this Commonwealth, nor any justice, mayor or other officer trying the case, shall suspend the sentence of any person convicted of any felony or the illegal manufacture, or the sale, of ardent spirits or the transportation thereof in quantities exceeding one gallon, or for any second or subsequent conviction of any offense against the prohibition laws of this State or any ordinance of a city or town authorized by this act, since the first day of November, nineteen hundred and sixteen.”

The opinion expressed in my letter to Justice Booten was largely based upon the provision last quoted.

After further consideration of the question as to the right of a mayor to suspend sentence, I have come to the conclusion that there is serious conflict between the provisions of the law quoted from section 37, denying mayors the right to suspend sentence, and the inference contained in section 6 that a mayor may suspend sentence except in those cases where authority so to do is expressly denied him by that section. It would rather seem that

the express denial of authority as contained in section 37 should be given greater weight in interpreting the law of the right of a mayor to suspend than the second paragraph in section 6, which would inferentially give such right.

Section 37, giving localities the right to pass prohibition ordinances, expressly provides that the penalties for violations of ordinances should be the same as those provided by the State law for similar offenses.

You do not state whether the Mayor of Saltville tried the two accused persons under town ordinance or under the State law. If they were tried under a town ordinance, the law which I have quoted is applicable to the cases with an exception hereafter to be noticed. If not tried under a town ordinance, and the Mayor of Saltville was acting as ex-officio justice of the peace, then there is no doubt of the law he had no authority to suspend the jail sentence. Justices of the peace are expressly prohibited, under section 33, from trying any prohibition offenses except under sections 17 and 18 of the prohibition law. They are only authorized, in the presence of the Commonwealth's Attorney and with his consent endorsed in writing on the warrant, to accept a plea of guilty and fix the punishment.

In the paragraph in your letter from which I have quoted, you speak of the accused as having been arrested and going before the mayor.

In addition to the fact that the mayor may not have had a right to suspend sentence in a case which was properly presented by prosecuting officers, I do not think that a person can claim *autrefois* convict in a case in which he went before a trial officer for the express purpose of defeating the jurisdiction of a circuit court.

In prosecutions before a mayor, it is his duty to notify the Attorney for the Commonwealth of his county of the time set for the trial and, if he does not do so, I doubt very much whether he has jurisdiction. If he does notify the Attorney for the Commonwealth, I should say that it would be rather unusual for him to proceed with the trial of the case if the Attorney for the Commonwealth desired to have the case *nolle* prosequed.

You would not at all embarrass me by proceeding with the trial of the indictment referred to in your letter. There are questions involved in the prosecution which should undoubtedly be passed upon by the court of last resort, as I have heretofore understood that the courts of the several jurisdictions in Virginia hold differently as to the authority of mayors to suspend sentences. It is certainly unfortunate to have the law concerning the right of a mayor to suspend sentences differently construed in different jurisdictions. There should be a uniformity of decision, and this can only be brought about by a final determination of the Supreme Court of Appeals.

I shall be pleased to have a letter from you letting me know the outcome of the case you refer to, should it be disposed of in the circuit court.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**MILLER MANUAL LABOR SCHOOL—Publication as to trust fund.**RICHMOND, VA., *February 17, 1931.*VIRGINIA TRUST COMPANY,  
*Richmond, Virginia.*

GENTLEMEN:

*In re:* Miller Manual Labor School Fund.

I beg to acknowledge receipt of your letter of yesterday in which you call my attention to the fact that the Virginia Trust Company was appointed fiscal agent by the Board of Trustees of the Miller Manual Labor School pursuant to the provisions of clause V of an Act of Assembly approved February 21, 1930 (Acts 1930, page 35), and that by clause VI it is required to "discharge all the duties devolved by said twenty-fifth clause of the will of Samuel Miller upon the second auditor and shall receive such compensation as may be allowed," etc.

That portion of the twenty-fifth clause of the said will, which is pertinent to this inquiry, reads as follows:

" \* the Second Auditor \* \* shall annually on the 31st day of December, make out and render a true and accurate account of the said fund showing distinctly and in detail the disbursements and receipts on account of the same during the year immediately preceding, a copy of which account, verified by the oath of the Second Auditor, shall, as soon thereafter as may be, be delivered to the Governor of this Commonwealth for the time being, to be by him laid before the Legislature thereof, and another copy thereof, verified in like manner, shall be published forthwith for one month in two newspapers, one printed in the Town of Charlottesville, in the said County of Albemarle, and the other in the City of Richmond, the cost of which publications shall be paid out of the profits and income of the said trust fund."

It appears that the second auditor, during the period in which he had charge of the fund, did not make it a practice to show in the account of said fund required by the twenty-fifth clause of the will each separate item of receipts and disbursements and the dates thereof, but that he consolidated them and showed the aggregate income received from the several sources and the aggregate disbursements made on account of the several types of expenditures.

You have asked whether, in the opinion of the Attorney General, it will be permissible for you "in the account of income receipts, to give the aggregate of the income received, indicating the sources from which received, namely: from real estate secured bonds, from Virginia State bonds, etc., and in the statement of disbursements from income account to aggregate forms of disbursements of a like nature, and in the principal account would it be permissible for us to state the balance on hand as of the beginning of the fiscal year, the aggregate amount of securities paid off or redeemed, etc., and the aggregate amount of the investments made, indicating their character. What we have in mind is to make such a summarized report to the Governor and then publish the same, and also furnish to the Governor a complete itemized statement of the fund. In the account rendered to the Governor and published, we would also summarize the securities held, namely: state the aggregate amount thereof in real estate secured bonds, the aggregate amount thereof in State or municipal bonds, etc."

I am of the opinion that it will be permissible for you so to proceed. It appears that for years the officer charged with the administration of this fund proceeded in this fashion so far as publication was concerned. It would also appear that a publication of each separate item with the date thereof would subject this fund to an annual expense which is not necessary under the will, but that the publication of such a statement as has heretofore been made by the second auditor, as is contemplated by you, would be in essence a compliance with the directions of the testator.

Yours very truly,

COLLINS DENNY, JR.,

*Assistant Attorney General.*

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**MOTOR VEHICLE COMMISSIONER—Has no authority to appoint inspectors to patrol private property.**

RICHMOND, VA., January 7, 1931.

HON. T. McCALL FRAZIER, *Director,*  
*Division of Motor Vehicles,*  
*Richmond, Virginia.*

DEAR MR. FRAZIER:

I am in receipt of your letter of the 30th ultimo, with which you enclosed a letter under date of December 22 from Honorable A. S. Johnson, General Manager of the James River Bridge Corporation, and I note what you have to say and what Mr. Johnson has to say as to the appointment of inspectors of your department for duty on the James river bridge, and the further fact that the inspectors are paid not by the State but by the Bridge Corporation.

In my opinion, there is no authority of law for the appointment by you of inspectors to patrol private property. I do not think that the fact that the State incurs no financial obligation to pay these men in any way modifies the law or enlarges your right to appoint them for patrol duty on the James river bridge.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**OFFICE—Eligibility of member of town council for election to school board.**

RICHMOND, VA., May 19, 1931.

MR. W. CABELL FITZPATRICK,  
*Attorney at Law,*  
*Peoples Bank Building,*  
*Farmville, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of May 18, in which you inquire whether a member of the town council of Farmville, Virginia, is eligible for election to the school board of Prince Edward county, and in

which you state that the town of Farmville is not a separate school unit, but is a part of the general county system.

In my opinion he is eligible. Section 786 of the Code, to which you refer, deals with the eligibility of persons to school boards in cities and towns constituting separate school districts. Section 644-1 (Acts 1930, page 794) is concerned with the eligibility of persons to the county school boards, and in this last mentioned section a member of the council of a town located within the county is not rendered ineligible for membership on the county school board.

If the town of Farmville were constituted a separate town school district, then you would fall under section 786 and my answer to your inquiry would not be applicable.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**OFFICES—Compatibility of.**

RICHMOND, VA., *August 12, 1930.*

HON. HARRY L. SNEAD,  
*Attorney at Law,*  
*Union Trust Building,*  
*Petersburg, Virginia.*

DEAR MR. SNEAD:

I am in receipt of your letter of recent date, in which you ask whether a member of the town council is permitted to hold the office of school trustee in the county wherein the town is located.

I beg to advise that, in my opinion, this is not prohibited. This seems to be the only conclusion that can be drawn from Acts 1930, chapter 360, page 794.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**OFFICES—Compatibility of.**

RICHMOND, VA., *August 9, 1930.*

HON. E. HUGH SMITH,  
*Heathsville, Virginia.*

DEAR JUDGE SMITH:

I am in receipt of your letter of August 5, asking my opinion upon the question whether a division superintendent of schools can be appointed commissioner of accounts.

In view of Act 1930, page 878, et seq. (section 650), which provides "No Federal officer or employee, no State officer, except appointees by the governor, no State employee, no deputy of such officers and no officer, or employee or the deputy of such officer of a city, county or town shall be eligible to the office of division superintendent of schools," I am of the

opinion that the same gentleman cannot hold the office of commissioner of accounts and division superintendent of schools.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**OFFICES—Compatibility of.**

HON. EARL L. ABBOTT,  
*Attorney for the Commonwealth,  
New Castle, Virginia.*

MY DEAR MR. ABBOTT:

I beg leave to acknowledge receipt of your letter of August 1st, in which you desire to be advised whether Mr. Chas. F. Simpson, who has recently been appointed acting postmaster of New Castle, Virginia, can continue to be a member of the board of supervisors.

The answer to your question is found in chapter 449 of the Acts of the Assembly, 1928, which amend section 291 of the Code of Virginia. Among other provisions contained in this section, it is provided that a third or fourth class postmaster is not prohibited from holding the office of supervisor. It, therefore, follows that, if New Castle is either a third or fourth class post-office, Mr. Simpson can continue to act as a member of the board of supervisors of Craig County.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**OFFICES—Compatibility of.**

RICHMOND, VA., June 23, 1931.

HON. ROBERT A. RUSSELL,  
*Attorney for the Commonwealth,  
Rustburg, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of the 16th instant, in which you ask whether a county supervisor may also act as one of the commissioners to establish a boundary line between his county and another county, and in which you also ask whether a county supervisor may act as a fourth class postmaster.

I think it permissible for a county supervisor to act as commissioner to establish a boundary line between two counties, as it appears to me that such a commissioner is not an officer within the meaning of section 2702 of the Code.

The language of section 291 of the Code appears expressly to cover the case of a supervisor acting as fourth class postmaster, for it enumerates those Federal offices which it is permissible for certain State officials to hold. Among other provisions in section 291 is found the following:

"The preceding section shall not be construed to prevent \* \* fourth class \* \* postmasters from acting as \* \* supervisors, or from holding any district office under the government of any county."

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**OFFICES—Compatibility of—Can examiner of records serve as member of the House of Delegates.**

RICHMOND, VA., May 29, 1931.

MESSRS. OAST, OAST AND OAST,  
*Attorneys at Law,*  
*Portsmouth, Virginia.*

GENTLEMEN:

I beg to acknowledge receipt of your letter of the 28th instant, in which you ask whether or not a person may hold the office of examiner of records and at the same time be a member of the House of Delegates. You state that I have recently rendered an opinion in a case of this character.

To be frank with you, I do not recall having written the opinion. However, I take pleasure in submitting my views to you.

Section 44 of the Constitution provides for the qualifications of Senators and Delegates, who eligible, etc. One of the provisions contained in this section is as follows:

" \* \* But no person holding a salaried office under the State government, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court, shall be a member of either house of the General Assembly during his continuance in office, \* \*."

You will observe that there is nothing in this section which seems to prohibit an examiner of records from becoming a member of the General Assembly. The only part of the section which might possibly apply to him would be the assessor of taxes or the collector of taxes, but I do not think an examiner of records is either a collector or assessor of taxes within the meaning of this section.

I will further add that the representative from Rockbridge county in the House of Delegates was at the same time the examiner of records of that judicial circuit.

I also call your attention to the last sentence of section 47 of the Constitution, which reads as follows:

"Each house shall judge of the election, qualifications and returns of its members; \* \*."

I know of no reason why an examiner of records cannot be a member of the House of Delegates.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**OFFICES—Compatibility of—Eligibility of trustee of county school board to hold office of deputy commissioner of revenue.**RICHMOND, VA., *March 12, 1931.*

HON. EDWARD C. BURKS,  
*Commonwealth's Attorney,*  
*Bedford, Virginia.*

DEAR MR. BURKS:

I am in receipt of your letter of yesterday, in which you write asking for a ruling as to whether a person can hold the office of trustee of a county school board and at the same time the office of deputy commissioner of the revenue, and I note that you have advised that the same person cannot hold these two positions at the same time.

In my opinion, you are entirely correct. A deputy commissioner of the revenue is a county officer, as he is appointed by the court upon the recommendation of his principal and takes the oath of office.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Compatibility of—Clerk of one court acting deputy of another.**RICHMOND, VA., *January 15, 1931.*

MR. WILLIAM HODGES BAKER,  
*Room 331, S. A. L. Ry. Bldg.,*  
*Norfolk, Virginia.*

DEAR MR. BAKER:

I am in receipt of your two letters, both of the 13th instant, and note what you have to say in reference to the appointment of clerks and deputy clerks of the hustings court and the circuit court of the city of Portsmouth, and I further note that you say a question has arisen as to whether the law prohibits the clerk of one court acting as deputy clerk of another court. I also notice the memorandum which you have given me as to the authorities bearing upon the question.

You refer me to sections 2701 and 2702 of the Code.

Section 2701 provides for the appointment by the clerk of any city court, with the consent of the judge thereof, of deputy clerks. I assume that your appointment of deputy clerk will be made under the provisions of that section.

Section 2702 provides that no person holding certain offices shall hold any other office, elective or appointive, at the same time—with certain exceptions. You will notice that, while county clerks are enumerated, clerks of city courts are not included. Therefore, it does not seem that the clerk of a city court is prohibited from acting as deputy clerk of another city court.

In my opinion, the meaning of the word "liabilities" found in section 2989 is intended to cover offenses committed by officers or omissions in the performance of the duties of officers included in that section.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Incompatibility of—Can juvenile judge hold position of rural supervisor of schools.**

RICHMOND, VA., July 21, 1930.

HON. R. GRAY WILLIAMS,  
*Attorney at Law,*  
*38 Rouss Avenue,*  
*Winchester, Virginia.*

MY DEAR MR. WILLIAMS:

I beg to acknowledge receipt of your letter of July 14, in which you ask whether it is permissible for the same person to hold the office of juvenile judge in Berryville and also the position of rural supervisor of schools in Clarke county.

In my opinion this is permissible. Section 2702 of the Code, as amended by Acts 1930, page 809, does not, in my opinion, cover such a situation as this. I am advised by the State Board of Education that the position of rural supervisor of schools is really one of a supervising teacher. It is not an office created by any act of the Legislature, but rather it is one formed by the Board of Education for the purpose of supervising the instruction in a number of schools, and I think it is perfectly proper for the lady in whose interest you write to continue to hold both offices.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Incompatibility of—Can member of school board serve as councilman of town.**

RICHMOND, VA., July 21, 1930.

MR. LEWIS POFF, *Sergeant,*  
*Cambria, Virginia.*

MY DEAR SIR:

I beg to acknowledge receipt of your letter of July 15, in which you ask whether a member of the school board is eligible to serve as councilman of the town of Cambria. You refer me to section 12 of chapter 423 of the Acts of 1922.

The above act was repealed by chapter 471 of the Acts of 1928, and by Acts 1928, page 1295, it was amended and re-enacted. It 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 member of the county school board," etc. It would, therefore, appear that under this section there is no inconsistency in one holding a position on a municipal council and at the same time being a member of the county school board. I also refer you to section 2982 of the Code wherein it is provided that no member of any council shall be eligible, during his tenure of office, to any office to be filled by the council. The council of Cambria having nothing to do with the appointment of the members of the county school board, there is nothing in this section which would prevent a person from holding both offices.

Indeed, the two sections to which I have above referred would seem, by necessary implication, to permit one person to hold the two offices to which you refer.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**OFFICES—Incompatibility of—Game warden and justice of the peace.**

RICHMOND, VA., *September 9, 1930.*

HON. R. H. L. CHICHESTER,

*Attorney at Law,*

*Stafford, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 5 to the Attorney General. In his absence this letter has come to me for reply.

The question presented is as follows:

“Is a game warden eligible for the office of justice of the peace, so long as he does not try cases coming under the game laws of the State?”

I do not think that the same man can hold both of these offices. The matter would appear to be governed by section 3093 of the Code wherein it is provided that a justice shall not accept or hold the office of clerk of a court, sheriff, etc., or deputy of either, “or any other office incompatible with that of justice.” A game warden is an officer charged with the enforcement of certain specific laws. Such an office would clearly appear to be incompatible with that of a justice of the peace.

I might further add that the jurisdiction of a justice, being given to him by statute, is not subject to diminution. A man cannot go into the office of justice of the peace with only a part of the jurisdiction of that office.

Yours very truly,

COLLINS DENNY, JR.,

*Assistant Attorney General.*

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**OFFICES—Incompatibility of—Referee in bankruptcy serving as jury commissioner.**

RICHMOND, VA., *September 2, 1930.*

MR. F. C. BEDINGER,

*Attorney at Law,*

*Boydton, Virginia.*

DEAR MR. BEDINGER:

I am in receipt of your letter of the 26th ultimo, in which you state that Judge Turnbull desires to appoint you jury commissioner of Mecklenburg county and that at present you are referee in bankruptcy for the district composed of the counties of Brunswick, Lunenburg and Mecklenburg.

You refer to section 290 of the Code and express the opinion that you are not eligible for the office of jury commissioner and ask my opinion as to your eligibility.

Section 290 provides that no person shall be capable of holding any office or post mentioned in section 289 while holding any office or post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of the United States, or who is in the employment of such government, or who receives from it any emolument whatever. The office or post mentioned in section 289 refers to an office of honor, profit or trust.

It becomes necessary, therefore, to ascertain whether or not the position of jury commissioner is an office.

Previous to the time that Honorable William H. East, who was then a member of the State Senate, was appointed a member of the State Highway Commission, I very carefully investigated the question as to whether the position of highway commissioner was an office, and I arrived at the conclusion that it was not an office under the provisions of law which prevented a member of the General Assembly of Virginia, during the term for which he was elected, holding another office.

I am of the opinion that the conclusion reached in that case is sound, and that you are eligible to appointment as jury commissioner of your county while holding the position of referee in bankruptcy under the Federal government.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**OFFICES—Member of State Senate may hold position as superintendent of sanatorium.**

RICHMOND, VA., *March 16, 1931.*

DOCTOR ENNION G. WILLIAMS,

*State Health Commissioner,*

*Department of Health,*

*Richmond, Virginia.*

MY DEAR DR. WILLIAMS:

I am in receipt of your letter of the 14th instant, in which you state:

"1. The superintendent of Piedmont Sanatorium is an employee of the State Department of Health and is not an independent officer. He is subject at all times to the direct supervision of the State Health Commissioner.

"2. The Superintendent so employed is not required to qualify as an officer by taking oath of office which is taken and subscribed by State officers.

"3. The employment of the Superintendent is not made for any definite period but is terminable upon thirty days' notice, whenever, in the judgment of the Health Commissioner, it would be desirable to terminate the period of service.

" \* \* \* It is possible that under the enlarged authority given to Dr. Woodson the handling of the moneys of the institution will also be included, in which event we shall bond him as we bond Mr. Martin, Mr. Shelhorse, Mrs. Nicholls, and Dr. Brown, these being all who handle money belonging to the State Health Department."

My inquiry, to which your letter is a reply, was occasioned by the fact that a question had arisen as to the status of Doctor Woodson, who is superintendent of Piedmont Sanatorium and at the same time a State Senator.

By virtue of the State Constitution, a member of the General Assembly of Virginia may not at the same time hold a salaried office, and the question has arisen as to whether the position which Doctor Woodson holds is a salaried office.

In my opinion, the position of superintendent of Piedmont Sanatorium is not a salaried office within the meaning of the Constitution, when that provision is construed in connection with the statements contained in your letter. It is true that Doctor Woodson receives a salary, but according to your statement he is an employee for an indefinite tenure, is subject at all times to the direct supervision of the State Health Commissioner, is not required to take an oath of office, and his employment is terminable upon thirty days' notice whenever, in the judgment of the Health Commissioner, it is desirable to terminate the employment.

I will say that this opinion is consistent with that rendered in connection with the investigation of the law as applicable to several other employees of the State who have held positions carrying salary, but who were not construed to be officers of the State.

In my opinion, therefore, Doctor Woodson may hold the position of superintendent of Piedmont Sanatorium during his term of office as State Senator of Virginia.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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#### OPTOMETRY—Lawful and unlawful solicitation.

RICHMOND, VA., May 8, 1931.

HON. M. ANDERSON MAXEY,  
*Commonwealth's Attorney,*  
*Suffolk, Virginia.*

MY DEAR MR. MAXEY:

I beg to acknowledge receipt of your letter of May 1, in which you call my attention to the fact that a man in your city has been going from house to house for the purpose of fitting or selling spectacles, and that he contends that he makes these visits only upon specific requests from the occupants of the house that a call be made.

I think you are correct in your view that the legality of his action depends upon the bona fides thereof. If these are bona fide requests, it does not appear to me that he is violating that portion of section 1638 of the Code which prohibits house to house soliciting; on the other hand, if he calls and passes out a request card, it seems to me that he is violating the law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OYSTER LAW—Appropriation to be expended, for what purpose.**RICHMOND, VA., *March 3, 1931.*

HON. JOSEPH W. CHINN,  
*Commissioner of Fisheries,*  
*Warsaw, Virginia.*

MY DEAR JUDGE:

I am in receipt of your letter of February 25, in which you refer me to and quote from section 8 of chapter 253, page 673, of the Acts of 1930; section 3221 of the Code, as amended by chapter 302, page 735, of the Acts of 1930, and section 3242 of the Code, page 666, of the Acts of 1930.

In order that a better understanding may be had of my opinion, I am quoting your letter in full:

"An act of the General Assembly, approved March 26, 1928 (Acts 1928, p. 1279), as amended by an Act approved March 24, 1930 (Acts 1930, p. 672), directs an inspection tax of 2 cents per bushel to be levied on all oysters taken from public rocks and leased grounds, and the revenue derived therefrom paid into the State treasury. Section 6 of said Act provides that \$25,000.00 of said revenue shall be used by the State Health Commissioner for the purposes therein prescribed; and section 8, as amended, provides as follows:

"'All the rest and residue of the funds derived from the tax imposed by this act shall be set up as a special fund in the budget, to be known as the oyster repleting fund, to be appropriated and applied for the repletion of the depleted natural oyster rocks, shoals and beds of this State. The money to be so appropriated and applied shall be spent for seed oysters or oyster shells, or both, to be planted upon such of the depleted natural oyster rocks, shoals and beds, in the waters of this State, and the expense attendant upon such planting, as may be determined upon, from time to time, by the *Commission of Fisheries*. It being the intent and purpose of this act to restrict the expenditure of all money received, from any source connected with the oyster industry of this State, now or hereafter, to the conservation and development of that industry.'

"Section 3221 of the Code, as amended by an act approved March 24, 1930 (Acts 1930, p. 735), directs oyster inspectors to collect the fees specified therein for certain services, 'and such other fees as are specified under other sections of the Code pertaining to fish, crabs, clams and other shell fish,' and then provides:

"'All such fees and/or commissions heretofore allowed shall be paid into the treasury of the State without any deductions therefrom by way of commissions to the said inspectors, along with any other funds that may come into the hands of the inspectors, for services rendered in numbering boats or for any other service rendered by inspectors under provisions of law which heretofore have entitled inspectors to fees for such services. All such funds shall be appropriated by the budget for the repletion of natural rocks of the State.'

"Section 3242 of the Code, as amended by an act approved March 24, 1930 (Acts 1930, p. 666), after prescribing the license taxes to be imposed for the privilege of taking oysters or clams from the public rocks, then provides:

"'For issuing such license in each case herein specified, there shall be a fee of fifty cents paid by the licensee, in addition to said license tax, and which fee shall be turned over to the Commissioner, and

covered into the public treasury, to be appropriated, as provided by law, for the benefit of the seafood industry.'

"That fifty per cent (50%) of the income in the revenue derived under this act shall be segregated for the replenishment of the public oysters, rocks, beds and shoals of the Commonwealth.'

"As you will observe, the express purpose of the above statutes is that the funds derived under them shall be used for the 'repletion' and 'replenishment' of the natural oyster rocks, and the 'conservation and development of the oyster industry.'

"Unless and until they are closed to tonging there are only two methods known to the Commission by which the natural rocks of this State can be 'repleted' or 'replenished': (1) by planting young oysters and/or shells thereon, as prescribed by section 8, above quoted; and (2) by conserving the small oysters and shells now on the rocks in order that they may have an opportunity to replenish themselves by natural processes. Of these two methods the Commission feels convinced that the one last mentioned is, under the existing conditions, by far the most beneficial and effectual, but no matter what program of repletion is adopted, it is manifestly essential, in order to obtain the desired results, to provide a sufficient number of boats, inspectors, and other enforcement officers to protect the rocks from depredation. Unless this is done, the small oysters and shells would be removed from the rocks much faster than the State could put them back, and any effort at repletion or replenishment would be entirely futile. For these reasons, other available sources of revenue being insufficient for the purpose, the funds derived under section 3221, and the inspectors' fees provided by section 3242 (directed by that act 'to be appropriated, as provided by law, for the benefit of the seafood industry'), have been appropriated by the Commission of Fisheries in its budget to the payment of the salaries of inspectors and other expenses incident to the protection and conservation of the natural rocks of the State.

"Since, however, some question has recently arisen as to the proper application of these funds, I am writing to request that you will, after due consideration of the above, kindly advise the Commission whether in your opinion the funds specifically referred to should be segregated to the 'oyster repleting fund' set up by section 8 of the Act of 1928, as amended, to be used only for planting seed oysters and shells on the natural rocks, as therein provided; or, whether said funds can be properly used by the Commission, with the Governor's approval under the general appropriation Act (Acts 1930, p. 230), for the purposes to which said funds have been appropriated by the Commission, as above set forth.

"I will add that the Commission has not thus far undertaken to specifically appropriate the 'fifty per cent of the income' derived under section 3242 from the license taxes thereby imposed, and directed to be 'segregated for the replenishment' of the public rocks, it being the purpose of the Commission to use this revenue, even if not specifically so appropriated by the statute itself, for the purpose of planting seed oysters and shells on the rocks under 'the oyster repleting fund.' For the future guidance of the Governor, the State Comptroller's office, and the Commission of Fisheries, however, I will be obliged if you will also advise whether, in your opinion, the revenues derived from this particular source are specifically appropriated by the statute for planting seed oysters and/or shells and should, therefore, be placed in 'the oyster repleting fund,' or may be used, if necessary, for 'replenishment' by the other method herein before referred to."

In my opinion, it is the purpose of all the Acts to which you refer to conserve the valuable oyster industry of the State and, at the same time, put the financial affairs of your Commission upon an efficient budget basis.

As you suggest in your letter, there are but two principal ways of taking care of the oyster industry: (1) by planting young oysters and/or shells, and (2) by conserving the small oysters and shells now on the rocks.

The language used in section 3221 provides for the use of certain funds for the "repletion of natural oyster rocks of the State," while section 3242 provides funds "for the replenishment of the public oysters, rocks, beds and shoals of the Commonwealth."

The question which has arisen has to do with whether or not sections 3221 and 3242 require that such funds must be used exclusively in the purchase and planting of seed oysters and/or oyster shells, or may be used in taking care of the expense of inspectors and caretakers whose duty it would be to see that the present supply of young or seed oysters and oyster shells is conserved by preventing persons engaged in the oyster business from removing them from the present rocks and beds.

In my opinion, the conservation of the present seed oysters and oyster shells is of equal, if not paramount, importance to the planting of oysters and shells, and would result in a much more economical and efficient manner of preserving the oyster industry, and I am further of the opinion that the Commission of Fisheries is authorized, under the provisions of the sections quoted, to use the funds in any such reasonable manner as it may deem advisable and for the best interest of the oyster industry in conserving the present supply of seed oysters and oyster shells.

While section 8 of chapter 253, page 673, Acts 1930 provides "the money to be so appropriated and applied shall be spent for seed oysters or oyster shells, or both, to be planted upon such of the depleted natural oyster rocks, shoals and beds, in the waters of this State," it is my opinion that the language of the section should be liberally construed to carry out the intent and purpose of all the oyster legislation which was passed at the 1930 session of the General Assembly, and that money set apart under chapter 253 may be expended for the same purpose and in the same manner as the funds provided for the Commission by sections 3221 and 3242, and that such funds may be used as an "oyster repleting fund" and for the "replenishment of the public oyster rocks."

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### **PARDONS—Breach of conditional pardon.**

RICHMOND, VA., *September 23, 1930.*

HON. JOHN GARLAND POLLARD,  
*Governor of Virginia,*  
*Richmond, Virginia.*

MY DEAR GOVERNOR:

I am in receipt of your letter of the 20th instant, in which you enclosed a copy of a conditional pardon given Harry Waterfield by Honorable Harry

F. Byrd, your immediate predecessor as Governor of Virginia, and accompanying this you also enclosed a copy of a letter addressed to Honorable A. L. Jordan, Norfolk, Virginia, and certain other citizens and officials of Norfolk, and to Harry Waterfield personally.

You ask my opinion as to whether his recent conviction in the U. S. District Court for violating the National Prohibition Law is a breach of one of the conditions of the pardon granted Waterfield by Governor Byrd; the provision being to the effect "that he will conduct himself in the future as a good, law-abiding citizen, and that, if he should violate any of the above conditions or if ever again he be found guilty of a violation of the penal laws of the Commonwealth, this pardon shall be null and void."

The provision that he must in the future conduct himself as a good, law-abiding citizen was unquestionably broken when he violated the National Prohibition Law.

It is not stated in your letter just what National Prohibition Law he violated, but the State and National Prohibition Laws are virtually parallel and there are very few, if any, cases of violations of the National Prohibition Law which are not also violations of the Virginia Prohibition Law.

While it may be said that he was not actually convicted of a violation of the penal laws of Virginia, he must have been guilty of a violation of those laws should the offense charged against him have occurred within the jurisdiction of Virginia, and, although there may be a doubt as to a violation of the Virginia law, there is no doubt that he has been officially and formally found guilty of a violation of the National Prohibition Law in the Federal courts.

Therefore, in my opinion, he has violated the conditions upon which he was conditionally pardoned by Governor Byrd.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**PHARMACISTS—Requirements of in filling prescriptions for narcotic drugs.**

RICHMOND, VA., July 15, 1930.

HON. A. L. I. WINNE, *Secretary,*  
*State Board of Pharmacy,*  
*712 State Office Building,*  
*Richmond, Virginia.*

MY DEAR SIR:

I beg to acknowledge receipt of your letter of July 12, in which you ask the following questions regarding chapter 164 of the Acts of 1930, page 445:

"May a pharmacist lawfully fill a prescription for such narcotic drugs as are enumerated in the act when such prescription is phoned to the pharmacist by a physician, and also whether such a prescription must carry the signature of the prescribing physician?"

Section 1698-c of that act expressly provides that the selling of any of the mentioned drugs shall be on "a written prescription of a doctor," etc. I am, therefore, of the opinion that such a prescription should not be filled

on phone directions and that no prescription, which is not signed, would fall within the specific directions of the act.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**PENSIONS—Confederate—Estate of deceased entitled to funeral expenses.**

RICHMOND, VA., July 10, 1930.

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

*Richmond, Virginia.*

MY DEAR MR. COMBS:

I beg leave to acknowledge receipt of yours of July 9th, in which you submit the following case and the facts connected therewith for an opinion:

You state that Mr. B. S. Herrink filed his application for a Confederate pension on May 16, 1930; his application was approved by the Pension Board of Henrico County on May 20, 1930, and by the circuit court of the city of Richmond on May 22, 1930, and was filed in your office on May 24, 1930; that the law under which Mr. Herrink qualified as a pensioner became effective June 17, 1930, and his name was placed on the pension roll in your office. On July 1st the first check payable to him as a Confederate pensioner was mailed from your office. However, Mr. Herrink died before the check reached him. Later the administrator of his estate made application for \$50.00 to cover funeral expenses, as is now provided for by the Pension Law. Your question, therefore, is whether or not under these circumstances the estate of Mr. Herrink is entitled to be paid the \$50.00 for funeral expenses for Confederate pensioners.

I have carefully considered the facts stated in your letter, and also section 4 of the Virginia Pension Law, which is the section dealing with this question. It states that "Upon the certificate of the clerk of the circuit court of any county or the corporation or hustings court of any city that, upon reliable information under oath, of the death of any Confederate pensioner now on the pension rolls of this State, or who may hereafter be placed on said roll, it shall be the duty of the State Comptroller to issue his warrant for fifty dollars as an allowance for funeral expenses, in favor of the duly qualified personal representative of such pensioner, \* \* \*." I shall not quote the residue of the section, as that is unnecessary.

Mr. Herrink having made application for a Confederate pension to you on May 16, 1930, and his application having been approved in the manner which is provided for in the Pension Law, and his name having been placed on the pension roll by you, unquestionably, his estate is entitled to receive the fifty dollars for funeral expenses. The mere fact that he died on the 25th day of June, just five days before you mailed him his pension check, which, of course, had to be returned, in my judgment, in no manner affects the right of his estate to the fifty dollars, because he was already on the pension roll as is required by the statute.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**PENSIONS—Eligibility of Colonel Williamson to receive Confederate pension.**

RICHMOND, VA., July 21, 1930.

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

DEAR MR. COMBS:

I have considered with some care the question of whether Colonel E. M. Williamson is entitled to a Confederate pension. I understand that some years ago he retired from business and that his interest in his old concern amounted to \$20,000.00; that on this he is paid no interest and from it he derives no income, but that at certain times payments on account of principal are made to him.

While it is undoubtedly the case that the primary purpose of the pension law is to care for those who need support, nevertheless, the test whether a person who holds no national, State or county office shall receive a pension is his income from any and all sources. If that income exceeds \$1,000.00, he is not entitled to a pension. As I understand the facts in the matter you have referred to us, this gentleman has no income whatsoever. I, therefore, think he is entitled to a pension.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**PILOT COMMISSIONERS—Disposition of receipts.**

RICHMOND, VA., July 23, 1930.

HON. J. H. BRADFORD, *Director,*  
*Division of the Budget,*  
*Richmond, Virginia.*

DEAR MR. BRADFORD:

I beg to acknowledge receipt of your letter of July 19, in which you ask whether "such part of the balance in a Norfolk bank to the credit of the pilot commissioners as was collected in 1929, or prior to March, 1930, should be paid into the State treasury."

You do me the favor to refer me to section 3615 of chapter 239 and section 10 of chapter 79 of the Acts of 1928, and to certain paragraphs relating to this board on pages 162, 223 and 286 of chapter 118 of the Acts of 1930.

There would seem to be some inconsistency between section 10 of chapter 79 of the Acts of 1928 and section 3615 of chapter 239 of those acts. The former provides that "Every State \* \* board \* \* collecting or receiving public funds, or moneys from any source whatever, belonging to or for the use of the State, or for the use of any State agency, shall hereafter pay the same promptly into the treasury of the State, without any deductions on account of salaries, fees, costs, charges, expenses, refunds, or claims of any description whatever." This was an emergency act and went into effect on March 1, 1928. The latter provides that, upon issuance of an original or renewal certificate to a pilot, he shall pay the board \$55.00 and that within ten days such board shall remit \$50.00 thereof to the State treasurer. If

it were possible to construe the former act as requiring that the whole of this \$55.00 should be paid into the State treasury, this latter act, which became effective in June, 1928, and deals specifically with this particular payment, would take precedence and, in my opinion, under the 1928 law the board was required to remit only the \$50.00 sum.

Since the 1930 act to which you refer has become effective, it is clear that sums collected since March 1, 1930, must be remitted in toto into the treasury of the State. This, in my opinion, does not affect sums collected prior to March 1, 1930, and which under the law as it then existed were properly held by the board.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**ROADS AND HIGHWAYS—Running at large of livestock thereon.**

RICHMOND, VA., *August 14, 1930.*

THE TWIN STATE AUTOMOBILE ASSOCIATION, INCORPORATED,

*Hotel Bristol,*

*Bristol, Virginia-Tennessee.*

GENTLEMEN:

I beg to acknowledge receipt of yours of August 6 regarding the running at large of live stock on the highways of Virginia.

This matter is covered by section 14 of Article II of the rules and regulations of the State Highway Commission wherein it is provided that no one shall allow any live stock to run at large on any right of way of any road in the State Highway System, provided, however, that this restriction does not apply to State highways running through State and National forestry preserves.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**SERGEANTS—Right to receive fees in prohibition cases.**

RICHMOND, VA., *November 3, 1930.*

MR. GEORGE P. CROCKETT,

*Attorney at Law,*

*502 Law and Commerce Building,*

*Bluefield, West Virginia.*

DEAR MR. CROCKETT:

I am in receipt of your letter of the 22nd ultimo, in which you quote under the heads of "Sergeant" and "Duties" a section of the town charter of Bluefield.

I note that this section provides that the sergeant shall collect the fees prescribed for constables and turn the same into the treasury of the town, with the exception of certain commissions.

You then ask my opinion as to whether this section of the charter of your town operates to require your town sergeant to collect prohibition fees and turn the same into the town treasury.

In this connection, I call your attention to the fourth paragraph of section 37 of the Layman Prohibition Law. This paragraph provides that the officers included in paragraph 46 shall be entitled to the same fees as they would be entitled to for prosecutions by the Commonwealth for similar violations of the prohibition law. Sergeants are included in the list of officers mentioned in section 46.

I am of the opinion, therefore, that the sergeant of your town is entitled to receive and retain all prohibition fees earned by him.

Section 46 expressly makes it the duty of town sergeants to enforce the prohibition laws and makes his failure misfeasance in office, for which he may be removed, under the provisions of section 2705 of the Code, otherwise known as the ouster law.

While police officers should not neglect other duties, they should not neglect the enforcement of prohibition laws.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**SCHOOLS—Additional temporary loan from Literary Fund.**

RICHMOND, VA., *October 29, 1930.*

HON. J. WALTON HALL,  
*Superintendent of Public Schools,  
Ashland, Virginia.*

DEAR MR. HALL:

Your letter of the 21st instant to Mr. Hart has been referred to me, with the request that I reply thereto.

Briefly summarized, and as I understand it, the question you submit is as follows: On October 1st the Board of Supervisors of Hanover County approved the request of the School Board for authority to negotiate loans of \$25,000, which sum does not exceed one-half of the county levy for the current year. Thereupon you borrowed the sum of \$10,400, and you now desire, acting under the authority of the Board's action of October 1st, to borrow the further sum of \$11,000, and you wish to know whether section 675 of the School Code prevents this.

Save for the sentence in section 675, which reads, "No additional temporary loan shall be made until all prior temporary loans shall have been paid," that section is, for the purposes of this inquiry, similar to Acts 1926, page 59. Section 675 refers to the necessity of a School Board making "temporary loans." That is likewise the wording of the 1926 legislation.

Clearly under the 1926 legislation there would be nothing to prevent you from doing that which you now desire to do, and the only thing which could now stop you would be the sentence above quoted.

I am of the opinion that that sentence does not preclude you from taking the action which you desire. Under the statute referred to, there are

two steps necessary to the making of a loan by the Board; the first of which is the approval of the tax levying body, and the second of which is the negotiation of the loan. You have the approval of the tax levying body to borrow up to \$25,000, and I do not believe that the sentence quoted above would require of the School Board, which over a period of a year might need that sum of money, that it should actually execute its notes for it at one time and pay interest on money for which it has no immediate use.

I am rather of the opinion that, taking this statute as a whole, the meaning to be attached to the sentence above quoted is that all sums due on account of any loan made pursuant to a resolution of the Board of Supervisors must be repaid before loans for additional amounts can meet with the approval of that body and be negotiated.

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

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**SCHOOLS—Bonds—Authority of board of supervisors to levy district tax in excess of 25 cents.**

RICHMOND, VA., December 30, 1930.

MR. B. C. CHARLES,

*Division Superintendent of Schools,*

*Denbigh, Virginia.*

DEAR MR. CHARLES:

Your letter of recent date has been received.

I note from your letter that one of the districts of York county desires to vote upon the question of bond issue within the district for the purpose of a building program at Poquoson High School, and that the amount which will be necessary for the purpose will necessitate a levy in excess of 25 cents on the hundred dollars in that district.

You desire to know if, under the law, a district can assume by popular vote an obligation which will require the levying of a district tax in excess of 25 cents on the hundred dollars of property, as provided in section 698 of the School Code.

I have consulted with Honorable Harris Hart, Superintendent of Public Instruction, and we have discussed the question as to whether the 25 cents limit provided for in section 698 or the provisions of section 673 of the Tax Code govern where there is an election by the people and a debt is created requiring a levy in excess of 25 cents on one hundred dollars of property.

We are both of the opinion that section 698, carrying the 25 cents district limit, applies only to the usual or ordinary capital outlay and district indebtedness, and that, where an election is held under other sections of the Tax Code and the Code of Virginia, the Board of Supervisors has authority and it is their duty, under the provisions of section 673, to levy a sufficient rate on property to create a sinking fund to pay interest and retire the district's obligations as they respectively fall due.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**SCHOOLS—Bonds—Levy for interest on sinking fund—Amount of.**RICHMOND, VA., *February 2, 1931.*MR. L. FLOYD NOCK, JR.,  
*Accomac, Virginia.*

DEAR MR. NOCK:

I am in receipt of your letter of the 29th ultimo, in which you say that my letter of the 22nd ultimo did not answer the second question contained in your letter of the 20th, and repeat that question in the following language:

"To what statutes is the board of supervisors of a county required to conform when it raises the tax levy in that county, or any supervisor when he raises the tax levy in his own district? I wish especially to know if the taxpayers are entitled to be given notice of the intention of the board to raise the levy, and where and how far in advance should said notice be given. What is the penalty incurred if the board of supervisors fails to conform to these laws?"

Section 673 of the Tax Code provides that the question of issuing bonds for the erection of a school house shall be submitted to the voters under the provisions of sections 2738-2741 inclusive. That section also provides that an election shall only be held in the district at the expense of which it is proposed to erect a school house, and that the tax to meet the bond issue shall be levied only in such district.

Section 2741 of the Code provides that the board of supervisors shall annually include in the levy upon the property and lawful subjects of taxation a levy sufficient to pay the interest and create a sinking fund to pay bonds at maturity. It is true this section provides for a county levy, but that is because it has reference to the issue of bonds for the erection of county buildings, etc. It is unquestionably true that this section must be construed in the light of the provisions of section 673 and, therefore, necessarily provide for a district levy.

Section 2577-1 of Michie's Code of 1930 carries provisions concerning a county budget. Among other things, that section requires thirty days notice of the time of the meeting of the board of supervisors for the purpose of laying a tax levy.

There is no provision for a penalty on the board of supervisors, neither is any person pointed out to see that the law is properly observed by the board. I assume that each board of supervisors of the counties of the State will be pleased to hear from taxpayers and will be largely guided by the advice of its attorney for the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOLS—Bond issue for purchase of school site and erection of building thereon.**RICHMOND, VA., *March 12, 1931.*

HON. N. CLARENCE SMITH,  
*Attorney for the Commonwealth,  
Tazewell, Virginia.*

DEAR MR. SMITH:

I am in receipt of your letter of the 10th instant, in which you ask two questions concerning a district bond issue election, the first of which reads as follows:

"Under the law, can money realized from a bond issue such as the one contemplated be used for the purchase of a school site, that is for ground on which the building is to be built. There seems to be some little question on this in view of the fact that in all places the law refers to buildings and not particularly to the real estate."

The law itself makes no mention of money being used for the purchase of a lot upon which to build a schoolhouse. There is, however, no provision of law prohibiting the use of bond issue money for the purpose of purchasing a school site, and I see no reason why an application for an election containing an entire project for a school, including land and buildings, cannot be authorized and the proceeds of the bond issue, if one is voted, used for the purchase of land and the erection of buildings.

I have heretofore held that, where money is borrowed from the Literary Fund or bonds are issued for a district by virtue of an election held under the provisions of sections 2738-2740 of the Code of Virginia, the limitation of 25 cents on the \$100.00 of district levy does not apply, and that the board of supervisors are authorized to levy a sufficient sum to create a sinking fund to retire a Literary Fund loan or a bond issue and that the limit of 25 cents on the \$100.00 for a district does not apply.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOLS—Children entitled to attend schools must reside in district.**RICHMOND, VA., *September 26, 1930.*

HON. JAMES G. JOHNSON,  
*Superintendent of Schools,  
Charlottesville, Virginia.*

DEAR MR. JOHNSON:

I beg to acknowledge receipt of your letter of September 25, in which you submit to me five cases involving the right of children to attend the Charlottesville city public schools without paying tuition.

This question is governed by the actual residence of the child. Answering your questions in the order in which they are asked, I beg to advise as follows:

Case Number I: It appears that Edward Nutty is now making his home with relatives in Charlottesville and he need, therefore, pay no tuition.

Case Number II: According to the letter of Mr. J. R. Agnew, it appears that his niece is simply with him for the school term. This office has heretofore on numerous occasions ruled that, where a child comes into a county or city to live with persons other than his or her parents only during a school session, such child is not to be regarded as residing within the county or city within the meaning of section 682 of the Code. From the information sent I, therefore, think that tuition should be paid for this child.

Case Number III: It appears that this child resides in Albemarle county and, if she attends school in Charlottesville, tuition should be charged.

Case Number IV: Here again tuition should be paid for the reasons given in Case Number II.

Case Number V: If the pupil in this case still lives with his parents, he must pay tuition. On the other hand if he has moved to Charlottesville, is living and works there, he need not pay any tuition.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### **SCHOOLS—District levies.**

RICHMOND, VA., *February 6, 1931.*

HON. JEFF F. WALTER,  
*Attorney for the Commonwealth,  
Onley, Virginia.*

DEAR MR. WALTER:

I am in receipt of your letter of the 4th instant, in which you state certain facts concerning the school attendance situation at the Onancock high school, and especially with reference to the attendance of pupils of that school from sections of Lee District.

I have called up Mr. Hall and we agree that the law not only does not authorize a local levy in Lee District for the purpose of taking care of the tuition of Lee District pupils in the Onancock school, but expressly prohibits district levies except for taking care of existing indebtedness and for capital expenses.

Our thought is that the county can take care of the expenses of the additional buildings which are required for the Onancock school.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### **SCHOOLS—Effect of renewal of textbook contracts for a five-year period.**

RICHMOND, VA., *February 3, 1931.*

HON. THOMAS D. EASON, *Secretary,  
State Board of Education,  
Richmond, Virginia.*

DEAR MR. EASON:

I beg to acknowledge receipt of your letter of January 27, in which you ask for my opinion concerning the effect that the renewal of textbook con-

tracts for a five-year period beginning July 1, 1931, will have on any free textbook laws which the General Assembly might enact at its next session.

Your question is rather a difficult one to answer, for the reason that the effect of a renewal on a free textbook law would depend upon the nature of the new law.

Under section 617 of the Code it is provided:

" \* \* No textbook adopted for basal use shall be changed until such book has been in use for a period of not less than five years, subject to renewal from one to four years, unless such book becomes obsolete or unless a change would result in a material decrease in price."

The State Board of Education must, of course, make the necessary provisions for textbooks for use in the schools. Certain of its contracts must of necessity, by reason of this provision, be for a five-year period. Such contracts are supported, indeed required, by the law governing the board and, the contracts so executed being valid and binding and the obligation thereof being fixed, no legislation can be adopted which would violate the obligation.

Trusting that the above will give you the information you desire, I am

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**SCHOOLS—Insurance on buildings legal when written by member of school board.**

RICHMOND, VA., *September 15, 1930.*

MR. JOHN L. JEFFRIES, JR.,  
*Attorney at Law,*  
*Culpeper, Virginia.*

DEAR MR. JEFFRIES:

I am in receipt of your letter of the 12th instant, in which you desire my opinion on two questions concerning insurance of public buildings. Your letter reads as follows:

"Would you please advise me whether or not, in your opinion, a member of the school board of a county may legally write a policy of insurance on school buildings of the county of whose school board he is a member, the policy being with a company of which he is the agent and for which he receives a commission on the premium on said policy?"

"Also advise me whether such a policy may be legally written by a member of the town council on town buildings in a company of which said member is an agent and who receives a commission on the premium received on the policy so written."

Your first question is covered by section 708 of the Virginia School Code, in which, after providing that no member of the State Board of Education, etc., may have a pecuniary interest, directly or indirectly, in contracts for school buildings, etc., provides:

" \* \* But the prohibitions of this section shall not apply to \* \* nor shall they apply to the writing of standard or mutual insurance policies at the regular rate on any school building, or other school property; provided, such mutual insurance carries no assessment liability."

You will see from this section that a member of the school board may legally write standard insurance, but cannot write insurance in companies carrying assessment provisions.

Only very recently the right of a member of the council of the city of Richmond to write insurance on city buildings was referred to Honorable James E. Cannon, City Attorney. Mr. Cannon expressed the opinion that the writing of insurance on city property by a member of the council was not contrary to law. There has been no judicial determination of the question.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**SCHOOLS—No limit on levy for indebtedness.**

RICHMOND, VA., April 24, 1931.

MR. M. H. BOWEN,

*Tazewell, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 22nd instant, in which you write that in Bland county there is a school tax of \$1.50 on each \$100 of real and personal property, and that the board of supervisors of the county have given notice, a copy of which you enclose, of a proposed increase in district levies for certain purposes.

I have heretofore given an opinion to the effect that the provision of section 698 of the Tax Code, limiting district school levies to 25 cents on the \$100, does not apply to those cases in which it is necessary to make provision for the repayment of literary fund loans or to take care of bond issues voted by the people under the provisions of sections 2738-2740 inclusive of the Code of Virginia, providing for district bond issue elections.

In three of the districts of your county, to-wit: Seddon district, Sharon district and Rocky Gap district, the proposed increase in district levy is for the purpose of paying literary fund indebtedness. Therefore, there is no question of the authority of the board of supervisors to make the levies they have advertised.

So far as Mechanicsburg district is concerned, the board advertises a proposal to raise the district levy 20 cents on the \$100, for the purpose of making additions to school building in said district.

In my opinion, if the district school levy is already at the limit of 25 cents, the board of supervisors have no authority to levy an additional 20 cents on the \$100 of property, unless a literary fund loan is obtained or the district by a vote of the people within the district authorize the issue of bonds for building purposes.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**SCHOOLS—Local residence of pupil.**RICHMOND, VA., *November 25, 1930.*

HON. JAMES G. JOHNSON,  
*Superintendent of Schools,  
Charlottesville, Virginia.*

DEAR MR. JOHNSON:

I beg leave to acknowledge receipt of your letter of the 24th, to which I will reply at once.

You state that Mr. C. E. Gentry has lived in the county of Albemarle for several years past; that he and Mrs. Gentry have paid their capitation taxes in the city of Charlottesville for the years 1928-1929, which amount to \$6.00, and you are advised by the city treasurer of Charlottesville that no other taxes are paid to the city by Mr. Gentry; that his son, who resides with his parents in the county of Albemarle, is now attending the public schools of Charlottesville and you wish to be advised whether or not you have a right to require Mr. Gentry to pay tuition for his son.

You, of course, are thoroughly familiar with the provisions of section 682 of the Code, which, among other things, provides that "The public schools, except as otherwise provided, shall be free to all persons between the ages of seven and twenty years residing within the county."

There can be no doubt but that Mr. Gentry's child is a resident of the county of Albemarle. The mere fact that Mr. and Mrs. Gentry pay their capitation taxes to the city of Charlottesville for the purpose of voting in that city in no manner changes the residence of the child, because inasmuch as his father and mother reside in the county of Albemarle the child is a resident of that county and not of the city of Charlottesville.

You are familiar with the regulation prescribed by the State Board of Education in pursuance to Section 682 of the Code, which is as follows:

"Children within the legal school age residing in one county may attend the public schools of an adjoining county or city either on the prepayment of an amount not exceeding the total per capita cost of tuition and maintenance in the division to which pupils are sent, or upon the conditions of any mutual agreement reached between the two county school boards or the county and city school boards concerned."

It, therefore, follows that unless the county school board of Albemarle pays tuition to the city school board of Charlottesville, Mr. Gentry, in order to obtain the advantage of sending his child to the public schools in Charlottesville, will have to pay tuition. I do not think there can be any doubt about this construction of the law.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOLS—Residence of pupils.**RICHMOND, VA., *December 3, 1930.*

HON. ALBERT H. HILL,  
*Superintendent of Schools,*  
*Richmond, Virginia.*

DEAR MR. HILL:

Honorable Harris Hart, Superintendent of Public Instruction, has forwarded me a memorandum containing certain questions which Mr. C. P. Walford, Clerk and Supervisor of the Public Schools, desires answered.

The four questions contained in the memorandum have to do with the admission of children to the public schools of your city and, although the questions apply locally, the principles of law governing the admission of children to schools apply to situations of a like kind elsewhere throughout the State. Therefore, in answering I shall not confine myself to the situation as it applies to Richmond.

"1. What entitles a child to go to the Richmond public schools?"

Subject to qualifications hereinafter noted, under answers to other questions, a child is entitled to public school tuition in the schools of the county or city in which his or her parents reside.

"2. Should the mother's residence, or the father's residence, or the child's residence determine the admission of the child?"

The admission of children to public schools should not, as to the residence of the father or mother, be determined by strict technical principles of law. Usually children reside with either the father or the mother. In my opinion, the actual residence of the parent with which the child lives determines the local place of the child's school eligibility. Where a child lives with his mother, he should be admitted to the school of the community of the mother's residence, and, of course, where he lives with his father, that location governs.

A child, unless his parents have abandoned him or custody has been taken from the parents by the courts, is presumed to reside with his parents. In case of an abandonment of a child by the parents, and where such child is living with other persons, whether a guardian appointed by a court or where some other person stands in the place of the parents, or, as may be termed in law, in loco parentis, such child should have the benefit of the public schools at the place of residence of the guardian or of the foster parent.

This principle of law should not be abused so as to allow parents to make arrangements for a temporary residence of a child with some other person for the express purpose of securing schooling of the child as a resident of the place where the guardian or foster parent lives, or where such other person with whom the child temporarily lives resides.

"3. Does a person's payment of his poll tax and personal tax in the City of Richmond, and whose business is in the City of Richmond, but whose family and child reside in the county, entitle the child to admission in the Richmond public schools?"

At law there is a technical distinction between residence and domicile. A domicile once obtained remains until it has been changed by (a) an inten-

tion and (b) actual removal, while residence fluctuates and is determined by the place at which a person is actually staying. In my opinion, actual residence controls as to the right of a child to public schooling. The payment of a parent's poll tax and personal property tax does not control the right to local public schooling, that right depending upon the actual residence of the parents where the child lives with the parents. In those cases in which the parents reside in one county or city, but pay poll taxes and personal property taxes in another county or city, the child is eligible to public school tuition in the county or city of the actual residence of the parents and not entitled thereto at the place of the domicile or the place where the poll taxes and personal property tax are paid. The place of business of a parent in no wise controls the right of a child to local schooling.

"4. A man who pays all taxes (personal, real estate and poll) in the City of Richmond, owns a place in Richmond which he designates as his home, but resides with his family in the county. Are his children entitled to attend the Richmond schools free of tuition?"

Superadded to the question of the payment of taxes, poll, personal and real estate, is the fact that a person owns a dwelling in your city which he designates as his home, but resides with his family in the county. I have already expressed the opinion as to the payment of personal taxes. The payment of taxes on tangible personal property and real estate depends upon the local of such property and in no wise controls or affects the status of the taxpayer as to citizenship; neither does the ownership of a dwelling and this is so, even though the owner designates such a dwelling as his place of residence, where he does not actually occupy the residence, but resides in some other county or city.

In my opinion, residence as applicable to the school law has reference to the actual residence and not constructive residence or domicile. Under the school law, a child is entitled as of right to schooling in some definite ascertained place. The burden is upon school officials to ascertain this place and, in the matter of admission to schools, apply the principles of law determining the right of the child to local schooling.

The application of any other principles of law other than those laid down above would lead to indeterminable confusion. For instance, a large number of public officials actually reside in Richmond, but pay their capitation taxes, income taxes and taxes on intangible personal property in their home counties or cities. Many persons living in Virginia retain their domicile in other states. If the law of domicile applies to school attendance, then public officials living in Richmond or vicinity may not send their children to the local schools, but would be obligated to send them to the schools of their home counties or cities, and persons who actually reside in Virginia, but who retain their domiciles in other states, would not be entitled to free school education for their children anywhere in Virginia.

The law of residence and domicile is rather vague and it is often difficult to apply the law to specific cases. As applicable to public school facilities, the law should be liberally construed so as to provide educational advantages to the youth of the State. At the same time, localities are entitled to a certain amount of protection from having local schools crowded

by children from other localities. I am sure that you and your subordinates will execute the law in such a manner as will carry out the purpose for which free schools were established in Virginia, and, at the same time, take care of the interest of the City of Richmond.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**SCHOOLS—Residence for purpose of attending college free of tuition.**

RICHMOND, VA., April 21, 1931.

MR. FREDERICK R. REYNOLDS,  
624 North Calhoun Street,  
Tallahassee, Florida.

MY DEAR SIR:

I am in receipt of your letter of the 13th instant, in which you write certain facts concerning yourself. You ask the following question in your letter:

“In case I should enter school in Virginia and pay a non-resident fee one quarter, would I be required to pay the fee for the successive quarters?”

You say that you expect to enter college in Virginia and probably will settle here for at least a few years after graduation.

My answer to your question must be more or less hypothetical. A person who comes to Virginia for the purpose of becoming a bona fide resident thereby becomes a resident and is entitled to all the rights and privileges of a citizen. However, where a person comes to the State only for the purpose of acquiring a privilege accorded to citizens and has no real, fixed determination to make Virginia his permanent home or place of residence, he does not thereby become entitled to rights and privileges reserved to her actual residents or citizens.

There is no more reason for you to pay one quarter tuition at a Virginia school than to pay for successive quarters. If you are a resident when you enter the school and such school makes no fees or charges against residents, you are entitled to enter without the payment even of the first quarter. I should say that, if you enter school under such circumstances that you are required to pay the first quarter, you should thereafter pay for all successive schooling.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**SCHOOLS—Residence of pupils.**RICHMOND, VA., *April 1, 1931.*

HON. THOMAS D. EASON, *Secretary,*  
*State Board of Education,*  
*Richmond, Virginia.*

MY DEAR MR. EASON:

I have carefully noted the contents of your letter of March 30, with which you enclose a letter from Hon. Albert H. Hill, Superintendent of Public Schools of Richmond, to you under date of March 21, 1931.

The subject of your inquiry is whether or not the city school board of Richmond has a right to charge tuition to children which have been assigned homes in families residing in the corporate limits of the city of Richmond.

You have in your department a copy of an opinion given by me on December 3, 1930, to Honorable Albert Hill, which went very thoroughly into the question as to what constituted residence of pupils within the meaning of the school law. If you will refer to page 2 of this opinion, you will find the following paragraph:

"A child, unless his parents have abandoned him or custody has been taken from the parents by the courts, is presumed to reside with his parents. In case of an abandonment of a child by the parents, and where such child is living with other persons, whether a guardian appointed by a court or where some other person stands in the place of the parents, or, as may be termed in law, in loco parentis, such child should have the benefit of the public schools at the place of residence of the guardian or of the foster parent."

This, in my judgment, fully answers your question. There can be no doubt that persons with whom children are placed, and reside in the homes of such persons, stand in loco parentis and are, therefore, entitled to attend the public schools of the city of Richmond free of tuition.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOLS—Temporary loans—When lawful.**RICHMOND, VA., *September 13, 1930.*

HON. C. C. SHELBURNE,  
*Division Superintendent,*  
*County School Board of Montgomery County,*  
*Christiansburg, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of September 12 to Colonel Saunders which, in his absence, has come to me for reply.

As I understand the situation outlined in your letter, it is as follows:

Some years ago your school board borrowed from the Literary Fund a sum of money, of which \$23,000.00 is still due. I judge that this is the only money which your board owes and, in particular, that there is now outstanding and unpaid no temporary loan. You wish to know whether you have the right to make a temporary loan.

I refer you to section 675 of the Code, being Acts 1928, page 1211, wherein it is provided that the school board of a county is authorized to make temporary loans "not to exceed one-half of the amount produced by the county school levy laid in such county or city for the year in which the loan is negotiated, or one-half of the amount of the cash appropriation made for schools for the preceding year. Such loans shall be evidenced by notes or bonds negotiable or non-negotiable, as said board may determine; shall bear interest at a rate not exceeding six per centum per annum, and shall be repaid within one year of their date, provided, however, that no loans shall be negotiated by a county or city school board without the approval of the tax levying body."

The language of this statute seems to me to be clear and, if there are now no temporary loans outstanding, and if the loan which you contemplate making does not exceed the amounts above referred to and if it meets with the approval of the tax levying body of your county, I see no reason why your school board cannot make the loan.

Yours very truly,

COLLINS DENNY, JR.,

*Assistant Attorney General.*

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**SCHOOLS—District levy.**

RICHMOND, VA., July 24, 1930.

HON. GEO. G. TYLER, *Clerk,*  
*Manassas, Virginia.*

MY DEAR MR. TYLER:

I am in receipt of your letter of the 22nd instant, in which you call my attention to, and quote from, sections 698 and 673 of the School Code, in reference to the maximum amount of the district school levy for certain purposes.

In my opinion, section 698, limiting a district levy to twenty-five cents on the one hundred dollars of the assessed value of the property in the district for capital expenditures and for the payment of existing district indebtedness, applies to what may be called ordinary district expenses and indebtedness.

I am further of the opinion that the amount of a levy which may be imposed to take care of bond issues and loans from the Literary Fund is not included within the limit of twenty-five cents on the one hundred dollars, but that where a Literary Fund loan has been contracted, or bonds have been issued after a vote of the people, the board of supervisors must levy for a sufficient yearly sum to create a sinking fund for the purpose of paying interest and retiring obligations occasioned by the Literary Fund and bond issue loans.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**SCHOOL BOARDS—Authority to transfer funds.**RICHMOND, VA., *August 23, 1930.*

HON. W. R. BROADDUS, JR.,  
*Commonwealth's Attorney,*  
*Martinsville, Virginia.*

MY DEAR MR. BROADDUS:

I beg to acknowledge receipt of your letter of recent date which reads as follows:

"The school board of Henry county presented, through the division superintendent, their annual budget, providing for a certain supplementary salary to the superintendent and for a certain salary to the clerk of the school board. The Board of Supervisors did not approve the budget in the form in which it was presented, with reference to the above items, reducing both the supplementary salary of the superintendent and the salary of the clerk.

"The school board now finds, or feels, that they are able to pay the superintendent the supplementary salary that was originally contained in their budget and also to pay the clerk the original salary set out therein, obtaining this money from other allowances made by the Board of Supervisors.

"They desire to know, if they issue warrants paying the superintendent his larger supplement and the clerk a larger salary than that approved by the Board of Supervisors, whether these warrants should be honored by the treasurer of the county or should he be governed by the budget as approved by the Board of Supervisors and, therefore, refuse to pay those which are larger than is set out in the budget as approved? In other words, they wish to know whether they can switch funds that were appropriated for one purpose and use them for another purpose, if they find that they will not need as much as was appropriated for some particular purpose."

The answer to your question seems to me to be clearly contained in the first sentence of section 656 of the Code wherein it is stated:

\* "The county school board shall have authority to check on the county treasurer for the payment of teachers' salaries and the payment of officers, and other incidental expenses connected with the operation of the schools, *provided all of such items have been included in the school budget, approved by the board of supervisors*, a copy of which budget shall be furnished the treasurer. \* \* \*" (Italics supplied.)

The underlined portion of the above quotation from the act seems to make it clear that a county treasurer has no authority to honor a warrant issued by the school board for any item which is not included in the school budget and which has not been approved by the Board of Supervisors.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOL BOARDS—Liability of for operation of school bus; liability of bus driver; authority of board to take out insurance.**

RICHMOND, VA., October 30, 1930.

HON. N. CLARENCE SMITH,  
*Commonwealth's Attorney,*  
*Tazewell, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of October 17 in which you submit three questions which may be briefly summarized as follows:

"1. Is a county school board liable for damages in a tort action arising from the negligent operation of a bus driven by one employed by the school board and engaged in carrying children to and from school?"

"2. Is the individual driver of such a bus liable?"

"3. If so, is the school board empowered to take out liability insurance to protect the individual driver against injury which may be inflicted upon the person or property of others?"

In reply to your first question, I beg to advise that it appears to me to be clear that a county school board in providing transportation for its pupils is acting pursuant to direct authority conferred upon it by section 656 of the Code, and is exercising a public and governmental function imposed upon it by law. I am, therefore, of the opinion that the board is not responsible for any negligent act of the driver of such a bus. *Fry v. County of Albemarle*, 86 Va. 195, 9 S. E. 1004, 19 A. S. R. 879; *Maia's Administrator v. Eastern State Hospital*, 97 Va. 507, 34 S. E. 617, 47 L. R. A. 572; *Supervisors v. Manuel*, 118 Va. 716.

In reply to your second question, I am of the opinion that the driver of a bus would be personally liable for injury occasioned to others by his negligence. *Supervisors v. Manuel*, 118 Va. 716, and notes found in 40 A. L. R. 1358, and 53 A. L. R. 381.

Your third question is one which presents some difficulties. The powers of a county school board are clearly set forth in sections 656 and 668 of the Code. For the purpose of this question we can disregard the provisions of the latter section and deal only with those of the former. The powers conferred in the former section, with the exception of the last sentence thereof, deal primarily with the expenditure of money for the purposes of visitation, payment of teachers and other officers, erection and maintenance of school-houses and facilities, and the furnishing of text-books. There is also given the authority to expend money for any lawful purpose attending the administration of the public school system. This general power, combined with the specific power conferred upon a county school board to provide for the transportation of pupils in such cases as in its opinion will contribute to the efficiency of the public school system, would seem to me to confer upon the board, provided the Board of Supervisors of the county approves of it, the right to expend money, not only in the actual transportation of pupils, but also in matters ancillary and incidental thereto and which contribute to that end. Under this construction, I think that the board would be empowered to take out such insurance.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOL BOARD—Right of member to insure school property.**RICHMOND, VA., *March 18, 1931.*

MR. E. D. ENGLISH, *Chairman,*  
*Municipal School Board,*  
*Bedford, Virginia.*

DEAR MR. ENGLISH:

I am in receipt of your letter of the 16th instant, in which you ask to be advised as to whether or not it is legal for a member of the school board of the town of Bedford, Virginia, who is engaged in selling fire insurance, to insure school property belonging to the town.

The subject of your inquiry is covered by section 708 of the School Code. This section prohibits the members of a school board from having a pecuniary interest directly, or indirectly, in contracts covering school operations, and provides that the prohibitions thereof shall not apply to the sale of certain school books, " \* \* nor shall they apply to the writing of standard or mutual insurance policies at the regular rate on any school building, or other school property; provided, such mutual insurance carries no assessment liability." Therefore, there is no law prohibiting a member of the school board from writing insurance on school property.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOL BOARDS—Right to operate independently in incorporated towns.**RICHMOND, VA., *August 14, 1930.*

HON. C. H. BOYER, *Clerk,*  
*Fries School Board,*  
*Fries, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of recent date in which you ask the following question:

"Will you kindly advise whether recent legislation permits school boards in incorporated towns to operate independently? In other words, can they exist as separate units and not be affiliated with the county school boards, and, if so, are they entitled to the same amount of county and State funds as though they were a part of the county units?"

Section 653 of the Code, as amended by Acts 1928, page 1202, expressly provides that special town school districts shall be retained. Under date of November 24, 1928, I gave an opinion to the effect that this provision not only retained the special town district in its geographical limitations, but also in its function as a school district. The town school board and the county school board are, of course, independent of one another, but the Legislature of 1928 placed under the management of the county school board the county school system. It would, therefore, appear that the town school board, while independent of the county school board, has only limited powers such as the

drawing of warrants upon the treasurer of the town for any school funds raised pursuant to section 698 of the Code, as amended, or the doing of any act for which express authority may have been given.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**SCHOOL BOARDS—Sale of textbooks—Bonds.**

RICHMOND, VA., July 14, 1930.

HON. ROBERT M. NEWTON,  
*Division Superintendent,  
Elizabeth City County Schools,  
Hampton, Virginia.*

DEAR MR. NEWTON:

I am in receipt of your letter of July 7, in which you submit the following inquiry:

"I am writing to ask you to give me a ruling on section 619 of the Code, as amended by the Acts 1930, page 880, which has to do with the sale of textbooks, especially the sentence beginning, 'The State Board of Education may stipulate,' at the top of page 881 to the bottom of that paragraph.

"Our school board sells the textbooks to the public from its office and it does not designate an agent. Under such conditions, does the school board have to bond itself or anyone else for this service to the public?"

In reply thereto, I beg to advise that in the section of the school law referred to by you the State Board of Education is empowered to stipulate that the local school boards may furnish textbooks to the children either free or at wholesale price, or at a price not exceeding fifteen per centum added to wholesale; or the State Board of Education may stipulate that county and city boards shall designate agents for the purchase and proper distribution of said textbooks. The section then provides:

" \* \* \* The agents thus designated by the local school board shall be required to give reasonable bond guaranteeing the prompt ordering of books and an ample supply to meet the requirements of the schools. The local board shall also require the agent to furnish a bond in a penalty to be fixed by the board indemnifying the board against loss from the failure to pay the publisher or publishers for said books. When such agent is thus designated and bonded the local board shall be responsible to the publisher for any default by such agent in the payment for such books."

If, pursuant to this section, the books are being furnished by your local school board, no bond is required, a bond being required only in the event an agent is designated.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**SCHOOL TRUSTEES—Right of school trustee to write insurance.**RICHMOND, VA., *August 12, 1930.*

MR. J. T. EVERETT,  
*P. O. Box 276,*  
*North Emporia, Virginia.*

DEAR MR. EVERETT:

I am in receipt of your letter of the 7th instant, in which you write:

“Shall any member of the Board of School Trustees, or the Superintendent of the County School System enter into a contract with the county to insure the school buildings and any other county buildings? And shall any such policy of insurance be valid?”

Under the provisions of section 708 of the Virginia School Code, either members of the School Board or the Division Superintendent of Schools may write insurance on school property in standard or mutual insurance, provided the policies in the mutual companies do not carry assessment liability.

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

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**SHERIFFS—Amount of fees in prohibition cases.**RICHMOND, VA., *June 22, 1931.*

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

*In re: Account of A. G. Humphreys, Deputy Sheriff v. Commonwealth.*

DEAR MR. COMBS:

I have before me your file in the above matter, and note that Mr. Humphreys has listed in his account, which has been certified to your office for payment, five items of \$10 each, claimed to be due him for a like number of arrests in prohibition cases. In his letter of the 27th ultimo he makes claim of \$10 in each case and cites as authority the last paragraph of section 46 (47) of the Layman Prohibition Law.

The second paragraph of section 46 allows for official services rendered in connection with violations of the Layman law the same fees when payable by the Commonwealth as are now allowed in felony cases.

The last paragraph makes a provision for a fee of \$10 to the officer making arrest in certain cases, \$1.50 fees in other cases, and a fee of \$5.00 in still other cases, the sentence and paragraph concluding:

“ \* \* to be taxed as a part of the costs against such defendant.”

In my opinion, Mr. Humphreys is entitled to a fee of \$10 in each of these cases if collected from the defendant, but only, as you have allowed him, a fee of \$1.50 if the cost is paid by the Commonwealth.

Section 3504 has no bearing upon Mr. Humphreys' claim.

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

**STATE HOSPITALS—Inebriates and users of habit forming drugs are required to be kept in wards separate from insane patients.**

RICHMOND, VA., *January 16, 1931.*

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

MY DEAR DR. HENRY:

I am in receipt of your letter of January 15, in which you ask to be advised as to my interpretation of that portion of section 1068 of the Code of 1930 reading as follows:

“But every inebriate so committed and received at such institution shall be assigned and kept in wards separate and apart from the insane patients.”

I assume you have in mind an inquiry as to whether the word “inebriate” includes those committed on account of habit-forming drugs as well as the use of alcoholic liquors.

While the definition “inebriate” applies to habitual users of alcoholic liquors, it is my opinion that the General Assembly intended to put both inebriates and users of habit-forming drugs in the same category, and those of each category are required to be kept in wards separate and apart from the insane patients. I do not think it was intended that each category should have a separate ward.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**STATE HOSPITALS—Southwestern State Hospital—Authority of Governor to increase salary of superintendent by transfer from annual appropriation.**

RICHMOND, VA., *April 10, 1931.*

HON. J. H. BRADFORD,  
*Director of the Budget,  
Richmond, Virginia.*

DEAR MR. BRADFORD:

I am in receipt of your letter of the 31st ultimo, and have carefully noted the situation to which my attention is called and upon which I am asked for an official legal opinion.

Because I must base my opinion upon the facts stated in your letter in connection with the appropriation for the Southwestern State Hospital, at Marion, I am quoting your letter in full:

“Under section 21 of the general appropriation act (chapter 118 of the Acts of Assembly of 1930) authority is given to the governing board of any State department, institution, or other agency to transfer within the respective department, institution, or other agency any appropriation made for such department or institution 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.

"This provision was first inserted in the appropriation bill by the General Assembly of 1920 and has regularly appeared in each general appropriation act thereafter.

"Under this provision of the bill State departments and institutions have in certain cases, with the Governor's approval in writing first obtained, made salary increases for officers and employees whose salaries were specifically fixed in the bill. These increases have been made by transferring from unsegregated appropriations the amount of the proposed increase to the specific salary item set out in the bill.

"Among the institutions at which such salary increases have been made are the Western State Hospital, Central State Hospital, Catawba Sanatorium, and Piedmont Sanatorium. At the Central State Hospital, for example, the salaries of the First Assistant Physician, Steward and Clerk were increased by transfers from a fund derived from payments made to this institution by the Federal Government for the treatment of disabled World War Veterans. Certain special provisions relative to salaries of hospital and sanatoria officials appear in the appropriation bill, but these provisions have not heretofore been construed as preventing salary increases under authority from the Governor by transfers under section 21 of the general appropriation act. The transfer orders above referred to increasing salaries at these institutions were printed in each case in the budget and laid before the next session of the General Assembly.

"The General Hospital Board has approved an increase in the salary of Dr. G. A. Wright, Superintendent of the Southwestern State Hospital, of \$1,300 and the Governor has been asked by the Special Board of Directors of this institution to authorize a transfer from the annual appropriation 'for maintenance and operation of the Southwestern State Hospital' of the amount of this proposed increase to the specific item of \$4,500 authorized by the bill as the salary of the Superintendent.

"I will appreciate it if you will kindly give me for the Governor's information your opinion as to whether under section 21 of the appropriation bill referred to above the Governor can legally authorize the Special Board of Directors to make the transfer which it has requested for the purpose of increasing the salary of the Superintendent of the Southwestern State Hospital."

I note that your office and the present and former Governors of Virginia have construed appropriations of a like character as that covering the Southwestern State Hospital, at Marion, as limiting the salaries of officers specifically mentioned therein to the first item covering an appropriation of \$170,860 "for maintenance and operation of the Southwestern State Hospital," and have not construed the limitation as covering the appropriation of \$75,900 received from other sources and paid into the State treasury, and not out of the general fund of the State treasury, and that the Governors have heretofore allowed increases other than the basic salaries of officials of institutions of like character out of appropriations such as that last mentioned, notwithstanding the limiting provisions contained in former appropriation bills. I see no reason why a different construction should now be placed upon the provisions of the last appropriation bill and that, therefore, the increase of the salary allowed Dr. Wright by the General Hospital Board is within the discretionary authority of the Governor and, if approved by him, should be paid.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**SUPERINTENDENT OF SCHOOLS—Board of supervisors does not have the right to reduce salary.**RICHMOND, VA., *January 26, 1931.*

MR. W. W. BOBBITT,  
*Division Superintendent of Schools,*  
*Keysville, Virginia.*

DEAR MR. BOBBITT:

I am in receipt of your letter of the 20th instant, in which you write concerning the situation as to your salary and the apparent purpose of the board of supervisors of your county to refuse to include that part of the salary which is payable by the county in the county budget for the 1931-32 school year.

Section 615 of the School Code provides for your salary and the proportion in which it is to be paid by the State and county, with a further provision that the local school board may out of the local fund supplement the salary fixed by law for each superintendent.

The amount due you by the county as salary is a fixed and definite sum calculated, of course, upon school population, and the board of supervisors has no right to refuse to pay such salary.

I regret that I do not think I should advise you as to what course you should pursue should the board refuse to lay a levy to cover the county's part of your salary. This is a matter which you should take up with personal counsel should the board refuse to take care of its obligations.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**TAXATION—Advertisement of delinquent lands.**RICHMOND, VA., *November 17, 1930.*

MR. P. M. JOHNSTON,  
*Care Pearisburg Virginian,*  
*Pearisburg, Virginia.*

MY DEAR MR. JOHNSTON:

I am in receipt of your letter of the 15th instant, making inquiries as to the law concerning the advertisement of delinquent lands.

In my opinion, you are mistaken when you say that the advertisement of these lands must be for four weeks. Section 2460 of the Code covers this character of advertisement and provides, first, for an advertisement by printed copies of the list of lands returned delinquent.

In lieu of posting printed copies, the Auditor of Public Accounts may direct a copy of the list to be published *once* in a newspaper published in the county.

I realize the fact that there is no longer a State tax levied on lands, but I can find no change in the law directing the Auditor of Public Accounts to provide for a publication in a newspaper.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**TAXATION—Authority of treasurer to levy on personal property of deceased for real estate taxes.**RICHMOND, VA., *January 2, 1931.*

MR. G. W. MITCHELL,  
*County Treasurer,*  
*Culpeper, Virginia.*

DEAR MR. MITCHELL:

I am in receipt of your letter of the 16th ultimo, in which you state that a taxpayer, who died some months ago, owing taxes, had personal property and real estate and had a mortgage on both, and I note that you ask whether you can levy on the personal property for real estate taxes.

Under the provisions of sections 378 and 381 of the Tax Code, a treasurer is authorized to levy for real estate taxes on personal property while in the possession of its owner.

If, however, a party is dead and his estate has been committed to his personal representative, such representative should see to the payment of taxes.

Taxes in all cases are made a lien ahead of other indebtedness including deeds of trust.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**TAXATION—Deed transferring property of old corporation to new corporation subject to recordation tax.**RICHMOND, VA., *October 13, 1930.*

HON. R. GRAY WILLIAMS,  
*Attorney at Law,*  
*Winchester, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of October 9 relative to the proposed conveyance of the property of the Standard Gas and Oil Supply Company, Incorporated, to the Harvey System, Incorporated.

As I understand this situation from the interview we had and from the papers which you enclose, the charter of the first named concern has been amended in the one respect only of changing its name to the Harvey System, Incorporated.

Since our interview I have been examining the statutes which might be applicable, with a view to settling two questions: first, may a paper in the form of a deed and declaration which sets forth a change of name and a purported transfer by the corporation in its old name to the corporation in its new name be recorded; second, if so, must any tax be paid thereon?

Both these questions are answered by the 1930 amendment to section 121 of the Tax Code (Acts 1930, page 831). One of the paragraphs of that section answers both these questions and reads as follows:

“When the charter of a corporation is amended, and the only effect of such amendment is to change the corporate name of such corpora-

tion, the tax upon the recordation of a deed conveying to, or vesting in, such corporation under its changed name, the title to any or all of the real or personal property of such corporation held in its name as it existed immediately prior to such amendment, shall be fifty cents."

Very truly yours,

JNO. R. SAUNDERS,

*Attorney General.*

#### **TAXATION—Levies—Local—What constitutes.**

RICHMOND, VA., October 28, 1930.

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

DEAR MR. COMBS:

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

"Under the provisions of chapter 45, p. 41, Acts 1930, one of the factors to be used as the basis for distribution of gasoline tax amongst the several counties of the State, effective January 1, 1931, is 'total of all State taxes and local levies, including levies on public service corporations, collected by the county treasurers in their respective counties during the next preceding fiscal year.'

"Please advise me if amount of delinquent local levies collected by the clerk of court and turned over to the county treasurer should be considered as local levies collected by the county treasurer.

"Also please advise what items constitute 'local levies.'"

In my opinion, local delinquent taxes should be included.

Local levies include the aggregate of all county and district taxes collected by county treasurers as the result of levies laid by local tax levying authorities.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

#### **TAXATION—Recordation tax on deed of trust on personal property.**

RICHMOND, VA., September 17, 1930.

HON. JOE W. PARSONS, *Clerk,*  
*Independence, Virginia.*

DEAR MR. PARSONS:

I am in receipt of your letter of the 16th instant, in which you desire to be advised as to whether or not liens on personal property recorded in your miscellaneous book are subject to taxation.

Section 121 of the Tax Code makes no difference between deeds of trust on real estate and deeds of trust on personal property, although deeds of trust on real estate are to be recorded in deed books while deeds of trust on personal property are to be recorded in miscellaneous books.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

**TAXATION—What year's capitation tax required to obtain licenses, etc.**RICHMOND, VA., *September 13, 1930.*HON. L. K. LEAKE, *Treasurer,*  
*East Leake, Virginia.*

DEAR MR. LEAKE:

I am in receipt of your letter of yesterday, in which you ask to be advised as to whether or not a person applying for a State license is required to keep all of his capitation taxes paid to date of application for licenses.

I do not think so.

Section 128 of the Code, providing for the payment of capitation taxes as a prerequisite to the right to obtain a license, permit or other authorization, provides:

“ \* \* \* setting forth that the State capitation tax, assessed or assessable against such person for the tax year immediately preceding the last preceding tax year to the tax year to which the license, permit or authorization relates, has been paid, \* \* \*.”

In my opinion, a person desiring to obtain a license for the year 1930 is only to make a written certificate, or show by the records of the proper officer, that his or her capitation tax has been paid for the year 1928, that being the year immediately preceding the last preceding tax year (1929) to the tax year to which the license (1930) relates.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**TREASURER—Appointment of deputies—Commissions.**RICHMOND, VA., *May 5, 1931.*MR. FRANK SAUNDERS,  
*Peoples Garage,*  
*Bedford, Virginia.*

DEAR MR. SAUNDERS:

I am in receipt of your letter of yesterday, in which you desire certain information. I copy your questions:

“Does the law require our treasurer (county) to employ and keep a deputy in each magisterial district in our county?”

The general law covering the appointment of deputy treasurers is contained in section 2701 of the Code. This section provides:

“The treasurer of any county, \* \* with the consent of the circuit court of his county, \* \* may appoint one or more deputies who may discharge any of the official duties of their principal during his continuance in office, \* \*. The order of appointment shall be entered on the minute book of such court whether made in term time or vacation.”

This law, as you will see, does not require the treasurer to have a deputy treasurer for each magisterial district, but, as he is left entirely free in this

matter, he may appoint as many deputies as he desires, subject to the approval of the judge of the circuit court of Bedford county.

"If the cost of operating the treasurer's office in our county should be less than the commissions allowed this office, what becomes of this saving? For example, say the commissions of this office for 1931 were \$12,000 and the cost \$11,000 to operate the office, what would become of the \$1,000 saved?"

The general law provides for commissions on practically all funds collected and disbursed by county treasurers, with a provision limiting a treasurer's salary according to the population of the county. In addition to the amount he may himself retain as a maximum compensation, he is allowed certain expenses of his office, this amount being fixed by the Comptroller and State Treasurer. You can see by this that the amount which it may cost a county in the way of the expenses of running a treasurer's office is the maximum salary of the treasurer plus the amount allowed as expenses of running the office.

In the example contained in your letter, where the commissions of a treasurer amount to \$12,000 and his maximum salary, plus the expenses of the office, is \$11,000, he must account under what is called the West Fee Bill for \$1,000. This sum is paid by him into the State treasury. One-third of the \$1,000 is retained by the treasurer and goes into the general fund of the State treasury; two-thirds is returned to Bedford county and goes into the general fund of the county.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**TREASURERS—County and city—Bonds—Termination of liability of.**

RICHMOND, VA., July 17, 1930.

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

DEAR SIR:

I am in receipt of yours of today in which you ask the following question:

"I am writing to request an opinion with reference to the termination of liability on the official bonds of county and city treasurers in cases in which the principal is permitted by the court to execute a new bond carrying the same or a different penalty from the old bond and secured either by corporate or personal security, the question being at what date will the liability on the old bond terminate with reference to the date of the execution of the new bond?"

In reply thereto, I beg to advise that in my opinion, if the court before which a county or city treasurer has heretofore qualified and given bond enters an order allowing him to execute a new bond in lieu of the old bond, carrying the same or different penalty therefrom, and pursuant thereto such treasurer executes a new bond in accordance with the said order, the surety on the old bond will not be responsible for any shortage of the treasurer which occurred after the execution of the new one, unless the order expressly

provides otherwise. Sureties on the old bond will, of course, be responsible for any shortages which took place prior to the date of the execution of the new bond, but, as stated above, their liability for further shortages ceases upon the execution of the new one.

Section 281 of the Code seems to cover your question exactly. It is therein, in part, provided:

"Where it is provided by any section of this Code, or shall be provided by any subsequent statute, that any new bond \* \* \* may be required to be given by any officer, fiduciary, or any other person, if such new bond, when required, be given and accepted, the sureties in the former bond and their estates shall, except in cases where it is otherwise expressly provided, be discharged from all liability for any breach of duty committed by their principal after such new bond is so given and accepted. \* \* \*"

The language quoted above cannot, in my opinion, be deemed to refer to a bond given in addition to the bond already outstanding, for the reason that the section from which I have quoted refers in part expressly to an entirely new bond and in part expressly to a bond in addition to the one already outstanding.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**TREASURER—Liability of funds deposited in bank by court order, etc.**

RICHMOND, VA., *April 27, 1931.*

HON. F. W. HUDDLESON,  
*County Treasurer,  
Fairfax, Virginia.*

DEAR MR. HUDDLESON:

I am in receipt of your letter of the 21st instant, in which you detail the circumstances under which you have placed on deposit certain sinking funds formerly in your hands, part in the National Bank of Fairfax and the rest in the National Bank of Herndon, and I note you say that these funds were deposited pursuant to the orders of the circuit court of your county, and that the question has arisen as to the liability of you and your bondsman for the safety of the funds deposited.

In my opinion, provided the funds were taken out of your hands and deposited in the banks by the action of the board of supervisors of your county, with the approval of the circuit court of the county or the judge thereof in vacation, you are not further liable for the safe keeping of the money so deposited.

In your letter, however, you say that you were directed in each instance by the court to deposit these funds. Section 2124-g of the Code, to which you refer, provides for a deposit in a bank by a board of supervisors, with the approval of the court. I assume, however, that the board made the deposit and, when you say that the court directed the deposit, you have in mind the fact that the court approved of the deposit.

The propriety of depositing county funds in bank without security is a matter for the board of supervisors and for the court and, after the money has been taken out of your hands by legal authority, neither you nor your bondsman are, in my opinion, further liable.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**TREASURER—Liability on official bond.**

RICHMOND, VA., *September 23, 1930.*

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

DEAR SIR:

I am in receipt of your letter of the 15th instant, in which you write:

“As Treasurer of Virginia I hold in custody the following funds:  
Federal Vocational  
Federal Rehabilitation  
George Read

“These funds are sent to me direct by the United States Treasurer and held by me as custodian for a period of from ten to sixty days, in a special account, until such time as I am ordered by the Board of Education to pass them to the credit of the General Funds of the Treasurer of Virginia.”

You then desire my opinion as to whether your bond to cover your official duties as Treasurer includes the administration of the three Federal funds you have named.

I understand that these funds are held by you in your capacity as State Treasurer. This being true, your bond covers the proper handling of these funds, your bond being conditioned for the faithful discharge of the duties of your office.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**VACCINATION—Injury from—No criminal offense.**

RICHMOND, VA., *September 24, 1930.*

HON. WILLIAM R. BROADDUS, JR.,  
*Attorney for the Commonwealth,*  
*Martinsville, Virginia.*

DEAR MR. BROADDUS:

I am in receipt of your letter of the 22nd instant, in which you state that a citizen of your county has made complaint to you on account of the death of his son, which he attributes to a forceful vaccination.

Accompanying your letter is a resolution of the school board of your county ordering the vaccination of all school children.

I note you say that you are of the opinion that there was no criminal negligence shown in the vaccination of the school children and that you do not think that the school board was exceeding its authority in requiring and enforcing the vaccination.

I concur in your opinion. Section 690 of the School Code expressly authorizes the school board to require immediate vaccination in case of an epidemic of smallpox and the annual revaccination of those who have not furnished certificates of a proper vaccination. This section in part provides:

“ \* \* Where a pupil has not been vaccinated, the board shall, after notifying the parent, guardian, or such other person having the custody or control of such child, to do so, proceed to have such child vaccinated, where the parent, guardian or other person having such child under control fails or neglects to do so within the time specified, the cost of which vaccination shall be paid out of the school funds of the county. \* \* ”

Section 691 of the School Code makes it a misdemeanor for a parent, etc., to fail to obey the notice of the school board within the time limit prescribed by such notice, not less than five days from the date thereof.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**VIRGINIA INDUSTRIAL SCHOOL FOR BOYS—Actions in behalf  
should be brought in name of State.**

RICHMOND, VA., *December 22, 1930.*

HON. WM. M. SMITH,  
*Attorney for the Commonwealth.*  
*Cumberland, Virginia.*

DEAR SIR:

In reply to your inquiry of whether a suit may be brought in the name of the Virginia Industrial School for Boys for damages to one of its automobiles, I beg to refer you to Acts of 1920, page 64. Pursuant to that act, it is my understanding that all of the property of the Prison Association of Virginia was transferred to the Commonwealth and that the property and affairs of that association were thereafter governed by the board of directors. It would appear from this that the Commonwealth should bring the suit, unless there be some other act of which I at present am not advised.

You refer to Acts of Assembly, 1926, page 399. The only mention I find in that act of the Virginia Industrial School for Boys is a provision permitting the authorities thereof to send to the State Prison Farm for defective misdemeanants any ward of the school who appears to endanger the morals of the institution.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

**VIRGINIA MILITARY INSTITUTE—May not pay for membership chamber of commerce.**RICHMOND, VA., *April 21, 1931.*

GENERAL JOHN A. LEJEUNE, *Superintendent,*  
*Virginia Military Institute,*  
*Lexington, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 18th instant, in which you desire to be advised as to whether it is legal for a State institution to become a member of the Virginia State Chamber of Commerce.

I assume from your letter that your inquiry is directed to the question as to whether the institution may pay the admission fee or annual dues of a member of the Chamber of Commerce.

Of course, it is not illegal for an institution to become a member of the Chamber of Commerce. The question of the propriety of the payment of an annual membership fee is another question.

Appropriations for State institutions are usually directed to specific objects. There is no appropriation covering membership fees of State institutions in the Virginia State Chamber of Commerce, and I am of the opinion that no such expenditure comes within the letter or the spirit of the appropriation act providing for State institutions.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**WESTERN STATE HOSPITAL—Legal residence.**RICHMOND, VA., *October 17, 1930.*

DR. J. S. DEJARNETTE, *Superintendent,*  
*Western State Hospital,*  
*Staunton, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 11th instant, in which you write:

"We had a patient committed to this institution as inebriate recently who has lived in Washington, D. C., for the past ten years, though he has been voting in Virginia and claims citizenship in Virginia. While he may be a citizen of Virginia, he is certainly not a resident of Virginia, and I am writing to know if he is entitled to treatment at our hospital, or should he be sent to one of the institutions in Washington, D. C., where he has been living with his wife for the past ten years."

In my opinion, the right of a person to hospital treatment depends upon his actual residence and not to his technical right to register and vote in a county in which he does not actually reside.

You will remember that some time ago I held to this effect in the case of a Chinaman who, though unnaturalized, had been a resident of Norfolk for quite a considerable period of time, and I construed the word "resident" in the law applicable to the unfortunate insane to have reference to the place of residence and not to the question of citizenship.

In my opinion, therefore, if the patient to whom you allude has been an actual resident of the District of Columbia for the past ten years, he should be taken care of by the hospital authorities of that district.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**WESTERN STATE HOSPITAL—Residence.**

RICHMOND, VA., July 29, 1930.

DR. J. S. DEJARNETTE, *Superintendent,*  
*Western State Hospital,*  
*Staunton, Virginia.*

MY DEAR DOCTOR:

I am in receipt of your letter of July 19, in which you advise that a woman has been committed to your institution from Loudoun county who has only been in Virginia four months. You say her husband came to Virginia from another state about two years ago, because of the fact that he was threatened in his home state with arrest for non-support, and that he has refused to live with his wife in this State.

You ask if the residence of the wife follows that of the husband under these circumstances.

I do not think so. Ordinarily, where a man has made a home and his wife follows him and lives with him, his residence becomes that of the wife, but I do not think this applies where a person has fled his home State because of threatened arrest for non-support, and his wife follows him into Virginia, but they have not lived together as husband and wife.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.*

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**WESTERN STATE HOSPITAL—Sterilization of inmates.**

RICHMOND, VA., December 17, 1930.

DR. J. S. DEJARNETTE, *Superintendent,*  
*Western State Hospital,*  
*Staunton, Virginia.*

DEAR DR. DEJARNETTE:

I am in receipt of your letter of Monday, in which you ask to be advised as to whether or not, in order for you to comply with the provisions of chapter 46-b of the Code, having to do with the sexual sterilization of inmates of State institutions, it is necessary for the patients, after having been committed to institutions, to remain continuously in such institutions while proceedings are being had in court for the purpose of securing an order allowing sterilization of the patients.

Under the provisions of section 1091 of the Code, feeble-minded persons committed to institutions may be handled and treated in the same way as

insane patients, and I take it that that permits the furlough of a patient either before or after actually entering into the institution.

I do not think the entry of a patient into the institution is a technical matter. However, the court proceedings, including petition, notices, appointments of guardians, etc., should be strictly complied with.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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**WESTERN STATE HOSPITAL—Unnaturalized Chinaman entitled to treatment.**

RICHMOND, VA., *September 4, 1930.*

DR. J. S. DEJARNETTE, *Superintendent,*  
*Western State Hospital,*  
*Staunton, Virginia.*

DEAR DR. DEJARNETTE:

Your letter of the 15th of August has been received. In this you write:

"We have a Chinaman here from Hampton who has never been naturalized, but has been living in Virginia twenty years. We charge him the rates of a non-resident and I will be glad if you will advise me if this charge is correct."

I do not think so. On November 17, 1920, I wrote Dr. B. L. Taliaferro, Catawba Sanatorium, Virginia, that I knew of no law preventing the admission of a Chinaman who had been living in Virginia for fifteen years, but who had not been naturalized, to Catawba Sanatorium.

The law providing for the admission of persons to State hospitals provides for residents. There is no distinction made between naturalized and unnaturalized residents. It is true that persons coming into the State who have not become residents are subject to deportation to the State of their residence.

In my opinion, the Chinaman to whom you refer is entitled to free hospital treatment.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**WILLIAM AND MARY COLLEGE—Legal right to pay for health service rendered to the college.**

RICHMOND, VA., *April 23, 1931.*

HON. C. R. KEILEY, *Director,*  
*Bureau of Rural Sanitation,*  
*Department of Health,*  
*Richmond, Virginia.*

DEAR COLONEL KEILEY:

I am today in receipt of your letter of the 21st instant, in which you refer to a conference in which the right of the College of William and Mary

to subscribe for certain health service rendered to the college, was discussed. Your letter contains the following information as to the work done for the college:

"As you doubtless will recall, Williamsburg formerly had a considerable number of malaria cases every year. During the years 1921 and 1922 there were reported from the county, and most of the cases were in the city of Williamsburg, 355 cases of malaria. Control work was started in 1923 and even during the first year there was a considerable drop in malarial cases. For the seven years, 1924 to 1930 inclusive, there have been 92 cases of malaria reported from the county. There were only five cases last year, and there has been only one death from malaria since 1923—none in the last five years. To a less extent but definitely, typhoid fever has declined during the years succeeding the period of health work as compared with an equal number of years preceding. And since a large part of this work is done in the immediate vicinity of the college and for the direct benefit of the college, it has been customary for the college to pay a proportionate cost of carrying on the work. The payment made by the college has been and is at the rate of \$750 a year out of a total expenditure for health work amounting to \$5,500. I should say that the actual time spent on work directly in the interest of the college would cost that institution considerably more if conducted alone than it is costing under the present arrangement."

In my opinion, the College of William and Mary is authorized to expend funds appropriated by the Legislature for necessary sanitation purposes. There is a decided difference between a subscription by the college for general county health or sanitation purposes and a subscription to the work of your department which directly concerns the health and sanitation of the college.

I do not mean by this opinion that the expenditure of college funds must necessarily be confined to the college campus, but the work in which the money is expended must bear a direct relation to the well-being of the college. For instance, I do not think the college would be authorized to expend money in a remote part of James City county, where there is little or no likelihood of bad health conditions reacting on college life or activities.

I am of the opinion, however, that public college money may be expended for the eradication or control of disease in such close proximity to the college where there is a reasonable probability that the disease may reach the college and affect the health of the students and college staff.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**WITNESSES—Fees and mileage.**

RICHMOND, VA., July 13, 1931.

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

DEAR SIR:

I have for reply your letter of July 11, in which you inquire whether Mr. C. M. Feltner, Deputy Sheriff and Jailor of Clarke county, is entitled to an allowance out of the State treasury for appearance as a witness in a certain

misdemeanor case and in a certain felony case tried at the January term of the circuit court of that county, the facts being as follows:

Mr. Feltner, who was duly served with process in Clarke county, went to Cuba and returned in order to testify in these cases. The treasurer of the county has presented a witness certificate for the sum of \$178.00 in the felony case (\$3.00 of which is for attendance fee and \$175.00 of which is for mileage) and one for the sum of \$101.00 in the misdemeanor case (\$1.00 of which is for attendance fee and \$100.00 of which is for mileage), the amount of mileage of these certificates being for traveling expenses from Cuba.

In the file of correspondence enclosed with your letter, I find a communication to you from the clerk dated July 9, in which he says that the question was raised whether Mr. Feltner was entitled to mileage in the misdemeanor case and it was held that he was.

Section 3512 of the Code provides as follows:

"All witnesses summoned for the Commonwealth shall be entitled to receive for each day's attendance fifty cents, all necessary ferriage and tolls, and five cents per mile over five miles going and returning to place of trial \* \* \*."

Section 3529 of the Code reads as follows:

"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 \* \* \*."

Section 4957 of the Code provides:

"Sections thirty-five hundred and twenty-nine to thirty-five hundred and thirty-two, inclusive, shall apply to a person attending as a witness, under a recognizance or summons in a criminal case, as well as to a person attending under a summons in a civil case, except that, in a criminal case, a witness who travels over fifty miles to the place of attendance, shall have for each day's attendance one dollar, instead of fifty cents; 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."

I know of no way in which one of our courts can "summon" as a witness a non-resident, unless he be in the State of Virginia. A specific mileage allowance is paid to one who is "summoned." If a non-resident is willing to attend as a witness, then the court can make him an allowance; but it seems to me that, if a resident of Virginia is duly "summoned," he is entitled only to the ordinary mileage allowance from the point where he resides to the point of trial. To adopt the view that a resident who has been "summoned" can then go off to Cuba, or to any other point, and ask the State to pay him a large sum of money for traveling from this far distant point, is totally outside the consideration of our statute, and I do not think a resident of Virginia, who has been duly "summoned," is entitled to any mileage allowance other than that from the place where he resides to the place of trial.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

## Statement

*Showing the Current Expense of the Office of the Attorney General from June 30, 1930, to July 1, 1931.*

General repairs .....	\$ 98 75
Telegrams .....	21 29
Telephone service and tolls .....	478 53
Subscriptions to and purchase of law books .....	307 50
Postage .....	205 00
Towels, drinking water, furniture, office supplies .....	288 35
Office equipment .....	407 40
Insurance premiums .....	14 40
Additional stenographic service .....	148 00
Miscellaneous .....	29 70
Printing .....	419 00
	<hr/>
	\$ 2,417 92

## Statement

*Showing Amounts Expended from the Appropriation for Traveling Expenses from June 30, 1930, to July 1, 1931.*

1930	
Sept. 15. Edwin H. Gibson, expenses to Staunton, attending Court of Appeals .....	\$ 10 00
Nov. 14. Edwin H. Gibson, expenses to Front Royal, taking of depositions in case of <i>Commonwealth v. A. L. Warthen</i> .....	4 00
Dec. 17. Edwin H. Gibson, expenses to Roanoke, conference in re violations of Weights and Measures Law .....	9 25
1931	
Jan. 17. Collins Denny, Jr., expenses to Washington, attending Supreme Court of U. S., <i>Railway Express Agency v. Commonwealth</i> ..	20 40
Jan. 24. Collins Denny, Jr., expenses to Washington, attending U. S. Supreme Court .....	14 05
Feb. 17. John R. Saunders, expenses to Washington, attending Federal Power Board hearing .....	17 20
Feb. 17. Edwin H. Gibson, expenses to Washington, attending Federal Power Board hearing .....	7 70
April 3. Edwin H. Gibson, expenses to Winchester, re: <i>Commonwealth v. Warthen's Est.</i> .....	2 75
April 13. Collins Denny, Jr., expenses to Portsmouth, attending habeas corpus case .....	7 11
April 15. Edwin H. Gibson, expenses to Washington, attending U. S. Supreme Court .....	26 75
June 8. Collins Denny, Jr., expenses to Wytheville, attending Court of Appeals .....	19 13
	<hr/>
	\$ 138 34



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