

REPORT
OF THE
ATTORNEY GENERAL

TO THE
Governor of Virginia

From July 1, 1931, to June 30, 1932

RICHMOND :
1933

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Letter of Transmittal

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 1, 1932.

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, 1932.

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.)

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

Attorneys General of Virginia
From 1776 to 1930

EDMUND RANDOLPH	1776-1786
JAMES INNES	1786-1796
ROBERT BROOKE	1796-1799
PHILIP NORBORNE NICHOLAS	1799-1819
JAMES ROBERTSON	1819-1834
SIDNEY S. BAXTER	1834-1852
WILLIS P. BOCOCK	1852-1857
JOHN RANDOLPH TUCKER	1857-1865
THOMAS RUSSELL BOWDEN	1865-1869
CHARLES WHITTLESEY (military appointee).....	1869-1870
JAMES C. TAYLOR	1870-1874
RALEIGH T. DANIEL	1874-1877
JAMES G. FIELD	1877-1882
FRANK S. BLAIR	1882-1886
RUFUS A. 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

*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. *Ayres, Stanley v. Commonwealth.* From Circuit Court of Fairfax County. Robbery. Reversed.
2. *Byrd, Preston v. Commonwealth.* From Circuit Court of Accomac County. Malicious wounding. Affirmed.
3. *Commonwealth of Virginia v. City of Newport News, et als.* From Circuit Court of City of Richmond. Pollution of waters. Affirmed.
4. *Cox, Randolph C. v. Commonwealth.* From Circuit Court of Richmond County. Murder. Affirmed.
5. *Dillard, Marion v. Commonwealth.* From Circuit Court of Montgomery County. Malicious wounding. Error confessed.
6. *Grinnelle, Leon v. Commonwealth.* From Circuit Court of Mathews County. Rape. Reversed.
7. *Hagood, J. L. v. Commonwealth.* From Circuit Court of Mecklenburg County. Lynch law. Affirmed.
8. *Hicks, Lee v. Commonwealth.* From Circuit Court of Fairfax County. Larceny. Affirmed.
9. *Hurdle, J. M. v. Commonwealth.* From Circuit Court of Accomac County. Prohibition. Affirmed.
10. *McCallister, J. R. v. Commonwealth.* From Circuit Court of Alleghany County. Prohibition. Reversed.
11. *Nelson, Thomas v. Commonwealth.* From Circuit Court of Albemarle County. Murder. Reversed.
12. *Puckett, Slep v. Commonwealth.* From Circuit Court of Tazewell County. Murder. Affirmed.
13. *Richmond, W. M. v. Commonwealth.* From Circuit Court of Northampton County. Robbery. Reversed.
14. *Roach, John v. Commonwealth.* From Circuit Court of Northampton County. Robbery. Reversed.
15. *Roy, George v. Commonwealth.* From Corporation Court of City of Alexandria. Gambling—lottery. Dismissed for want of judgment.
16. *Scoggin, Junius L. v. Commonwealth.* From Circuit Court of Patrick County. Rape. Reversed.
17. *Steele, Erna v. Commonwealth.* From Circuit Court of Wise County. Murder. Affirmed.
18. *Sullivan, Eugene v. Commonwealth.* From Hustings Court of City of Roanoke. Breaking and entering. Affirmed.
19. *Tester, Hillman v. Commonwealth.* From Circuit Court of Buchanan County. Murder and malicious shooting. Reversed.
20. *Thacker, James v. Commonwealth.* From Circuit Court of Buchanan County. Murder. Reversed.
21. *Watson, Haynie v. Commonwealth.* From Circuit Court of Mecklenburg County. Prohibition. Error confessed.
22. *Wilson, Charlie v. Commonwealth.* From Corporation Court of City of Norfolk. Malicious shooting. Reversed.
23. *Woody, Will and Charles v. Commonwealth.* From Circuit Court of Halifax County. Prohibition. Error confessed.

Cases Pending in the Supreme Court of Appeals of Virginia

1. *Belcher, William v. Commonwealth.* From Circuit Court of Franklin County. Murder.
2. *Clarke, George v. Commonwealth.* From Circuit Court of Botetourt County. Murder.
3. *Davis, Aldora v. Commonwealth.* From Corporation Court of City of Radford. Assault and battery.
4. *Gamble, Joe v. Commonwealth.* From Circuit Court of Scott County. Prohibition.
5. *Hill, John v. Commonwealth.* From Hustings Court of City of Petersburg. Murder.

6. *Hurd, John v. Commonwealth*. From Circuit Court of Russell County. Murder.
7. *International Harvester Company Truck, etc., v. Commonwealth*. From Circuit Court of Brunswick County. Forfeited automobile.
8. *Martin, C. W. v. Commonwealth*. From Circuit Court of Russell County. Obstructing a public road.
9. *Miller, Thomas R. v. Commonwealth*. From Circuit Court of Chesterfield County. Trespass.
10. *Myorum Development Corporation v. Commonwealth of Virginia, etc.* From Circuit Court of Prince George County. Forfeited automobile.
11. *Owens, Roger v. Commonwealth*. From Circuit Court of Hanover County. Attempted rape.
12. *Regensburg, John T. v. Commonwealth*. From Circuit Court of Gloucester County. Prohibition.
13. *Rosenberger, H. C. v. Commonwealth*. From Circuit Court of Shenandoah County. Prohibition.
14. *Rosser, R. W., Jr. v. Commonwealth*. From Corporation Court of City of Lynchburg. Malicious shooting.
15. *Saeyer, Will, et al. v. Commonwealth*. From Circuit Court of Dickenson County. Malicious trespass.
16. *Tucker, Albert v. Commonwealth*. From Corporation Court of City of Lynchburg. Murder.
17. *Walters, Neal v. Commonwealth*. From Circuit Court of Wythe County. Housebreaking.
18. *Wood, Leonard H. v. Commonwealth*. From Circuit Court of Rockingham County.

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.*

IN CHANCERY

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

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OPINIONS

ACTS OF ASSEMBLY—When effective.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 12, 1932.*

MR. C. B. MORTON,
207 High Street,
Portsmouth, Virginia.

DEAR MR. MORTON:

I am in receipt of your letter of the 7th instant, in which you write in part:

"4. The terms of service of all special policemen appointed for the county of Norfolk before this act takes effect shall expire at midnight on the *thirty-first day of June, nineteen hundred and thirty-two*, and the terms of service of the police officers appointed under the provisions of this act shall begin at the same time.

"Will you be so kind as to inform me whether this error is of a vital nature or not? There being no such date, how could any terms expire then, or begin then?"

In my opinion, there being no such date as the 31st day of June of any year, an act providing that it shall take effect at midnight on the 31st day of June will be construed by a court as taking effect on and after midnight of the 30th day of June.

"Mere verbal inaccuracies, or clerical errors in statutes in the use of words, or numbers, or in grammar, spelling, or punctuation, will be corrected by the court whenever necessary to carry out the intention of the Legislature as gathered from the entire act." *Looney v. Commonwealth*, 145 Va. 825.

The same principle of law, using the identical words, is found in 36 Cyc. 1126.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AGRICULTURE AND IMMIGRATION—Authority to employ engineer.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 5, 1931.*

STATE BOARD OF AGRICULTURE AND IMMIGRATION,
State Office Building,
Richmond, Virginia.

DEAR SIRs:

There has been left in my office for consideration the file covering the allowance of \$500 to Mr. A. W. Koiner for professional services and expenses in connection with his investigation into the power rates at the State Lime Grinding Plant at Staunton, Virginia.

There is a letter in this file under date of October 28th last from Governor John Garland Pollard to Honorable R. H. Angell, Roanoke, Virginia, covering some features in connection with this item. The Governor cites the fact that section 1102 of the Code gives the State Board of Agriculture and Immigration control of the funds of the department, and suggests that the item allowed Mr. Koiner be referred to my office for an opinion as to its validity. The Governor calls attention in his letter to the fact that the State employs an engineer to perform the very services for which Mr. Koiner was retained, and further states

that, where a specialist is needed, the State avails itself of the services of the faculty of the Virginia Polytechnic Institute, and further on insists that it is his policy for all of the departments and institutions of the State to use the free technical service which is at the command of State agencies.

At one time the State Board of Agriculture and Immigration did have control and disposition of the funds of the Agriculture Department, but, since the reorganization act of 1927, and in pursuance of the provisions carried in the appropriation bill of 1930, all of the money going to the Agriculture Department in any way is converted directly into the State treasury. In this event, money can only be appropriated by an act of the Legislature to take care of the expenses of the board, and it may no longer itself pay expenses incurred unless there is provision therefor in the appropriation bill. I have examined the appropriation bill and find that \$36,300 is appropriated for the maintenance and operation of the State Lime Grinding Plant at Staunton, and that among the items a sum not exceeding \$4,475 is specifically set apart for additional employees and special payments.

The Governor in his letter to Mr. Angell calls attention to the fact that the services which were rendered by Mr. Koiner had already been provided for through an engineer employed for the purpose and by the faculty of the Virginia Polytechnic Institute. The Governor, I understand, did not have at the time either the joint letter, or a copy thereof, from Mr. C. W. Hoilman, of the Virginia Polytechnic Institute, electrical engineering department, and Mr. S. R. Minter, of the electrical service department of the same institution. It will be seen from this letter that the Department of Agriculture and Immigration had, before the employment of Mr. A. W. Koiner, been in touch with the engineering department of the Virginia Polytechnic Institute, and the gentlemen whose names I have given had been to Staunton and made an investigation of the situation. They had been sent there because of the fact that the cost of operating the plant had greatly increased. Their report, without going into its technical features, did not offer a solution as to the cause of the large increase in operating expenses; neither did it suggest a remedy, and I do not understand that the institute or any of its activities took up with the power company the economic features of the problem which was thoroughly gone into by Mr. A. W. Koiner and whose services have resulted in a very considerable saving to the Lime Grinding Plant.

I think it would be well to call the Governor's attention to the fact that Mr. Koiner's services were of a nature different from the services rendered by the institute and that, while there is no doubt of the efficiency or the correctness of the survey made by the engineering department of the institute, Mr. Koiner went further than to investigate the efficiency of the then existing plant and the testing of the quantity of power furnished by the power company. He acted not only as an engineer, but as an economist, and I am of the opinion that, upon these facts being called to the attention of the Governor, he will agree that Mr. Koiner's bill for services is of such a character and nature that it should be paid.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

APPROPRIATIONS—Disposition of unexpended balance—Industrial Commission—Banking Division.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 19, 1932.

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

MY DEAR GOVERNOR:

I beg to acknowledge receipt of your letter of May 10th, in which you call my attention to section 28 of the general appropriation act (chapter 147 of the Acts

of Assembly, 1932), and in which you further call attention to the fact that the Comptroller's records show a relatively large unexpended balance to have accumulated to the credit of the Industrial Commission from revenues collected for the support of that Commission, of the Bureau of Insurance and Banking from fees collected for the supervision, inspection and regulation of insurance companies, of the Penitentiary Industrial Department and State Lime Grinding Plant, at Staunton, from funds derived from the operation of those agencies, and of the State Penitentiary Farm and State Prison Farm for Defective Misdemeanants, from funds derived in part from the operation of the farm and in part by an allowance made from the appropriation for criminal charges. You wish my opinion upon the question whether those unexpended balances will, at the close of business on June 30, 1932, lapse into the general fund of the State treasury.

I am informed by the Comptroller's office that the balances to the credit of these special funds are not derived solely from "the balance of the appropriations made by previous acts." These credit balances are, in part, composed of an unexpended balance of an appropriation, and they are, in part, composed of an unappropriated surplus of funds derived from special sources. It seems to me clear beyond peradventure of doubt that any portion of these balances created by reason of an unappropriated surplus from these special funds is not within the contemplation of section 28 of the general appropriation act. If that portion of each of these balances which is traceable to an unexpended appropriation will lapse into the general fund by virtue of section 28, it would be necessary to examine the balances in order to ascertain what portion thereof is traceable to one source and, therefore, lapses, and what portion thereof is traceable to another source and does not lapse. It will not, however, be necessary to make that examination, for I am of the opinion that none of these balances, whether derived from an unexpended appropriation or from an unappropriated surplus, will lapse into the general fund.

In the 1928 amendment to the reorganization act (Acts 1928, page 343) it was provided that "moneys paid into the State treasury which are not now payable into the general fund of the treasury shall be placed to the credit of the respective accounts which are required by law to be kept on the books of the Comptroller or to the credit of new accounts to be opened on the books of the Comptroller with such agencies so paying such moneys into the treasury, respectively."

The appropriation act itself provides that the general fund shall consist of "public taxes and arrears of taxes," and "the revenue and money derived from all other sources, not segregated by law to special funds or otherwise appropriated."

None of the moneys to the credit of these funds has ever been regarded as a part of the general fund, nor have they ever been paid into the general fund, and it is moneys of this type to which the above-mentioned Act of 1928 referred when it provided "not now payable into the general fund."

So far as the unexpended balances to the credit of the Penitentiary Industrial Department and the State Lime Grinding Plant, at Staunton, are concerned, an examination of the statute referring to the Industrial Department (section 2073) and of the statute referring to the Lime Grinding Plant (section 1268) shows that those two industries are to be conducted as nearly as possible upon a cost basis and that they are not designed for profit. For this reason the receipts from those enterprises have always been carried, and I think correctly so, as a specially segregated fund and not as part of the general fund.

I am, therefore, of the opinion that from the nature of these funds and from the nature of the business operations with which they are connected, and from that which has been above recited, they are not lapsable into the general fund, save by express provision to that effect, and section 28 of the general appropriation act does not contain any such express provision.

What has just been said will, in part, apply to the balances to the credit of the State Penitentiary Farm and State Prison Farm for Defective Misdemeanants. The money which those institutions receive from the appropriation for criminal costs is in return for the per diem keep of the prisoners and is, to use the language of the appropriation act, "collected or received for the use" of said farms. By long administrative construction, it has been carried as a special segregated fund and would not lapse into the general fund, save only pursuant to express provision.

The balance to the credit of the Industrial Commission is derived from a special tax levied by subsection (c) of section 75 of the Workmen's Compensation Act. That section expressly provides that this tax is levied for the purpose of paying the expenses of the Industrial Commission, and that the funds so collected shall be paid out only pursuant to section 22½ of chapter 33 of the Acts of 1927. Section 22½ of chapter 33 of the Acts of 1927 provides that "No portion of the fund, or any surplus accruing therein shall be paid into the general fund of the treasury." Very clearly the balance to the credit of this fund does not lapse.

The balance to the credit of the Bureau of Insurance and Banking is derived from a special assessment levied on insurance companies pursuant to section 4194 of the Code, and is for the purpose of maintaining the Bureau of Insurance. Since this act also fixes the assessment and the purpose for which it is made, the credit balance would not lapse into the general fund.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUDITOR OF PUBLIC ACCOUNTS—Duty to answer inquiries as to county accounting.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 27, 1931.

HON. T. COLEMAN ANDREWS,
*Auditor of Public Accounts,
State Office Building,
Richmond, Virginia.*

DEAR MR. ANDREWS:

I am in receipt of yours of the 16th instant, enclosing a letter from Honorable Fred R. Shepherd, under date of the 15th instant. I quote Mr. Shepherd's letter:

"As a citizen and taxpayer of the county of Chesterfield, Virginia, I wish to make inquiry of your office relative to the bookkeeping and accounting system of the various offices of said county. I would appreciate your advising me by return mail relative to the following questions:

"1. Has the offices of Chesterfield county adopted the system of bookkeeping and accounting as provided for by section 552 of the Virginia Code of 1924?

"2. Has the system been furnished and adopted by the treasurer, D. M. Walker, of Chesterfield county as provided for in section 554 of the Virginia Code of 1924?

"3. Has D. M. Walker, treasurer of Chesterfield county, put into effect the system of bookkeeping furnished?

"4. Has the treasurer of Chesterfield county, D. M. Walker, refused to adopt the system furnished; has his refusal been reported to the Attorney General's office, as provided for in section 555 of the Virginia Code of 1924?"

In response to your request for an opinion as to whether or not you *must* answer the questions asked by Mr. Shepherd, I have this to say:

On September 13, 1928, in response to a letter from Honorable Eppa Hunton, Jr., chairman of the Board of Visitors of the Medical College of Virginia, which letter I quoted in my answer, I expressed the opinion that the records of the Medical College of Virginia were public documents and, so far as they were of direct interest to individuals or of public concern, taxpayers and citizens had a right to the public access thereto. I enclose a copy of that letter.

In my opinion, the information which is sought in Mr. Shepherd's questions is not such as you are obligated as a public official to answer, although I can see absolutely no impropriety in your answering such of them as you feel disposed to answer.

So far as the first question is concerned, I do not understand that officials of counties adopt systems of bookkeeping and accounting under the provisions of section 552 of the Code of Virginia. That is a function of the Auditor's office, under the direction of the auditing committee of the General Assembly. While the language of section 555 speaks of the adoption of a system by county officials and provides for the manner in which recalcitrant officials are compellable to install the system, the selection of the system is with the Auditor.

All of the information asked for in the first three questions of Mr. Shepherd's letter are available to him upon an inspection of the public records of Chesterfield county. He, as any other taxpayer and citizen, may go to the office of the treasurer of Chesterfield county and ascertain for himself whether or not the bookkeeping system mentioned has been installed.

The fourth question is practically a repetition of the preceding ones. Last week Mr. Walker was in the Attorney General's office and I, although not required to do so, gave him a statement to the effect that you had not reported him as having refused to adopt a system of bookkeeping and accounting for Chesterfield county. I told him at the time that the law required him to put in such a system as you should devise under the direction of the auditing committee of the General Assembly, and I understood him to say that he expected to do so whenever you made such a demand.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

AUDITING COMMITTEE—Authority to incur indebtedness.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 15, 1931.

HON. T. COLEMAN ANDREWS,
*Auditor for the Auditing Committee of the General Assembly,
Richmond, Virginia.*

DEAR MR. ANDREWS:

I am in receipt of your letter of yesterday, in connection with the payment of the expenses incurred by the Auditing Committee of the General Assembly in carrying out duties imposed upon that committee by section 68 of the Constitution.

I note that your letter refers to my opinion to the Comptroller, in which I held that if it becomes necessary for the Auditor of Public Accounts to expend more than is provided for his office in the general appropriation bill, the Governor should be requested and should allow the Auditor of Public Accounts to incur a deficiency.

At the time that opinion was given, my attention had not been called to the fact that the Auditing Committee was proceeding under section 68 of the Constitution to have an examination made of the books and accounts of the State Treasurer and all other executive officers at the seat of government whose duty pertained to auditing or accounting the State revenue and examination of the public institutions of the Commonwealth.

I did not, until our conversation yesterday, appreciate the fact that you, as Auditor of Public Accounts, were handling all of the duties of your office and paying the expenses thereof out of the appropriation provided by law for the Auditor of Public Accounts, and that the Auditing Committee of the General Assembly was proceeding under section 68 of the Constitution to perform its duties and, pursuant thereto, had authorized and directed you to employ accountants to assist in the investigations of the committee.

From the above facts, I see that you are acting in a dual capacity, performing the duties of both Auditor of Public Accounts and auditor for the Auditing Committee of the General Assembly; that you are paying the expenses incurred

as Auditor of Public Accounts out of the appropriation provided by law for that office, and that the question which you are now asking is my opinion as to the authority for payment of the expenses incurred by you as auditor for the Auditing Committee of the General Assembly.

A certain specified amount is allowed for the expenses of the Auditor of Public Accounts; the provision for the payment of the expenses of the Auditing Committee for the year 1930-31 being found on page 197 of the Acts of 1930, under the head of Auditor of Public Accounts, is as follows:

"Expenses of the Auditing Committee, as provided by law, a sum sufficient."

And I find that under the same heading the identical language is used on page 259 of the Acts of 1930 for the year 1931-32.

The Constitution having provided imperative duties on the part of the Auditing Committee, and the Legislature having provided for the biennium 1930-32 an appropriation of a sum sufficient to meet the expenses of the Auditing Committee, I am of the opinion that there is no limit upon the amount appropriated for all proper expenses incurred by the committee in discharging its duties, and that all bills, when audited and certified to the Comptroller by the committee, should be paid by him.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

AUTOMOBILES—Chauffeurs' license, fees, etc.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 30, 1932.*

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

DEAR MR. HARDY:

I am in receipt of your letter of the 22nd instant, in which you enclose query D, both your letter and the query containing an interpretation of the law now and hereafter governing the issue of chauffeurs' licenses by the Division of Motor Vehicles.

To say the least, the chauffeurs' license law is exceedingly complicated and it is almost impossible to be absolutely sure of a correct interpretation and construction. As you say in your letter, two acts were passed by the General Assembly of Virginia at its 1932 session: the first, being chapter 342, was approved March 26, and the second, being chapter 385, was approved March 29. Consequently the last act, so far as it covers the entire field of the examination and licensing of chauffeurs, governs the operation of the issue of chauffeurs' licenses.

Chauffeurs' licenses issued on or before the 20th of June of this year must be issued under the law now in force, the fee for such licenses being \$5.00, and the licenses expire on the 31st day of December, 1932. Licenses issued June 21-December 31, 1933, inclusive, are controlled by the provisions of chapter 342 of the Acts of 1932, and require the payment of a fee of \$5.00, and expire at midnight on the 31st day of March, 1933. Licenses issued January 1-June 30, inclusive, 1933, expire June 30, 1933, and the fee therefor is \$2.50.

On and after July 1, 1933, the fee is \$2.00 for the annual license of a chauffeur. All licenses issued at any time after July 1, 1933, up to and including June 30, 1934, expire on that date. Such licenses may be renewed for periods of one year for a fee of \$2.00 or three years for a fee of \$5.00. Where the license has been issued between July 1, 1933, and June 30, 1934, such license may be renewed either for one year for the sum of \$2.00 or, upon the payment of the sum of \$5.00, renewed to expire June 30, 1936, and all licenses issued after June 30, 1934, may

be renewed for one-year intervals for the sum of \$2.00 for each year or for a period of three years for the sum of \$5.00.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

AUTOMOBILES—Reckless driving—Punishment.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 25, 1932.

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

DEAR MR. HARDY:

I am in receipt of your letter of the 22nd, in which you ask my opinion concerning the construction of several provisions contained in chapter 342 of the Acts of 1932, known as the Motor Vehicle Code of Virginia, and I note the circumstances under which you say that this act was passed by the General Assembly and especially with reference to the recital in subsection (d) of section 62 of the act in your query A and of the provision in section 113 in your query B.

The same principle of law applies to both of these queries and an answer to one is practically an answer to the other.

Section 61 of the act provides the punishment for reckless driving and to a limited extent defines that offense, making it a misdemeanor.

Section 62 defines reckless driving with very much greater particularity, and in subsection (d) provides that the offense shall be punished under the provisions of section 62, although section 62 does not itself make any provision for the punishment of reckless driving. The error, as I understand it, arises because of the fact that one of the sections of the Motor Vehicle Code was eliminated and thus the numerical designation of sections was reduced by one number, 61 as originally written and before one section was eliminated being 62, and section 62 being 63. The change in the numerical designation of sections having been made, an amendment should have been made to subsection (d) so as to provide that the offense for reckless driving enumerated in section 62 should be punished as provided in section 61. By an unfortunate oversight this was not done.

The same unfortunate mistake was made in section 113. This last error arose because of the fact that section 113, which made it a misdemeanor to violate any of the provisions of that section, was left in its original shape providing that a punishment for a misdemeanor under that section should be as provided in section 119 of the act, whereas section 113 should have been so amended as to provide for a punishment for violations of that section under the provisions of section 118. Section 118 provides for punishment for misdemeanors, while section 119 provides punishment for felonies. The mistake or error arose because of the fact, as stated above, that the numerical designation of the sections was reduced one by the elimination of one section.

A question of law embodying the same principle of construction was considered by me and my opinion was expressed in a letter addressed to Mr. C. B. Morton, 207 High street, Portsmouth, Virginia. In that letter I wrote in part:

"Mere verbal inaccuracies, or clerical errors in statutes in the use of words, or numbers, or in grammar, spelling, or punctuation, will be corrected by the court whenever necessary to carry out the intention of the Legislature as gathered from the entire act." *Looney v. Commonwealth*, 145 Va. 825.

Under the principle of law contained in that letter, I am of the opinion that violations of section 62 may be punished as provided for in section 61 and viola-

tions of section 113 may be punished under the provisions of section 118, as it was unquestionably the intention of the Legislature to punish reckless driving under the provisions of section 61 and to punish offenses under section 113 under the provisions of section 118.

Query C. Section 29 of the Acts of 1926, as amended, provides for the registration of motor vehicles, trailers and semi-trailers, and the fees for registration. A new schedule of fees for registration is contained in section 35 of chapter 342 of the Acts of 1932, effective April 1, 1933. This section continues the registration features of section 29 of Acts of 1926, as amended, for purposes of registration until April 1, 1933, and provides that registrations under section 29 shall not expire until March 31, 1933. Thus by inference all other provisions of section 29 are eliminated, and the section should be construed as containing only those provisions relating to registration. While this seems the evident purpose of the General Assembly, the language contained in section 35 of chapter 342, Acts 1932, might not be so construed but for the subsequent provisions contained in section 123 of chapter 342.

This last section repeals all of the provisions of the Act of 1926, as amended, except section 29, and that section after the 31st day of March, 1933, as theretofore amended. The two sections of chapter 342, sections 35 and 123, as construed together, should give effect to the evident purpose of the General Assembly. This intent was, in my opinion, to continue in effect until the 1st day of April, 1933, the schedule provision and the schedule provision only, and to repeal all other provisions of the Act of 1926, as amended, and to repeal the unrepealed provision of section 29 of the Acts of 1926 at midnight March 31, 1933.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BILLS—Constitutionality of—Providing preference for governmental deposits.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 23, 1932.*

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

DEAR GOVERNOR:

I am in receipt of your letter of the 21st instant, in which you ask to be advised as to my opinion of the constitutionality of House bill No. 133, passed by the General Assembly of 1932 and commonly known as the county depository bill.

I have carefully examined this bill and do not doubt that it is constitutional.

Section 4149 (49) of chapter 164a—the Banking Code—carries a provision allowing banks and trust companies to secure deposits of the United States government and its agencies and the Commonwealth of Virginia and its political subdivisions by placing securities in trust.

This provision of the Banking Code has never been attacked, and I can see no difference in allowing governmental subdivisions a preference in the distribution of assets of an insolvent bank or trust company from the deposit of securities in the provision allowing such bank or trust company to deposit securities for the protection of governmental deposits.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General

BILLS—Constitutionality of—House Bill 357—School indebtedness.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., March 22, 1932.

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

MY DEAR GOVERNOR:

I am in receipt of your letter of the 19th instant, in which you desire to be advised of my opinion as to the constitutionality of House Bill No. 357, relating to the school indebtedness of Washington county, in which letter you enclose the title of Senate Bill No. 390, passed at the 1930 session of the General Assembly, and which was vetoed by you. I note also the memorandum which you made at the time of your veto of this bill:

"Approval is withheld from this bill because it violates the Constitution (see *Brunswick v. Peebles*, 138 Virginia 348, and the authorities there collected), and because it violates the general policy upon which the whole plan of education at public expense rests."

I have examined a copy of both Senate Bill No. 390, session 1930, and House Bill No. 357, session 1932, and especially with reference to that part of your memorandum which refers to the case of *Brunswick v. Peebles*.

Except in one particular, to which I will refer, the House Bill and the principle involved in the *Brunswick Case* are entirely dissimilar. In that case the board of supervisors had laid a county school levy. The town of Lawrenceville constituted a separate school district. Peebles, a taxpayer in Lawrenceville, challenged the validity of the county school levy as applicable to property in the town of Lawrenceville, because of several sections of the Constitution of the State providing for the levy of school taxes by cities, counties and towns, the plaintiff asserting in his bill that, because a town constituting a separate district is allowed to levy school taxes, the county could not do so. The court held the county levy valid.

House Bill No. 357 has many wise provisions of law stringently prohibiting school boards from issuing warrants for anything except operation and maintenance and the repayment of future temporary loans for the current school year, and further providing that no warrant should be issued in excess of the amount of money available in fund or funds and actually on hand in possession of the treasurer at the time the warrant is drawn.

The bill further provides in section 2 thereof for the repayment of the principal of \$6,000, together with interest, on account of the floating indebtedness of Holston magisterial district, and of the sum of \$1,000, with interest, for North Fork magisterial district. The indebtedness of the two districts is held by the Farmers Exchange Bank of Abingdon, Virginia. The bill allows the school board to renew the certificates of indebtedness held by the bank, evidencing the obligation of the two districts, and provides that the board of supervisors shall lay a special levy for each of the districts to take care of the indebtedness of each within five years from January 1, 1932, with interest payable semi-annually.

Section 4 of the act, which is the only provision which could have any relation to the principle of law established in *Brunswick v. Peebles*, has no reference to the tax laid in Holston and North Fork districts, but has reference to the county levy authorized in section 3 of the act providing for a county school levy.

The provision of section 4 was doubtless inserted in the bill because of the provision in section 653 of the Tax Code providing for separate school districts and the remittance by the county treasurer to the treasurer of towns constituting a separate school district of the amount collected from such town.

I do not feel at liberty to express an opinion as to the general policy in the conduct of the public educational system of the State, but I know of no legal or constitutional objection to prevent the passage of a private bill for the worthy purpose of taking care of the indebtedness existing before the adoption of the Constitution of 1928. In my opinion, it is decidedly to the advantage of educa-

tional administrations and for the decided good of the State for every possible legal means to be adopted to take care of obligations issued by school authorities.

I am of the opinion that House Bill No. 357 is constitutional and I see no reason why you should not sign it.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BILLS—Constitutionality of implied waiver of trial by jury.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 2, 1932.*

HON. T. RUSSELL CATHER,
*Senate Chamber,
State Capitol,
Richmond, Virginia.*

MY DEAR SENATOR:

In response to your request that I give you my view of the constitutionality of Senate Bill No. 27 introduced by you, with particular reference to that portion thereof which provides that in prohibition cases "The accused shall be deemed to have waived a trial by jury unless prior to such trial he shall file a statement in writing with the clerk of the court asserting his right to trial by jury," I beg to advise as follows:

Section 8 of the Constitution provides that, if an accused plead not guilty, with his consent and the concurrence of the Commonwealth's attorney and of the court entered of record, he may be tried by a smaller number of jurors than would otherwise be the case, or waive a jury. The question, therefore, reduces itself to the meaning of the word "consent" as used in this section of the Constitution.

I am of the opinion that the word "consent" appearing in section 8 of the Constitution means express consent, and that, therefore, the proposed bill would violate this constitutional provision.

You will, of course, be interested in my reasons. The right to a trial by jury is regarded as so fundamental that we might describe it as one of the natural rights of the Anglo-Saxons. I, therefore, believe that any constitutional provision which would curtail that right, or which would curtail the enjoyment of that right, or which would in any way affect a trial by jury, is to be most strictly construed. A liberal construction of the word "consent" would permit such a bill as that proposed, but a strict construction of it forbids such a provision.

In a case decided only last month, *i. e.*, *Charlie Wilson v. Commonwealth*, the Court of Appeals had before it a question which might certainly be described as analogous. In that case the wife of the accused had been called to the stand by the Commonwealth. No objection was made when she was called. She was asked her name, to which she responded; she was asked her age, to which she responded; and she was asked her relationship to the accused, to which she responded. Immediately the accused interposed an objection to hearing further testimony from her, which objection was, of course, sustained.

The question was raised whether the calling of the wife to the stand was not ground for a new trial in view of the provisions of section 6211 of the Code, which provides that neither husband nor wife may be compelled to testify against the other, "nor without the consent of the other, allowed to be called as a witness against the other."

The Commonwealth took the position that the word "consent" in this statute meant implied as well as express consent, and that, when the accused and his counsel had sat silent when the wife was called to and took the stand, the right of the accused in this connection was thereby waived. The court, however, held that, by virtue of the public policy which prevents husband and wife testifying

against one another in a criminal case, the word "consent" meant only express consent.

In dealing with the matter of a trial by jury you have not only what might be called a very powerful public policy, but you have the constitutional provision itself. While, of course, the question is a debatable one, my opinion is that our court would interpret the word "consent" in section 8 of the Constitution as meaning express consent, and would, therefore, render ineffectual the amendment which you desire.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BILLS—Constitutionality of—Defining and classifying "Dealer" in gasoline.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., February 11, 1932.

HON. JOHN Q. RHODES, JR.,

State Capitol,

Richmond, Virginia.

MY DEAR MR. RHODES:

In reply to your recent request that I give you my views on the question of the constitutionality of Senate Bill No. 64, which is a bill designed to amend a portion of the motor vehicle tax law, I beg to advise as follows:

Under the law as it now stands, and as it will stand after the amendment, a "dealer" pays the tax. The proposed bill, however, adds to the definition of a "dealer" any person who imports for his own use any motor vehicle fuel "in any container, having a capacity of and containing more than fifty gallons, connected with the engine of the motor vehicle in the operation of which the fuel is to be consumed." In reality such a provision would not fall within the usual conception of a dealer. The question then arises, can one who is not in fact a dealer be made such by legislative fiat?

The Supreme Court of the United States in the case of *Producers Transportation Co. v. Railroad Commission*, 251 U. S. 228, has held that a legislative body cannot by legislative fiat make one a common carrier who, in fact, conducts a business which is private in nature, and it is said that an attempt so to do is tantamount to an attempt to take property without due process of law.

The term "common carrier" is in law one which has a definite and fixed meaning; the term "dealer" has no legal meaning. I see no reason why the Legislature may not define that term as it sees fit. The question which worries me, however, is, can the Legislature impose a burden on one who is in fact not a dealer, but who simply brings into the State in a tank connected with his engine a little more gas than another person may bring? You will note that, under the law as it now stands, any person who ships any gas into the State for his own use in a separate container is a dealer, and the man who brings in a can of one gallon is as much a dealer as the one who brings in a carload. The proposed amendment, however, says that a man who brings in forty gallons in a tank connected with his engine is not a dealer, whereas the man who brings in fifty gallons in a tank connected with his engine is a dealer. You will note that in either case the gas is to be used by the owner.

I have grave doubts of the constitutionality of such a definition. The classification is based simply upon quantity and is in no sense based upon any classification of business or the method of handling fuel.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BILLS—Providing relief to firemen's organizations unconstitutional.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., February 19, 1932.

HONORABLE FRANK MOORE, *Chairman,**Committee on Insurance and Banking,**State Capitol,**Richmond, Virginia.*

MY DEAR MR. MOORE:

I beg leave to acknowledge receipt of your letter, in which you enclose a copy of the bill now before your committee, the purpose of which bill is "To create a firemen's relief fund for the relief of injured and disabled firemen; for the relief of the dependents of deceased firemen, and to provide for levying a tax on fire and lightning insurance companies for the purpose of creating such fund." You ask in your letter to advise you whether or not the proposed bill is constitutional.

In my judgment, it is not. The Legislature of Virginia, in 1908, passed a similar act, which was approved on March 11, 1908, and is found on pages 259 to 261, inclusive. I have carefully examined the Act of 1908 and the bill which is now before your committee. Several sections in the two are identical, and there is no material difference, in my judgment, between the proposed bill and the Act of 1908. The purposes of both the act and the proposed bill are the same. If you will examine the Act of 1908, you will find that section 7 of the act sets forth the purposes of the law, and section 7 of the proposed bill sets forth the same purposes.

The Act of 1908 became the law some time in June of that year. In the fall of 1909, a suit was brought by the *Aetna Insurance Company v. Joseph Button*, Commissioner of Insurance, in the Chancery Court of the City of Richmond. The purpose of this suit was to enjoin Colonel Button, then Insurance Commissioner, from enforcing the provisions of the act on the ground that it was unconstitutional.

Judge Daniel Grinnan, who was at that time judge of this court, decided that the law was unconstitutional for two reasons: first, it was unconstitutional because it appropriated money for a charitable institution, not owned or controlled by the State, quoting in his opinion section 67 of the Constitution, and, second, it was unconstitutional because it imposed a tax for a private and not a public purpose. An effort was made to appeal the case to the Supreme Court of Appeals, but the court refused an appeal.

I am of the opinion that this bill comes within the inhibition of section 188 of the Constitution, which provides for the limit of tax or revenue, which section is as follows:

"No other or greater amount of tax or revenue shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the State."

The tax to be levied in this bill is neither to pay the expenses of the government, nor the indebtedness of the State.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

BILLS—Norfolk County Trial Justice Bill—Constitutionality of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *March 29, 1932.*

HON. JOHN GARLAND POLLARD,

*Governor of Virginia,**Richmond, Virginia.*

MY DEAR GOVERNOR:

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

"In considering the question of my approval of House Bill No. 332, I desire you to advise me whether it is possible under existing law for Norfolk county to establish a trial justice court, and if so, what procedure is necessary, and how the trial justice must be selected.

"If you find that a trial justice court can be established under the existing law, also advise me further whether the judge of said court may also be the judge of the juvenile and domestic relations court."

In my opinion, a trial justice may be appointed under the provisions of chapter 388, page 650, of the Acts of 1922, as amended.

This act provides for the appointment of a trial justice in every county adjoining one or more cities having a population of 30,000 or more in the aggregate as shown by the preceding United States census. This act is only effective in counties adjoining a city or cities having a population of not less than 170,000 only after it has been adopted by the board of supervisors of the county.

Under the provisions of this law passed in 1922, a trial justice could have been appointed for Norfolk county.

The amendment passed at the 1924 session of the General Assembly retained the provision as to the adoption of the act by boards of supervisors and added to the title and enacting clause a provision for the appointment of a trial justice in counties having a population of 30,000 or more to the original provision for the appointment in counties adjoining one or more cities having a population of 30,000 or more.

Under the original act, as amended, a trial justice can be appointed for Norfolk county, as that county comes within each of the two provisions as to population, the county having a population of more than 30,000 and at the same time adjoining cities with a population of more than 30,000. The operation thereof can only become effective upon its adoption by the board of supervisors of Norfolk county.

The procedure necessary for the appointment of a trial justice in Norfolk county is, however, very complicated. Section 2 of chapter 388 of the Acts of 1922 provides that within thirty days after the act becomes effective the board of supervisors shall nominate one or more suitable and qualified persons to the judge of the circuit court, who shall within ten days in term time or vacation appoint the nominee or one of the nominees or notify the board of supervisors in writing of his disapproval of the nomination or nominations. In this event, the board of supervisors can make further nomination, which the court can either appoint or refuse to appoint. The result of this provision as to the nominations and appointments may easily be a deadlock, as the authority to nominate is vested in the board of supervisors while the authority to appoint is vested in the judge of the circuit court. There is no provision by which the board of supervisors can be compelled to nominate a person agreeable to the judge, nor to compel a judge to appoint a nominee of the board.

It has been suggested that chapter 352 of page 783 of the Acts of 1930 repeals chapter 388 of the Acts of 1922, as amended, as the act of 1930 carries a provision that all acts or parts of acts in conflict with chapter 352 are repealed. This provision of the act of 1930, if it would otherwise operate to repeal the act of 1922, as amended, is rendered useless because of the further provision in the act of 1930 expressly declaring that the provisions of chapter 352 of the Acts of 1930 shall not apply to counties adjacent to cities having a population of 100,000 or

more by the last United States census. The county of Norfolk is adjacent to cities with a population in excess of 100,000.

Objection is made to the constitutionality of House Bill No. 332 on two grounds:

- (1) That the act is local and, therefore, unconstitutional.
- (2) That the title is not broad enough to cover all of the provisions of the act and that the act has more than one object.

(1) In my opinion, the objection to the act as unconstitutional because violating the provisions of section 63 of the Constitution is untenable.

A very similar statute was before the Court of Appeals in *Ex Parte Settle*, 114 Va. 715. The act attacked in that case provided for the appointment of a trial justice in counties having a population greater than 300 inhabitants to the square mile. It was contended that this was a special law, as the county of Alexandria was the only county in which a trial justice could be appointed under the provisions of the act, just as in this case it is alleged that a trial justice can only be appointed, under House Bill No. 332, in the county of Norfolk. The court held that there is every presumption in favor of the constitutionality of the law; that the fact that a law applies only to certain territorial districts does not render it unconstitutional, provided it applies to all districts and to all persons similarly situated and to all parts of the State where like conditions exist, and that laws may be made to apply to a class only and that the class may be in point of fact a small one, provided the classification is reasonable, and the law made to apply to all of the persons in the class without distinction. "The number of inhabitants of a county is the basis for a valid classification" (2 syllabus).

Martin's Ex'ors. v. Commonwealth, 126 Va. 603, is another case in which the court held, under an attack upon the West fee bill, that the constitutional prohibitions against special legislation do not prohibit classification, and that the necessity for the reasonableness of classifications is primarily a question for the Legislature, and that, if any state of facts can be reasonably conceived that would sustain the law, that state of facts at the time the law was enacted must be assumed.

(2) I do not think that the act is unconstitutional because of a failure in the title to go into greater detail as to the duties of the trial justice to be appointed nor because of its failure to enumerate the items of authority and jurisdiction of the trial justices.

It is true that section 12 of the act confers the jurisdiction heretofore exercised by the judge of the juvenile and domestic relations court upon the trial justices. This provision of law is contained in chapter 11, page 20, of the Acts of 1926, applicable to the counties of Henrico and Chesterfield. The constitutionality of this act has never been questioned and is operative in both counties.

In *Morris v. Virginia Insurance Co.*, 85 Va. 588, an attack was made upon the constitutionality of an act to enlarge the jurisdiction of the hustings court, because, under that restricted title, a provision was made in the act allowing the judge of the hustings court to act as a judge of the chancery court. The courts were unanimous in holding that it is not necessary to enumerate in detail in the title of an act everything which is comprehended by the act, and that all matters that are germane to the general object of an act, as expressed in a title, are included therein, and an act is not unconstitutional because its object is stated in general terms.

There is no provision in the act of 1922, as amended, providing for the appointment of a trial justice which confers upon such justice the jurisdiction conferred by section 1953 of the Code upon a judge of the juvenile and domestic relations court. There is at present, I understand, such a judge in the county of Norfolk. If a trial justice is appointed under the act of 1922, as amended, the juvenile court will be continued. If, however, House Bill No. 332 is approved, a trial justice may be appointed, who will have not only the jurisdiction conferred upon trial justices as to civil and criminal matters, but will also have all of the jurisdiction heretofore conferred by law upon the judge of the juvenile and domestic relations court.

There can be no objection to House Bill No. 332 because it confers jurisdiction on its trial justices in prohibition cases. Article 6 of the Constitution pro-

vides for the judiciary department. Section 108 of article 6 confers jurisdiction upon the General Assembly to provide for the appointment or election of justices of the peace and to prescribe their jurisdiction. All justices of the peace, including trial justices, are elected or appointed under the provisions of this section and they may lawfully have such jurisdiction as the General Assembly prescribes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BILLS—Constitutionality of—Workmen's compensation.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., November 9, 1931.

HON. WILLIAM R. SHANDS, *Director,*
Division of Statutory Research and Drafting,
Richmond, Virginia.

DEAR MR. SHANDS:

I beg to acknowledge receipt of your letter of recent date, in which you enclose a copy of the proposed draft of the bill amending and re-enacting section 14 of the Virginia Workmen's Compensation Act. You ask my opinion as to the constitutionality of the amendment thereto, providing that the Industrial Commission may adopt, promulgate and enforce rules which, in its discretion, are reasonably necessary for the protection and safety of the employee, and may punish any violator of such rules by a fine not in excess of \$500.00.

I am of the opinion that such a provision would not be constitutional. There seem to be a number of reasons for this. In the first place, one accused of a violation of such a right would be denied a trial by a jury, and in the second place, I doubt the right of the General Assembly, in which is vested the legislative power of the State, to delegate to any commission the right to enact penal laws.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF EQUALIZATION—Power of Board to equalize taxes.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 6, 1932.

MR. ROY L. ARMFIELD,
Palmyra, Virginia.

MY DEAR SIR:

I beg to acknowledge receipt of your letter of February 1st, reading as follows:

"I wish to know whether, under present statutes, the boards of equalization of the counties may meet, if it is thought necessary, to reassess land for the purpose of lowering or raising assessments. Here we are thinking of advocating this method of lowering taxes, rather than by cutting the levy, and this is what prompts this request for information from your office. The statutes seem to imply that this can be done, but I wanted to be certain."

I think you have mistaken the function of the board of equalization. Its purpose is to equalize assessments to "the end that the burden of taxation shall rest equally upon all citizens." In order to accomplish this purpose, it is authorized to decrease or increase assessments; but I do not find anything in the statutes which gives to the board the right to go beyond this function, or which would

authorize it, if it finds the burden of taxation resting equally upon all citizens, to alter assessments for the purpose of lowering taxation. This was decided in the case of *City of Lynchburg v. Taylor, Commissioner of Revenue*, 157 S. E. 718.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Authority to increase or decrease salary of county officers during term.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 8, 1932.*

HON. JOSEPH WHITEHEAD, JR.,
*Attorney for the Commonwealth,
Chatham, Virginia.*

DEAR MR. WHITEHEAD:

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

"I am writing you for an opinion on the following statement of facts:
"Mr. S. S. Hurt, our county clerk, was elected to office in 1928 and at that time the statute provided that his salary be from \$1,200.00 to \$1,500.00 per year, and since that time the Legislature has revised this section and now provides that his salary be from \$800.00 to \$1,000.00 per year.
"I would like to know whether or not the board of supervisors have authority to reduce his salary during the present term."

Under section 110 of the Constitution, covering the organization and government of counties, the election of certain county officers, including a county clerk, is provided for, and in the same section it is further provided:

"The duties and compensation of such officers shall be prescribed by general law."

An examination of this section shows that there is no limitation upon the Legislature either to increase or decrease the compensation of a county clerk during the term for which he is elected, and that, therefore, the board of supervisors are authorized to fix the salary of Mr. Hurt, as county clerk, within the limit now provided by law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Authority to issue warrants.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 28, 1931.*

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

DEAR MR. SMITH:

I am in receipt of your letter of the 5th instant, in which you ask to be advised as to whether the board of supervisors can settle and allow accounts chargeable against a county and issue warrants although there are not at the time funds in the treasurer's hands to the credit of the particular fund against which the warrant is drawn.

Section 2724 of the Code, to which you refer, does not prohibit the settlement

of accounts and the issue of warrants, where at the time there are no funds in the hands of the treasurer to pay such warrants. The only limit placed upon boards of supervisors is that prohibiting them from issuing in any one year warrants for an amount aggregating more than the tax levies for that year.

I am confirmed in this opinion by the provisions of sections 355 and 356 of the Tax Code providing for issuing warrants by the treasurer where there are not at the time sufficient funds to pay the warrants as they are presented.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Authority to divert levies.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., November 30, 1931.

HON. W. M. MINTER,
Mathews, Virginia.

DEAR MR. MINTER:

After writing you on the 25th, expressing an opinion that the board of supervisors of your county had a right to make cash contributions for the operation of school buses in your county, I got in touch with Honorable T. Coleman Andrews, State Auditor, and he informed me over the phone, as well as in his letter of the 28th instant, that his office did not question the right of boards of supervisors to make cash contributions to school authorities of available funds. He informed me that the question arose between his auditor and your board because of the fact that money levied for road purposes was being used for school purposes.

In my opinion, his construction of the law upon the facts as stated by him is correct. I should have consulted him before writing my letter of the 25th, as the opinion therein contained was based upon a different state of facts from those understood by Mr. Andrews and his auditor.

In my opinion, the law providing for cash appropriations out of available funds limits such appropriations to available funds which may be used for any county purpose, as distinguished from those funds which are levied for specific purposes. I do not think that funds levied for road purposes can be used for school purposes. If this has been done, I suggest an adjustment between the two funds.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Authority to fix salary of judge of juvenile and domestic relations court.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 7, 1932.

MR. W. H. GLENN,
*Supervisor Prince Edward County,
Prospect, Virginia.*

DEAR MR. GLENN:

Pardon me for not having sooner answered your letter of recent date.

You ask whether the board of supervisors of your county has a right to fix the salary of the judge of the juvenile and domestic relations court at a straight salary of \$100 per annum and require him to turn his fees into the county treasury.

That part of your inquiry is covered by section 1953-c of the Code, in which

it is provided that the judge shall receive the fees prescribed by law for justices of the peace, "or in lieu thereof he shall receive out of the treasury of the city or county for which he is appointed such salary as the council or other governing body of the city or board of supervisors of such county may prescribe, in which latter event all such fees, when collected, shall be accounted for and paid by him into the treasury of said city or county, as the case may be, on or before the tenth day of each month."

You further ask whether the board of supervisors is authorized by law to pay the clerk of the board a salary after the first day of July for road work in addition to a salary as clerk.

This last question has reference to a local matter, about which you should take the advice of the attorney for the Commonwealth of your county. I will say, however, that the State Highway Commission takes over all of the work in connection with the county roads, with the exception of two meetings of boards of supervisors at which the supervisors are required to consult with representatives of the State Highway Commission as to county road matters.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Authority of, to appropriate funds derived from State capitation tax.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 5, 1932.

HON. F. B. WATSON,
Division Superintendent of Schools,
Chatham, Virginia.

MY DEAR MR. WATSON:

I have for reply your letter of January 30th, which was written at the request of your Commonwealth's attorney and treasurer, in which you say in part:

"On January 21, 1932, the Treasurer of Virginia sent our treasurer a check for \$3,571.05, 1930 capitation taxes. Mr. Whitehead, our Commonwealth's attorney, says the law is a little mixed to him and he is not quite sure whether the above check should go to the school funds or to general funds. While being more or less familiar with the law pertaining to this fund, I do not feel like assuming the responsibility without instructions from your office."

I refer you and your Commonwealth's attorney, to whom you very properly submitted this question, to section 173 of the Constitution and to section 22 of the Tax Code, where you will find it fully and clearly answered. It is therein provided that the State Treasurer shall pay over to the county or city treasurer 50c of each capitation tax collected, the money so paid "to be appropriated by the proper authorities to such county or city purposes as they shall respectively determine."

It, therefore, becomes utterly impossible for me to answer your question, and your Commonwealth's attorney is the only person who can answer it, for I do not know for what purpose the board of supervisors of Pittsylvania county may have appropriated these capitation taxes. If they have been appropriated for the purpose of schools, I suppose your treasurer should place the check to the account of the school funds; if they have been appropriated for the general purpose of the county, I suppose he should place it to the account of the general funds.

Your letter contains a second question. It appears that in 1921 the Dan River school district voted a \$60,000.00 bond issue for a district school building. You wish to know whether a uniform school tax may be levied on the whole county.

I assume that the bond issue referred to was solely the obligation of the district and not of the county. The fact that you now operate on the county unit

basis would not change the nature of this obligation. The provisions of section 115-a of the Constitution prevent the issuance of any county bonds (save on loans from the Literary Fund) without a vote of the people of the whole county. I take it that the purpose of this section is to prevent the incurring of a county bonded obligation, and also to prevent the levying of the necessary tax to care for it, without the approval of the electorate of the county. If these bonds were the obligation solely of the district, you could not now make them an obligation of the county without the approval of the electorate; nor can you, in my opinion, levy a tax on the whole county to meet an old bonded indebtedness of the district for which the whole county is not responsible.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Cash appropriation to school funds.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 3, 1932.

HON. W. P. PARSONS,
*Attorney for the Commonwealth,
Wytheville, Virginia.*

DEAR MR. PARSONS:

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

"I would like to get your opinion on the question of whether or not the board of supervisors of a county has the right to transfer funds which were raised by the general county levy for the purpose of paying off district school bonded indebtedness. The county, having levied \$1.00 school levy, which is the maximum for the operation of schools, do they have the right, in addition to this \$1.00 school levy, to transfer funds, as hereinbefore stated, for the purpose of paying off bonded indebtedness incurred by the district for the erection of school buildings?

"It is my opinion that it will be necessary to levy a specific district tax for this purpose in the district in which the buildings were erected, not to exceed twenty-five cents."

I am of the opinion that the law limits cash appropriations by boards of supervisors to money necessary or expedient for the "establishment, maintenance and operation" of public schools in counties.

In addition, I further agree with you that the general school levy for the county is limited to \$1.00 on each \$100.00 of property, and that there may be an additional district levy of 25 cents on \$100.00 of property for capital expenditures and for the payment of existing district indebtedness, under the provisions of section 115-a of the Constitution, even though counties have by the school law taken over all district school property.

I may add that Dr. Sidney B. Hall, Superintendent of Public Instruction, informs me that some counties have taken over and are paying existing district indebtedness.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—Delinquent taxes—Cannot extend time of penalty.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *November 13, 1931.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 12th instant, which I quote in full:

"I am today advised that the board of supervisors of Washington county desires to extend the time for the payment of local taxes without penalty and wishes to know whether this may be done lawfully. I am advised that this action is desirable because the citizens of Washington county are unable to market their crops and obtain settlements therefor in time to enable them to pay their taxes on or before December 5.

"For your information, I advise that this same request was made last year and the board of supervisors passed a resolution extending the time for the payment of the local taxes without penalty. My predecessor declined to pass upon the legality of the action of the Board, and advised that he would have to charge the treasurer of the county with whatever amount of penalty he waived pursuant to the action of the board, but that he would thereupon give the treasurer credit for such amount of penalty in recognition of the action of the board.

"Two questions arise here: first, may the board of supervisors extend the time for the payment of local taxes without penalty? And, second, if they may do so, is the treasurer thereby relieved of the responsibility for accounting for the amount of penalties waived pursuant to such action?

"I shall be very much obliged to you for your opinions in these matters at your first convenience."

It is true that, before your appointment as Auditor of Public Accounts, the question of the right of boards of supervisors to extend the time for the payment of local taxes, without imposing the penalty provided by law, was called to the attention of Honorable C. Lee Moore and by him referred to me for an opinion. I did not give a written opinion to Mr. Moore, but had a conversation with him in which we decided that to a very large extent the imposition of a penalty upon local taxes was a local matter, in which the State was not interested, and that the failure to collect such a penalty by a county treasurer, when the board of supervisors of the county agreed to remit the penalty, was not a matter upon which the Auditor should pass an opinion.

At that time, as you state, Mr. Moore, while recognizing the lack of authority to sanction the action of the board of supervisors deferring the imposition of a penalty or to authorize such a course, agreed, under the stress of the then existing economic depression, that, should a board of supervisors acquiesce in such a course upon the part of a treasurer, he would not himself call in question the action of the board or of the treasurer. This, of course, was to apply to local levies and had no reference to State revenues.

In answer to your two questions, I will say:

First, I doubt if the board of supervisors has the authority to extend the time for the payment of local taxes without penalty.

Second, the responsibility of the treasurer is to the board of supervisors as representative of its county, and I do not see, if such a course is pursued, why just complaint could be made by anyone, as the taxpayers of such a county are

the only persons who could complain and they, having been favored, have no cause for complaint.

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

BOARD OF SUPERVISORS—Employment of welfare worker.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 18, 1932.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

MY DEAR MR. ANDREWS:

I am in receipt of a letter from Mr. Sale dated February 27, 1932, enclosing a letter of February 26 to you from Honorable William A. Adair, treasurer of Rockbridge County, and your letters of March 12th and 15th, all of which relate to the desire of the authorities in that county to employ a welfare worker for the Central district of Rockbridge county, said worker to be paid by warrants drawn upon the poor fund of that district.

My understanding of the situation is that it is desired that the board of supervisors employ a welfare worker who will also be overseer of the poor for that particular district, and that the board wishes to pay this worker out of the poor fund of that district. You wish to know whether or not this can be done.

It is my opinion that it cannot be done. If the county desires to take itself out of the old method of giving relief to its indigent citizens, it may establish by virtue of section 1902-1 of the Code, a county board of public welfare, which board may in turn employ a superintendent of public welfare whose powers and duties are set out in section 1902-o of the Code. By ruling of November 15, 1926, to Honorable Frank Bane, Commissioner of Public Welfare (see Annual Report of Attorney General, 1926-1927, pages 153-154), I stated that, in my opinion, it was permissible to turn over to the superintendent of the county board only the funds received from one district and that this action of the board "would have the practical effect of limiting his powers, so far as the administration of funds is concerned, to one district."

The Legislature has prescribed the machinery by which a county may employ a welfare worker as is outlined above, and I know of no power given to the county authorities to appoint a person to do this work in a manner other than that prescribed by statute.

Clearly, the board of supervisors could not appoint a welfare worker and also make that welfare worker overseer of the poor for that district. An overseer of the poor is an elective official (see section 127 of the Code). An overseer of the poor is limited in his compensation to \$2.00 per day while actually engaged, not to exceed \$40.00 per year (see section 2806 of the Code).

The only way I see that the board can carry its purpose into effect is to proceed through the county board of public welfare and have elected a superintendent of public welfare, to whom shall be turned over the funds raised in Central district.

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

BOARD OF SUPERVISORS—Fixing salaries of county officers.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *January 12, 1932.*

MR. W. H. GLENN,
Supervisor Prince Edward County,
Prospect, Virginia.

DEAR MR. GLENN:

I am in receipt of your letter of the 9th instant, in which you write:

"Referring to my letter of the 8th, I feel that I should be a little more explicit in the matter, so you can give me a more intelligent answer relative to our board fixing the annual salary for Commonwealth's attorney, clerk and sheriff. The law says all shall fix them annually. All of these officers except clerk are new officers and, like the board of supervisors, took office January 1, 1932. I contend that it is the duty of our board to fix their annual salary beginning January 1, when they took office. The attorney for the Commonwealth advises that the old board fixed these salaries to July 1, and that it is illegal for our board to change them before that time. I notice from the papers that the boards of a large number of counties are reducing salaries right along. Will you kindly give me your opinion as to whether it is illegal for us to reduce salaries at this time or not?"

The authority of a board of supervisors to fix salaries is contained in section 2726 of the Code. That section provides that salaries shall be fixed by the board annually. It does not, however, specify the time of the year when salaries shall be fixed. In the absence of a definite provision upon the subject, I cannot express a decided opinion. While the terms of office begin on the 1st day of January and expire four years later as to certain officers and eight years later as to the clerk of the court, the fiscal year begins upon the 1st day of July and expires on the 30th day of June. Apparently your old board of supervisors has been fixing annual salaries to correspond with the fiscal year. If this is true and the old board of supervisors in good faith fixed the annual salaries of officers beginning with the 1st day of July, I agree with the attorney for the Commonwealth of your county that the salary fixed by the old board should continue until the 30th day of next June. There cannot be a great difference as to salaries, if this opinion is correct, as the new board will upon the last year of its service fix the ensuing annual salaries of county officers beginning with the 1st day of July of their last year and thereby extending six months into the term of office of the next board of supervisors.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOARD OF SUPERVISORS—No compensation for road service under "Byrd Road Plan."

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *April 14, 1932.*

MR. W. C. WEBB, *Chairman,*
Board of Supervisors,
Disputanta, Virginia.

DEAR MR. WEBB:

I am in receipt of your letter of the 12th instant, in which you write:

"After the Byrd Road Law goes into effect, what will be the pay for the members of the board of supervisors of Prince George County?"

In my opinion, members of boards of supervisors will not be entitled to any pay for road services. They will, of course, be entitled to the compensation provided by law for all other services. The Byrd road law transfers everything connected with the administration of road laws and the working of public roads to the State Highway Commission. I should say that the members of the board will be entitled to a per diem for the two meetings in each year which each board has with the representative of the Highway Department pursuant to the second paragraph in section 2 of the road law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOXING MATCHES—City ordinance may not contravene State law.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 20, 1932.*

COLONEL JAMES R. SHEPPARD, JR.,
Director of Public Safety,
Richmond, Virginia.

DEAR COLONEL SHEPPARD:

I am in receipt of your letter of the 18th instant, in which you quote section 24 of an ordinance of the city of Richmond, approved December 16, 1931, reading:

"Amusements—Boxing or other pugilistic encounters.—Persons, firms or corporations operating boxing exhibitions or other pugilistic encounters, for each performance * * * \$20.00, or \$200.00 for the right to make such exhibitions for the period of one year. Permit from director of public safety required before license will be issued. Not prorated."

You also quote section 3693 of the Code of Virginia, making it a felony to engage in prize fights, there being no necessity to quote this section.

I note that you desire my opinion as to whether the director of public safety will be within his rights in issuing permits for boxing exhibitions under the ordinance of the city of Richmond and section 2693 of the Code of Virginia, and further you request an opinion as to your right to issue permits "where boxing exhibitions are held and no admission fee charged but a silver offering taken up and it is claimed the proceeds turned over to charitable organizations."

In my opinion, the council of the city of Richmond has no authority to pass an ordinance conflicting with the criminal laws of the State of Virginia, and, in respect to the particular section of an ordinance of the city of Richmond and the section of the Code prohibiting prize fighting, I am of the opinion that the ordinance, so far as it authorizes a prize fight which is prohibited by section 3693 of the Code of Virginia, is inoperative and void.

Whether or not a particular boxing exhibition violates section 3693 of the Code is more a matter of fact than of law, and, in my opinion, each of such exhibitions must be handled by the police authorities of the city of Richmond according to their very best judgment, the ultimate decision of the legality of the exhibition being, of course, vested in the police court of Richmond and upon appeal in the hustings court.

As the exhibition, if unlawful, must be prosecuted by the attorney for the Commonwealth of the city of Richmond, I suggest that you obtain his judgment after having had the prospective promoters lay before him their pros-

pectus or a detailed statement of the manner in which the proposed exhibition is to be conducted. It is only in cases of appeal upon convictions of persons charged with violations of a criminal law that the Attorney General's office is called upon to represent the Commonwealth.

I, therefore, advise you to consult with Mr. Satterfield and be governed by his opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

BOXING MATCHES—Prize fights.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., August 27, 1931.

HON. HARRY E. MCCOY,
*Attorney for the Commonwealth,
Norfolk, Virginia.*

DEAR MR. MCCOY:

At your request I have very carefully examined the letter of Mr. S. R. Heller written to you on August 21, in which he asks your opinion concerning the legality of certain boxing exhibitions held by the Veterans' Athletic Club of your city under plans detailed at length in his letter, which I quote in full:

"Veterans Atheletic Club, Incorporated, was organized during July, 1931, in behalf of several of Norfolk's Posts of the American Legion. Its immediate funds for operation, purchase of equipment, etc., came from the sale of thirty shares of preferred stock—only sixty per cent of which has been called for. Its operating capital therefore has been less than \$1,800.00. The preferred stock is subject to call and retirement after six months from organization.

"In addition to the preferred stock, there were also one hundred and fifty shares of common stock, thirty shares going with the preferred and the remaining one hundred and twenty going to Old Dominion Post No. 67 of the American Legion, or its assigns, from which it has given American Legion Posts 5, 110 and 118, all of Norfolk, a portion.

"All of this is mentioned to evidence that the corporation was not organized as a money-making project through the investment of any large sum of money, or to furnish any individual with an opportunity to sell his services for large returns.

"No salaries of any kind or in any form are paid any of the active legionnaires, whether for personal or professional services; all service of whatever nature is given absolutely free to the Club as a part of the legionnaires support of the move.

"Salaries are paid, however, to the men who arrange matches for the participants, in order that well balanced contests may be had, and a salary is paid a young office woman who acts for the secretary of the Club in receiving membership applications and handling the payments of dues by the members of the Club.

"Only members are eligible to attend the Club's entertainments, and no receipts for membership dues are issued except to members.

"There is enclosed a blank application for membership (marked 'A'), and a membership card (marked 'B'). These two papers cover the actual registration for membership, and all membership applications are properly considered and approved before issuance of the membership card. There are some fourteen hundred enrolled members in Veterans Athletic Club.

"Before each entertainment the enrolled membership is advised by post card notice or letters advising them of the time and place of the entertainment and where their dues may be paid. Upon payment of their dues at the Club's two offices—neither of them located on the premises where the entertainments are given—they are issued a receipt for their dues, of which the card (marked 'C') is a sample.

"All of the men engaging in the exhibitions are duly enrolled as Club members, and in addition, before being permitted by officers of the Club to use the ring and other property of the Club, are required to file with the Club's office a letter per the enclosed copy (marked 'D').

"This letter is directed to you in the hope of getting your opinion and ruling as to the legality of the plan that has been suggested for the Club's future operation.

"In other words, the Veterans Athletic Club plans, on the evening of August 31, to offer to its members a high class star wrestling match.

"And, in addition to the wrestling bouts, the Club will offer its members, as a free attraction, and without charge of any kind whatsoever, sparring matches or boxing exhibitions in which all contestants will be required to sign under oath statements in substantially the language shown in the letter-copy (marked 'D').

"Membership dues receipts will be issued only up to the time of the scheduled start of the wrestling bout.

"We desire to express the hope that you will favor us with the benefit of your official views in the matter, and, if you feel that the Club may thus operate for its enrolled membership's benefit, we will be very glad indeed."

I have also examined exhibits (A), (B), (C) and (D) which were enclosed with Mr. Heller's letter to you.

You request my opinion upon the inquiry contained in Mr. Heller's letter to you.

In my opinion the method by which persons join the Veterans' Athletic Club, Incorporated, of your city (A); the issue of a card showing membership in the Club (B); the ticket of admission to the Norfolk Baseball Park, Monday, August 3, 1931 (C), approach indirectly the payment of money for admission to exhibitions held by the Club on that day; and a prize fight, if held on that day, was unlawful and not only subjected the principals in the prize fight, or, as termed in the statute (section 4426), "pugilistic encounter," to a term in the penitentiary from one to five years, but, under the provisions of section 4427, rendered all aiders, abettors and promoters liable to punishment by confinement in the penitentiary not exceeding three years, or by fine not exceeding five hundred dollars, or both.

Whether or not the exhibition comes within the definition of "pugilistic encounter" is determined by the last sentence of section 4426 of the Code, which provides:

"By the term 'pugilistic encounter' as used in this section is meant any voluntary fight or personal encounter by blows by means of the fists or otherwise, whether with or without gloves, between two or more men for money or for a prize of any character or for any other thing of value or for any championship or upon the result of which any money or any thing of value is bet or waged."

In considering this last question, I have examined (D), which is a request from an unnamed party to the Veterans' Athletic Club, Incorporated, for permission to use the ring at the baseball park on a specific date "for a boxing match." This application certifies that the applicant has "not received any money or other award for the boxing match, nor will I accept any payment of any kind for said match."

In my opinion a "pugilistic encounter" may include a boxing match by either amateurs or professionals.

As I understand the distinction, an amateur is a person who boxes without award of money, or for anything of value, and I may say purely for athletic sport.

A professional is a person who boxes for an award of money, or for something else of value.

The legality or illegality of a boxing match, as a "pugilistic encounter," depends entirely upon a matter of fact. If the boxing match is an amateur affair, it is legal; if, on the other hand, the participants in the boxing match engage in the encounter "for money or for a prize of any character or for any other thing of value or for any championship or upon the result of which any money or any thing of value is bet or waged," it is a "pugilistic encounter," even if termed a boxing match, and is clearly illegal under the provisions of section 4426 of the Code of Virginia.

While it may not be strictly within the ordinary practice of my office to comment, I must say that it is difficult to believe that boxing matches of the character indicated by Mr. Heller's letter would be participated in by persons who, more or less, make boxing a profession without being paid for their services, either directly or indirectly; and I advise, if boxing matches are held in your city under the plan proposed by the Veterans' Athletic Club, Incorporated, that strict inquiry be made as to the standing of the participants in order to ascertain the probability of their being paid, and, if they are of doubtful amateur standing, that a searching inquiry be made as to whether or not they or their aiders, abettors and promoters have violated what is usually termed the prize fighting law.

If, upon investigation, you come to the conclusion that there is reason to believe the participants violated the law, I advise you to present the matter to the grand jury of your corporation court. However, you, as Commonwealth's attorney for the city of Norfolk, are to judge, under all the facts and circumstances of the case, as to your line of duty, and I am sure you will faithfully and conscientiously perform this duty.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CIRCUS PERFORMANCE—Advertisement of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 7, 1931.

MR. C. F. LAUTERBACH,
*Sycamore Street,
Petersburg, Virginia.*

DEAR MR. LAUTERBACH:

I am in receipt of your letter of yesterday, from which I quote the following:

"I have had two or three inquiries from different circuses thinking about playing Virginia this fall. Please give me the data on a circus playing near fair time; how many weeks before, and how many weeks after, also, how soon can they build and how close to a fair day?"

Under the provisions of section 154 of the Tax Code, a circus exhibiting in a city, town or county, within fifteen days previous to, or during the week of, or within one week after the holding of any agricultural fair in any city, or county, shall pay a State license tax of \$1,000 for each performance, in addition to the ordinary license tax upon such circus.

It is unlawful for a circus to publish or post advertising matter in any

way in such city or county, or in such town or city within a county, within fifteen days prior to the holding of a fair. The punishment for such an offense is by fine of \$2,000.

The law which I have quoted does not apply to circuses held within the grounds of agricultural fairs.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Authority to grant letters of administration d. b. n.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 8, 1931.*

HON. ERNEST C. LACY, *Clerk,*
Halifax, Virginia.

DEAR MR. LACY:

I beg to acknowledge receipt of your letter of December 1, the first paragraph of which reads as follows:

"I would thank you to kindly advise me whether or not the clerk of a court has authority to grant letters of administration d. b. n. where the former administrator was a bank or trust company which has gone into the hands of a receiver."

In view of the provisions of sections 5360 and 5361 of the Code, a clerk has no authority to appoint an administrator d. b. n. unless the former representative has died, resigned, or been removed from office. The mere fact that a trust company has gone into the hands of a receiver amounts neither to a resignation nor a removal. I, therefore, think your question should be answered in the negative.

The receiver of the company may, if he sees fit, resign on behalf of the company, in which event you could appoint the administrator d. b. n.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Bonds of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *August 5, 1931.*

MR. R. I. BARNES, *Clerk,*
Warsaw, Virginia.

DEAR MR. BARNES:

I am in receipt of your letter of the 3rd instant, in which you call my attention to section 2698 of the Code, providing for the bonds of county and district officers, and asking whether or not my opinion as to the payment of bonds of county and city treasurers applies to clerks of courts.

I am herewith enclosing a copy of an opinion covering the bonds of treasurers. You will see from a reading of section 2698 that the only provision covering bonds other than those of treasurers is to the effect that the board of supervisors of counties may pay the cost of the premiums of bonds of local officers when given by a surety or guaranty company, while that part

of the section referring to treasurers' bonds provides that the premiums shall be paid in the proportion of one-third for the State and two-thirds for the county.

In my opinion, the section requiring the payment of bonds only applies to bonds of treasurers and leaves it optional or discretionary with boards of supervisors to pay the premiums on bonds given by other officers.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—Fees of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., December 22, 1931.

HON. GEORGE G. TYLER, *Clerk,*
Manassas, Virginia.

DEAR MR. TYLER:

I am in receipt of a letter from Honorable E. R. Combs, State Comptroller, dated November 5, in which he enclosed your letter to him of November 2. In your letter you state that you are taxing as clerk's fees in felony prohibition cases:

Where there is no fine, \$2.50;

Where there is a fine, in addition to the above charge, under the provisions of section 2566, \$1.00;

For issuing official certificates under the provisions of section 2552, \$0.25;

Making a total, where there is a fine, of \$3.75.

You ask Mr. Combs whether the charges are correct, whether you are allowed a fee for issuing a *capias pro fine* and whether the item of 25c for an official certificate applies only to fines reported by a justice of the peace, or whether it may be also taxed by you in cases tried in the circuit court.

Under the provisions of section 3506, a clerk is entitled to a fee of \$2.50 in case of conviction, payable by the Commonwealth where it is not made out of the accused.

Certain duties are imposed upon a clerk to make an annual report of fines on or before the 15th day of October in each year under the provisions of sections 2563, 2564 and 2565. For performing the duties and making the report required in those three sections, a clerk is allowed a fee of \$1.00, which is included in the execution for costs and is to be retained by him when collected. Section 2566 does not provide for the payment of this fee by the Commonwealth.

Under section 2550, justices of the peace are required to certify fines to clerks. Under section 2552, clerks are required to enter the certificates received from the justices of the peace in a suitable book. For performing this duty, a fee of 25c is allowed for each case, payable out of the public treasury. This is the fee to which you refer in your letter as being payable under the provisions of section 2552, and is limited to cases certified by justices to clerks and cannot be charged as a fee in cases heard in the circuit courts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CLERKS—May practice law.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., December 28, 1931.

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

DEAR MR. PARSONS:

I am in receipt of your letter of the 22nd instant, in which you state that you have recently passed the State bar examination and desire my opinion as to whether you are allowed, under the law, to practice your profession before justices of the peace of your county or before a mayor of an incorporated town of a county.

I note the sections to which you refer. Section 3426 only applies to the practice before the court of which you are clerk. Section 3380, as you say, only applies to clerks of the Supreme Court of Appeals.

In my opinion, you can legally practice before justices of the peace and mayors in your county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMISSIONERS OF REVENUE—Transfer fees continued and disposition thereof.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 23, 1932.

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 17th, in which you write:

"As you know, a transfer fee of \$1.00 is charged on certain types of deeds and real estate transfers in wills, which fee is payable to the commissioners of the revenue. Will you please advise at your first convenience who, in your opinion, will be entitled to this fee on and after July 1, when the salary bill goes into effect?"

Under the provisions of section 1, chapter 426 of the Acts of 1932, fees of commissioners of the revenue for issuing licenses and making transfers, including real estate entries and transfers, are continued, and commissioners pay real estate entry and transfer fees into the treasuries of their respective counties monthly and license fees, including the license transfer fees, into the State treasury monthly.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEY—Authority in prohibition cases in incorporated towns.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 21, 1932.

MR. R. W. ARTHUR, *Town Manager,*
Wytheville, Virginia.

DEAR MR. ARTHUR:

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

"The Commonwealth's attorney for Wythe county also has the town of Wytheville to cover, as you know. Therefore, is it necessary that the mayor of Wytheville notify the attorney whenever a prohibition case is to come before him, the mayor?"

"Again, where the case goes against the party, and the costs and fine cannot be paid, and party has to serve time in jail, is the town due the attorney his fee of \$25.00?"

Under section 34 of the Layman prohibition law, mayors or police justices of cities or towns are required to notify both the commissioner of prohibition and the attorney for the Commonwealth of cases before each of them in time to be present at the trial.

The attorney for the Commonwealth, where the mayor or police justice hears a case covering a prohibition ordinance, is entitled to a fee of \$25.00 as taxed against the person who is convicted. If the accused is convicted and his fee cannot be made out of the defendant, or if the defendant is not convicted, the attorney for the Commonwealth is only entitled to a fee of \$10.00 in each case payable by the town or city.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Fees of in mayors' courts.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., January 13, 1932.

HON. B. J. COOK, *Mayor,*
Richlands, Virginia.

DEAR MR. COOK:

I am in receipt of your letter of the 8th instant, in which you write:

"Shall thank you to advise me at your earliest convenience what fee the attorney for the Commonwealth is entitled to in cases of violations of the prohibition law such as manufacturing, possessing, transporting and selling ardent spirits where the defendant confesses in a mayor's court.

"It has been customary for the attorney for the Commonwealth here to assess a fee of \$25.00 in such cases, but I get from the law that he is only entitled to a fee of \$5.00; therefore, shall thank you to advise me on this matter as soon as possible and greatly oblige."

I have heretofore held that attorneys for the Commonwealth are entitled to fees of \$25.00 in cases of violations of the prohibition law covering the manufacture, possession, transportation and sale of ardent spirits, even where the accused pleads guilty in a mayor's court where the offense charged is a violation of a town ordinance, as distinguished from a trial by a mayor in his

capacity as ex-officio justice of the peace, in trials involving the violation of the State prohibition law. As you do not state in your letter whether or not the offenses charged are violations of a town ordinance or the State prohibition law, I cannot give you a definite opinion.

If the charge against the accused is for the manufacture of distilled ardent spirits or second offense transportation or the selling of ardent spirits or second offense possession for sale of ardent spirits, it is a felony, and, while a mayor has a right to try such offenses under a town ordinance, he can only in his capacity as justice of the peace examine as for any other felony under the State law and either dismiss the accused or send him on to the grand jury.

If he has final jurisdiction, as in case of violation of a town ordinance, the attorney for the Commonwealth is entitled to a fee of \$25.00 in each case except such offenses as are included in sections 17 and 18 of the prohibition law, which cover drinking in a public place or being drunk in a public place. Upon a plea of guilty of such offense before a magistrate, the attorney for the Commonwealth is entitled to no fee. In case of a plea of guilty of other State law offenses under section 33 of the State prohibition law, the attorney for the Commonwealth is entitled to a fee of \$10.00, under the provisions of section 46 of that law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Fees—Prosecution for owning or operating still.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., May 17, 1932.

HON. W. D. MILLER,

*Assistant Commonwealth's Attorney,
Hustings Court, Part II,
Richmond, Virginia.*

DEAR MR. MILLER:

I am in receipt of your letter of the 14th instant, in which you write:

"I have always been under the impression that when a Commonwealth's attorney appears in a distilling case, at a preliminary hearing and then prosecutes the same in the hustings or circuit court, that he is only entitled to a fee of \$25.00. However, I am advised that a number of the Commonwealth's attorneys receive a fee of \$35.00 in the statement of costs rendered by the clerk against the defendant.

"I, as one of the Commonwealth's attorneys, am interested in knowing which is correct; whether \$25.00 or \$35.00 should be allowed, though I have never received anything but the \$25.00."

In my opinion, the total fee assessable against a defendant upon conviction and prosecution for distilling ardent spirits is the sum of \$25.00.

To be candid with you, I have never understood just what is meant by the provision contained in section 20 of the prohibition act allowing an attorney for the Commonwealth a fee of \$10.00 taxable against a person convicted in connection with the provision of section 46 of the same law allowing attorneys for the Commonwealth a fee of \$25.00 upon final convictions for violations of the prohibition law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Fees of in nolle prosequi cases.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 22, 1932.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 20th instant, in which you ask for an opinion upon the following state of facts presented to you by Hon. H. F. Hutcheson, clerk of the circuit court of Mecklenburg county:

"As I see it, if several nolle prosequi are entered against the same person charged with several different offenses at the same term of court, it matters not how many, then only one fee of \$5.00 will be allowed by the Commonwealth. Suppose, though, that more than one person is indicted jointly, is the Commonwealth's attorney entitled to a fee of \$5.00 for each person named in the same indictment whose nolle prosequi is entered? Suppose two persons are jointly indicted—one convicted or acquitted, tried separately and the other nolle prosequied."

In my opinion, Mr. Hutcheson is correct in his conclusion that, under the provisions of section 3505 of the Code, an attorney for the Commonwealth is only entitled to one fee of \$5.00 for each case in which there is a nolle prosequi, without regard to the number of persons included in the same indictment.

As to the situation presented in the last sentence of Mr. Hutcheson's letter, I am of the opinion that, where two or more persons are jointly indicted, one or more convicted or acquitted in a separate trial, and the indictment is good as against one or more persons who are not tried, the attorney for the Commonwealth is entitled to a fee upon the nolle prosequi of the indictment which is good against one or more persons whose case has not been decided one way or the other.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Fees of—Appearing before trial justices and justices of the peace.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 21, 1932.*

HON. WALTER E. BLOUNT,
Trial Justice,
Berryville, Virginia.

DEAR MR. BLOUNT:

I am in receipt of your letter of yesterday, in which you ask my construction of section 46 of the Layman Prohibition Law (section 4675 (47) of the Code) in reference to the fees of attorneys for the Commonwealth appearing in prosecutions before trial justices in prohibition violations.

In my opinion, attorneys for the Commonwealth are entitled to the same fees in prosecutions before trial justices as they would be entitled to in trials in a circuit court.

The difference between hearings before a trial justice and before a magistrate lies in the fact that trial justices have final jurisdiction to both hear and determine all misdemeanor cases, while justices of the peace are limited in their jurisdiction to a preliminary examination except, under the provisions of section 33 of the Layman Act, a justice of the peace may accept a plea of guilty under circumstances set out in the section, and fixes the penalty prescribed by law for the offense to which a plea of guilty is entered.

However, where there is an appeal from the judgment of a trial justice and a retrial in circuit courts, the judgment of the trial justice is not final; but one fee should be taxed against an accused upon his conviction in the circuit court, the fee originally taxed in a trial justice court not being collectable as a part of the cost upon his conviction in the circuit court.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

COMMONWEALTH'S ATTORNEYS—Ten per cent reduction not applicable to income from private practice.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 25, 1932.*

HON. WILSON M. FARR,
*Attorney for the Commonwealth,
Fairfax, Virginia.*

DEAR MR. FARR:

I have carefully noted the contents of your letter of April 21.

In reply to your inquiry, I will state that chapter 425 of the Acts of 1932, which provides that the "attorney for the Commonwealth shall pay into the State treasury ten per centum of all fees, allowances, commissions, salaries, and other emoluments of office, derived from the State or any political subdivision thereof, or from any other source whatever" has no application whatever to fees received by attorneys for the Commonwealth from their private practice.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CONFEDERATE MEMORIAL ASSOCIATIONS—Use of appropriations.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *June 7, 1932.*

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

DEAR MR. JOHNSON:

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

"It appears in reports by memorial associations of this State that some of them are using part of the appropriation for purposes not intended by the law, namely, for music, speeches, flowers, etc.

"By reference to Senate Bill No. 263, General Assembly 1932, copy of which I enclose herewith, you will observe that this money is to be spent in caring for cemeteries, graves of Confederate soldiers and sailors buried in cemeteries, erecting and caring for monuments to the memory of said soldiers and sailors.

"This office desires to know if in your opinion these associations have the right to use part of the money for other purposes than those specified in the bill aforesaid, also under previous Acts."

Chapter 439, page 940, of the Acts of 1930, and chapter 363, page 717, of the Acts of 1932, appropriating money to Confederate memorial associations, limits the expenditure of the money appropriated to the care of cemeteries and graves of Confederate soldiers and sailors buried in the cemeteries and to the erection and care of markers and monuments to the memory of Confederate soldiers and sailors.

The appropriations cannot be used for the purpose of providing music and speakers for Memorial Day exercises. The care of graves may include flowers. In my opinion, the appropriation should be limited to purposes which can be reasonably construed as included within the terms of the Act providing for the care of cemeteries and graves and the erection and care of markers and monuments. It is certain that the appropriations cannot be used for purposes other than those specified in the acts referred to.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CORONERS—Fees in re "stranger."

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 7, 1932.

DR. BURTON NOWLIN, *Coroner,*
Lynchburg, Virginia.

MY DEAR DOCTOR:

I am in receipt of your letter of the 4th instant, in which you ask my opinion as to who should pay your fee as coroner for viewing the body of a person found dead in the seat of a railway car entering a city; I assume you have reference to the City of Lynchburg. The dead person to whom you refer, you say, was a resident of another state.

In my opinion, section 4814 of the Code covers the subject of your inquiry:

"If the deceased be a stranger, the expense of the coroner's proceedings shall be paid out of the State treasury * * *. No expense incurred either for burial or for the coroner's proceedings shall be paid until allowed by the court of the coroner's county or corporation to which his return is properly to be made * * *."

In my opinion, therefore, you should present your claim before the corporation court of your city and have it allowed as a charge against the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CORONERS—Fees of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *September 21, 1931.*

MR. SIDNEY C. DAY,
State Comptroller's Office,
Richmond, Virginia.

DEAR MR. DAY:

I have your file covering allowance to Dr. C. D. J. MacDonald of \$170.00 at the August, 1931, term of the corporation court of the city of Norfolk, and I note your personal request for an opinion as to this claim.

In Dr. MacDonald's letter under date of the 17th instant, to Mr. W. L. Prieur, Jr., clerk of the corporation court of Norfolk, he says that he has never since his appointment as coroner of Norfolk made an autopsy or held an inquest unless he deemed it absolutely necessary. He also writes that he is answerable to both civil and criminal courts for the true cause of death and that, because of this fact, he must know and not simply guess at the cause of death.

In my opinion, it is the duty of a coroner in case of any sudden, violent, unnatural or suspicious death, or a death without medical attendance, to view the body and make inquiry, and, if he has reasonable belief that the death was caused by murder or manslaughter, or by the contrivance, aiding, procuring, or other misconduct of any person or persons, he shall fix a time and place for a hearing to determine when, how, and by what means the said person came to his death.

You will see by a reading of the law as contained in section 4806 of the Code that a coroner is invested with very wide discretion as to whether or not he should perform an autopsy or hold an inquest. This discretion, however, should not be abused. Whenever there is suspicion of death caused by intentional unlawful means or extreme recklessness, which apparently amounts to manslaughter, it is the duty of the coroner to hold an inquest wherever his primary or superficial investigation leads to a suspicion that a criminal offense has been committed and that a criminal prosecution will follow.

In my opinion, to the extent that the coroner must be able to testify positively as to the cause of death in a probable criminal case, he is not only authorized by law, but it is his duty, to find the cause of death, as well as the person or means by which the death was caused.

I do not think that Dr. MacDonald's conclusion that he is answerable to civil courts for the true cause of death warrants an autopsy or inquest at the expense of the State, and, if any of the items in the bill he has presented and which the court allows is for services rendered where there is no suspicion of foul play or criminal negligence, and only a question as to civil liability, I do not think such item should be paid, and I suggest that the account be returned with the request, that it be corrected to contain only such items as are included as legitimate expenses under my opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

CORONERS—Fees of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 14, 1931.*

MESSRS. J. T. MORRIS & SONS, INC.,
Petersburg, Virginia.

DEAR SIRs:

I am in receipt of your letter of the 10th instant, in which you desire information as to the payment of fees to coroners for viewing dead bodies and holding inquests.

Your inquiry is covered by section 4814 of the Code, which provides that, where the deceased is a citizen of the State, fees of the coroner or other officers are payable by the city or county, and, where he is a non-resident, the officers' fees are paid by the State. In no case are officers' fees payable by the estate of the deceased.

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

COUNTIES—Entitled to fines—Violation of county ordinance.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 18, 1931.*

HON. FRANK M. WRAY,
Commonwealth's Attorney,
Berryville, Virginia.

DEAR MR. WRAY:

I beg to acknowledge receipt of your letter of September 9, in which you ask whether a county which takes advantage of the provisions of section 2145(72) of the Code can retain in the road maintenance fund fines received by it from convictions for violations of the ordinance adopted by such county pursuant to the provisions of that section of the Code; or whether section 134 of the Constitution would prevent such a retention of these fines.

In my opinion, section 134 of the Constitution is confined to fines arising out of convictions under the State law. I do not think it refers to fines arising from convictions under a county ordinance. If a county should adopt as an ordinance the provisions of the law to which you refer, and if a man were prosecuted under the ordinance, the fine would not arise from a violation of the State law. On the other hand, if he were prosecuted under the State law, the fine would be governed by section 134 of the Constitution.

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

COURTS—Liability for funds on deposit.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 6, 1932.*

HON. JAMES HOGE RICKS, *Judge,*
Juvenile and Domestic Relations Court,
Richmond, Virginia.

MY DEAR JUDGE RICKS:

I have for reply your letter, in which you ask my opinion upon the

question of your liability for the moneys deposited in the name of your court in the event the depository should fail.

I understand from your letter that you have four funds, the first of which is received by you from men for the support of their wives and children; the second of which is for cash security for bonds; the third of which is for restitution, and the fourth of which is for fines and costs imposed and collected. Some of these funds are, therefore, public funds which go either to the State or city treasury, and others might be denominated private funds which are disbursed to individuals.

In the light of the opinions of the Court of Appeals rendered in the cases of *Mecklenburg v. Beales*, 111 Va. 691, and *Camp v. Birchett*, 143 Va. 686, it appears that the strictest liability rests upon a public officer for public funds, and that he is personally responsible for those funds in the event the depository with which they are deposited should fail. I have drawn here the distinction between public and private funds, for the Court of Appeals in the first mentioned case confines its opinion to the "question of the liability of a public officer for public funds lost without negligence or fault on his part," and calls attention to the fact that the rule in such a case is different from the "question of the liability of executors, guardians, trustees and other fiduciaries for loss of funds by bank failures and otherwise."

Turning now to the second question, namely, the liability of a public officer for private funds lost without negligence on his part, I regret that I am unable to give you a specific answer. So far as I am aware, this particular question has never been, even inferentially, passed upon by our court. If you will refer to the very complete note found in 36 L. R. A. (N. S.) 285, which note is appended to the decision of our court in the first case above mentioned, you will find that the views supporting the rule of strictest accountability of public officers for public funds are generally adopted throughout the country. Many of the reasons which support such a heavy responsibility are, of course, not applicable in the case of private funds, and some cases have drawn a distinction between the two; others have disregarded all differences that might exist by reason of the differences in the nature of the funds and, until this question may at some time be passed upon by our Court of Appeals, or rendered clear by statute, no person can give an authoritative opinion thereon.

I call your attention to another consideration. Fines and costs collected by you are, of course, public funds; support and restitution moneys are, of course, private funds; but cash security for bonds may be either, depending upon the nature of the bond and the circumstances.

I see no way that you can escape the personal liability that rests upon you for public funds, and the possible personal liability that rests upon you for private funds. You can, of course, protect yourself by a bond such as that given by the banks with which funds of the State are on deposit.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DENTISTRY—Dentists practicing in school clinics to pay license.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., October 12, 1931.

HON. C. R. KEILEY, *Executive Assistant,*
State Department of Health,
Richmond, Virginia.

DEAR COLONEL KEILEY:

Your letter of October 10 has been received. In this you submit the following question for an opinion:

"Should our clinicians be required to pay a State license tax to practice dentistry where their entire time is given to school work?"

You further state in your letter the conditions under which these clinicians, or dentists, practice their profession, all of which I have carefully noted.

In reply I will state that, unquestionably, they are required to pay a State license. Section 177 of the Tax Code provides as follows:

"No person shall practice as a dentist for compensation without a revenue license, but a license granted to practice dentistry in any county or city shall authorize such dentist to practice throughout the Commonwealth."

This section further provides the amount of license to be paid by dentists.

You will observe from the quotation above that the law does not exempt a dentist from paying a license tax, no matter from what source he may derive his compensation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DENTISTRY—Employment of assistants by school dentist.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., October 22, 1931.

MRS. C. C. RAUH, *President,*
Cherrydale Parent-Teacher Association,
4 Linden Avenue,
Cherrydale, Virginia.

MY DEAR MRS. RAUH:

I am in receipt of your letter of October 6, in which you state that your association has been requested to take a vote on whether or not the school dentist needs an assistant, and the association feels that, if there is a necessity for an assistant, it would like to have a mouth hygienist fill this place. You then ask if there is a law in Virginia which prohibits an oral mouth hygienist from practicing.

In reply, I will state that there is such a law, which I take pleasure in quoting you. It is found in the third paragraph of section 1653 of the Code of Virginia, and is as follows:

"No person shall employ or give aid, or assist any person not regularly licensed to practice dentistry to perform any dental operation upon human beings in this State. * * *"

You will see from this that an oral mouth hygienist is not permitted to do the class of work which your association desires, because they are not licensed to practice dentistry.

I am advised that some of the dentists in this State have been exceedingly anxious to have the Legislature pass the law which would permit this class of work to be done, but many of their profession are opposed to it and the result is the law has never been passed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DIVISION OF PURCHASE AND PRINTING—No provision for payment of record books.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *April 9, 1932.*

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

MY DEAR GOVERNOR:

I am in receipt of your letter of the 1st instant, in which you write:

"The General Assembly at its recent session, enacted Senate Bill No. 101 amending and re-enacting section No. 121 of the Tax Code of Virginia. The last paragraph of this bill reads as follows:

"The Division of Purchase and Printing shall furnish to such clerks at the cost of the State suitable and necessary books for properly recording and indexing the deeds, deeds of trust, mortgages, leases, contracts and agreements on which recordation taxes are collected under this section."

"The estimates which I have obtained indicate that the cost to the State of furnishing the books referred to in the above paragraph would amount to a total for the next biennium of from \$200,000 to \$400,000. The bill in which this paragraph appears, makes no specific appropriation to cover this expense.

"Kindly advise what legal effect, if any, the above quoted provision has."

Under the provisions of section 186 of the Constitution it is provided:

" * * * 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; * * * "

Senate Bill No. 101, to which you refer, directing the Division of Purchase and Printing to furnish clerks of city and county courts suitable and necessary books for recording and indexing deeds, deeds of trust, mortgages, leases, contracts and agreements on which recordation taxes are collected, makes no provision for paying the cost of carrying out the provisions of the Act. It contains no appropriation made according to the Constitution and, therefore, unless the appropriation made by the General Assembly to the Division of Purchase and Printing is sufficient to cover the cost authorized by the bill, the same cannot be operative. It is vain to require a department to perform a duty without having made provision to take care of the cost.

I also call your attention to the fact that the bill contains a continuing provision of law and requires the Division of Purchase and Printing to indefinitely supply books of record, while, even if the present appropriation is sufficient to cover the expense, such appropriation cannot be for a period exceeding two years and six months.

To the extent that no provision has been made to cover the cost necessary to be incurred, the Act is inoperative so far as the direction to the Division of Purchase and Printing is concerned.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DIVISION OF PURCHASE AND PRINTING—Supplying recordation books.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 5, 1932.HON. JOHN GARLAND POLLARD,
Governor of Virginia,
Richmond, Virginia.

MY DEAR GOVERNOR:

I am in receipt of your letter of the 3rd instant, in which you enclose certain correspondence in connection with the question of whether or not the last paragraph of chapter 185 of the Acts of 1932, providing "the Division of Purchase and Printing shall furnish to clerks at the cost of the State suitable and necessary books for properly recording and indexing the deeds, deeds of trust, mortgages, leases, contracts and agreements on which recordation taxes are collected under this section" (section 121 of the Tax Code of Virginia), complies with section 186 of the Constitution, providing that no money shall be paid out of the State treasury unless appropriated by the General Assembly and is sufficient as an appropriation Act to authorize the payment for books furnished by the public printer under the provisions of chapter 185.

On April 9, in answer to your letter of the 1st of that month, I expressed the opinion that the language of chapter 185 of the Acts of 1932, which I quoted, was not sufficient to authorize the payment of money out of the State treasury.

In the file which you enclosed with your letter of the 3rd instant, is a letter from Honorable James E. Cannon, city attorney of Richmond, in which Mr. Cannon expresses the opinion that the provision of chapter 185 of the Acts of 1932 fully complies with the requirements of section 186 of the Constitution, and cites as authority therefor the case of *Commonwealth v. Ferries Company*, 120 Va. 827. I have examined both the opinion of the court in this case and chapter 346 of the Acts of 1922, page 684. The appropriation contained in the Act of 1922 reads as follows:

"Be it enacted by the General Assembly of Virginia, that the Auditor of Public Accounts be, and he is hereby, directed to draw his warrant on the treasurer of the city of Norfolk for the sum of nine hundred ninety-two dollars and forty cents in favor of the Ferries Company."

It is true that the Court of Appeals held the Act a valid appropriation within the meaning of section 186 of the Constitution, expressing the opinion that no particular form of appropriation is prescribed, and that the Act which directed the Auditor of Public Accounts to draw his warrant for a definite sum on the treasurer of the city of Norfolk in favor of the company complied with all of the requirements of a valid appropriation.

I do not think that the provision in chapter 185 of the Acts of 1932, directing the Division of Purchase and Printing to furnish certain books at the cost of the State, comes as a valid appropriation within the principle laid down in *Commonwealth v. Ferries Company*. It will be noted that the Act of 1922 directs a certain officer to draw a warrant for a definite sum, while the Act of 1932 makes no such provision and, at most, directs a department to perform a certain duty without providing the means to accomplish the end sought.

I adhere to the opinion that the Act of 1932 does not appropriate money out of the public treasury as provided in section 186 of the Constitution of Virginia.

As the city attorney differs with me, the construction of the provision causing the difference may be determined in a friendly suit between the city of Richmond and the Commonwealth of Virginia. The city can furnish its clerks with the books enumerated in the Act of 1932, pay therefor and sue the

State. I should advise that no technical question be raised and upon a final determination, if the suit goes against the State, that the amount of the judgment be promptly paid.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DOG LAW—Dogs in licensed kennel to be kept together.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 16, 1932.*

HON. E. C. BURKS,
*Attorney for the Commonwealth,
Bedford, Virginia.*

DEAR MR. BURKS:

I am in receipt of your letter of the 14th instant, from which I quote:

"The game warden of Bedford County has requested me to write you for a ruling as to the proper county or city in which to purchase dog tags under the following circumstances:

"The owner of the dogs actually resides in the city of Roanoke, wherein he keeps a part of his dogs while another part of them are kept in Bedford County. He purchased a kennel license in the city of Roanoke. Can the resident of a county or city purchase a license in such county or city and keep a part of the dogs in such county or city of his residence and a part of them in another county? Can a resident of a county or city purchase a license for his dog or dogs in the county or city in which he resides and keep his dogs in another county either all of the time or for a period of six to nine months in the year?"

In my opinion, a license for a kennel must be obtained in the county or city in which the owner or custodian resides. Under the provisions of section 67 of the game, inland fish and dog laws, all dogs of a kennel are required to be kept at one location. I do not think that a kennel license can be obtained and part of the kennel dogs kept in one county and part in another, or part in one county and part in a city.

I will say that this is the construction placed upon this law by the Commission of Game and Inland Fisheries.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

DOG LAW—Compensation for livestock killed by dog.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 30, 1932.*

MR. W. L. IRBY,
*Game Warden,
Blackstone, Virginia.*

DEAR MR. IRBY:

I beg leave to acknowledge receipt of your letter of March 28, in which you submit the following question for an opinion:

"If stock, such as a cow or any other kind of stock, is bitten by a dog with rabies and dies as a result of this, is the owner of the animal entitled to compensation for the loss of such stock under the provisions of the dog law?"

In reply to your letter, I beg leave to call your attention to the provisions contained in section 74 of the Game, Inland Fish and Dog Laws, which provides as follows:

"Any person taxed by the State who shall have any livestock or poultry killed or injured by any dog shall be entitled to receive compensation therefor at the assessed value of such livestock and fair value of unassessed lambs or poultry, and in addition thereto may recover from the owner or custodian of such dog, in an appropriate action at law, the difference between the assessed value and the full value of such livestock."

You will see from a reading of this provision in the law that unquestionably the owner of the cow is entitled to receive compensation therefor at the assessed value of the cow. This amount, of course, is to be paid out of the dog fund. Whatever additional amount is recovered by suit must be against the owner or custodian of the dog, the amount paid out of the dog fund being limited to the assessed value of the animal.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voter's ballot—Return of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 30, 1931.*

MR. CLINTON WILLIAMS,
Herald, Virginia.

DEAR MR. WILLIAMS:

I am in receipt of your letter of the 29th instant, in which you write:

"In the absent voters' law the registrar is required on the morning of the day of the election to post a list of the names of all such voters. Now, in case the returned ballot of such absent voter is not received by the registrar until late in the afternoon on election day (that is, not received in time to be posted in the list of that morning), may the judges count such ballot as legal?"

In my opinion, a ballot which is returned to a registrar at any time on election day before the closing of the polls should be returned by the registrar to the judges of election and the vote received by them.

It is not the purpose of the law to deprive a voter of his right of suffrage because of immaterial irregularities.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Absent voters' ballots—Return of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 26, 1931.*

HON. D. WAMPLER EARMAN,
*Attorney for the Commonwealth,
Harrisonburg, Virginia.*

DEAR MR. EARMAN:

I am in receipt of your letter of the 17th instant, from which I quote:

"The question has arisen here, when a person votes by mail and does not hand the ballot to the registrar in person, whether or not the ballot has to be returned to the registrar by registered mail. I understand that you have ruled that registering the ballot back is not absolutely necessary."

In my opinion, the absent voters' law does not contemplate the return of a mail ballot through the hands of another. A person receiving a ballot by mail or in person may in either case return the ballot in person or by mail, but cannot return it through any other channel.

I have expressed the opinion that it was not a prerequisite to its validity that a ballot should be registered when it was returned by mail.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballots—Preparing of before candidate—Legal residence.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 27, 1931.*

HON. CHARLES W. CRUSH,
*Attorney for the Commonwealth,
Christiansburg, Virginia.*

DEAR MR. CRUSH:

I am in receipt of your letter of the 26th instant, which I quote:

"Please advise me, for the benefit of the judges of the approaching election, whether or not a mail ballot is void which was acknowledged, marked, and qualified before a justice of the peace whose name appears on the ticket as a candidate for election. There is alleged to have been a number of mail ballots prepared before such a candidate and an immediate ruling is requested."

There is no express provision of law covering the inquiry contained in the paragraph of your letter which I have quoted. Therefore, I cannot express a decided opinion as to the legality of a mail ballot which has been marked in the presence of and certified to by a justice of the peace who is also a candidate for election. In reply to a number of questions of like character, I have called attention to the fact that certificates of officers to papers in which they are personally interested have been in many instances declared void. Upon challenge to a ballot which has been marked before and certified by a candidate, the judges of election must themselves decide, upon such testimony and law as is brought before them, whether or not they will allow such ballot to be cast or will reject the same.

"A lady who taught school in Montgomery county, whose home is

in another county in the State of Virginia, was married to a life-long citizen of Montgomery county on the 24th day of April, but did not actually come into Montgomery county to reside until the 15th of May. She has paid her poll taxes in Montgomery county and registered. The judges of the election have been notified that her vote will be challenged on the grounds of non-residence in the county for a period of six months prior to the election on November 3. Please advise me what your opinion is in this case."

The right of the lady to whom you refer to vote in Montgomery county depends upon whether or not she established her citizenship in the county of Montgomery six months prior to the 3rd of November next. If she did so, she is entitled to vote. However, under the provisions of the law extending the right of suffrage to women (Acts 1922, page 462), it is provided in section 1 thereof:

"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 provisions quoted, I do not think that the marriage of a woman *ipso facto* changes her legal voting residence, as the law quoted, in my opinion, changes the common law rule and grants to a woman the privilege of establishing her own place of residence for voting purposes, being controlled, of course, by the law covering the residence of a voter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballots—Preparation of before candidate for office.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 13, 1931.*

MR. CHAPMAN S. HOGE,
Pembroke, Virginia.

DEAR MR. HOGE:

I am in receipt of your letter of the 10th instant, in which you ask several questions concerning the absent voters' law.

"1. Under the provisions of the absent voters' law, is it legal for a notary public or justice of the peace to certify to a mail ballot, when they are at the time candidates for election or re-election and, therefore, personally interested in the voting of said ballots?"

The law does not cover the subject of your inquiry. However, the courts hold in business transactions that the act of a notary or justice of the peace taking an acknowledgment to a paper in which he is interested voids the paper.

"2. What constitutes a 'precinct' under the absent voters' law?"

As applied to the election laws, a precinct is that geographical division of a county at whose polling place residents of that particular section of the county vote.

"3. Suppose a voter makes affidavit that he will be out of the precinct on election day, and thus obtains a ballot; he votes said ballot, but remains in the precinct, although able physically to come to the polls, but does not come to the place where the election is being held, would this be a legal vote? In other words, does not a voter actually

have to be out of his precinct to vote by mail? Of course, I am not referring to those voted on a certificate from a physician, but to those who certify that they will be absent from their precinct in the regular and orderly course of their business, profession, etc., and then proceed to stay at home from that time on, including the day of election."

This question also is not covered by the absent voters' law, and, as it is a matter which has not yet been determined by the courts, I feel that I should not express an opinion. The challenge of persons offering to vote, and the Court of Appeals holds that an absent voter offers his vote, just as a voter who is present, must be determined by the judges of election, and, in case of a contest, the law upon the subject is finally determined by the circuit court.

"4. Suppose a candidate goes to the home of a voter living some distance from the polls, but in the precinct, and secures an application for ballot, delivers it to the registrar and has the ballot mailed to the voter; then the candidate takes a notary and goes to this home and has this man vote. Has he complied with the law, or should this voter be out of his precinct when he actually marks this ballot?"

This question likewise is not covered by the election laws. The law authorizes the applicant for a ballot to hand his application to the registrar in person or to forward it to him by mail. It does not specifically authorize an application to be secured by some other person for presentation to the registrar and does not authorize the registrar to deliver the ballot to such person. The law does not prevent a candidate from carrying a notary to the voter's home, although it does provide that the ballot must be marked in the presence of the notary or other officer, without assistance and without making known the manner of the marking, and that he shall place the ballot in an envelope provided for same, seal the envelope, and fill in and sign the voucher on the back of the envelope, in the presence of the officer, and that the officer shall witness the same in writing. It then provides that the coupon furnished with the ballot shall be filled out and signed by a notary public or other officer, and shall be enclosed with the envelope directed to the registrar, which shall be sealed, registered and mailed to the registrar or delivered to the registrar in person.

If officers do not comply with the law, the question of whether or not such omissions are sufficient grounds for rejecting the ballot is first for the judges of election and then, upon contest, for the circuit court judge to determine.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballots—Printing of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *October 10, 1931.*

MRS. JESSE A. MUNCY,
Bland, Virginia.

DEAR MRS. MUNSEY:

I am in receipt of your letter, in which you ask whether or not it is lawful for the chairman of the Republican party of Bland county, whose brother is a candidate for sheriff, to print the tickets for the county.

Under the provisions of section 155 of the Code, it is the duty of the electoral board, as soon as is practicable after the board has been notified of

the names of candidates and at least sixty days prior to an election, to have the ballots printed.

Under the provisions of section 156, the printer of the ballots is required to take an oath and the ballots are printed in the presence of one of the members of the electoral board, who is required to be continuously present in the room in which the ballots are printed until the printing has been completed.

There is no provision of law which prohibits a person whose relative is a candidate for office from printing the tickets used in the election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballots—Printing of—Cities of second class.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 30, 1931.*

HON. W. R. BROADDUS, JR.,
*Attorney for the Commonwealth,
Martinsville, Virginia.*

DEAR MR. BROADDUS:

I am in receipt of your letter of September 28, which I deem advisable to quote in full that my reply may be made applicable to the facts stated in same:

"Mr. Taylor advises me that on Saturday last he called you over the 'phone with reference to printing of the ballots for the coming election. The county and city electoral boards desire to have a written opinion on the matter. Therefore, I am writing and giving you the full details so that you can reply immediately.

"You will recall that Martinsville became a city of the second class in the year 1928. They have their own electoral board and the county likewise has an electoral board. The following officers are to be elected by the voters of the county alone: treasurer, commissioner of the revenue and the various district officers. On the other hand, the county and city voters both have the right to vote for the following officers: sheriff, Commonwealth's attorney and representative to the House of Delegates. Therefore, it would seem that different ballots have to be used in the city and county.

"Section 155 of the election laws provides as follows: 'It shall be the duty of the electoral boards of the several counties and cities of this State * * * to cause to be printed a number of ballots * * * etc.' No special reference is made to cities of the second class, but only cities.

"Please advise as soon as possible whether in your opinion the county electoral board will prepare a ballot for the county and also one for the city, or will the city electoral board have prepared its own ballot."

The question as to who should print the tickets for the city of Martinsville in the November 3 election is not entirely free from doubt.

According to the provisions of chapter 117 of the Code of 1930, having to do with cities of the second class, I notice that treasurers of cities are elected, or appointed, under the provisions of section 2889, and commissioners of the revenue are elected under the provisions of section 2890. These officers, along with certain other officers of cities, are elected by a vote confined to cities, and county treasurers and commissioners of the revenue are, under the general law, elected for the county outside of cities by the voters of the county.

Under the provisions of section 2894, attorneys for the Commonwealth, clerks, and sheriffs, are elected both for cities of the second class and for the counties in which such cities are situated, and the combine vote of the city and county is eligible to vote in the election of these officials.

In addition to the election of certain county and district officers, a senator and a member of the House of Delegates is to be elected at the November election. There is no city election at that time and, of course, said officers are not then voted for.

One provision of section 2894 is to the effect that the qualified voters residing in the city shall be entitled to vote for attorneys for the Commonwealth, clerks, and sheriffs, and at the general election for county officers, the wards of the city shall be treated, for election purposes, as precincts of the county as if such city had not been declared to be a city of the second class. It will thus be seen that the coming election is one in which all of the officers of the county are chosen by the voters of the city and county voting for them.

The question then arises as to whether or not the electoral board of the county shall prepare a ballot for the county precincts, and the city electoral board shall prepare a ticket for the city precincts. The same question arises as to the appointment of judges and clerks of election; that is to say, whether the county electoral board appoints all of the judges and clerks of election, or only for the county precincts, while the city electoral board appoints the judges and clerks of election for the city wards treated, for the purposes of the election, as county precincts.

In my opinion, the duties of the city electoral board are confined to the appointment of judges, the preparation of ballots, and the general conduct of city elections, and the county electoral board has authority to perform the same duties, both throughout the county and in the city, in such elections in which a city of the second class votes for all of the county officers, including a senator and member of the House of Delegates, as shall be elected throughout the county and city. I attach special significance to the fact that section 2894 provides that wards of cities shall be treated, for election purposes, as precincts of counties, just as if a city had not been established.

It is my opinion, therefore, that the ballots for the election of the candidates mentioned in your letter should be printed by Henry county electoral board.

I concur in the suggestion you made today over the phone that the city and county electoral boards unite in the selection of judges and clerks, the preparation of ballots, the appointment of commissioners to canvass the votes, and in any and all other things to be done in the conduct of the election in the city of Martinsville, and the county of Henry.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballots—Right to open same.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., August 11, 1931.

MR. W. T. HICKS, *Secretary,*
Electoral Board of Carroll County,
Hillsville, Virginia.

DEAR SIR:

I am in receipt of your letter of August 10, in which you submit the following question:

“ * * * if the number of ballots furnished to the registrar of each precinct should not be sufficient, would it be legal for the electoral board

to break the seal of the ballots already delivered to the judge and take out a sufficient number for the registrar and then reseal those left with the judge?"

I know of nothing that would prevent such action.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Candidates' filing of expense accounts.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 11, 1932.*

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

DEAR MR. McDOWELL:

I am in receipt of your letter of the 8th instant, in which you write:

"Section 253 of the Code of Virginia provides that candidates in any primary election shall within thirty days after such election file an expense account with the officer or board, empowered by law to issue certificates of election to such office or place, and a duplicate thereof with the clerk of the circuit court of county or corporation court of the city.

"Please advise whether candidates in the Democratic primary for members of the city council must file a copy of said account with the chairman of the city Democratic committee, or if it is only necessary to file same with the clerk of the hustings court of the city of Richmond."

The meaning of section 253, requiring candidates before any caucus or convention or primary to file an expense account with the officer or board empowered to issue certificates of election, is not entirely clear as to whether or not this provision requires a candidate to file his expense account with the committee of the party for which a primary has been held and a person nominated for office.

Out of an abundance of precaution, I suggest that it may be wise, if not necessary, to file an expense account with the clerk of the circuit court of the county or the corporation court of the city in which the candidate resides and with the chairman of the committee of the county or city in which the primary was held.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Candidates—When names not to be printed on ballot.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 9, 1931.*

HON. HUGH REID,
Cherrydale, Virginia.

DEAR MR. REID:

I am in receipt of your letter of yesterday, from which I quote:

"Arlington county is about to change its form of government in accordance with the provisions of chapter 167, Acts of 1930. This Act, as you will recall, was passed pursuant to the new authority given the General Assembly by the constitutional amendment ratified in 1928, authorizing the General Assembly, under section 110, to provide complete forms of organization and government for counties different from those provided for by article 7 and, notwithstanding the provisions of that article. Chapter 167, as you will note, provided for a choice of two plans, (a) a modified commission, and (b) a county manager, at a popular election called in accordance with the law. The people elected to adopt the managerial plan and also chose, under the option provided for in question 3, to elect the governing board at large.

"About a month ago, as the result of charges that the Act was unconstitutional because of its abolition of the magisterial districts, doubt arose in the minds of candidates as to whether they should file for the office of supervisor or office of member of the county board. Notwithstanding the language of the Act as contained in section 2773(f), various candidates also filed for the offices of supervisor, constable and overseer of the poor. The clerk of the court, conceiving his duties to be purely ministerial, immediately certified to the electoral board the names of all candidates filing for positions under either the old or new government.

"The electoral board then being faced with the problem of conducting an election, announced that it would reject the names of all candidates filing for any other offices than those provided for in chapter 167, the trial justice and the officers whose popular election is provided for by section 110 of the Constitution."

After having written the facts concerning the adoption of the county manager plan pursuant to the authority contained in chapter 167 of the Acts of 1930, enacted by the General Assembly of Virginia, under the provisions of section 110 of article 7 of the Constitution, you propound three questions, which I quote:

"1. Does the fact that the bill abolishes the magisterial district and establishes the county as a unit involve any principle repugnant to the Constitution?"

The Act of 1930 does not, in my opinion, involve any principle repugnant to the Constitution. In fact, the act appears to be carefully drawn and fully within the power conferred upon the General Assembly by section 110 of article 7 of the Constitution.

"2. Is the Act in other respects, in your opinion, entirely constitutional?"

Chapter 167 of the Acts of 1930 is, in my opinion, in all respects entirely constitutional.

"3. Did the electoral board of Arlington county act properly in refusing to print on the ballot the names of candidates for the office of supervisor, constable and overseer of the poor?"

The electoral board of Arlington county properly refused to print upon the official ballot to be voted in the November election the names of candidates for any office except those especially provided for in the act. The board would be acting without authority should it undertake to print the names of candidates for the office of supervisor, constable and overseer of the poor upon the official ballot. The law does not authorize, directly or indirectly, the election of any one of such officers for the county of Arlington after the county has adopted the county manager plan, as provided for in section 2773(f) of the Code of Virginia, as amended by chapter 167 of the Acts of 1930.

All legislative acts are presumed to be constitutional unless the contrary

plainly appears and it would, in my opinion, be an assumption of authority upon the part of an electoral board to undertake by its action to declare null and void an Act of the General Assembly of Virginia because, in the opinion of such board, the Act of the General Assembly might be unconstitutional.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Ballot—Name of candidate may be inserted.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *June 28, 1932.*

MR. F. C. DICKERSON,
Drakes Branch, Virginia.

DEAR MR. DICKERSON:

I am in receipt of your letter of yesterday, in which you recite certain facts concerning the candidacy of a person for mayor of your town, and I note that this person, though his name was not upon the official ballot, received a greater number of votes than any other person.

You ask if such a person was legally elected.

Section 28 of the Constitution of the State authorizes the General Assembly to provide election ballots and requires the names of all candidates to be printed thereon, and provides:

“ * * * but any voter may erase any name and insert another.”

The last phrase in section 162 of the Code reads:

“ * * * but it shall be lawful for any voter to erase any or all names printed upon said official ballot and substitute therefor in writing the name or names of any person or persons for any office for which he may desire to vote.”

You will see from the above quotations that it is not necessary for a person to have his name printed upon an official ballot to be elected to office, and, if there is no other objection raised to the election of the candidate to whom you refer, he was duly elected.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax required of aliens.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *June 11, 1932.*

HON. CHARLES E. FORD,
Attorney at Law,
Newport News, Virginia.

DEAR MR. FORD:

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

“What is your opinion about the right of a man to register and vote who has been living in Virginia for about five years and has just gotten his citizenship papers this month?”

"Kindly let me know at once, for, if he has a right to vote, he would like to do so at the municipal election next month."

In the last paragraph of your letter you speak of the municipal election next month. I did not understand that Newport News would have an election in July, but thought it was in June. If in June, I do not think that the alien who has just been naturalized can now register and vote.

Under the construction placed upon the poll tax law, residents, though alien, are required to pay a capitation tax. If your man has been a resident of the State for the last five years, in order for him to be entitled to register and vote, he should have paid his capitation taxes six months in advance of the municipal election.

In addition to the poll tax provisions, registration books are closed in cities and towns on the third Tuesday of May and no one can register until after the next election.

If I misunderstand as to the time of the municipal election to which you refer, kindly let me hear further from you.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax—Young man becoming of age.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 30, 1931.

MR. W. C. FITZPATRICK,
Secretary of Electoral Board,
Farmville, Virginia.

DEAR MR. FITZPATRICK:

I am in receipt of your letter of the 28th instant, which I quote:

"One of the judges of election in this county has asked me to get your ruling on the question of whether a person becoming twenty-one years of age after January 1, 1930, and before May 4, 1931 (six months prior to November election, 1931), can vote in the primary election to be held on August 4, 1931, by paying in advance the 1931 taxes, which tax is paid after May 4, 1931, but before August 4, 1931."

The person to whom you refer in your letter, possessing all other qualifications, may, upon the payment of his capitation tax, register and vote in the August 4, 1931, primary. It is not necessary for him to have paid his capitation tax before May 4, 1931, as the law only requires a person becoming of age at such time as not to have been assessable with a capitation tax for the year preceding the year in which he offers to vote to pay his capitation tax at any time before the election at which he offers to vote, and does not require its prepayment six months in advance of the election. If the person became of age in the year 1930, the capitation tax is credited for the year 1931. If he became of age during 1931, the capitation tax is credited for the year 1932.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax—Residence.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *August 1, 1931.*

HON. J. E. OLD,

*County Treasurer,**Princess Anne, Virginia.*

DEAR MR. OLD:

I am in receipt of your letter of the 30th ultimo, which I quote:

"Will you please write me to the effect that you have ruled that a person coming to Virginia after the first day of January, 1930, can register and vote without the payment of poll taxes?"

A person coming into the State any time after the first day of January, 1930, may register and vote without the payment of capitation taxes, section 20 of the Constitution being to the effect that every citizen of the United States having qualifications of age and residence, who has paid all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to vote, is entitled to register and vote.

No capitation taxes are assessable against a person coming into Virginia after January 1, 1930, for that year, and, of course, that is the year preceding this fall's election.

A person qualified to vote in an election is qualified to vote in a primary held to select the candidates to be voted for at that election.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***ELECTIONS—Capitation tax.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *November 30, 1931.*

HON. HERBERT L. HULCE,

*City Treasurer,**Richmond, Virginia.*

DEAR MR. HULCE:

You have requested an opinion as to the last day upon which persons may pay capitation taxes in order to qualify to vote in the Richmond city municipal election which, according to law, will be held upon the 14th day of June, 1932, that day being the second Tuesday in June.

Section 21 of the Constitution provides that every person, unless exempted by section 22 of the Constitution, shall pay all State poll taxes assessed or assessable against him or her at least six months prior to the election in which the person offers to vote.

The question as to the last day upon which capitation taxes may be paid resolves itself into an inquiry as to what is meant by the provision requiring the prepayment of taxes at least six months prior to an election.

In the 5th volume of Words and Phrases Judicially Defined, page 4575, I find the following:

"A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the

same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted."

Applying this authority to your inquiry, I am of the opinion that the 14th day of December, 1931, is the last day upon which capitation taxes may be paid, as that day is six months prior to the 14th day of June, 1932, the day of the Richmond city municipal election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax required of cooks, servants, etc., of Confederate army.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 13, 1932.*

MR. D. T. TINSLEY,
Notary Public,
Radiant, Virginia.

DEAR MR. TINSLEY:

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

"I hate to trouble you with small things, but this means a great deal to us each year at election time. I wish you would give me a ruling on the following:

"According to the Constitution, an old soldier is allowed to vote, whether his capitation tax is paid six months prior to the election or not. A few years ago the legislature passed a bill to pension some old slaves, who were cooks, etc., in the Confederate army. Now, what we want to know is this: Can a pensioned slave (negro) vote without paying capitation tax six months prior to an election or not? Does his being a pensioner give him a right to vote without paying the tax six months prior to the election? By deciding this you will help us, as at election time some try to vote these on the same footing of an old soldier."

The exemption from the payment of poll tax as to the right of Confederate veterans to vote is covered by section 22 of the Constitution, which reads in part as follows:

"No person, nor the wife or widow of such person who, during the late War Between the States, served in the army or navy of the United States, or of the Confederate States, or of any State of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. * * * ."

In my opinion, the words "served in the army or navy" restrict the exemption to the enlisted personnel of the army or navy of the United States or of the Confederate States or of any State of the United States or of the Confederate States, and does not allow an exemption to a slave who served his master, or any class of persons who are pensioned because of having rendered certain services during the war.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Capitation tax required of candidates.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 3, 1932.

MR. JOHN L. ROSE,
Abingdon, Virginia.

DEAR MR. ROSE:

I am in receipt of your letter of the 29th of last month, in which you desire my opinion upon the following statement of facts:

"Will you please inform me whether or not a voter in the November election of 1931, and is now qualified to vote in the November election of 1932, is eligible for his name to be placed on the ticket for councilman in the June election of the town of Abingdon."

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."

A person, to be qualified to vote in the June municipal election, must have paid his capitation tax six months prior to that election. All municipal elections being held this year upon the 14th day of June, he must have paid his capitation tax on or before the 14th day of December, 1931, to render him eligible to vote in the June election. Neither the fact that he voted in the November, 1931, election nor the fact that he is qualified to vote in the November election of this year renders him eligible to vote in the June municipal election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Contested—Taxation of costs.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 25, 1932.

HON. A. H. CRISMOND, *Clerk,*
Circuit Court of Spotsylvania County,
Spotsylvania, Virginia.

DEAR MR. CRISMOND:

I am in receipt of your letter of the 23rd instant, in which you write concerning the taxation of costs in certain contested election cases tried in the circuit court of your county, and in which you ask my opinion as to the party to whom such costs are to be taxed.

The taxation of costs is covered by sections 3529 and 3530 of the Code of 1930, the former providing that the clerk shall enter the sum to which each person is entitled and by whom to be paid, while section 3530 provides that in all cases except Commonwealth cases, or cases before the General Assembly, witnesses' fees are to be paid by the person for whom the summons issued. Subject to law, judges of courts are authorized to provide in the judgment or decree for the recovery of costs by the party prevailing.

There does not seem to have been any change by statute in the law of costs in contested election cases since *West v. Ferguson*, 16 Gratt. 270. Judge Lewis, in the dissenting opinion in *Gresham v. Ewell*, 85 Va. 1, says on page 8 that costs in contested election cases cannot be recovered at common law and that

there is no statute authorizing the recovery of costs in a contested election case in a county court, county courts then having jurisdiction of the trial of contested election cases.

I suggest that you make up statements as to costs as provided in section 3529 and deliver a certificate to each of the witnesses. In my opinion, officers should make out their own fee bills as against the parties for whom the services were rendered, their fees being collectible as provided by law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Division of town into precincts and election officials therefor.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 29, 1932.*

HON. W. T. HICKS, *Secretary,*
Electoral Board of Carroll County,
Hillsville, Virginia.

MY DEAR SIR:

I am in receipt of your letter of recent date, in which you refer me to Acts 1930, page 560, by which it is provided that the town of Hillsville should be governed by a council composed of four members and a mayor, the mayor to be elected by the qualified voters of the town at large and the four councilmen to be elected one each from that portion of the town which lies in the respective magisterial districts. You wish to know whether the electoral board should appoint one registrar and three judges for each of those districts in the town which was a part of the several magisterial districts.

Section 2995 of the Code provides that the electoral board shall appoint "one registrar and three judges of election for each voting precinct."

Section 2999 of the Code provides as follows:

"There shall be but one voting place in each town, which shall be fixed by ordinance, unless the council thereof by ordinance shall provide for, establish and lay off said town into voting precincts, in which event they shall also fix the voting places in each precinct, provided, however, that if said voting place or places be not fixed by ordinance, the same shall be fixed by the judges of election of the respective precincts. * * *."

Unless by ordinance separate voting precincts have been established, the town constitutes but one precinct, and there should be only one registrar and three judges of election for that precinct.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges—Appointment of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 16, 1932.*

HON. DACOSTA WOLTZ, *Mayor,*
Galax, Virginia.

DEAR MR. WOLTZ:

I am in receipt of your letter of the 14th instant, in which you write:

"I notice in the Virginia election laws that the party receiving the highest number of votes at the last election is entitled to two judges. I shall thank you to please advise me whether or not this applies to candidates in town elections where both candidates are the same politically and the same candidates in the last election.

"Your opinion in the above matter will be greatly appreciated."

Section 84 of the Code, covering the appointment of judges of election, requires representation so far as possible of each of the two political parties which at the general election preceding the appointment of judges cast the highest and next highest number of votes. This provision of the law applies only to political parties and has no reference to the appointment of judges on account of the number of votes cast for candidates in town elections.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges—Eligibility of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 27, 1931.*

MR. S. P. EDWARDS,
Bee, Virginia.

DEAR MR. EDWARDS:

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

"Will you please give me the following information: My son is the contractor of a mail route and he has me employed to carry mail for him. I am now appointed as an election judge. I want to know if this disqualifies me in serving as a judge of election."

In my opinion, you are not disqualified to serve as a judge under the statement that you make in your letter that your son is a mail contractor and that you are employed by him to carry the mail.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Notice of candidacy.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 9, 1931.*

MR. L. E. FARMER,
Hillsville, Virginia.

DEAR MR. FARMER:

I am in receipt of your letter of the 7th instant, from which I quote:

"I want your ruling on whether I should have my name on the ticket or not. I mailed my announcement as an independent Republican candidate for the office of treasurer of Carroll county to the clerk on September 2, and he got it that day. I did not know that it had to have two witnesses to it, and the clerk did not notify me until after the time was up to file, although he had plenty of time to write me or could have phoned me, and I could have witnessed my announcement in the time prescribed by law, but said he did not have to notify anybody. * * * "

In my opinion, while it is very unfortunate, the clerk is entirely within the law in neglecting to notify you of the fact that you had not complied with the law requiring a candidate to have his notification of candidacy witnessed, and, not having certified your name to the electoral board, that board could not have it printed upon the official ballot.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Commissioners of election—Fees of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *August 17, 1931.*

MR. E. G. PEERMAN,
Rustburg, Virginia.

DEAR MR. PEERMAN:

I am in receipt of your letter of the 15th instant, in which you ask for a construction of section 200 of the Code providing pay for commissioners of election.

Commissioners are allowed \$5.00 per day and the mileage allowed jurors for each mile necessarily traveled to and from the county seat.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Notice of candidacy—Party nominee.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *August 28, 1931.*

MR. GEORGE S. DESHAZOR, JR., *Clerk,*
Denbigh, Virginia.

DEAR MR. DESHAZOR:

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

"Please advise me if you think it is necessary for a party primary nominee to file a written notice of his intention to be a candidate for the office which he was nominated for in the primary.

"It is my opinion that he need not do so under section 154, as amended in 1926."

I think that you are entirely correct in your construction of section 154 of the Code of Virginia, to the effect that a primary nominee is not required to file a written notice of his candidacy for office, under the provisions of that section.

However, the law does not seem to be complete, as, although it makes an exception in regard to notification of candidacy in case of primary nominees, the statute does not provide how or in what manner the electoral board is to be notified of the nomination of a party candidate. As a practical question, I see no reason why a party nominee should not notify the clerk of his candidacy for office.

In lieu of such notification, I think it would be advisable for party chairmen to notify clerks of all party nominees. There is no apparent reason why the electoral board may not take official notice of party nominations and include the names of party nominees in the official ballot.

I regret that I cannot express a more decided opinion, but I think you will agree with me that the law does not definitely point out the manner in which a party nomination is brought to the attention of the electoral boards.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Primary—Right to vote in.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., August 31, 1931.

MR. J. B. PARNELL,

Route 4,

Alexandria, Virginia.

DEAR SIR:

I am in receipt of your undated letter, which I quote in full:

"In the recent primary for county and state offices in this (Fairfax) county, your opinion was disregarded in respect to the rights of certain voters in that in certain precincts voters known to favor certain candidates were not allowed to vote, while in other precincts they were. The opinion I have reference to was in regard to the rights of the negro to vote in this primary. I can show by affidavits that unfairness was shown. 1st, what would be the status of these judges in the general election? 2nd, is there any law that says that a voter has to support the nominee? 3rd, have the judges of election any legal right to question a voter as to how he voted in the primary? 4th, have the judges of election any legal right to instruct and try to influence voters against certain candidates?"

(1) The law provides for the appointment of judges and clerks of general elections and for the separate appointment of judges and clerks of primary elections. Of the three judges of a general election, two may belong to one party and one must belong to the party casting the next highest number of votes in the last election.

Primary judges of election are chosen from members of the party holding the primary election.

(2) The State primary law provides that a person, to be entitled to vote in a primary, must belong to the party and have voted for the nominees of the party in the last preceding general election in which he voted.

If the person has never voted, then his declaration that he will support the nominees of the party is sufficient.

(3) Judges of election have no right to question a voter as to how he voted in a primary. They have a right to question the person offering to vote as to how he voted in the last preceding general election, and have a right to allow, or refuse to allow, such person to vote according to his answer as to his party regularity.

If the person questioned refuses to answer, he should not be allowed to vote.

Judges of election have a right to assist voters registering before the first day of January, 1904. They have no right to assist persons registering since that time unless physically disabled. They have no right to electioneer with voters or, as you express it, try to influence them.

I note you say that you have affidavits as to the partiality of judges. It is not the practice of this office to advise as to individual cases. I always refer such questioners to private counsel or, in cases of charges of criminal

conduct, to attorneys for the Commonwealth of the county in which the crimes are alleged to have been committed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Democratic primary—Who may vote in.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., July 31, 1931.

MR. L. C. GARRETT,
*Judge of Primary Election,
Cumberland, Virginia.*

DEAR MR. GARRETT:

I am in receipt of your letter of yesterday, which I quote:

"When our Democratic county committee met several months ago and declared to have a primary August 4 for county officers, a resolution was offered and passed to allow all voters to vote, whether Democrats or Republicans. Judge Smith, Commonwealth's attorney, a member of the committee, refused to vote on the resolution, advising the committee that they had no right to allow Republicans to vote in a Democratic primary. It is claimed now by the Democratic friends of these Republicans, that the Republicans, by virtue of this resolution, be allowed to vote in the primary.

"As one of the judges of this primary, will you please advise me whether or not the judges of this primary are bound to allow the Republicans to vote by virtue of this resolution. It is also claimed by these people that negroes can vote in this primary. Please advise about this also."

In my opinion, only Democrats are entitled to vote in the August 4, 1931, Democratic primary. Both the platform of the Democratic party, adopted at Norfolk, Virginia, June 11, 1924, and section 228 of the Code of Virginia, require that persons, to be entitled to vote in a primary, shall belong to the party holding the primary. The platform of the Democratic party provides:

"All white persons qualified to vote at the election for which the primary is held may vote at the primary; provided, however, that no person shall be permitted to vote unless such person is a member of the Democratic party and at the last preceding general election in which such person participated voted for the nominees of the Democratic party; provided, further, that if he did not vote at such general election, then upon his declaration that he will support at the ensuing election the nominees of the party, he shall be allowed to vote. When challenged, he shall make his declaration on oath."

Section 228 of the Code 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, and, upon challenge, such person shall declare on oath that he or she is a member of such party and supported such nominees as hereinbefore required before being permitted to vote.

"If such person has never voted before, then it shall be necessary only that such person is a member of such party and will support the nominees of such party in the ensuing election. * * * ."

In my opinion, no county committee can legally amend the platform adopted by the party and the statute law of Virginia covering the eligibility of voters to participate in party primaries.

The United States District Court and the Circuit Court of Appeals have both decided that, on account of the fact that primary elections are held under statute law, neither a statute nor a party rule or regulation can effect the right of a voter to participate therein on account of his race.

It is true that the Democratic plan, which I have quoted, limits the right of suffrage in primaries to white persons, but, of course, a party platform is inferior in authority to decisions of courts, and, unless and until the Supreme Court of the United States decides otherwise, judges of primary elections will be rendering themselves liable to civil actions for damages should they refuse to allow colored persons to vote in Democratic primaries simply on account of their color.

Of course, colored persons, to be entitled to vote, must convince the judges of election that they are Democrats and, in the last general election in which they voted, voted for the nominees of the Democratic party.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Primaries—Eligibility to vote in.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *July 23, 1931.*

MR. J. L. DAWSON,
Woodbridge, Virginia.

DEAR MR. DAWSON:

I am in receipt of your letter of the 21st instant, in which you ask a number of questions covering the right of persons to vote in the August Democratic primary. Each one of your questions is quoted and the answer given immediately following:

"1. A party who has not voted for ten or twelve years and now wishes to vote in the primary, obligating himself to vote for the nominees at the general election."

A person, to be entitled to vote in a Democratic primary,

- (1) must be a member of the Democratic party,
- (2) must have voted for the nominees of the Democratic party at the last preceding general election in which the party participated.

"2. A party who voted for Hoover in the presidential election, but has failed to vote since, but is willing to support in the general election the nominees in this primary."

I have heretofore held that, on account of the wording of the primary law, in which it is provided in section 222 of the Code:

"This chapter shall apply to the nomination of candidates for such offices as shall be nominated by a direct primary and to no other nominations."

a vote for a Republican candidate for president is not a test of a person's right to vote in a Democratic primary. The right to vote is determined by the law I have quoted in my answer to your first question.

"3. A party who has never voted before, but now wishes to vote in the Democratic primary, with the understanding he will support the nominees."

Section 228 of the Code covers this inquiry. This section in part provides:

"If such person has never voted before, then it shall be necessary only that such person is a member of such party and will support the nominees of such party in the ensuing election."

The party to whom you refer must be a member of the Democratic party.

"4. A party who voted for Hoover and later Brown, but in the 1930 election supported and voted for Judge Smith, the Democratic candidate."

Subject to the provision that a person, to be entitled to vote, must be a member of the party in whose primary he desires to participate, his eligibility is based upon his votes in the last preceding general election. Although he may have voted for Hoover and for Brown, if he voted for Senator Glass and Judge Smith last November, he is eligible to vote in the Democratic primary. A vote for Smith, but not for Glass, does not render him eligible.

"5. A party who had theretofore voted a Republican ticket, but in the 1930 election supported and voted for Judge Smith, the Democratic nominee in the general election."

My answer to this question is largely governed by my answers to the first and fourth questions. A person must be a Democrat and, if he voted in 1930, must have voted for both Senator Glass and Judge Smith.

"6. A party who has heretofore voted the Republican ticket, but now wishes to enter the Democratic primary, thereby pledging himself to support in the general election the primary nominees."

The other answers cover this question. If a person who has heretofore voted the Republican ticket desires to participate in the Democratic primary, he must have changed his allegiance from the Republican to the Democratic party and also voted for the Democratic nominees in the last preceding general election in which he voted.

"7. Whether a person who has been appointed judge or clerk, and has made a bet or bets on the primary results, is eligible or is barred by reason of his betting."

I do not think a person is qualified to act as judge or clerk of an election upon the results of which he has made bets.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges of—Electoral board—Powers with reference to.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., July 29, 1931.

HON. W. E. HOGG,

*Attorney for the Commonwealth,
Yorktown, Virginia.*

DEAR MR. HOGG:

I am in receipt of your letter of the 28th instant, in which you recite certain facts connected with the proceedings of the electoral board of York county in the consideration of a suggestion that Mr. R. E. White, one of the judges appointed for the Democratic primary election held August 4, 1931, was not a Democrat.

I note that Mr. White admitted facts which disqualified him to serve as a judge in a Democratic primary. You then write that, while Mr. White did not prefer charges against any of the other primary judges, he insisted that each judge should be required to appear before the electoral board for questioning as to his qualification to sit as a judge, and that the board refused his request.

You then say that Mr. White desires my opinion as to whether it was the duty of the electoral board to require all primary election judges to appear before it and disclose their qualifications to sit as judges.

There is no law covering Mr. White's request.

In my opinion, it was a matter for the determination of the electoral board and their action was entirely within the exercise of their discretion. The board was not legally compelled to summon the judges and to go into an investigation as to their eligibility to serve. It was a right belonging to them exclusively to determine the desirability and practicability of an investigation of the eligibility of any or all of the primary judges.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Method of voting.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 30, 1931.

MR. ROBERT L. KIRBY, JR.,
Attorney at Law,
Independence, Virginia.

DEAR MR. KIRBY:

I am in receipt of your letter of the 24th instant, in which you write that voters of your county have been advised not to deliver their ballots to judges of election, but themselves to deposit their ballots in the ballot boxes.

A voter is required, under section 162 of the Code of Virginia, after having marked and folded his ballot with the names of the candidates on the inside, to "hand the same to the judge of the election," and the judge thereupon is required to deposit the ballot in the ballot box after having assured himself that the paper offered is only a single ballot and is genuine.

Judges of election should not allow voters to themselves deposit their ballots in the ballot boxes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Names transferrable to town books—No special or assistant registrar.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 6, 1932.

MR. J. G. EDWARDS, *Registrar,*
Galax, Virginia.

DEAR MR. EDWARDS:

I am in receipt of your letter of the 3rd instant, in which you ask certain questions concerning the registration of voters in your town:

"1. Is it necessary for a voter to first be on county books before going on town books?"

It is necessary for voters to register in a county before being placed upon the registration books of a town. Persons must register in a county according to the provisions of law making certain requirements as to application, etc. There is no such requisite necessary as to town registrations. A person having registered in a county can be transferred to the registration of a town.

"2. Are the town books closed thirty days prior to the election both to new registration and transfers from precincts out of the corporation?"

Town registration books are not closed thirty days prior to an election, but are closed, under the provisions of section 98 of the Code, after the third Tuesday in May, that being the date provided by the section for the sitting of a town registrar. I do not think that a person can be registered in a town after the third Tuesday in May until after the second Tuesday in June.

The provision for the registration of voters transferring from a precinct and having their names put upon the registration books on election day is restricted to changes of registration from one county precinct to another county precinct and does not apply to a change from a county to a town.

"3. Has a notary public the authority to swear in a person as a special registrar on days other than the regular days of registration when the regularly appointed registrar is absent from his precinct for one day? This refers to county books."

There is no law providing for a special registrar.

"4. Has the wife of a Confederate soldier the privilege of voting without the payment of capitation taxes?"

Widows of Confederate soldiers are entitled to vote without the prepayment of capitation taxes. This inquiry is covered by section 22 of the Constitution, providing that neither the wife nor widow of a Confederate soldier is required to pay a poll tax as a prerequisite to vote.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Officers and enlisted men of army and navy do not acquire legal residence.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 12, 1932.*

MR. ROBERT L. COUNTS,

Box 405,

Coeburn, Virginia.

DEAR MR. COUNTS:

I am in receipt of your letter of recent date in which you ask:

"Do our election laws permit the commissioned and enlisted personnel of the army and navy to vote?"

The commissioned and enlisted personnel of the army and navy have the same right of suffrage as other citizens of the State of Virginia. The law provides, however, that army and navy men stationed in Virginia do not acquire the right of suffrage by virtue of their being so stationed. This law does not take away the right which an officer or an enlisted man of either service has, but simply does not confer the right of suffrage because of residence in Virginia in the line of their professional occupation.

In your letter you ask for any information concerning this question or which the election laws provide. My answer to your question about covers all the law on the particular subject.

If there is any further information you wish, the Attorney General's office will be glad to furnish it.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

ELECTIONS—Registration of voters—Persons becoming of age.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 26, 1931.*

MR. L. S. MARSHALL,
Williamsville, Virginia.

DEAR MR. MARSHALL:

I am in receipt of your letter of the 24th instant, in which you ask to be advised as to whether a person becoming of age after October 3, 1931 (registration day), and before November 3, 1931, may register and vote.

Under the provisions of section 93 of the election laws, it is made the duty of registrars to register "every citizen of the United States of his election district * * * who shall be twenty-one years of age at the next election, * * *."

In my opinion, a person becoming of age on or before the 3rd day of November, 1931, is entitled to register, although he is not of age on or before the last registration day.

Such person must, of course, be assessed by the commissioner, pay one year's capitation tax to the treasurer, and present his receipt to the registrar.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Precincts—Rearrangement of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *May 16, 1932.*

MR. L. R. BARTENSTEIN, *Secretary,*
Fauquier County Electoral Board,
Warrenton, Virginia.

DEAR MR. BARTENSTEIN:

I am in receipt of your letter of the 14th instant, in which you write:

"The Fauquier county electoral board is of opinion that one of the small precincts in Fauquier county, called Fiery Run, should be closed, the situation being that the man who has been available and capable of handling the elections there is now dead and there being only eight or ten voters left in the entire precinct and none who would be willing or capable of holding an election.

"From a reading of section 144 of the elections laws it is not clear to me whether the petition to be filed with the court should be signed by twenty voters who are land owners in the precinct to be eliminated or whether they may be twenty voters and land owners within the same magisterial district. It would be impossible to obtain twenty signatures in the particular precinct which we wish eliminated. We could obtain twenty signatures in the precinct with which Fiery Run will be merged. Also, of course, we could get twenty signatures within the magisterial district. We would certainly appreciate your advice in this connection."

In my opinion, the section to which you refer authorizes the rearrangement of election precincts provided an aggregate of twenty qualified voters having the qualifications required by section 144 living in the proposed new district petition the circuit court for rearranging or consolidating the districts, even though such rearrangement or consolidation eliminates one or more districts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration—Time of day.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., October 23, 1931.

MR. R. L. WALDROP, *Registrar,*
Cardwell, Virginia.

DEAR MR. WALDROP:

Yours of the 22nd has been received.

Section 98 of the election laws provides that registrars in cities and towns of the State shall annually on the third Tuesday in May at their voting precincts proceed to register the names of all qualified voters, such registration to commence at sunrise and close at sunset. This section further provides that, thirty days previous to the November election, each registrar in this State shall sit one day for the purpose of amending and correcting the list, at which time any qualified voter applying and not previously registered may be added. You will note that in the latter provision nothing is said about the time for the registrars to sit.

It is my opinion that you should have registered the party who came to your house at 8 o'clock. However, it is too late now to do this, as the registration books are closed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registration books—Closing of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 7, 1932.

MR. S. E. HANCOCK,
Myrtle Avenue,
Danville, Virginia.

DEAR MR. HANCOCK:

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

"Kindly advise me when, in your opinion, the registration books should be closed for a local councilmanic election, to be held on June 14th. I am of opinion that the books do not close for this election."

Section 98 of the Code provides that registrars in the cities and towns of the State shall annually on the third Tuesday in May register all qualified voters not previously registered. It also provides "the registrar shall, at any time previous to the regular days of registration, register any voter entitled to vote at the next succeeding election who may apply to him to be registered; * * *."

I am of the opinion that this section required the registrars of the city of Danville to sit on the third Tuesday in May and to close their books for the municipal election on that day, and not to register any person between the third

Tuesday in May and the fifteenth day of June, or the day after your municipal election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registrars—Fees of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 8, 1931.

HON. A. M. BOWMAN, JR., *Chairman,*
Roanoke County Democratic Committee,
Salem, Virginia.

DEAR SIR:

I am in receipt of your letter of July 7, in which you desire to be advised whether or not registrars are entitled to fees under section 200 of the Virginia Election Laws for services rendered on election days.

While it is true that the law requires registrars to deliver the absent voters' ballots to the judges of election on election days, there is no provision of law for paying them for this service. The only provisions for paying registrars are contained in sections 96, 98 and 200 of the Virginia Election Laws.

The Attorney General has held that, under section 96 of the Virginia Election Laws, the per diem allowed registrars for sitting has been increased from \$2.00 to \$5.00 by section 200 thereof. They are also entitled to \$1.00 for posting notices.

Under section 98, registrars are entitled to ten cents for each person registered on days other than registration days, and three cents for each ten words for certifying persons registered to clerks of courts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registrars—Place of sitting.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., October 16, 1931.

HON. GEORGE A. BOWLES,
State Office Building,
Richmond, Virginia.

DEAR MR. BOWLES:

I am in receipt of your letter of the 13th instant, in which you ask my opinion as to whether or not a person who was registered by a registrar on the regular October registration day at a place other than that at which he sat on that day was properly registered and is entitled to vote by reason of said registration.

Section 98 of the Code makes it the duty of a registrar in the cities and towns of the State to sit on the third Tuesday in May for the purpose of registering voters, and requires the registrar to begin his sitting at sunrise and to close at sundown on that day.

The provision for fall registration is to the effect that, thirty days previous to the November election, each registrar shall sit one day for the purpose of amending and correcting the list, at which time he shall register all qualified voters.

This provision, in my opinion, requires the registrar to sit for the entire day

at the place designated by him, and does not warrant him in leaving the regular place of registration and going from place to place to register voters.

While there is no case in point, the practice of a registrar leaving his place of registration on a regular registration day is certainly irregular and may easily lead to substantial grounds for contesting an election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registrars—Duties of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 29, 1931.*

MR. M. W. VICARS,
Attorney at Law,
Coeburn, Virginia.

DEAR MR. VICARS:

I am in receipt of your letter of the 22nd instant, in which you write:

"Registrars in this county are going out of their precinct to deliver ballots to persons desiring to vote by mail. In fact, they are going out of their county and in some instances out of the State. They are also delivering in person ballots to applicants within their precinct, without a doctor's certificate that the applicant will be unable to go to the polls on the election day. Should those ballots be counted or voted as absent voters?"

Registrars are prohibited by section 208 of the Code from going in person to voters for the purpose of receiving his or her ballot. This section does not prevent him from delivering ballots in person.

Courts are not inclined to reject a ballot because of immaterial irregularities. I am not prepared to say just what irregularities render a ballot void and justify judges of election in rejecting it. If there is reason to believe the ballot is so tainted with fraud, or the irregularity charged is so great as to justify a rejection of the ballot, challenge should be made thereto before the judges of election, whose duty it is to receive and weigh the evidence and be guided by their best judgment. In case of contest, the circuit court of your county must finally pass upon each vote challenged, and, as the judges of election and the judge of your circuit court must in their discretion determine these challenges, I do not feel that I should embarrass them with an opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registrar cannot serve as judge.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 16, 1931.*

MR. E. L. REYNOLDS,
Rainswood, Virginia.

DEAR SIR:

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

"Please advise me by return mail whether the registrar of a precinct has a right to serve as judge or clerk of election in same precinct where he is registrar."

Under the provisions of section 86 of the Code, a registrar cannot hold any other office by election or appointment during his term, and a judge of election is an officer.

Therefore, a registrar cannot serve as judge of election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registrars of towns—Appointment of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 12, 1932.*

MR. THOMAS W. BLACKSTONE,
Accomac Court House, Virginia.

DEAR MR. BLACKSTONE:

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

"Registrars for county are to be appointed next month. When are registrars for towns appointed? I understood not less than fifteen days prior to each election. There are some towns in this county in which elections will be held next June. When should judges and registrars for them be appointed?"

In my opinion, the appointment of registrars of towns is governed by section 2995 of the Code, providing that the electoral board of the county wherein a town or a greater part thereof is situated shall, not less than fifteen days before any town election, appoint one registrar and three judges of election for each voting precinct.

According to the provisions of section 86 of the Code, it is the duty of the electoral board of each city and county, prior to the first day of April, to appoint a registrar for each electoral district from their respective counties and cities. This does not, as you will notice, provide for the appointment of a registrar for towns, but only for cities and counties. No time limit being imposed upon the appointment of registrars for towns, except the provision that the appointment shall be made not less than fifteen days before any election, the electoral board, in my opinion, may, but are not compelled to, appoint judges and registrars before the first day of April.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Registrars—Fees of—Sittings—Witnesses.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *June 7, 1932.*

HON. FRED B. GREER,
*Attorney for the Commonwealth,
Wise, Virginia.*

DEAR MR. GREER:

I am in receipt of your letter of the 1st instant, which for purposes of my answer I quote in full:

"Some of the registrars of our county have presented claims to the board of supervisors in which they claim \$5.00 for each day's sitting instead of \$2.00 as provided in section 96 of the Code.

"They are basing their claim of \$5.00 on section 200 of the Code as it now stands.

"During the year 1931 some of our registrars were summoned into court by persons who had been denied registration and desired to test their rights and the registrars are also claiming \$5.00 per day for each day that they were in court on these cases, this claim being based on section 200 also.

"It will be greatly appreciated if you will furnish me with your opinion as to whether these men are entitled to \$2.00 or \$5.00 per day for the days of sitting and also as to whether they are entitled to pay for the days on which they were compelled to be in court."

In my opinion, registrars are entitled to \$5.00 for each day's sitting as provided in section 200 of the Code of Virginia. This section, as amended, was passed subsequent to the enactment of section 96 of the Code and is, therefore, controlling.

I do not think that registrars summoned as witnesses are entitled to the \$5.00 per diem allowed under the provisions of section 200. Although the litigation in court arose out of registration matters, I am of the opinion that registrars summoned as witnesses are only entitled to the same pay as other witnesses.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *August 28, 1931.*

MR. MEREDITH A. EARLY,
204 Second Street, S. W.,
Charlottesville, Virginia.

DEAR MR. EARLY:

I am in receipt of your letter of the 23rd instant, in which you write:

"I was born and raised in Greene county and lived there with my father, who has been a resident of Greene county all of his life, until June 1, 1930, when I was employed by the National Bank and Trust Company, Charlottesville, Virginia.

"I am now married and housekeeping in a rented apartment in Charlottesville, Virginia. Should my employment cease in Charlottesville, I would have no further reason to continue to live there.

"My father, who owns a home and resides in Greene county, will probably be a candidate for the office of county treasurer in the coming election.

Section 4725 of the election laws states that a person must be an actual resident of the district in which he offers to vote.

"I became twenty-one years old on August 14, 1931, and I have never paid any poll tax or established any voting privilege. My interests are centered solely in Greene county and I am very anxious to establish a voting privilege there. However, I wish to be advised whether or not I may do so."

Your legal voting residence depends entirely upon whether or not when you left Greene county you intended to make a permanent change of residence. If when you left you gave up your old home, with no expectation of returning, you became a voting resident of Charlottesville upon becoming of age.

If, however, when you went to Charlottesville you did not intend to give up your old home in Greene, and did then and now have an expectation to return to the old home, even at some indefinite future date, you are entitled to return to Greene county, register and vote there.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 3, 1931.*

MR. C. C. COLLINS,
Attorney at Law,
Covington, Virginia.

DEAR SIR:

I am in receipt of your letter of the 26th ultimo, in which you, at the request of a registrar of your county, ask my opinion concerning the right of two persons to vote in the registrar's precinct. I quote your questions:

"1. A formerly lived in the Boiling Springs precinct with her parents; later she moved to the Covington precinct and is working in that precinct, and has been living there for the past 18 months, and is also registered there. She now wishes to be transferred to the Boiling Springs precinct, although still working in the Covington precinct and rooming and boarding there.

"2. B is registered in the Boiling Springs precinct, but he and his family have been living in the Covington precinct for the past two years. Is he still entitled to vote in his old precinct?"

The right of a person to vote at some particular place depends so largely upon both facts and intention that I hesitate to express a positive opinion.

Where a person moves from one precinct to another, he is entitled to retain his old voting residence unless, coupled with the actual removal to a new place of residence, is the intention to acquire a new place of residence and abandon the old place of residence.

As reply to your first question, I will say that, where a person formerly lived in one precinct and is now living in another precinct and has registered in the new precinct, such person would ordinarily be considered in law a voting resident of the new precinct and could not arbitrarily transfer to the old precinct without in fact having both given up the new precinct and returned to the old, although it is not necessary that the person returning to the old precinct should live there continuously.

As reply to your second question, a person may live in the new or Covington precinct for any number of years and yet retain his or her voting residence in the Boiling Springs precinct, provided that, when he or she removed from the latter to the former, there was no intention of giving up the old precinct as a permanent residence.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence precinct.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 17, 1931.*

MR. E. F. YATES,
Powhatan, Virginia.

DEAR MR. YATES:

I am in receipt of your letter of the 9th instant, which I quote:

"If a person lives in one electoral district and buys a piece of property across the highway in another electoral district and moves over there anywhere between six months and thirty days before election, would he be compelled to transfer to the electoral district to which he has recently moved or can he vote in the district he moved from?"

I am not sure whether your question is directed to a person who changes his residence from one magisterial district to another or only to the question of the change from one precinct in a magisterial district to another precinct.

Under the provisions of section 143 of the Code, each magisterial district of a county and each ward of a city constitutes an election district unless the magisterial district or ward is sub-divided, and election districts and voting places as constituted at the time the law was enacted continue until it is subsequently changed. I understand that there are many magisterial districts in the counties of the State which have more than one voting place or precinct, but in which the boundaries have never been fixed by law. In such districts a person may register and vote in any one of the precincts or voting places he may choose. However, where the magisterial district has been sub-divided into precinct districts, then I am of the opinion that the qualification of voters is determined by section 18 of the Constitution, providing that a resident of the State one year, of the county, city or town six months, and of the precinct in which he offers to vote thirty days, governs and that, where a person permanently changes his residence from one defined election precinct to another, even in the same magisterial district, he must vote in his new precinct. A change of residence does not always require a change of voting precinct, as in many instances persons move from one precinct to another only temporarily, with no intention of abandoning the old precinct as a place of residence. In such cases a person may return to his old precinct from a place in the magisterial district, or in the county or State, or even out of the State, and vote at his old voting place.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 5, 1931.*

MR. HENRY W. CONANT,
Chincoteague, Virginia.

DEAR MR. CONANT:

I am in receipt of your letter of the 1st instant, in which you write:

"My wife and I were residents of the State of Delaware and voted there on the 4th of last November at the general election. On the same day we moved, together with our furniture, and entered the State of Virginia for the sole purpose of becoming residents of Virginia and have been such ever since. Will you be kind enough to advise me if Mrs. Conant and I will be eligible to vote in this State at the next general election on November 3, providing all other requirements are met?"

I have been unable to locate a decision of the courts upon the question you ask. However, by analogy to the doctrine of law which holds that a person becomes twenty-one years of age the day before his twenty-first birthday and, therefore, eligible to vote at an election held on the day previous to his twenty-first birthday, I am of the opinion that both you and Mrs. Conant, having established your residence in the State of Virginia on the 4th day of November, 1930, are eligible, all other requirements being met, to vote in Virginia on the 3rd day of November, 1931.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *October 24, 1931.*

HON. J. B. HAYWOOD,

*Commissioner of the Revenue,**Hopewell, Virginia.*

DEAR MR. HAYWOOD:

My delay in answering your letter of the 12th instant has been largely brought about through the fact that there was some misunderstanding as to whether you referred to taxes or the right of suffrage.

As you know, I took this matter up with Mr. Morrissett and have now before me a copy of his letter to you of the 22nd instant. I agree fully with him as to the legal question of the domicile of a voter, that two things must occur—a removal from an old place of residence to a new and, second, the intention to abandon the old place and establish a new place of residence. It is so largely the intention of the individual whose case is under consideration that it is very difficult for a person to express a positive opinion upon any given state of facts, and, whenever a challenge is made to the right of a person to vote, the question of his or her right to vote must be decided by the judges of election.

In your letter of the 12th instant, in which you refer to the case of Mr. and Mrs. Gilman, you seem to be satisfied that they are legal voters within the city of Hopewell, and, if there is no question as to their right to vote in the city, there is no need for me to do more than refer to the general principles of law governing voting residents.

In referring to another case you write:

“Mr. E. F. Fielder was transferred to Hopewell from New York as an employee of the Atmospheric Nitrogen Corporation, and secured room and meals in a private residence in Walnut Hill, which is either in the city of Petersburg or Prince George county. He has no interest in either the county or the above-named city, but is an employee of our local plant and desires to elect the city of Hopewell as his legal residence and to qualify to vote there. The officials of the Atmospheric Nitrogen Corporation are in the same status as Mr. Fielder.”

In my opinion, Mr. Fielder, never having resided within the city of Hopewell, cannot claim a legal residence therein, qualify and vote in the city. A person must not only desire to vote in a place, but must have established a residence in that place in order to be eligible to vote therein.

You refer to another case:

“Mr. R. T. Short, an assistant bank examiner in the banking department of the State Corporation Commission, was appointed to this position while a resident of Hopewell. He has continued to vote here, as he considers Hopewell his legal residence.”

Upon the statement as to Mr. Short's residence, I am of the opinion that, while he may be temporarily residing elsewhere, if he did not, when he left Hopewell for the purpose of discharging his duties or carrying on his business elsewhere, give up Hopewell as his home and expected to return at some future date, however distant, he is entitled to vote in that city.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Residence.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 29, 1931.*

MR. A. E. VAUGHN,
Eagle Rock, Virginia.

DEAR SIR:

I am in receipt of your letter of October 28th, which is as follows:

"Mr. George H. Moody was principal of the high school here for three years, and about sixty days ago he moved out of the county to accept a position of same nature in another county in Virginia. He, of course, cannot vote in his new county; and, according to my understanding of the law, he is not entitled to vote in this county because he has been away more than thirty days."

If Mr. Moody, when he moved from your county into another county in Virginia, did so with the intention of establishing a permanent home in the new county and never returning to your county, he is not entitled to return and vote in that county.

A person is not necessarily entitled to vote somewhere. He may temporarily remove from one locality without losing his right of suffrage in his old place of residence; but, if he leaves and establishes himself at a new place of residence, with no present intention of returning to the old place of residence, he is not entitled to return and vote, although he has not been in the new place of residence long enough to have acquired a right to vote there.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence in annexed territory—Status of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 5, 1931.*

MR. M. M. HEUSER,
Attorney at Law,
Norton, Virginia.

DEAR MR. HEUSER:

I am in receipt of your letter of the 1st instant, in which you state that, because of the annexation of certain county territory to the town of Norton by a court order providing that the annexation shall become effective December 31, 1931, a question has arisen as to the legal status of voters in such territory, and I note that this difficulty has arisen because of the provision of the Constitution that a person must have resided in a town six months before being entitled to vote therein, and that section 82 of the Code seems to require a person to have been a resident of a town one year before being eligible to vote, and that, furthermore, section 2703 of the Code requires that town officers shall have resided in a town for one year next preceding their election, and that section 2997 requires that the electors of a town shall be actual residents thereof and qualified to vote for members of the General Assembly.

These provisions of the law do not, in my opinion, so far as they affect the right of either candidates or voters, apply to territory annexed to a city or town, but only to those cases in which a person actually moves from a locality outside of a city or town to a location within the corporate limits of such city or town.

As you have referred to the payment of poll taxes, I will add that, in my opinion, the 14th day of December is the last day upon which capitation taxes can

be paid in order to participate in any municipal election held on the 14th day of June, 1932.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence—Soldiers and sailors.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 17, 1932.

GENERAL S. GARDNER WALLER,
*The Adjutant General,
Richmond, Virginia.*

MY DEAR GENERAL:

I am in receipt of your letter of yesterday, enclosing a letter from Mr. Don C. Smith, director of war service, American Red Cross, in which he desires to be advised as to the law of Virginia covering the legal residence in the State for purposes of public relief of a man who is absent from the State in active service with the army or navy.

Service in the army or navy does not affect the legal residence in the State for any purpose, such a person retaining his legal residence just as if actually present, provided, of course, he has not through choice while in the service given up his residence in Virginia and established a residence in some other jurisdiction.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Residence of married woman.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 23, 1931.

MR. A. G. HUTCHISON, *Registrar,
Herndon, Virginia.*

DEAR MR. HUTCHISON:

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

"Mrs. Mary Doe, 26 years of age, who came into Virginia in the spring of 1930, makes application to the registrar without the payment of capitation tax; yet her husband, John Doe, to whom she has been married for five years, has paid tax and voted here for the last nineteen years regularly. Should she be allowed to register and vote without paying any tax, or pay for one year, or pay for three years?"

"Did her legal residence in Virginia begin when she married John Doe, five years ago, or when she fully settled here in the spring of 1930?"

Under the old law, the residence of a man became the residence of the woman he married. This, however, was changed by an act passed by the General Assembly in 1922 (see Acts 1922, page 462). In the first section of this law 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 this law, therefore, I am of the opinion that Mrs. Mary Doe, having moved into Virginia in the spring of 1930, is entitled to register and vote without the payment of a capitation tax, the provision for the payment of capitation taxes

in order to qualify a person to vote applying to the year or years preceding that in which such person offers to vote, and, no capitation tax being assessable against a person who moved into the State in the spring of 1930, such person is entitled to register and vote without the payment of a capitation tax.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Return of poll books by judge—Compensation.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 21, 1931.*

MR. JAMES G. SPENCER:
Buckingham, Virginia.

DEAR MR. SPENCER:

I am in receipt of your letter of October 15th, in which you ask to be advised as to whether or not, in my opinion, a judge of an election, who returns the poll books to the county clerk's office on the night of the election, is entitled to additional pay for so doing. In other words, I assume you wish to know whether or not he is entitled to one day's pay for acting as judge of an election, and one day's pay for returning the poll books.

Under section 180 of the Code, one of the judges of the election, to be determined by lot, is authorized to deliver the ballots to the clerk of the county on the day following the election.

Under section 200 of the Code, judges, clerks, registrars, and commissioners of any election are entitled to receive five dollars per day *for each day's service rendered*, and the judges carrying the election returns to the commissioners of election are entitled, in addition thereto, to the mileage now allowed to jurors for each mile necessarily traveled.

The judge who performs his duties at the polling booth, and who carries the ballots to the clerk's office on the same day, has only performed one day's service, although I admit it is a very long day, and for such he is only entitled to one day's pay, even though it will cost the county the same to have him hold the ballots over until the next day and deliver them to the clerk.

I assume the Legislature, in passing the law, acted upon the theory that, because of the lateness of the count, ballots would not be returned the night of the election, and that one of the judges having to carry the ballots to the clerk's office the day after the election should be paid for that day, as well as for the day upon which he served at the polls.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Special—Qualification of voters.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 8, 1932.*

HON. B. H. BOTTOMS, *Registrar,*
R. F. D. No. 3,
Richmond, Virginia.

DEAR MR. BOTTOMS:

I am in receipt of your letter of yesterday, which I quote:

"Will you kindly give me an opinion on the following: We are to have a special election January 27, 1932, for bond issue at Sandston for sanitary

district No. 2. Voters that voted in the general election November 3, 1931, can vote in this special election. Can a person who has paid since November 3rd, or will pay before January 27, 1932, the poll tax for the years 1929, 1930 and 1931, vote in this special election?"

Under the provisions of section 83 of the Code, providing the qualification of voters at special elections, those who were qualified to vote in the November, 1931, election may vote in the special election to be held on the 27th day of this month.

In reply to the latter part of your inquiry as to whether or not a person who has paid since November 3rd, or will pay before January 27th, poll taxes assessed or assessable against such person for the years 1929, 1930 and 1931, I am of the opinion that those persons who were qualified to vote in the November, 1931, election or who paid their poll taxes six months prior to the second Tuesday in June of this year or on or before the 14th day of December, 1931, are qualified to vote in the special election to be held in Sandston district No. 2.

I do not think that those who were not qualified to vote in November, 1931, and who did not pay their taxes on or before the 14th day of December, 1931, can vote in the special election. It follows, therefore, that those who have paid their capitation taxes since the 14th day of December, 1931, and those who will pay them before the 27th day of January, 1932, cannot vote in the special election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Use of rubber stamp.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 17, 1931.*

Mr. J. D. MORTON,
Drakes Branch, Virginia.

MY DEAR MR. MORTON:

Your letter of October 13th has been received.

In this you request an opinion relative to the following question: If a person who is a qualified voter should now decide to become a candidate for a county office in the general election to be held on November 3rd, it now being too late to print his name on the official ballot, could a rubber stamp containing his name be used by the voters in voting for him?

In reply, I will state that this can be done. Section 28 of the Constitution provides that any voter may erase any name and insert another on a ballot. I am of the opinion that the insertion of a name of a candidate on a ballot by way of a rubber stamp is legal. I will further state that this has been done in a number of elections.

Trusting this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voters—Transfer of in cities.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., July 29, 1931.

HON. WILMER L. O'FLAHERTY, *Secretary,*
Richmond City Electoral Board,
Richmond, Virginia.

DEAR MR. O'FLAHERTY:

In response to your inquiry as to the construction of section 1 of chapter 44, page 34, Acts 1928, as to the duty of general registrars to close their registration books fifteen days before special and primary elections, and especially the reference to the question as to whether or not it is the duty of the registrar of the city of Richmond, within fifteen days prior to August 4 primary, to issue transfers to voters removed from the city of Richmond to the counties outside of said city, I will say that I have carefully noted the chapter to which you refer and am of the opinion that the provisions of section 1, providing that the registration books of all voting precincts in cities covered by the act "shall be closed for the purpose of registering voters," does not authorize a registrar to refuse to issue transfers. The language of the statute is plain and unambiguous, and the provision that the books shall be closed for the purpose of registering voters should be limited to registration and should not be extended by implication to close registration books for the purpose of issuing transfers.

In my opinion, it is the imperative duty of registrars to issue transfers at any and all times previous to the days of special and primary elections.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voting—Eligibility of convicted person.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., October 27, 1931.

MR. H. K. SHELTON,
Stanardsville, Virginia.

DEAR MR. SHELTON:

I am in receipt of your letter of the 26th instant, in which you ask certain questions concerning the election laws:

"1. Has one a right to vote who has been caught manufacturing liquor, sentenced and served six months on road?"

Section 23 of the Constitution provides in part:

"The following persons shall be excluded from registering and voting:
* * * persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, * * *."

The manufacture of distilled ardent spirits is a felony. If the person to whom you refer was convicted of the manufacture of distilled ardent spirits, a felony, he is disqualified from voting. However, if he was only convicted of a misdemeanor, although he served a term in a convict road camp, he is not disqualified and may vote.

"2. Has one a vote in his home precinct which he moved from twelve months ago, into another precinct in the same county?"

If the person to whom you refer left his home precinct only temporarily, he

is entitled to return and vote there, even though he may have been absent twelve months or more.

"3. Also state whether or not one has a vote in his home county, who is working with the State and is temporarily located elsewhere. Can he return to his home county and vote if he has never moved his transfer and his parents are still living here?"

My answer to your second question covers your third question. No person loses his right to vote in his home precinct or the precinct or place of his former residence simply because of his temporary absence. This is true, notwithstanding his temporary absence may have continued for a great length of time. So long as it is the intention of the voter to return at some future time and resume his residence at his original place of residence, he is entitled to return there and vote.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voting—Eligibility of pauper.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 27, 1931.*

MR. R. D. KOONTZ,
Judge of Election,
Stanley, Virginia.

DEAR MR. KOONTZ:

In reply to your inquiry as to the legal definition of "pauper" as applied to section 23 of the Constitution covering the exclusion of certain persons from registering and voting, I am quoting from a letter written on June 22, 1931, to Honorable Joe W. Parsons, clerk, Independence, Virginia, in reply to an inquiry upon the same subject:

"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., Article 3, providing that every male citizen of twenty-one 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."

As you will see from this quotation, the judges of election must themselves pass upon and determine a challenge to a voter whose right to cast a ballot is contested on the ground that he is a pauper.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Voting list.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *June 20, 1932.*

MR. W. P. LIPSCOMB,
Virginia Beach, Virginia.

DEAR MR. LIPSCOMB:

I am in receipt of your letter of the 17th instant, in which you ask as to the right of a person to vote whose name has been inadvertently left off of the treasurer's voting list, and I note that you ask my opinion as to the discretion of judges of election in permitting persons to vote whose names are not on the voting list.

Persons whose names are not on the voting list are not entitled to vote. Such persons, however, have thirty days in which to apply to the judge of the circuit court of their county after the list has been delivered by the treasurer to the clerk to have their names added to the list of voters.

Registrars are not authorized to register persons between the third Tuesday in May and the municipal election in cities or towns, nor between thirty days prior to a November election and election day.

The registration law applies to voters just becoming of age as well as to others, although the law as to the payment of capitation taxes is different and allows those becoming of age to pay capitation taxes at any time up to and including the regular days of registration.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FEES—Application of 10 per cent reduction.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 12, 1932.*

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

DEAR MR. ELEY:

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

"The city of Suffolk has about decided to cut the salary of city officials 10 per cent during the next fiscal year, which begins July 1st. After reading the new law regarding the reduction in salaries of officials, etc., we are a little uncertain as to how it applies to my case as city treasurer. I am on a fixed salary by the city. Will this law (chapter 425) have anything to do with the salary that is paid me by the city or will it just have to do with the commissions paid me by the State? It would not be exactly the fair thing if I were reduced by the city 10 per cent and then again by the State for the same. Kindly advise me so that I may let the city council know in order that they act accordingly."

In my opinion, the action of the council of the city of Suffolk has no reference to, nor does it in any way affect, the provisions of chapter 425 of the Acts of 1932, providing a 10 per cent reduction of all fees, allowances, commissions, salaries and other emoluments of office derived from the State or any political subdivision thereof, or from any other source whatsoever, received by treasurers for the year 1933 and subsequent years, 1933 being the first year for which chapter 425 is effective.

However, your aggregate compensation cannot be reduced by the fee bill more than 10 per cent below what you received in the aggregate for the year 1930.

Carrying both the main provision and the proviso into effect, they mean that,

if the reduction of 10 per cent of your salary for the year 1933 brings your compensation down to ninety per centum or less of your 1930 receipts, chapter 425 is ineffective and you do not have to pay into the State treasury 10 per cent, or any part thereof, provided for in that chapter.

If, however, it so happens that, after the city of Suffolk has deducted 10 per cent from your salary for the year 1933, you are still left with a larger salary than you received in 1930, that salary may be further reduced by the imposition of the 10 per cent or a fraction thereof.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FEES—Attorney for Commonwealth—Prohibition cases.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 24, 1931.*

HON. JOHN M. HART, *Judge,*
Hustings Court,
Roanoke, Virginia.

MY DEAR JUDGE:

I am in receipt of your letter of the 16th instant, in which you write:

"I am asking you to answer the following question:

"In a preliminary hearing had in a case where the justice of the peace or magistrate is not given authority to accept a plea of guilty and the case is sent on and there is then a plea of guilty, does the attorney for the Commonwealth receive a fee of \$25, as in the case where there is a *conviction*, or does he receive a fee of \$10, provided for in case of preliminary hearing, plus \$5, provided for where defendant pleads guilty?"

In my opinion, attorneys for the Commonwealth are, under the provisions of the prohibition law, entitled to a fee of \$25 in each case tried in a hustings, corporation or circuit court, and that a trial takes place in each instance in which a person is arraigned and pleads guilty.

If you will notice, the provision for \$10 for the attorney for the Commonwealth to which he is entitled in a preliminary hearing is specifically included in the final fee of \$25 allowed him for a prosecution in a court of record.

The provisions allowing a fee of \$10 to the attorney for the Commonwealth in all other cases and a fee of \$5 in cases of violations of sections 17 and 18 of the prohibition law both apply to pleas of guilty before a justice of the peace.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FEES—Clerks.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 17, 1931.*

HON. FLOYD HOLLOWAY, *Clerk,*
Yorktown, Virginia.

DEAR MR. HOLLOWAY:

I am in receipt of your letter of yesterday, in which you call my attention to the fact that, in your opinion, section 2566 allows a clerk a fee of \$1.00 for services performed under sections 2563, 2564 and 2565 of the Code, and that

under another section, which I assume to be number 2552, a clerk is entitled to a fee of 25 cents for certain other services performed under preceding sections of the Code in the same chapter.

I note also you say that one of the attorneys has handed you the sum of \$1.25 in each case where no fine is imposed and that you have refused it on the ground that it is not provided for by law.

In my opinion, you are entirely correct. The only fee provided a clerk is that of 25 cents under section 2552 of the Code, and that fee is for services rendered under sections 2550 and 2551 of the Code. This fee is payable out of the State treasury.

The \$1.00 fee, which I assume goes to make up the \$1.25 fee in criminal cases, is for services performed under sections 2563, 2564 and 2565, is not payable out of the public treasury, but is payable by the defendant, and is to be included in the execution issued on behalf of the Commonwealth against the defendant for the purpose of collecting the fine and costs, including the 25 cents fee paid the clerk out of the public treasury.

I may say that I have consulted with Honorable E. R. Combs, State Comptroller, who was for a long time clerk of Russell county, and a recognized authority on fees, and he agrees that my opinion in regard to clerks' fees is correct.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FEES—Sheriff carrying prisoners to jail.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *December 5, 1931.*

MR. A. H. GOFF, *Sheriff,*
Grundy, Virginia.

DEAR MR. GOFF:

I am in receipt of your letter of the 1st instant, as well as a letter from Mr. Henry Ratliff, deputy sheriff, Davenport, Virginia, in both of which letters my attention is called to the ruling of the judge of your court refusing the mileage allowance to officers carrying prisoners to jail or before the bond commissioner or the trial justice of your county before having been ordered to jail. I note that in all of these cases the officer is conducting the prisoner to jail or carrying him before one of the officers mentioned upon the execution of a warrant of arrest without an order from a justice of the peace.

I have consulted with the Comptroller's office and they tell me that they agree with the judge that no allowance can be made because of the language of section 3508 of the Code, under which compensation is allowed officers for carrying prisoners to jail, that section providing compensation only in cases where they have an order of a justice.

This section was evidently enacted prior to the appointment of trial justices and operated in counties in cases in which prisoners were by law carried before justices of the peace of the district in which they were arrested for a trial or a preliminary examination.

In my opinion, the construction placed upon the law by the Comptroller and the judge is entirely proper. I agree with you, however, that this provision as to the mileage of both the officer and the prisoner works a very great hardship upon the officer, and that, while every effort is being made to cut down the criminal expenses of the State, some reasonable provision should be made for an officer who executes a warrant of arrest in a remote section of his county and carries the prisoner a long distance to the court house for trial or examination before a trial justice.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FINES AND COSTS—All costs in criminal cases to be taxed.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *October 2, 1931.*

HONORABLE E. R. COMBS, *Comptroller,*
State Library Building,
Richmond, Virginia.

DEAR MR. COMBS:

I am in receipt of your letter of the 28th ultimo, enclosing a letter to you under date of the 11th of September from Honorable R. E. Marable, clerk of the corporation and circuit courts of the city of Newport News.

Mr. Marable asked in his letter an opinion as to what costs should be taxed against a person accused and convicted of a criminal offense, and you ask for my opinion upon the inquiry contained in his letter.

In my opinion, all costs necessarily incurred by the Commonwealth in the prosecution of criminal cases should be taxed as a part of the costs against every person convicted of a criminal offense.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FORESTRY LAWS—Duty State forester and county authorities concerning fire protection.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *October 26, 1931.*

MR. W. S. DUNN,
Attorney at Law,
Bland, Virginia.

DEAR MR. DUNN:

I am in receipt of your letter of the 15th instant, which I quote:

"Several years ago the supervisors of Bland county requested the State Forester to organize Bland county for fire protection under section 541, chapter 28, of the Code of Virginia, and amendments thereto as of 1920 and 1926; then about one year ago they decided to rescind this action and in the future make such appropriations for fire protection as they may see fit. The district forester's office contends that, having once organized under this section, they have no power to revoke their former action, but must continue under the organized policy. Will you please give them your opinion on this, as they have requested that I write you in regard thereto?"

"I would also like your opinion as to whether persons confined in jail for non-payment of fines and costs should be given the same credit for good behavior as where they are serving regular sentences."

On March 4, 1931, in a letter to Honorable James M. Settle, clerk, Washington, Virginia, I covered the same inquiry contained in the first paragraph of your letter, and am enclosing you a copy of that letter.

In addition to the information contained therein, I will say that I do not understand that, because the State Forester has at one time, in response to a request of the supervisors of your county, undertaken fire protection in the county, the county may not thereafter itself take care of fire protection.

In reply to the inquiry contained in the second paragraph of your letter, I am of the opinion that persons in jail for the non-payment of fines and costs should be given the same credit for good behavior as where they are serving regular sentences.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

FUNDS—County cannot use district sinking fund.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 30, 1932.*

HON. JOSEPH WHITEHEAD, JR.,
*Attorney for the Commonwealth,
Chatham, Virginia.*

DEAR MR. WHITEHEAD:

I am in receipt of your letter of the 28th instant, in which you write:

"I would appreciate it if you would give me your opinion as to whether or not the county has the right to take a district sinking fund or any part thereof and pay off county bonds with same."

I know of no law which permits the use of a district sinking fund for the purpose of paying off county bonds.

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

GAME AND INLAND FISHERIES—Authority of Commission to close areas.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *May 4, 1932.*

HON. RICHARD ARMSTRONG,
*Commissioner of Fisheries,
Hampton, Virginia.*

DEAR MR. ARMSTRONG:

In the office a few days ago you informed me that a question had been raised as to the authority of the Commission of Fisheries to open certain waters which are now closed for the catching of fish, crabs, oysters, clams and other shell fish.

In my opinion, unless there is some special law applicable to a particular locality, your Commission has full authority for the purpose of opening or closing any particular area under the provisions of section 3240, the particular part of the section giving you that authority being found on page 44 of the pamphlet containing the Laws Relating to Fisheries of Tidal Waters.

I do not mean to express an opinion as to the authority of the Commission to open areas during the closed seasons nor to close areas during the open seasons.

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

GAME AND INLAND FISHERIES—Disposition of funds of Eastern Shore Protective Association.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 1, 1931.*

HON. T. COLEMAN ANDREWS,
*Auditor of Public Accounts,
Richmond, Virginia.*

DEAR MR. ANDREWS:

I am in receipt of your letter of yesterday, in reference to the claim of Dr. J. W. Bowdoin, of Bloxom, Virginia, president of the Eastern Shore of Virginia

Game Protective Association, to a balance of \$2,254.12 remaining in the treasury of the Association after the payment of a balance of \$2,588.88, which latter sum was received by the Association after the 24th day of June, 1926.

The claim of the Association is based upon the fact that the sum of \$2,254.12 had been collected and paid into the treasury of the Association prior to the 24th day of June, 1926, at which time the act approved March 24, 1926, became effective.

Dr. Bowdoin's claim is more or less based upon the fact that in the act approved March 27, 1930 (Acts 1930, p. 981), it is provided that the clerks of the circuit courts of Accomac and Northampton counties are relieved of all liability for public funds collected and paid over to the Game Association up to the 1st day of March, 1930, and that the Game Association is "relieved from liability for such of the public funds as have been expended by it for the payment of administrative expenses, the salaries and expenses of game wardens and the purchase and repair of equipment." The remaining part of that section (2) provides: "The remainder of the public fund not so expended shall be by it paid to the State Treasurer of Virginia, accompanied by an itemized and detailed statement in duplicate of all public monies received and expended from June 24, 1926, to March 1, 1930; the date of such payments, to whom paid and for what purpose."

While the last quotation from the Acts of 1930 requires an itemized account of expenditures since the 24th day of June, 1926, and until March 1, 1930, it does not, if it could lawfully and constitutionally have done so, provide that the amount on hand on the 24th day of June, 1926, was to remain in the treasury of the Association. The quotation expressly provides that all of the unexpended money in the treasury of the Association shall be paid into the State treasury. The fact that an itemized statement of expenditures between certain dates is provided for does not, in my opinion, warrant the conclusion that the Legislature intended to allow the Association to retain the sum of \$2,254.12 which was public money and which had been paid into the treasury of the Association.

It is, therefore, my opinion, that the Association should account for and pay to the State Treasurer the sum of \$2,254.12, which your audit finds was in the treasury of the Association on the 24th day of June, 1926.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND INLAND FISHERIES—Oyster law—Jurisdiction of offenses committed in Potomac River.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *April 11, 1932.*

HON. JOSEPH A. BILLINGSLEY,

Attorney for the Commonwealth,

King George Court House, Virginia.

DEAR MR. BILLINGSLEY:

I am in receipt of your letter of the 4th instant, in which you write concerning the arrest of persons charged with dredging oysters in the Potomac River in violation of section 3305-c of the Code of Virginia, and you ask certain questions as to the jurisdiction of the circuit court of your county to try these offenders. I note your reference to section 3256 of the Code giving jurisdiction to justices of the peace in certain cases, and agree with you that the jurisdiction therein contained is limited to violations of chapter 128 of the Code.

In my opinion, the venue for the trial of offenders against the provisions of section 3305-c is provided for in subsection 7 of section 3299 of the Code, in which jurisdiction for all offenses committed in the Potomac River may be tried before magistrates or courts of the residence of the citizen committing the offense.

As you will notice, the only limitation to the jurisdiction of Virginia justices

and courts is in case of citizens of Maryland committing offenses in the Potomac River, as they are punishable only in the courts of Maryland.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND INLAND FISHERIES—Permit and license required to buy furs.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND VA., *January 6, 1932.*

HON. FRANK M. WRAY,
Commonwealth's Attorney,
Berryville, Virginia.

DEAR SIR:

I have for reply your letter of January 4, in which you ask whether the provisions of section 3305(27), when read in conjunction with the first paragraph of section 3305(33), not only authorize the imposition of a fine upon one engaged in buying and selling furs without a permit, but also compel that person to purchase such permit.

I think your question must be answered in the negative. The pertinent language of section 3305(27) is confined to a person convicted of hunting, trapping or fishing without a license, and does not refer to one engaged in buying and selling furs without a license.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND INLAND FISHERIES—Eligibility of Commissioner.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 16, 1931.*

HON. RICHARD ARMSTRONG,
Commissioner of Fisheries,
Newport News, Virginia.

DEAR MR. ARMSTRONG:

I am in receipt of your letter of the 11th instant, in which you ask for my opinion as to whether or not certain personal affairs conflict with your duties as Commissioner of Fisheries. I quote from your letter as to what these affairs are:

"* * * I am president of the Security Storage of Norfolk, Virginia, I am a director in another storage company in Richmond, I am president of the Armstrong Land Company, a director in a land company in Washington, D. C., I own stock in a deep sea fishing company, operating outside the waters of the Commonwealth. So far as my time is concerned, none of these positions requires anything but occasional attendance. I own no oyster ground, have no interest in any oysters, and in that respect am entirely free."

There is no reason why you should not continue your personal interests in the businesses in which you are now interested.

Section 3146 of the Code makes you, as Commissioner of Fisheries, one of the Commission of Fisheries, while section 3158 of the Code provides that no member of the Commission of Fisheries shall be interested, directly or indirectly, in the

fish industry in the State of Virginia. There is certainly no connection with the business interests you have enumerated which makes you interested in any way in the fish industry in Virginia.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND INLAND FISHERIES—Power of Commission to regulate season on migratory birds.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., October 12, 1931.

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

DEAR MR. HART:

I am in receipt of your letter of the 9th instant, which I quote in full:

"The United States Bureau of Biological Survey, Department of Agriculture, has recently promulgated a ruling providing for an open season on wild waterfowl, November 16 to December 15, in Virginia.

"Your attention is directed to the last paragraph in section 37 of chapter 247, Acts General Assembly of Virginia, approved March 24, 1930. We would like to secure an official ruling from you as to whether or not State game wardens have the right and power to enforce the Federal law after December 15."

I assume that your question covers the same matter of inquiry about which you talked with Major Gibson, one of my assistants, several days ago.

As I understand the situation, the open season for hunting migratory game birds is included in section 37 of chapter 247 of the Acts of 1930. The season for ducks is fixed by section 37 as open between November 1 and January 31. The last paragraph of section 37 reads as follows:

"Should the United States regulations concerning the open season and daily bag limit of the above-named species of migratory birds be changed, the provisions of this section shall be automatically changed to conform with the regulations of the United States."

In my opinion, the provision which I have quoted governs the hunting of ducks and, as the United States Department of Agriculture has promulgated a ruling limiting the open season on wild waterfowl from November 16 to December 15, inclusive, I am of the opinion that the present open season in Virginia is limited to the last-mentioned period, to-wit, from November 16 to December 15, inclusive, and it is the duty of State game wardens to enforce the provisions of the State law only, but, as the State law and the Federal law are the same, State game wardens, unless the Virginia season is changed by your Commission, are obliged under their oath of office to enforce the limited migratory game bird season in the State of Virginia.

However, section 33 of the Virginia game law vests very great powers in your Commission, including the authority to restrict, extend or prohibit the hunting, taking, capture, killing, etc., of all wild birds or wild animals. Under the provisions of this section, I am of the opinion that the Commission is authorized, so far as pertains to the Virginia game laws, to change that part of section 37 which provides that the State and Federal laws covering the open season for migratory game birds shall conform; and that, if the Commission adopts a regulation pursuant to sections 33 and 34 of the law, and fixes the season on ducks from November 1 to January 31, both inclusive, then, and in that event, the game wardens of the State of Virginia cannot enforce the Federal period fixed for

hunting ducks, but should be governed as to law enforcement by the regulation adopted by your Commission.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME AND INLAND FISHERIES—Rabbits or hares—Permit not necessary to sell.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., August 13, 1931.

HON. L. W. TYUS, *Fiscal Secretary,*
Commission of Game and Inland Fisheries,
Richmond, Virginia.

DEAR MR. TYUS:

I am in receipt of your letter of the 7th instant, in which you quote from section 32, chapter 247, Acts of 1930, subsection (b), requiring persons to obtain a permit "to engage in the business of raising foxes and rabbits or hares other than the native Virginia species, for the sale of their fur or carcass, permit five dollars; provided that this shall not in any way be construed to apply to persons having foxes and hares or rabbits for their own use or as pets."

You then desire to be advised as to whether a permit is required for the sale of rabbits used as pets.

I do not think that it was the intention of the Legislature to require a permit of persons raising foxes and hares or rabbits who sell them as pets.

The language confines the permit requirement where foxes and hares are raised "for the sale of their fur or carcass."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GAME WARDENS—Appointment and salaries.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 8, 1932.

HON. J. H. BRADFORD,
Director of the Budget,
Governor's Office,
Richmond, Virginia.

DEAR MR. BRADFORD:

I am in receipt of your letter of May 1, in which you write:

"The Chairman of Game and Inland Fisheries has submitted for the Governor's approval a salary schedule providing for the consolidation of duties of certain game wardens who have heretofore served in only one county to act as game warden for two counties, *i. e.*, Game Wardens Walker and Mountcastle are now employed as game wardens in Charles City and New Kent counties, Walker being assigned to duty in one county and Mountcastle in the other county. The Commission proposes to drop one of the wardens and to assign the other employee to serve as game warden for both counties at an increased salary.

"Please advise me, for the Governor's information, whether, in your opinion, the Governor can authorize a salary increase for such warden for

the fiscal year, which begins July 1, 1932, in view of the provisions of section 2 of chapter 147 of the Acts of Assembly of 1932."

The General Assembly for the 1930-32 biennium, in making appropriations for each of the years of that biennium for the Commission of Game and Inland Fisheries, provided "additional employees, wages and special payment, not exceeding \$190,305.00." No appropriation was made in any other section for the payment of game wardens whose appointment is authorized by law, and evidently the Commission was given plenary power to determine the number of game wardens and to fix their salaries within the appropriation of \$190,305.00.

The General Assembly of 1932, in the appropriation bill for the biennium 1932-34, included the item "Game wardens (not over 105) not exceeding \$140,000." I understand that the result of this item in the 1932-34 biennium necessarily eliminated about fifteen game wardens. This elimination necessitated the reassignment of territory. This reassignment resulted in increasing the territorial jurisdiction of some of the wardens; for instance, whereas, previous to the passage of the recent appropriation bill, the counties of Madison and Greene each had a game warden, the office of game warden for Madison county was discontinued and one warden living in Greene county was appointed for both Madison and Greene counties. This action upon the part of the Commission was also applied in several other localities, resulting in the dropping of the game warden for one county and giving his territory to a game warden of an adjoining county. This rearrangement of territory very materially added to the duties and responsibilities of those appointed for two counties.

The Commission of Game and Inland Fisheries in its salary budget furnished the Governor has included, I understand, items for increase of salaries for game wardens whose territorial authority has been extended. The inquiry contained in your letter is directed to the authority of the Governor, under the provisions of section 2 of chapter 147 of the Acts of 1932—the appropriation bill—to allow these increases of salary.

In my opinion, the Governor has authority to allow such increases of salary.

I do not construe section 2 of chapter 147 as applicable to instances in which there has been a promotion of an individual or where a person held an office such as that of game warden for one county and has had the limits of his territory increased and has been appointed as game warden for two counties. For instance, I do not think that the Commission could have increased the salary of the game warden of Greene county had not the territorial limits of his employment been enlarged or had his duties been confined to Greene county.

In *Moore v. Moore, Auditor*, 147 Va. 460, a mandamus was issued directing Moore, Auditor, to pay Moore, the auditor, an additional compensation of \$1,000 per year. The law at the date of Auditor Moore's election prescribed his duties and fixed his salary, and further provided that it could not be increased during the term for which he had been elected. Subsequent to his election, by an act of the General Assembly, certain additional duties were assigned to the Auditor in relation to the assessment and collection of certain taxes. As the Attorney General was not willing to express an opinion as to the constitutionality of that part of the law increasing by \$1,000 the aggregate compensation of the Auditor, he applied to the Supreme Court of Appeals of Virginia for a mandamus to compel himself to pay the additional compensation provided in the act referred to. In an able opinion, in which a number of cases are cited, the mandamus was granted upon the principle of law that, where additional duties are imposed upon a public official, he is entitled to compensation therefor, even though there was a constitutional provision prohibiting the increase of his salary.

In the matter of compensation for game wardens, under the rearrangement made necessary by chapter 147 of the Acts of 1932, additional duties are added to certain of the game wardens then in the employment of the Commission of Game and Inland Fisheries. Unquestionably, should outsiders be appointed to a position in a consolidated district, such appointees would be entitled to a compensation in excess of that paid either of the wardens previously serving the separate units of the consolidated territory. I can see no reason why a man who was in office and whose duties are increased cannot be put upon the same footing as an outside appointee.

I am of the opinion that the Commission of Game and Inland Fisheries, sub-

ject to the approval of the Governor, may fix salaries within the limits of the item providing for the pay of game wardens, so that no game warden may receive more compensation for the same work than he received January 1, 1932; but that, although employed July 1, 1932, a game warden whose territorial limits have been extended may be paid on account of the additional services placed upon him compensation in excess of that paid January 1, 1932.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GARNISHMENT—Salary of Staff of V. P. I. subject to.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 31, 1931.*

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

DEAR MR. FOGLEMAN:

I beg leave to acknowledge receipt of your letter of recent date.

In this you ask the specific question whether the salary of the members of the staff of the Virginia Polytechnic Institute, including the president, may be garnisheed.

In reply, I will state that I am of opinion that this can be done. The statute only makes certain exemptions in cases of this character, and neither a professor nor a president of an institution is included in the exemption.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GASOLINE TAX—Counties not required to match.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 2, 1931.*

HON T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 30th ultimo, in which you request my opinion as to whether or not there is a limitation put upon the thirty per cent county gas tax allotments, so as to restrict the use to roads in county road systems.

I also note your inquiry as to whether or not counties are required to match any part of the thirty per cent with county monies.

Chapter 426 of the Acts of 1908, as amended, etc., was repealed by the act of February 27, 1930. However, I should say that the provision of chapter 45 of the Acts of 1930, to which you refer in your letter, covering the restriction placed upon the thirty per cent gas tax allotment, evidently contemplated the old county highway system, and I am of the opinion that, where there is a county highway system, the gas tax allotment for that county should be spent on that system, irrespective of the effect of the repeal of chapter 426 of the Acts of 1908, as amended.

As to this, I have consulted with Mr. A. B. Gathright, Assistant Comptroller, and he informs me that county money is forwarded without restriction or limita-

tion and that no effort is made by his office to see that the provisions quoted, restricting county allotments to a county highway system, are attempted.

As to your second inquiry, I am of the opinion that the county allotment may be used free of an obligation of the county to match it for maintenance of roads and purchases in the county highway system, and that the provision that counties shall be required to match the amounts used applies only to the construction or reconstruction of highways and bridges.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GASOLINE TAX—No refund allowance for fuel used in trucks.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 20, 1932.

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

DEAR MR. FRAZIER: *Attention Mr. C. F. Joyner, Jr.*

I am in receipt of your letter of the 19th instant, enclosing copies of your letter to the Emporia Golf Club, Emporia, Virginia, and of the same club to you of the 16th instant, and I note that the golf club has made claim for a refund of tax on fifty gallons of gasoline used by the club in a truck which seems to have been hitched to and hauled a mowing equipment upon its golf links.

In my opinion, the club is not entitled to the refund, as the law providing for a refund as contained in section 7 of chapter 470 of the Acts of 1928, pages 1185-86, does not provide for a refund of the tax on gasoline used in trucks, and this is so whether or not the truck is used upon public highways or used exclusively elsewhere.

I construe the law to exclude from the operation of the refund provisions of the gasoline tax law gas used in motor vehicles which are so built as to be intended for use and operation upon the public highways. A truck is certainly such a vehicle and, therefore, no refund can be made for gasoline used in a truck.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GASOLINE TAX—Provision of Act of 1930 limited to year 1931.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., December 12, 1931.

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

DEAR MR. COMBS:

I am in receipt of your letter of the 8th instant, which I quote in full:

"I respectfully refer you to page 42, chapter 45, Acts 1930, beginning ninth line from bottom of page, where it is provided as follows:

"* * * if, at the end of the year nineteen hundred and thirty-one, it shall appear that any county has received for that year less than eighty-five per centum of the amount it would have received if the entire amount apportioned to the counties for that year, had been distributed by the same method now being practiced for the distribution of such revenue, such excess so lost, shall be paid to such county, or counties, out of the motor ve-

hicle fuel tax apportioned to the counties of the State for the month of January, nineteen hundred and thirty-two, before such tax for that month shall be distributed.'

"Please advise if, in your opinion, it is intended by this language to reimburse each county receiving less than eighty-five per centum of amount it would have received had the law not been changed for one year only; namely, calendar year ending December 31, 1931, out of gas tax to be distributed for the first month of year 1932, or is this law to be construed that such reimbursement shall be made at the end of each calendar year out of gas tax for the first month of the following calendar year until the law is changed."

In my opinion, the provisions of the law you quote, providing for compensation of counties receiving in 1931 less than eighty-five per centum of the amount received by them from the gas tax by the provision of the law in force before the act of 1930 was passed, is limited to the year 1931.

Should the General Assembly of 1932 desire to continue the same principle, it can do so by appropriate legislation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GASOLINE TAX—Refund of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., January 27, 1932.

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

DEAR MR. HARDY:

I am in receipt of your letter of yesterday, which, for purposes of answer, I quote in full:

"The G. L. Webster Canning Company, Inc., Cheriton, Virginia, owns and operates extensive farming lands and canning factories on the Eastern Shore of Virginia. In its operations this company consumes considerable quantities of gasoline. Under the law, as interpreted and enforced by this division, this company is entitled to the refund on the tax paid on a part of the gasoline consumed by them and is not entitled to the tax so paid on the residue of such gasoline.

"As you know, the last clause in section 7 of the gasoline tax law reads as follows:

"Provided that application for refunds as provided herein must be filed with the said director within thirty days from the date of sale or invoice on forms prepared and furnished by said director."

"Under this section, as interpreted and enforced by this division, no applicant for the refund of the tax paid on gasoline consumed by him is entitled to the refund unless the application therefor has been filed with the director within thirty days from the date of sale or invoice, and unless the gasoline has been consumed within that thirty-day period. Under this interpretation, this division has informed the G. L. Webster Canning Company, Inc., that in the future all applications for such refunds by such company will be declined unless such company conforms with the above ruling.

"Heretofore, this company has been applying for and obtaining refunds not in conformity with the above ruling, relying upon a ruling made by the former director of this division under date of March 17, 1928. I believe that you have a copy of this opinion. At the present time we have an application on file from this company for the refund of the tax paid on a considerable amount of gasoline which was consumed by this company

prior to the time of our notification to them that they would be required to comply with the terms of said statute as interpreted and enforced by this division. Will you please advise me whether or not, in your opinion, this division should allow this particular application for a refund?"

I also quote the letter of March 5, 1928, of the G. L. Webster Canning Company to the Motor Vehicle Commissioner, and the reply of Honorable James M. Hayes, Jr., then director, under date of March 17, 1928:

"We are arranging to buy our gasoline in tank car lots, and in order to have separate accounts of the gasoline used in automobiles and that used in tractors, we are installing a service tank for the automobiles, while the gas for tractors will be hauled to the fields with a tank wagon. It will be a simple matter to keep a record of the gasoline drawn from the main tank into the service tank or the tank wagon, as the case may be.

"But our auditing department reminds me that no rebate is allowed against an invoice more than sixty days old, and there will be some slack periods when we perhaps will not use as much as a carload within sixty days. In other words, there will still be some gas left in our main tank sixty days after purchase of a tank carload. How can we best handle this situation?"

"Replying to your letter of March 5, on gasoline purchased by you in tank cars upon which a part will be used for tractors on your farm and stationary gasoline engines, my suggestion is that you attach requisitions to your application showing the quantity of gasoline requisitioned for your tractors and stationary gasoline engines and attach the invoice from the oil company or a copy of the invoice from the oil company showing the purchase of the tank car of gasoline upon which the tax is paid. You can file these applications in a thirty or sixty-day period up to June 1 and the office will authorize refund to you under your requisition with tickets or invoices from the oil company showing purchases of the car of gasoline.

"If the entire car is not consumed within the sixty-day period we can handle this on a requisition, as same would be nothing more than your company buying the gasoline from another company and using it immediately.

"There is an amendment to the present gasoline tax act which is to become effective some time in June providing for thirty-day limit on refunds instead of sixty days. Of course, you must acquaint yourself with this provision when this becomes effective."

In my opinion, you correctly interpreted the refund law, and, of necessity, I am of the opinion that Mr. Hayes' interpretation was not correct. However, as the Webster Canning Company explained their practice to Mr. Hayes in their letter to him and thereafter acted upon his suggestion, kept their accounts accordingly, and made and were allowed refund upon gas tax according to the plan advanced by him, and, as you write, have heretofore been making claims and been receiving refunds in conformity with Mr. Hayes' opinion, even since the appointment of Mr. Frazier as director, I am of the opinion that it would be inequitable to refuse to allow the refund demand made by the Webster Canning Company in conformity with the ruling of the former director. I, therefore, recommend that you allow the claim which is now pending before you and any other refund based upon the former ruling and made previous to the date upon which the present director notified the Webster Canning Company that that plan would no longer be followed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GOVERNOR—Authority to remove architect.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., January 27, 1932.

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

MY DEAR GOVERNOR:

I am in receipt of your letter of yesterday, which, for purposes of my answer, I quote in full:

"On July 27, 1928, my predecessor in office appointed a member of the architectural division of the State Board for the Examination and Certification of Professional Engineers, Architects and Land Surveyors.

"It is alleged that the appointee had not been in active practice of architecture for a period of ten years previous to his appointment and that, therefore, his appointment is void under chapter 328 of the Acts of 1920.

"It is also stated that the appointee failed to renew his certificate for the practice of architecture for the past three years and is now practicing his profession contrary to law and that, therefore, if his appointment was originally legal, his failure to renew his certificate vacates his office.

"It is further alleged that he continually absents himself from the meetings of the board and has embarrassed the architectural section by preventing its having a quorum to transact business and, therefore, should be removed by me if such action be necessary to create a vacancy.

"Please give me your opinion on the questions raised and, if you reach the conclusion that the appointment was originally valid and that he has not forfeited his membership on the board, kindly advise what procedure is necessary for his removal if I should conclude to consider taking such a step."

The first allegation contained in your letter, having to do with the qualification of the member of the board to which you refer, relates to his qualification at the date of his appointment, July 27, 1928. If the appointee did not possess the qualifications required of the statute, which are carried into section 3145-a of the Code of 1930, then he was ineligible to appointment. However, he was appointed and presumably has qualified. Therefore, he holds the office to which he was appointed subject to a legal test as to his qualification. In my opinion, this test can only be made in a court.

The second point raised is to the effect that the appointee has failed to annually renew his certificate, as provided by section 3145-e of the Code. Reference to that section shows that, while a renewal is required as of January of each year, the section provides:

"* * * The failure on the part of any registrant to renew his certificate annually in the month of January, as required above, shall not deprive such person of the right of renewal thereafter, * * *."

There is a penalty put upon a registrant of an increase of ten per centum for each month or fraction of a month when payment for renewal is delayed, with a provision that the maximum fee for a renewal shall not exceed twice the annual renewal fee.

Under the language of this section, I do not think that the registrant can be said to have forfeited his right to practice his profession.

The third allegation embraces, in my opinion, matters for which he can be removed from office under the provisions of what is termed the ouster law, found in section 2705 of the Code, this section providing for removal "for malfeasance, misfeasance, incompetency, gross neglect of official duty, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any law of this State, * * *"

Proceedings against an official can be had in the circuit courts of counties

and of cities having no corporation court and the corporation courts of cities. As the official referred to is an appointee, charges will be heard by the judge without the intervention of a jury.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

GOVERNOR—Authority to appoint civil justice.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 9, 1931.*

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

MY DEAR GOVERNOR:

I beg to acknowledge receipt of your letter of this date from Honorable James E. Cannon, city attorney, Richmond, Virginia, dealing with the question whether you or the council of the city of Richmond should fill the vacancy occasioned by the death of the late John J. Blake, justice of the civil justice court, part two, of this city.

I have carefully checked what Mr. Cannon has to say and I have been unable to find any statutory provisions which might throw light upon this question, other than those mentioned by him.

The act creating a court, "civil justice number two," in cities containing 170,000 inhabitants, or more, is found in Acts 1926, page 87. It is provided that in such cities there shall be "an additional special justice of the peace * * * with like qualifications and to be elected by the city council of such cities." Section 2 of this act provides for a term of six years, the first term to commence on July 1, 1926. The act contains no provision as to the method to be followed in the event there is a vacancy, but section 5 thereof provides that all provisions of law now in force relating to civil justices shall apply to this particular justice unless otherwise provided.

In my opinion, neither section 136 nor section 332 of the Code is applicable. The former refers to county, city, town or district offices and to filling a vacancy therein when there is no provision otherwise; the latter refers to the filling of a vacancy in a State office whether it be elected by the people, or the General Assembly, or appointed by the Governor. I do not think that section 27b of the charter of the city of Richmond can govern the immediate question, as it unquestionably must be read in connection with section 27a thereof, wherein are enumerated certain officers, but in which there is no mention of a civil justice.

Section 73 of the Constitution provides:

"The Governor shall have power, during the recess of the General Assembly, * * * to fill, *pro tempore*, vacancies in all offices of the State for the filling of which the Constitution and laws make no other provision. Such appointments to vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the General Assembly."

It is possible that this language might be construed so as to govern the instant case, but I am of the opinion that such a construction would be too broad. The fact that this power of the Governor is limited to the time when the General Assembly is not in session, and that the commission expires at the end of thirty days after the commencement of the next session of the General Assembly, would seem to negative the view that this vacancy is to be filled by appointment of the Governor; otherwise, it would be impossible to provide for a "civil justice number two" during the second month the General Assembly is in session, for any appointment by you would cease after the Assembly had been in session thirty days. The General Assembly would have no right to elect a civil justice number two, and

you could make no further vacancy appointment until after the General Assembly had adjourned.

In view of the foregoing, and in view of the fact that the civil justice number two act itself states that such justice is "to be elected by the city council," I am of the opinion that not only is the council of the city of Richmond the proper body to elect the justice for a full term and also the justice who may fill a vacancy, but that no other person or body has any right or power in the premises.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HIGHWAY SYSTEM—Secondary—Application of unexpended balances.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 3, 1932.

HON. LEWIS JONES,
*Attorney for the Commonwealth,
Urbanna, Virginia.*

MY DEAR LEWIS:

I am in receipt of your letter of the 30th of last month, in which you write:

"You were present at Saluda today and heard the discussion about the appropriation of \$450 for the county nurse. Two members of the board will not agree, the other member is in accord. Mr. Woodward, member of the board of supervisors of Saluda district, wants to make the appropriation. Under the Byrd road plan, he will have on hand on July 1 something like \$650.00 or \$750.00, which, under section six of the said Byrd plan, will have to be used for the payment of outstanding obligations and the balance to be paid into the treasury for general county purposes. Mr. Woodward is willing to appropriate the necessary amount for the health work out of this fund. I do not think he can do it, but I would like your advice on the matter. Sorry I could not talk with you about it today. Let me know what you think about it."

I understand from your letter that the proposition is to pay a county nurse from district road funds on hand July 1.

I agree with you that this cannot be done, as, under the provisions of the plan, all district funds on hand July 1 are to be first applied to district indebtedness, if any, and, if there is no district indebtedness, the amount on hand goes into a general district fund.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

HIGHWAY SYSTEM—Secondary—Application of unexpended balances.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 5, 1932.

HON. WILLIAM MEADE FLETCHER,
*State Corporation Commission,
Richmond, Virginia.*

MY DEAR JUDGE:

I am in receipt of your letter of the 5th instant, in which you ask to be advised as to my opinion upon three separate questions contained in your letter.

"(1) Can the sum received from an entire county levy be legally used to pay the bonded indebtedness of one of the magisterial districts of the county?"

I do not think so. The last sentence in section 3 of chapter 415 of the Acts of 1932, creating a secondary system of State highways, provides:

"* * * All balances in the hands of the local authorities for county or district road purposes and any taxes heretofore levied for years prior to nineteen hundred and thirty-two for county or district road purposes and not collected, shall, when collected, and to the extent necessary, be disbursed in payment of obligations heretofore contracted for county or district road purposes and remaining unpaid, and the balance, if any, for general county or district purposes."

By virtue of the provision of law which I have quoted, all county road levies not expended or required for the payment of county obligations July 1, 1932, go into a general county fund. I do not think that the general county fund can be used for the payment of district indebtedness, as counties and districts are separate and distinct entities and each must bear the burden of its own obligations. Under the provisions of the same section, boards of supervisors may levy district road taxes to take care of district indebtedness created for road purposes.

"(2) Can the unexpended balance due from the gasoline fund turned over to the counties by the State be used to pay the bonded indebtedness of one of the magisterial districts of the county?"

I have heretofore held that gasoline tax allotted to counties and apportioned to districts could be treated as tentative allotments and was not strictly the property of the district, and, where one district ran in debt on its road operations and there was an apparent surplus of gasoline tax funds to the credit of another district, the board of supervisors could authorize the payment of the district road indebtedness out of funds which had been tentatively allotted to some other district in whose account with the treasurer there was a surplus. I do not think, however, that any part of the gasoline tax can be used to pay bonded indebtedness of a magisterial district.

"(3) Can a board of supervisors legally use county funds to build or improve a road on a privately owned farm?"

There is no warrant of law which authorizes or permits a board of supervisors to improve a privately owned road and pay the cost thereof out of county funds. They not only have no right to pay for such work out of county funds, but they have no authority to use any of the machinery or property of the county in improving a private road.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HIGHWAY SYSTEM—Secondary—Transfer and use of surplus district and county funds.

COMMONWEALTH OF VIRGINIA.

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 2, 1932.

HONORABLE M. B. BOOKER,
Attorney for the Commonwealth,
Halifax, Virginia.

MY DEAR SENATOR:

I am in receipt of your letter of May 28, in which you state that on July 1 the Staunton district in your county will have a balance of about \$5,000 on

hand in its road fund; that this district is indebted for school bonds and a movement is on hand to have this amount applied to Staunton district school indebtedness. You then ask if, under the Byrd road plan, this can be done. You further state that this \$5,000 represents accumulated balances from district road levies and gas tax funds and, in your opinion, this must be applied to any road indebtedness, and, if there is no road indebtedness in that district, it goes to the credit of the general county fund.

In reply to your letter, I quote you the last sentence of section 3 of the Act of the last Assembly creating the "Secondary System of State Highways," which is as follows:

"All balances in the hands of the local authorities for county or district road purposes and any taxes heretofore levied for years prior to nineteen hundred and thirty-two for county or district road purposes and not collected, shall, when collected, and to the extent necessary, be disbursed in payment of obligations heretofore contracted for county or district road purposes and remaining unpaid, and the balance, if any, for general county or district purposes."

In my judgment, it clearly follows from the provisions contained in section 3, and quoted above, that the first charge on funds remaining in any district would be the payment of any obligations due for road purposes and, after they have been discharged, the balance can only be used in the district in which the fund was created and would not go into the general county fund. Such being the case, I think it would be lawful to use this balance for district school purposes.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HIGHWAY SYSTEM—Secondary—Disposition of surplus funds.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 12, 1932.

HON. CHARLES B. GODWIN, JR.,
*Attorney for the Commonwealth,
Suffolk, Virginia.*

DEAR MR. GODWIN:

I am in receipt of your letter of the 8th instant, in which you write in part:

"We have five districts in our county, and on July 1st each district will have a balance on hand in its district road fund. Also, we will receive some money from the State of Virginia, as compensation for equipment taken over by the State Highway Commission. We will also receive certain funds from time to time for delinquent taxes that have been levied for district road purposes. One of the districts in our county, several years ago, through an election of the people in that district, created a district bonded indebtedness for the purpose of building a hard-surface road through the district, and were paying the interest and sinking fund out of the amount of money appropriated to them from gasoline funds. None of the other districts have any bonded indebtedness whatsoever.

"The question presented is whether or not the funds on hand in the several district road funds on July 1st, the delinquent taxes collected, which were levied for road purposes, and the money paid for equipment by the State, go into the general county fund, or go to pay off the district bond indebtedness of the district issuing bonds for road purposes. That is to say, whether or not districts A, B, C and D's

funds would go into the general county fund, or whether it would go to pay off the bonded indebtedness of district E, and whether or not the entire fund received from the sale of road machinery would go to pay off district E's road bond indebtedness, or only the funds derived from the sale of machinery in district E would be applied to that purpose. The same question is presented in reference to delinquent taxes."

In my opinion, under chapter 415 of the Acts of 1932, known as the Byrd road plan, all funds on hand on the 1st day of July, 1932, and all taxes heretofore levied and collected at any time thereafter go into the same funds for which the tax, county or district, was originally levied. Where the road fund arises from a county levy or from the county's allotment of the one and one-half cents gasoline tax allotted and received before the 1st day of July, 1932, it may be used for county road purposes, or to pay off county road indebtedness. If not so used, the county road fund on hand on the 1st day of July should be transferred to the general county fund.

District road funds may be used for district road purposes up until the 1st day of July, 1932, and may be used at any time for the payment of district road indebtedness. The unused balance on hand on that date which is not necessary for the payment of district indebtedness goes, under the provision of the law, into a fund for general district purposes. This provision as to district balances will, in my opinion, allow the unexpended balance of the district road fund to be used when unnecessary to pay district road indebtedness for district school purposes.

I do not think that any district fund arising from district levies can be used in any other district or to pay the indebtedness of another district. However, a fund which has been credited to a district may consist of an arbitrary allotment by the board of supervisors of money apportioned to a county as a unit out of the one and one-half cents gasoline tax. I see no reason why the unexpended portion of such an allotment made to a district may not be transferred by the board of supervisors from one district where it has not been spent to some other district for expenditure for road maintenance up to the 1st day of July of this year where the gas tax funds in one district exceed its road maintenance requirements and are needed in some other district.

Where road machinery is sold belonging to the county, the proceeds go into the county fund and, where owned by the district, they go into the district fund, subject to the same use and disposition as above provided for county and district road levies.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HIGHWAY SYSTEM—Secondary—Disposition of surplus road funds.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 15, 1932.

MR. R. C. HAYDON,
*Division Superintendent,
Prince William County,
Manassas, Virginia.*

DEAR MR. HAYDON:

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

"Our board of supervisors will probably designate what disposition shall be made of unused balances in the road funds of the various districts in Prince William county at its meeting Tuesday, June 21.

"We are desirous of having at least part of this money credited to

the various district school funds for capitalization purposes or for the payment of existing indebtedness.

"Please write me your opinion as to whether such a disposition of the money would be entirely legal."

In my opinion, district road balances on hand July 1, 1932, may be used for any district purposes including the erection of school buildings and/or for the payment of existing district school indebtedness.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

HIGHWAY SYSTEM—Secondary—Payment of gas taxes.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 15, 1932.

HON. E. C. LACY, *Clerk,*
Circuit Court of Halifax County,
Halifax, Virginia.

DEAR MR. LACY:

In the absence of the Attorney General, I am answering your letter of the 13th instant, in which you desire to be advised as to what gasoline tax the counties of the State will be entitled to as accrued up to July 1, 1932.

Section 4 of chapter 415 of the Acts of 1932, the Byrd road plan, provides as follows:

"From and after July first, nineteen hundred and thirty-two, the amount on hand from, and the proceeds of, the motor vehicle fuel tax available for apportionment among the several counties of the State under the law with reference to the levy, collection and expenditure of motor vehicle fuel taxes, shall be set aside as a fund for the secondary system of State highways and disbursed by the State under the supervision of the State Highway Commissioner for the maintenance and improvement, including construction and reconstruction of the secondary system of State highways * * *."

Under the construction placed upon the language quoted, no tax will be apportioned to counties collected after the 31st day of May, although, of course, checks will be received during the month of June for May collections. Gas tax funds collected during June, not being payable until July, are included in the provision "amount on hand July 1st" and will be set aside for use by the State Highway Commission for county purposes.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

HIGHWAY SYSTEM—Secondary—Gasoline tax allotment.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 15, 1932.

MR. T. K. WOLFE, *Editor,*
The Southern Planter,
Richmond, Virginia.

DEAR MR. WOLFE:

In the absence of the Attorney General, I am in receipt of your letter of the 13th instant, in which you write:

"I would like to have your opinion as to the amount of money that will be spent annually from the gasoline tax on the secondary roads of the State, under the Ferguson-Harman road bill. Will it be the amount accruing from the 1½ cent tax on gasoline as of the year 1931, or will it be the amount accruing from the 1½ cent tax on the number of gallons of gasoline sold in a given year? In other words, what I would like to know is whether the amount to be spent annually on the secondary roads by the State is a fixed amount as of 1931, or will the amount fluctuate depending upon the tax collections on motor fuel?"

"In reference to the money to be spent on the secondary roads from the State highway maintenance and construction funds, I understood from you some days ago that this amount would be not less than two million dollars annually. If I am incorrect in this understanding, please advise me."

In my opinion, the State Highway Commission will receive as a fund for the maintenance, improvement, construction and reconstruction of the secondary system of State highways the one and one-third cents per gallon of the gasoline tax allotted to each county for the use in such county, based upon the amount received by each county for the year 1931. This apportionment is not subject to fluctuation.

According to the provisions of the new law, the State Highway Commission sets aside for the same purposes a fund of not less than two million dollars each year. This fund is subject to arbitrary distribution by the Highway Commission, while the gasoline allotment is to be used in each county by the Highway Commission.

Should the aggregate of the gasoline tax for subsequent years fall below the aggregate received for 1931, then, in my opinion, the Highway Commission is required to supplement the county fund accrued so as to make it equal to the amount distributed to the counties during the year 1931. Should the aggregate exceed that distributed during the year 1931, the excess will, in my opinion, go into what may be called the State fund and be used by the Highway Commission, just as the amount allotted by the State Highway Commission to the county's fund out of its maintenance and construction fund.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

HIGHWAY SYSTEM—Secondary—Transfer and use of surplus county and district funds.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., April 25, 1932.

HON. W. C. CARTER,

*Attorney for the Commonwealth,
Warrenton, Virginia.*

DEAR MR. CARTER:

On the 21st of last month Colonel Saunders wrote you that he had not then received a copy of the new Byrd road law and was not in a position to answer your question as to the right of the board of supervisors of Fauquier county to use the balance of the general county road fund on hand July 1, 1932, to pay off bonded indebtedness of Marshall district of Fauquier county.

Printed copies of this law are now available, and I find that your opinion that the board of supervisors have no such authority and that any surplus in the county road fund must be used for general county purposes and not for the payment of district bonds is correct. In section 3 of the Byrd law it is provided:

" * * * All balances in the hands of the local authorities for county or district road purposes and any taxes heretofore levied for years prior to nineteen hundred and thirty-two for county or district road purposes and not collected, shall, when collected, and to the extent necessary, be disbursed in payment of obligations heretofore contracted for county or district road purposes and remaining unpaid, and the balance, if any, for general county or district purposes."

I am enclosing copy of this Act herewith.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

HIGHWAY SYSTEM—Secondary—Word "highways" includes all public roads.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 15, 1932.

MR. OLIVER A. MURRY,
Glen Allen, Virginia.

DEAR MR. MURRY:

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

"Will you please tell me what, in your opinion, is the proper definition of 'public roads' as used in the recent act of the Legislature creating the 'Secondary System of State Highways'?"

There is no statute defining the words "public roads" used in the Act creating the "Secondary System of State Highways." However, I should say that public roads include all of the roads of each of the counties of the State which have been opened at any time under public authority, either actual or constructive, because of long use, together with those roads which have been dedicated to public use and accepted as such by public authorities.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INDUSTRIAL COMMISSION—Payment to State for rent of offices.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 22, 1932.

HON. PARKE P. DEANS, *Chairman,*
Industrial Commission,
Richmond, Virginia.

DEAR COLONEL DEANS:

I am in receipt of your letter of yesterday, in which you state that Governor Pollard has requested the Industrial Commission to pay rent for the quarters in the State office building now occupied by it.

You quote several sections of the Workmen's Compensation Act and section 22½ of chapter 33, page 120, of the Acts of 1927.

It is true that paragraph (a) of sub-section 54 of section 1887 of the Code of Virginia provides that the Industrial Commission shall be provided with offices in the Capitol or other suitable building in the city of Richmond.

Paragraph (d) of sub-section 75 provides for the administration of the

funds derived from fees paid to the Industrial Commission and for the disbursement thereof, with the further provision that, should receipts exceed expenditures for any year, they shall not go into the general fund of the treasury, but constitute a surplus, as provided in paragraph (k) of subsection 75.

The provision relating to offices for the Commission, for necessary office furniture, stationery and other supplies was written into the law previous to the enactment of section 22½ of chapter 33 of the Acts of 1927. Previous to the enactment of the last mentioned section there was a question as to what may be termed the ownership of the surplus of receipts accumulated by the Industrial Commission. In the opinion of some, such surplus was the property of the State of Virginia and went, or should have gone, into the general fund of the treasury. Others were of the opinion that the receipts of the Commission, having been derived from assessments upon industries subject to the jurisdiction of the Commission, were a fund which could only be used for the purposes of the Commission.

If the first view was the correct one, then the State should have been at all expenses incident to the administration of the workmen's compensation law including, of course, office rent, stationery and supplies, and the accumulated surplus should have gone into the State treasury.

However, should the second view prevail and the receipts of the Commission be set aside as a fund devoted solely to the administration of the workmen's compensation law, then, in my opinion, all of the expenses of its administration, including office rent, office furniture, stationery and all other supplies, should be paid for out of the Commission's segregated funds.

The Act of 1927 adopted the latter view and set apart the fund derived from assessments on industries for the purpose of administering the workmen's compensation law. By making this segregation of assessment funds, the General Assembly evidently intended that the Commission should assume and pay all of its operating expenses including office rent, office furniture, stationery and supplies, as well as all other expenses for the administration of the workmen's compensation law.

While the Act providing for offices in the Capitol or other building, furniture and supplies might reasonably be construed to impose a burden upon the State, under the original Act the presumption is as strong, if not stronger, that the assessments imposed upon industry were to go into the general fund of the treasury. Since the Act of 1927 was passed and the fund segregated for administrative purposes, the assumption that the State was to furnish offices, furniture and supplies is no longer tenable.

On account of the fact that no charge has heretofore been made for office rent by the State, there is, in my opinion, a moral obligation upon the Commission to pay reasonable compensation as rent for the office space occupied by the Commission and the Commission may legally pay such compensation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INSANE PATIENTS—Place of delivery to superintendent.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 6, 1932.

HON. R. H. BRINKLEY,
City Manager,
Suffolk, Virginia.

MY DEAR SIR:

I have for reply your letter of recent date, in which you ask whether a city can be required to deliver to the authorities of State hospitals insane, etc.,

persons at any point other than the railroad station or boat landing in the city which may be designated by the superintendent of a hospital; or, if there is no railroad station or boat landing, can the city be required to deliver such person to the authorities of the State hospital at a point more than twenty-five miles distant from such city.

Section 1022 of the Code provides that the officer in whose custody an insane, etc., person has been committed shall forthwith make application to an appropriate hospital or colony for the admission and transfer of such person thereto.

Section 1024 of the Code provides that all persons applying for admission to any hospital (and I take it that the application here referred to is that of an officer) shall be, when required by the superintendent of the hospital, delivered to the agent of such hospital at the nearest or most convenient railroad station or boat landing to be designated by such superintendent, the expense of such delivery to be borne by the county or city of the person committed, as the case may be; provided, however, that the station or landing so designated shall not involve a travel at the expense of such county or city of a greater distance by rail or boat than twenty-five miles from the nearest railroad station or boat landing at the courthouse of the county or city of commitment.

This language would seem to indicate that the superintendent of a hospital may designate such railroad station or boat landing as he deems advisable, and that, if the designated point is less than twenty-five miles from the nearest station or landing to the place of commitment, then the county or city is to pay the expense; if more than twenty-five miles, the county or city must pay the expense of twenty-five miles travel and, by virtue of the last paragraph of section 1027 of the Code, the balance must be paid from the funds appropriated for the support of such hospital.

I am lead to this conclusion by reason of the fact that the twenty-five mile proviso was added by amendment in 1920. You will realize, however, that no one can speak with positiveness of the meaning of such a poorly and ambiguously expressed statute. I do not think that the "convenience" mentioned is solely that of the hospital, but I am rather of the opinion that the superintendent should, in designating a place, have somewhat the question of the comparative convenience of both parties.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INSANE PATIENTS—Payment of lunacy commission.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 14, 1932.*

TAYLOR MCCOY, ESQ.,
Attorney at Law,
9-10 Echols Building,
Staunton, Virginia.

DEAR SIR:

I am in receipt of yours of April 9 regarding the matter of the commitment of Thomas L. Bush, of Roanoke county.

It appears that sometime ago Bush had been committed to the Western State Hospital and had been formerly discharged. He was recently brought back to the hospital by members of his family and, in view of the fact that he had been discharged, it became necessary to recommit him in formal fashion. A commission was accordingly held at Staunton, the only other alternative which could have been adopted being to return him to Roanoke county, hold

a commission there, and return him to the hospital. Your question is whether the board of supervisors of Roanoke county is responsible for the costs of holding the commission.

As I understand, section 1017 of the Code authorizes the holding of a commission in any place where any person is found who is suspected of being insane, and so forth. Therefore, a commission could properly be held at Staunton.

Section 1021 of the Code provides that the expenses incurred in connection with the holding of the commission shall be paid by the county or city of which such person was a legal resident at the time of his commitment. That county in the case of Bush is Roanoke, and I am of the opinion that the costs should be paid by that county.

I can find nothing in our statutes which provides that a county shall pay for the costs of the commission only when the commission is held within the county. The place of holding the commission is not essential; the essential matter is the residence of the person committed.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

INSANE PATIENTS—Aiding furloughed patients—When unlawful.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 7, 1931.*

DR. FREDERICK D. BRENT,
Heathsville, Virginia.

DEAR DR. BRENT:

I am in receipt of your letter of the 5th instant, which I quote:

“This is relative to an opinion desired by me in connection with aiding in the escape of a patient on furlough from one of the hospitals for the insane in this State.

“Under section 1063 of the Code of Virginia, would the provisions of this Act apply with equal force in a case where the superintendent of an institution grants a furlough by ‘Certificate of Furlough’ and requires no furlough bond to be executed?”

Under the provisions of section 1060, which you quote, a person may unlawfully aid an insane person on furlough or *escapement* in escaping or secreting himself, and this is true, even though no bond has been required of any person for the return of the patient and the patient is on “certificate of furlough.”

However, to make a person guilty, the patient must have been furloughed under the provisions of section 1041 and the superintendent must have required the return of the furloughed patient.

You will notice that, under section 1040, where a furloughed patient fails to return when required by the superintendent to do so, he may be deemed by the superintendent an escape, and all laws applicable to escaped patients in any hospital or colony shall apply thereto.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INSANE, EPILEPTIC AND FEEBLE-MINDED—Patients may not be furloughed to State farm.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., September 10, 1931.

DR. J. H. BELL, *Superintendent,*
State Colony for Epileptics and Feeble-minded,
Colony, Virginia.

DEAR DR. BELL:

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

"Would I be permitted, either under section 9 of chapter 214, Acts of Assembly, 1926, or section 1091 of the Code, to transfer or parole to the State farm for defective misdemeanants a criminal, feeble-minded person who has on two occasions been charged with the most felonious criminal acts, but whose mental defectiveness was regarded as a bar to trial before the court, and who at present is a legally committed patient of the State colony for epileptics and feeble-minded?"

I do not think that either section 9, chapter 214, of the Acts of 1926, or section 1091 of the Code authorizes you to furlough the feeble-minded person to whom you refer to the State Farm for Defective Misdemeanants.

Section 9 authorizes the transfer to the State Farm of misdemeanants whose mental condition is sufficiently good to enable them to be detained at the farm. I understand from your letter that the person you refer to is not a misdemeanant, but is a feeble-minded person charged with more than one felony.

Section 1091 of the Code contemplates the furlough of feeble-minded into the custody of individuals and does not cover the transfer of a feeble-minded to the State Farm.

Your letter is not altogether clear as to whether or not your feeble-minded patient was committed to your institution after having been charged with the crime. If so, I suggest that you get in touch with the judge of the court making the committal and suggest that the person to whom you refer is undesirable as an inmate of your institution, and that his mental condition and moral disposition are such that he should be committed to a hospital for insane criminals.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INSURANCE—Assessment by State treasurer on securities.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., May 4, 1932.

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

DEAR SIR:

I am in receipt of your letter of the 2nd instant, in which you desire my opinion as to the legality of assessments on certain insurance companies doing business in Virginia of 1/20 of one per cent of the face value of surety bonds deposited with the treasurer in lieu of the deposit of securities under the provisions of section 4211 of the Code of 1930.

As I understand it, assessments have been made by the State treasurer on bonds of insurance companies deposited with him and that these assessments have been turned over to your office for collection.

In my opinion, the law does not authorize an assessment on surety bonds deposited with the State treasurer in lieu of securities which companies are authorized to deposit with him. The statute allows the assessment to defray the expense of the treasurer's office in the handling and safe-keeping of securities, with the further provision that the State shall be responsible for all bonds and other securities deposited with the treasurer, and, if any of the securities are lost, destroyed or misappropriated, the State will make these losses good. The last paragraph of the Act provides for the substitution of bonds with surety, but says nothing as to an assessment to cover handling and safe-keeping of the same, and, in the absence of specific authority, I do not think the treasurer is authorized to make such an assessment as he has done.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Forfeitures—Cities and towns cannot forfeit motor vehicles.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *August 19, 1931.*

HON. W. POTTER *Sterne*,
Commonwealth's Attorney,
Dinwiddie, Virginia.

DEAR MR. STERNE:

I am in receipt of your letter of August 15, in which you state that McKenney, which is a small incorporated town in your county, has adopted a prohibition ordinance. You then desire to be advised whether or not an automobile seized within the corporate limits of the town of McKenney, while used in transporting ardent spirits, can be forfeited to the town, or should it be forfeited to the Commonwealth.

In reply, I will state that a town has no authority to forfeit an automobile and receive the proceeds from the sale thereof. Forfeiture proceedings against vehicles illegally used in the transportation of ardent spirits must be conducted by the Commonwealth's attorneys, and the proceeds derived therefrom paid into the State treasury for the benefit of the Literary Fund. In this connection I call your attention to section 28 of the Virginia Prohibition Law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Attorneys for the Commonwealth to appear in municipal courts.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 10, 1932.*

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

DEAR MR. TURNER:

I have your letter of yesterday, in which you write:

"On page 632 of your report for the period July 1, 1930, to June 30, 1931, in a letter under date of October 13, 1930, addressed to Hon.

John Galleher, attorney at law, Leesburg, Virginia, you suggest that it is the duty of Commonwealth's attorneys to prosecute prohibition cases under town ordinances. Will you kindly write me whether this is a mandatory law, or simply the privilege of the Commonwealth's attorney. I make this inquiry for the reason that I have not heretofore appeared in these cases under the prohibition ordinance of the town of Emporia, but if it is my duty to prosecute these cases just as cases arising under the statute, I shall in the future appear in the mayor's court in all such cases."

The question has often been raised as to whether, in an incorporated town employing a town attorney, such attorney or the attorney for the Commonwealth for the county is required by the prohibition law to appear and defend cases for violations of town ordinances.

My opinion to Mr. Galleher, to which you refer, was to the effect that it is the duty of the attorney for the Commonwealth to prosecute violations of prohibition ordinances, and I am still of that opinion.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Commonwealth's attorney—Duty to prosecute ordinance violations.

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

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

DEAR MR. KERR:

I am in receipt of your letter of the 27th instant, with the enclosed clipping from the Waynesboro News-Virginian of last Saturday, and I note both from your letter and from the clipping that there is a movement on in Waynesboro to supersede the attorney for the Commonwealth of Augusta county as public prosecutor in prohibition cases for violations of the Waynesboro prohibition ordinances.

I do not think that this can be done.

According to my construction of section 34 of the prohibition law, providing that notice shall be given to attorneys for the Commonwealth of cities and towns, the attorney for the Commonwealth of the town is the attorney for the Commonwealth of the county in which the town is situated, and he, not a town attorney, is the person designated by law to prosecute prohibition cases, even for violations of town ordinances. Cities, of course, have their own attorneys for the Commonwealth.

I may also say that I nowhere find reference to or recognition of town attorneys in the prohibition law. Section 46 provides duties of certain officials and specifically mentions attorneys for the Commonwealth and provides for their compensation.

Mr. Quesenbery was in the office a few days ago and was given a copy of my opinion in which I held that attorneys for the Commonwealth of counties were charged with prosecutions in prohibition cases in the towns situated in their counties.

In the last paragraph of your letter you state that you are at a loss to understand the right of a town to receive fines paid for violations of town ordinances, while the expenses incident to the confinement in jail of persons convicted are paid by the State.

In my opinion, this is an absolutely improper method. All fines for town ordinances may be retained by the town. All expenses incident to prosecutions for violations of town ordinances, including amounts paid for keep of prisoners in jail, should be paid by towns.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees of Attorney for the Commonwealth.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 22, 1931.*

HON. A. D. WATKINS,
*Attorney for the Commonwealth,
Farmville, Virginia.*

MY DEAR JUDGE:

I am in receipt of your letter of yesterday, in which you ask my opinion as to whether or not a fee is allowable to an attorney for the Commonwealth in a prohibition case in a proceeding before a justice of the peace at which he appears, but at which the prisoner waives the examination and the case is sent on to the grand jury.

I am of the opinion that the attorney for the Commonwealth is entitled in such case to a fee of \$5.00 when payable by the Commonwealth. This opinion is based upon the fact that all officers engaged in the enforcement of prohibition are allowed the same fees as are allowed in felony cases for like services.

In those cases in which the attorney for the Commonwealth appears in a justice's court and is allowed a fee of \$5 and the case is subsequently tried in a circuit court and the accused is acquitted, the attorney for the Commonwealth is, in my opinion, allowed a fee of \$5 for the preliminary examination and a fee of \$10 for the trial of the case in the circuit court, both payable by the Commonwealth.

Under the same circumstances, where there is a conviction, the attorney for the Commonwealth is entitled to a fee of \$25, payable by the accused if it may be made out of him, and, if it is not so made, he is entitled to a fee of \$15, payable by the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Confiscation of automobile not legal by municipalities.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 16, 1931.*

HON. K. R. DOTSON, *Mayor,
Clintwood, Virginia.*

DEAR MR. DOTSON:

I am in receipt of your letter of the 14th instant, from which I quote:

"A few years ago the town of Clintwood, of which I am now mayor, passed an ordinance adopting the State prohibition law as the law of the town in so far as the said State law could be applied to a town. Recently

the town sergeant seized an automobile while transporting ardent spirits contrary to law, and the corporation is planning to confiscate the automobile in similar manner to that used by the State in like cases. There has arisen a question as to whether the town is authorized, under the aforesaid ordinance, to so confiscate the said automobile.

"I will appreciate your opinion as to whether the town has sufficient authority to do this."

In my opinion, the provisions of the Layman Act allowing cities and towns to pass ordinances paralleling the State prohibition law does not apply to the forfeiture of automobiles seized while containing ardent spirits. The last part of sub-section (a) of section 28 of the Layman Act provides that property seized shall be deemed forfeited to the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Confiscation of automobiles.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 22, 1931.*

HON. JOSEPH D. PARKER,
*Attorney for the Commonwealth, of Warwick County,
Newport News, Virginia.*

DEAR MR. PARKER:

The Attorney General has handed me for attention your two letters of the 13th instant, both covering the information filed against a car belonging to or used by one Tommy Johnson in the illegal transportation of ardent spirits.

I note you say that there is a lien upon this car in excess of its actual value and that you understand that the lienor desires to repossess the car as innocent of knowledge, either express or implied, of the use to which the car was or was to be put.

If the car is of value, I think the character of Johnson should be inquired into and, if it turns out that he had a general reputation as a violator of the prohibition law, or had been convicted of such violations, defense should be made to the relief prayed for by the lienor.

The Attorney General's office has successfully defended applications for relief in cases where cars were sold to notorious violators of the prohibition law, although actual knowledge was not brought to sellers or lienors.

It is entirely all right for you to file information in your own name against this car, but, if it is of any considerable value, I trust that you will have an investigation made by inspectors of this department, and I suggest Mr. White, of Denbigh, to find out as to the character of Tommy Johnson and the person to whom the car was actually sold before you agree to allow the relief prayed for by the lienor.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

INTOXICATING LIQUORS—Carrying liquor to college campus.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 12, 1931.*

DR. W. T. HODGES,
*Dean of Men,
College of William and Mary,
Williamsburg, Virginia.*

DEAR DR. HODGES:

I am in receipt of your letter of the 8th instant, from which I quote:

"I wish some legal advice from you with reference to non-students of this college bringing liquor into our dormitories and giving it to students.

"At a student dance held in our gymnasium recently two men from out of town who had never been students of the college were guests. One of them is a practicing lawyer in * * *. The two brought liquor with them to Williamsburg, went into the room of a student who was away for the week-end, and invited other students to come and drink with them. I may add that they used this absent student's room with his consent, he having told them where to find the key.

"Please let me know fully the law with reference to such an act and give me in particular an interpretation of section 4606 of Pollard's Code, and any other citation which I may have overlooked with reference to legal procedure against those who bring liquor into a students' dormitory and give it to students."

Section 14 of the Layman Prohibition Law makes it a felony to sell or give ardent spirits to a minor. If the persons to whom you refer as having carried liquor to your college gave any of the liquor to a minor, they are unquestionably guilty of a felony, the punishment for which is prescribed in section 6, viz.: confinement in the penitentiary not less than one nor more than five years, or, in the discretion of the jury, confinement in jail not less than six nor more than twelve months and by fine not exceeding \$500.00.

If no one of the students to whom liquor was given is a minor, then the offenders can be punished either for the transportation of ardent spirits or the unlawful possession thereof. Unlawful transportation is punished according to the provisions of section 6, where the quantity transported is a gallon or less, by confinement in jail not less than one nor more than six months and by fine of not less than \$50.00 nor more than \$500.00. This is the punishment for unlawful possession of ardent spirits irrespective of quantity.

If the quantity transported was in excess of one gallon, the offense is punishable by a fine not exceeding \$500.00 and confinement in jail not less than three nor more than twelve months.

If the act constituting the offense was unintentional or inadvertent, the jury may, in their discretion, omit the jail sentence.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Firearms not subject to confiscation—Search of buildings without warrant.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 1, 1932.

MR. D. A. COLTRANE,
*Deputy Sheriff of Carroll County,
Hillsville, Virginia.*

DEAR MR. COLTRANE:

I am in receipt of your letter of January 29, in which you ask several questions:

“(1) In case an officer enters a filling station with a search warrant and finds a small quantity of ardent spirits stored in the building and finds firearms in said building, would said officer have a right to confiscate the firearms in case he could not prove a sale?”

I do not think that a firearm found in a filling station, or other building, upon a search where there is no sale being made or ardent spirits being manufactured, is subject to confiscation.

“(2) Has an officer a right to search buildings other than a dwelling without a warrant?”

The right of an officer to search without a warrant is provided for in section 96 of the Layman prohibition law. As you have referred to section 9, I assume that you have a copy of the prohibition law.

“(3) What would be an officer's duty if he was about to enter a farm to search for a still and the owner was present and offered objections and resistance?”

I do not think an officer has a right to search a farm without a warrant where the owner is present and makes objections and resistance.

I refer you to page 21 of the Layman Prohibition Law, where the case of *McClanan v. Chaplain*, 136 Va. 1, is quoted. Search may be made where there is no objection and no resistance.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Definition of still.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 17, 1932.

HON. S. W. SHELTON,
*Attorney for the Commonwealth,
Palmyra, Virginia.*

DEAR MR. SHELTON:

I am in receipt of your letter of the 8th instant, in which you write:

“An outfit had been found in the county, which the officers making the seizure contended consisted of two stills; the defendants contended that there was only one still. Mr. M. L. Wood, deputy sheriff, was in charge of the raid and has stated to me the following facts in connection with the above: Mr. Wood says that the outfit consisted of a big steel drum of 200 gallons capacity, one wooden still, capacity of 180 gallons; from the wooden still a copper pipe lead to a 60 gallon wooden

barrel, or still; these were all connected up when found with an eighty foot coil leading into nearby branch.

"The officers contend that this outfit constituted two stills; namely, that the two wooden containers mentioned above were each a wooden still being operated by the steam from the steel drum or condenser. The officers further contend that this kind of outfit has been adopted by the bootleggers in order to make fast runs, each wooden container being used as a separate still."

In my opinion, the question as to whether the seizure officers are entitled to a fee for the seizure of one still or two fees for the seizure of two stills depends upon the facts, which are not altogether clearly stated in your letter.

If the two containers are connected up with a boiler and the distillation of ardent spirits is one continuous process, without the intervention of extraneous activities, I am of the opinion that there should be but one fee.

If, however, the same boiler is used for two separate stills and the mash is heated and alcohol evaporated therefrom, condensed and run out into a container which is handled by the operators and emptied into a second still or vat and again evaporated, cooled and condensed, and redistilled ardent spirits run out, I am of the opinion that there are two stills and that the officers are entitled to two separate fees.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fees for seizure of still.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., December 5, 1931.

HON. H. H. HOLT, *Clerk,*
Hampton, Virginia.

DEAR MR. HOLT:

I am in receipt of your letter of the 30th ultimo, in which you ask to be advised as to whether there should be taxed against parties in possession of two stills a separate fee of \$50 against the parties in possession thereof for each still captured, or only one fee of \$50 for two stills.

Under my construction of the law, which you question in your letter, I am of the opinion that a fee or award of \$50 should be taxed against persons convicted for each separate and complete still found in their possession. My ruling has also heretofore been to the effect that, although a still may be so constructed as to provide for a double distillation in one single process, only one fee is allowed for its seizure.

In other words, I have made a distinction between one still, though it may be a continuous process and turn out a complete article, and two separate stills each of which is capable of one complete operation.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Information against cars—No discretion in local officers.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 24, 1931.*

MR. E. FRANK DOTSON,
Prohibition Inspector,
Box 224,
Galax, Virginia.

DEAR MR. DOTSON:

I am in receipt of your letter of the 12th instant, in which you write concerning the practice of the attorney for the Commonwealth, sheriff and deputy sheriffs of Grayson county in the matter of releasing cars seized while containing ardent spirits.

Under the provisions of section 28 of the Layman prohibition law, wherever these vehicles are seized it is the duty of the officer making the seizure to turn them over to the sheriff of the county in which they are seized. It is also the duty of the sheriff to hold such vehicles until released by orders of courts of competent jurisdiction—in your county the circuit court. No person is authorized by law to release seized vehicles upon his say-so or written direction. The abuse of their duties by the sheriff and deputy sheriffs of your county should be immediately called to the attention of the judge of your circuit court.

In case attorneys for the Commonwealth do not file information against seized cars within ten days, it is within the province of the Attorney General to do so.

I am sending a copy of this letter to honorable Horace Sutherland, judge of your circuit court, asking him to call the attention of the Commonwealth's attorney and the sheriff of Grayson county to the provisions of law covering the subject.

I hope that you and the local county officers will be able to co-operate and that it will not be necessary for me to authorize you to retain cars which you seize in Grayson county until legal proceedings can be had looking to the confiscation of seized vehicles.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Trial of absent defendant—Fees of officer seizing still.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 30, 1931.*

MR. RICHARD G. DEANE,
Attorney at Law,
Charlottesville, Virginia.

DEAR SIR:

I am in receipt of your letter of October 29, which reads as follows

"After having searched through the Layman prohibition law, I find no authority authorizing a defendant, who has been bonded and leaves without appearing for trial, to be tried in his absence.

"I would also like to know if a still, or stills, can be charged in the prohibition costs against more than one person when they are caught manufacturing ardent spirits at the same still."

There is no provision in the prohibition law covering the question of the trial of an accused for a misdemeanor in his absence. The law upon the subject is governed by the general principle that an accused can be tried for a misdemeanor in his absence, while for a felony he cannot. The right, however, to try an accused for a misdemeanor depends upon whether or not the case has been set for trial upon his arraignment, or plea, in the circuit court, or upon his having been bailed on appeal to the circuit court. In either of these cases I am of the opinion that he can be tried in his absence.

However, if an accused was arrested and bailed to answer an indictment or information, and he was subsequently indicted, or information filed, I do not think he could be tried in his absence. The court in which an accused is being held for trial is to determine whether or not he can be tried.

Under the provisions of section 20 of the Layman prohibition law, a fee of \$50.00 is allowed the arresting officers for the seizure of a still which, the law provides, shall be taxed in the costs, and this fee is all the seizing officers are entitled to receive on account of one still, whether one or more persons are convicted of owning the same.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Jurisdiction of trial justices.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 28, 1931.*

HON. R. O. GARRETT,

Trial Justice,

Cumberland, Virginia.

DEAR MR. GARRETT:

I am in receipt of your letter of yesterday, which I quote:

"Please advise me whether or not, under section 4375(3) and 4675(6) of the 1930 Annotated Code of Virginia, manufacturing ardent spirits is a misdemeanor or a felony. Under sub-section 6 it seems the penalties make it a misdemeanor, I mean the first offense. And if I, as trial justice, can try a case for manufacturing. I understand I cannot try felony cases and have to send them on to the grand jury.

"Also please advise me what should be done with property confiscated by the officers found at a manufacturing still."

Section 5 of the Layman prohibition law makes the manufacture of *distilled* ardent spirits a felony. The manufacture of any other kind of ardent spirits is simply a misdemeanor.

Trial justices have jurisdiction to try prohibition misdemeanors, so that you can try any case for the manufacture of any kind of ardent spirits other than distilled. For instance, you can try a person for the manufacture of wine or home brew. The main difference, in my opinion, is that the making of ardent spirits in a still is a felony while making ardent spirits in any other manner is simply a misdemeanor.

Technically, property seized at a still, which is not proceeded against under the provisions of section 28 of the Layman Act, should be dealt with under the provisions of section 31. However, it is the general practice for officers making seizure of property other than that controlled by section 28 to make personal sale of such articles and to account directly to me for the net purchase price.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Brandied peaches—Sale of unlawful.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 2, 1931.*

MR. W. F. CARTER, JR.,
*Assistant Executive Secretary,
Chamber of Commerce,
Charlottesville, Virginia.*

DEAR MR. CARTER:

I am in receipt of your letter of the 31st of August, in which you desire to be informed as to the legality of the manufacture, transportation and sale of "brandied peaches."

In my opinion, the manufacture, transportation or sale of "brandied peaches" is unlawful.

In your letter you state that you have been informed that the Federal prohibition law does not prohibit the private manufacture, transportation and sale of "brandied peaches." I called the Federal prohibition administrator for Virginia over the phone today and he informed me that you were mistaken; that it is against the Federal law to manufacture, transport and sell "brandied peaches."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Brandied peaches—Sale of prohibited.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 2, 1931.*

MR. A. W. CARTER,
*403 Third Street, N. E.,
Charlottesville, Virginia.*

DEAR MR. CARTER:

I am in receipt of your undated letter, which I quote in full:

"Kindly let me have your legal opinion governing the transportation, handling and selling of unfermented grape concentrate, either liquid or in solids, also malt syrups and brandied peaches, or any other product that can be naturally converted into a state containing more than one-half of one per cent alcohol. Every merchant and household seems to be in suspense of having violated 'the noble experiment.' Should apple, peach or pear cider be allowed to turn to vinegar, or should the users of such confine their purchases to the chemical product? Nature seems to violate the standards prescribed under our present statute and, if possible, something should be done about it."

Your inquiry as to the legality of the transportation and sale of unfermented liquid grape concentrate depends entirely upon whether or not the liquid is wine, as wine is one of the articles specifically enumerated in section 1 of the Layman Prohibition Law as coming within the definition of ardent spirits.

Practically the same question, but as applicable to a solid concentrate, depends entirely upon the origin of the solid concentrate. If any of the liquid articles enumerated in the section referred to are reduced to a solid and are transported and sold for the purpose and with the expectation that it will be

restored to its original liquid form, it very likely comes within the prohibition contained in the section.

Malt liquors and malt beverages are both prohibited by section 1 of the Layman Law.

The question concerning brandied peaches is one difficult to answer. If in the process of brandying peaches any considerable amount of liquid develops which contains more than one-half of one per cent of alcohol, I am of the opinion that the transportation and sale of brandied peaches is illegal where not only the peaches themselves are sold, but the liquid made in the brandying process is included in the sale.

There is no State law against the manufacture or transportation of wine or cider from fruit of a person's own raising, irrespective of its contents, while, if the wine or cider is made from purchased fruit, it may not be used as a beverage or sold or transported where it contains more than one-half of one per cent of alcohol by volume.

There is no provision against the manufacture or sale of cider for the purpose of making vinegar not used as a beverage or the sale of vinegar for use as vinegar.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Towns and cities not entitled to fees of attorneys for Commonwealth.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 28, 1931.*

MR. HERBERT J. TAYLOR,
Attorney at Law,
Echols Building,
Staunton, Virginia.

MY DEAR MR. TAYLOR:

I beg leave to acknowledge receipt of your letter of September 26, which is as follows:

"The city council of Staunton is inaugurating a move to require that fees in prohibition cases be paid into the city treasury, their suggestion being that fees of all 'salaried' officers in prohibition cases be so paid.

"As Commonwealth's attorney for the city of Staunton, of course, I am greatly interested in this matter. I have always regarded these fees as controlled by the State law in which cities as such have no interest. In other words, I had assumed that when the Commonwealth's attorney appears in a prohibition case and a fee of \$25.00 is taxed up against the person convicted, that is a fee belonging to the attorney for the Commonwealth, and for the city or county to undertake to turn the same into its treasury will be practically confiscating fees belonging to the attorney for the Commonwealth."

In this connection, I beg leave to call your attention to the fourth paragraph of section 37 of the prohibition law, which is as follows:

"Upon final conviction under any of such ordinances, the same fees for services rendered by any of said officers shall be taxed against the defendant as would be taxed upon final conviction in a prosecution had by the Commonwealth for a similar violation of the prohibition laws of this State, anything in the charter or ordinances of any city or town to the contrary notwithstanding."

It, therefore, follows, and about which there can be no doubt in my judgment, that the city of Staunton has no right whatever to take your fees, as Commonwealth's attorney, which are taxed prohibition cases and convert them into the city treasury.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Fines and costs of prosecution—Fees of officers.

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

HON. ROBERT S. KIME,
*Attorney for the Town of Salem,
Salem, Virginia.*

DEAR MR. KIME:

I am in receipt of your letter of the 28th instant, and note your question as to the priority as between the town of Salem and enforcement officers in cases where only a part of the fine and costs has been paid for violations of town prohibition ordinances, and I note further that you are of the opinion that, where the full amount of fine and costs has not been paid, the town should first receive its fine and then the officers their fees.

I do not agree with your conclusion. In my opinion, officers should first receive their fees. I not only think this is fair and just, as the officers are the employees or servants of the municipality, but because of the fact that they are entitled to recover their fees from the town or city in case they are not paid by the person convicted.

While attorneys for the Commonwealth of the counties prosecute, local magistrates preside at trials and are largely charged with seeing that convicted persons are committed to jail to serve sentences, and seeing to the collection of fines and costs. Magistrates only can commit for non-payment of fines, although attorneys for the Commonwealth, where this is not done, have supervision of the issue of a *capias pro* fine where the magistrate has not originally committed the person to jail on account of non-payment of fine and costs.

I think there is a very decided difference between a case where an attorney for the Commonwealth attends court when there is a plea of guilty and one in which the attorney does not appear. A trial is generally construed to include a proceeding where a plea of guilty is entered as well as where there is a plea of not guilty and an actual trial of the case upon its merits.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Drunkenness in private place no offense.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 16, 1931.*

HON. DACOSTA WOLTZ, *Mayor,
Galax, Virginia.*

DEAR MR. WOLTZ:

I am in receipt of your letter of yesterday, from which I quote:

"Our inquiry involves the question of whether or not a man being found drunk on his own premises, that is in his yard or in his own home, would constitute a public place under the statute of Virginia, which relates to being intoxicated in a public place. Also advise as to what constitutes being under the influence of ardent spirits.

"Is there any statute in Virginia involving being drunk other than the one involving being drunk in a public place?"

A person who is found drunk on his own premises is not, in my opinion, guilty of an offense against the prohibition laws of the State. It is only when he is drunk in a public place that he is guilty of an offense under the provisions of section 18 of the Layman prohibition law.

Section 80 of that law defines drunkenness or intoxication.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

INTOXICATING LIQUORS—Manufacture of cider and vinegar.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 5, 1931.*

HON. E. H. DEJARNETTE, JR.,
Attorney at Law,
Orange, Virginia.

DEAR MR. DEJARNETTE:

I am in receipt of your letter of yesterday, with a contract enclosed, and I note you desire my opinion as to the legality of the provisions of the contract providing for the manufacture and sale of vinegar from culls and imperfect fruit belonging to you.

The subject of your inquiry is covered by section 32 of the Layman prohibition law. Under this law cider may be made from your own fruit for home consumption and may contain any per cent of alcohol by volume, so long as it is used in your home.

Cider may likewise be made for domestic consumption, and may be manufactured from fruit grown or purchased for the purpose of making vinegar not used as a beverage. Cider may also be made from grown or purchased fruit for use or sale, where such cider does not contain more than one per cent of alcohol by volume.

I understand that the Federal law requires a permit before allowing cider to be made and there is also a law covering the manufacture and sale of vinegar. I advise you, therefore, to consult Captain R. Q. Merrick, Federal prohibition administrator for Virginia, before proceeding further with your contract for the marketing of cider and vinegar, so that you may be informed of the Federal law governing the subject.

I am of the opinion that under our law you may sell non-intoxicating cider and vinegar, but, if your cider becomes hard or the vinegar you sell is used for beverage purposes, you will be violating the State prohibition law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Allowance of time by municipal ordinance.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 12, 1931.*

HON. HARRY E. MCCOY,
*Attorney for the Commonwealth,
Norfolk, Virginia.*

DEAR MR. MCCOY:

I have carefully examined chapter 115a of Michie's Code, which chapter covers the establishment, management and work of prisoners on county and city farms.

As you will have no doubt noticed, there is no provision in this chapter for time allowance for prisoners confined in county or city farms.

So far as I have been able to find, there are but two provisions of law covering time allowance, one allowing four days a month for prisoners confined in jail and the other allowing ten days a month for prisoners confined in the penitentiary or work on State convict road forces.

Undoubtedly, some allowance should be made for prisoners working on those farms. I can see absolutely no reason why the city council cannot make provision for a good behavior time allowance for persons violating city ordinances, and I suggest that the question of allowance to State prisoners working on county and city farms be called to the attention of the Legislature.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Allowance for good behavior.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 16, 1932.*

MAJOR R. M. YUELL, *Superintendent,
The Penitentiary,
Richmond, Virginia.*

MY DEAR MAJOR YUELL:

I am in receipt of your letter of March 14, reading as follows:

"I am enclosing herewith House Bill No. 15 which was passed by the 1932 General Assembly. This bill amends section 5017 of the Code of Virginia so that certain convicts will earn 15 days good conduct time per month instead of 10 days per month. I desire to know whether or not this bill is retroactive. In other words, will it affect the sentences of the inmates now in the prison after the date the law becomes effective, or does it apply to their sentences from the date they were sentenced? You will notice the bill does not state it is retroactive.

"In 1916 the General Assembly changed the good conduct time allowance from 4 days per month to 10 days per month, and at that time it was held that it was not retroactive because the bill did not carry a clause so stating."

As pointed out by you in your letter, this bill contains no provision prescribing that the benefits of it shall be retroactive. The Act, in my opinion, therefore, relates only to time after it becomes effective.

You should compute the time credit then as follows: A prisoner should be given ten days a month up until the 1932 Act becomes effective, as is now

allowed by section 5017 of the Code. After the Act goes into effect, he should be given fifteen days credit per month.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Good behavior time allowance.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 24, 1932.

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

MY DEAR JUDGE:

I am in receipt of your letter of the 21st instant, in which you desire my opinion as to the allowances for time off for good behavior of prisoners sentenced to the penitentiary prior to the taking effect of the law changing the allowances from ten days per month to fifteen days per month.

Prisoners convicted and sentenced before the law takes effect are undoubtedly entitled to credit of fifteen days per month for good behavior beginning the 21st day of June, 1932.

The authors of the change in the time of credit construe the law to allow a credit of fifteen days from the time the convict was originally received at the penitentiary.

I have held to the contrary, my ruling being that the allowance of ten days per month applies from the time the prisoners were received in the penitentiary, including the 20th day of June, 1932, and fifteen days per month thereafter. I might add that the ten days per month credit and not the fifteen days per month credit is applicable to persons sentenced to jail for not more than a year.

A declaratory judgment proceeding is now before Judge Gunn, of the circuit court of the city of Richmond, in which that court is requested to render an opinion as to whether or not the credit of ten days or fifteen days is applicable from the beginning of the sentence up to the time the new law takes effect.

I regret that I have but one copy of the Act covering the change in punishment, the Act itself being found on page 152 of the Acts of 1932. I have always understood that copies of these Acts were furnished to judges of the circuit courts.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Good time allowance.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 27, 1932.

CAPTAIN R. R. PENN, *Superintendent,*
State Farm, Virginia.

MY DEAR CAPTAIN PENN:

As I understood from you over the telephone this morning, you asked my opinion as to the application of chapter 136, page 152, of the Acts of 1932, amending section 5017 of the Code of Virginia, providing time allowance for good behavior for jail, convict road camp and penitentiary prisoners

"1. Does the fifteen days law affect misdemeanants?"

The law applies to misdemeanants, and such prisoners are entitled to the same allowance as those convicted of felony, subject to the opinions in answer to the second and third questions.

"2. If so, does it affect a man whose total sentence, including time in lieu of fine and/or costs, and/or bonds, amounting to more than twelve months?"

In my opinion, a man's sentence is the total length of time he must serve on account of a term in jail and the length of prison service on account of fine and/or costs, and/or bond. This only applies to those prisoners who do not work out their fines and/or costs where their term or terms of confinement upon their time sentence does not aggregate one year in all.

My meaning can best be explained by illustrations. If a prisoner is sentenced to nine months in jail and he can work out his fine and/or costs in two months, he can only be confined for eleven months, even though he does not pay his fine. In such a case the prisoner is not entitled to the fifteen days time off allowance, but to ten days time off allowance.

If he is sentenced to nine months and his confinement on account of fine and/or costs and/or bond require four months service, his original sentence would be for thirteen months and he would be entitled, provided his fine and/or costs were not paid, to a fifteen days deduction for each month served. If his fine and/or costs were paid, then his term of confinement would be nine months and he would only be entitled to ten days per month off for good behavior.

"3. Does it affect a man who has two or more sentences totalling over twelve months?"

Where two or more sentences run consecutively and total over one year, the prisoner is entitled to the fifteen days per month time off for good behavior. If neither sentence is for more than a year and they run concurrently, the prisoner would not be entitled to the fifteen days, but to the ten days time off for good behavior.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

JAILS AND PRISONERS—Convict entitled to credit on fine for day's work.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 17, 1931.*

HON. J. J. TEMPLE,
*Commonwealth's Attorney,
Prince George, Virginia.*

DEAR MR. TEMPLE:

I beg to acknowledge receipt of your letter of November 13, in which you call my attention to the case of one Robert Washington who was convicted in the circuit court of Prince George county for violating the prohibition law. It seems that he was sentenced to serve a term in jail, to pay a fine of \$50.00 and the costs incident to the prosecution, and that, pursuant to the provisions of section 2094 of the Code, he was sent to the State convict road force. Subsequently, he was discharged, but no report has been made to the clerk by the superintendent of the penitentiary.

You further call my attention to the fact that section 4953 of the Code provides that a prisoner held in jail for the non-payment of fine and costs shall not be held longer than ninety days, and that nothing contained in that

section shall prevent the issuance of a writ of *fiery facias* after his release from jail; whereas, if a man is a member of the State convict road force, he may be held for a period not longer than six months and is to receive a certain per diem for the work done by him, while section 2095 of the Code is silent as to the issuance of an execution after his discharge.

You ask, first, whether the fact that a man has been held to labor on the State convict road force satisfies the judgment of fine and costs, or whether he is simply entitled to the proper per diem credit thereon.

In my opinion he is entitled only to a credit.

In your second question you inquire upon what authority may the judgment be marked satisfied, or may the proper credit be given on the records.

I take it that, if a man has been fined and that fine is docketed as judgment against him, and he subsequently pays the fine by delivering the money to the clerk, the clerk so notes that fact on the judgment docket. It seems to me that, where a man has satisfied in part the judgment of the Commonwealth against him, the clerk, on proper certificate of that fact from the superintendent of the penitentiary, should so fix the records. The only way this last matter could be attended to would be by a proper certificate. I know of no law that requires the superintendent of the penitentiary to send out in each case such a certificate, but I am sure he would be glad to do so upon the request of either the clerk or the individual involved.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Confinement of minors in chain gangs and jails.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 2, 1932.

MR. WORLY T. CROSSWHITE, *Sergeant,*
Bristol, Virginia.

DEAR SIR:

Major R. M. Youell, superintendent of the State penitentiary, has forwarded me for attention your letter to him of the 29th ultimo, in which you state:

"You wrote me February 20 that you were not able to take any jail men for work on the Convict Road Force. There is one boy, and probably two, in jail who desire to be at work in order to get the ten days reduction, and I would like to know if they can legally be put to work on the city chain gang and get the ten days off. An answer will be much appreciated."

I regret that you did not state the age of the one or two boys in your jail desiring to be put to work on your city chain gang in order to obtain the ten days per month reduction provided by law.

In my opinion, the solution of your problem is covered by section 2075 of the Code, provided that you have, under the provisions of section 3061 of the Code, an established chain gang in your city.

Assignments to chain gangs are made in cities by orders of judges of corporation courts. No person under eighteen may be delivered to a chain gang, and over the age of eighteen and under the age of twenty-one it is discretionary with the judge. If persons are confined for violations of town or city ordinances, there does not appear to be any term limit, while, if sentenced for violations of State laws, they may be sentenced to chain gangs if their term is not more than thirty days, or, if more than thirty days, they

may be put on the chain gang pending removal to the State Convict Road Force.

Of course, if the superintendent does not desire the convicts for the road force, they can serve all or any part of their terms of confinement for State law violations on your city chain gang. Request for these convicts should be made to the judge of your corporation court or the mayor or council of your city.

If youths under eighteen years of age desire to be put on the chain gang of your city, I see no reason why the judge would not allow them to serve, but I suggest that, if the boys to whom you refer are under eighteen, this fact be brought to the attention of the court.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Time to be served by misdemeanant sentenced to jail and to pay costs of prosecution.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 10, 1932.*

CAPTAIN R. R. PENN,
*Superintendent State Farm,
State Farm, Virginia.*

MY DEAR CAPTAIN PENN:

I am in receipt of your letter of February 6, concerning Thomas Smith, a convicted misdemeanant. You enclose a letter from Mr. T. J. Christian, an attorney of Newport News, Virginia, and an order of the corporation court of that city.

This order shows that on August 4, last, Thomas Smith was found guilty of a misdemeanor and sentenced to the State convict road force for a term of twelve months, that being the term of his imprisonment in jail fixed by the court. The order also shows that the costs of prosecution amounted to \$100.60, and that recovery therefor was given to the Commonwealth. The order further shows on its face that Thomas Smith is to be held for the term prescribed by law until the costs assessed shall have been paid. It is to be noted that no fine was imposed. The question, therefore, presented may be stated as follows:

May a misdemeanant upon whom has been imposed a jail sentence, but upon whom no fine has been imposed, and who by order of court has been committed to the State convict road force there to be held for the term of his sentence as well as for non-payment of costs, be held after the sentence is served, and if so, for how long a time?

Such a misdemeanant as this may, by virtue of sections 2094, 2095 and 2096 of the Code, be sentenced to the State convict road force.

Section 2094 provides that he may be so sentenced "to work out such term of imprisonment and the fine and costs under the terms and conditions provided by this section and section two thousand and ninety-five." You will note that the language is "fine and costs."

Section 2095 contemplates a situation in which there is a fine, and provides that "No person shall be held to labor in any chain-gang for the non-payment of any *fine* imposed upon him for a longer period than six months." (*Italics supplied.*)

These statutes, then, setting the limit of six months in which one may be held in the State convict road force for failure to pay fine and costs, or fine alone, do not refer to a situation where there is no fine, but where there are costs alone.

It is my opinion, therefore, that a man against whom there is a term of

imprisonment and an order for the recovery of costs may not be held longer than three months, which would be the limit of the time were he in jail.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Pay of jail physician.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 15, 1932.*

DR. E. PENDLETON TOMPKINS,
Lexington, Virginia.

MY DEAR DR. TOMPKINS:

I am in receipt of your letter of the 13th instant, in which you desire to be advised as to my opinion as to the construction of section 4956 of the Code, appertaining to the allowance for the attendance of physicians upon prisoners in jail, and I note what you have to say of your past custom and of the comptroller's request that you furnish him with an account showing the dates on which you visit patients in the county jail.

I also note that the statute, in your opinion, allows you compensation for every day the patient is under treatment, regardless of whether or not you visit him each day.

The section to which you refer allows a jail physician 75 cents per day for each day he attends a patient and not that per diem for each and every day the patient is sick.

I agree with you that this allowance is very small in comparison with the usual charges for professional visits. The relief, if any, by changing the law is for the Legislature.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Right of convict to dispose of property.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 18, 1931.*

MISS BLANCHE LEE,
*2366 North Van Pelt Street,
Philadelphia, Pennsylvania.*

DEAR MISS LEE:

Major R. M. Youell, superintendent of the State penitentiary of Virginia, has forwarded to me your letter of December 7 to him, together with a letter to you from Mrs. Adaline M. Ward, president and secretary of the United Order of Tents of J. R. G. and J. U., under date of December 5

From this correspondence I note that your brother, Willie Lee, is confined in the Virginia State Penitentiary and that there is going to him from the organization, of which Mrs Ward is president, an amount of money on account of the death of your mother. I also note that Mrs. Ward has construed certain sections of the Code of Virginia to the effect that it is necessary for someone to be appointed as committee for your brother before her organization will pay to him, or to you, the amount going to him.

In my opinion Mrs. Ward's construction of the Virginia statutes is incorrect. It is true that section 4998 of the Code, instead of section 4996

thereof to which she refers, provides for the appointment of a committee of a convict's estate, and that section 5003 provides that, where there is no other person appointed, or the appointee refuses to act, the court may appoint the sheriff of the county or the sergeant of the city as committee of the convict.

Section 4998 of the Code, as construed in *Gilmer v. Redwine*, 131 Va. 55, 108 S. E. 857, in order to give jurisdiction to a court to appoint a committee for a convict, requires that the convict must have his estate, or some portion of it, within the territory of the court making the commitment. I do not understand from your letter that your brother has any estate in Virginia, so no Virginia court would be authorized by statute to appoint a committee for him.

I further call your attention to the case of *Haynes v. Peterson*, 125 Va. 730, 100 S. E. 471, in which the Court of Appeals of Virginia holds that, unless and until a committee is appointed for a convict, he has the same rights to hold and dispose of property, real and personal, as any other person, his right to do so not being affected by his conviction of a felony.

This being true, Mrs. Ward can, under the Virginia law, pay the amount due to your brother directly to you upon his order.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

JAILS AND PRISONERS—Escaped felon subject to second offense penalty.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *December 16, 1931.*

MAJOR R. M. YOEUELL,

Superintendent of Penitentiary,

Richmond, Virginia.

DEAR MAJOR YOEUELL:

In further reference to your letter of the 5th instant, directed to Honorable Julien Gunn, judge of the circuit court of the city of Richmond, which was referred to this office for an opinion, in which you asked the opinion of the judge as to whether or not a person, who, while serving a sentence in the penitentiary as John Smith, escaped and is again convicted for a felony and sentenced to the penitentiary under the name of John Doe, can be proceeded against as a repeater and an additional sentence imposed by the circuit court of the city of Richmond because of his second offense.

I misunderstood the purport of the inquiry you made of Judge Gunn when I wrote you on the 12th instant that I was of the opinion that a conviction under a different name would have no effect upon a sentence for the second conviction, while your inquiry was directed to the question as to whether or not, the first sentence not having fully been served and the prisoner having escaped and been convicted of the second felony, the prisoner could, upon a second sentence to the penitentiary, be proceeded against as a repeater under section 5054 of the Code.

I am of the opinion that, even though the convict has not served his full term, but has escaped, committed a second felony, been tried and again sentenced to the penitentiary, he may be proceeded against as a repeater under section 5054 of the Code.

The language of the Code is to the effect that:

"When a person convicted of an offense, and sentenced to confinement therefor in the penitentiary, is received therein, if it shall come to the knowledge of the superintendent of the penitentiary that he has been sentenced to a like punishment in the United States prior to the sen-

tence he is then serving, the superintendent shall give information thereof without delay to the circuit court of the city of Richmond. * * *

You will notice that there is no provision in the quotation requiring the sentence to have been served; that it is only necessary that the convict shall have been sentenced to a penitentiary term prior to the sentence he is then serving; under the state of facts now being considered the second term of confinement in the penitentiary.

Yours very truly,

JNO. R. SAUNDERS.

Attorney General.

JAILS AND PRISONERS—Jailors—Fees of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., August 13, 1931.

HON. FRANK BANE,

*Commissioner of Public Welfare,
Richmond, Virginia.*

DEAR MR. BANE:

I am in receipt of your letter of the 5th instant, in which you desire to be advised as to the payment of fees to jailors for receiving persons in jail charged with criminal offenses. In this letter you use the following example:

"L. J. Kidd, white, 50, was committed to jail the eleventh of July for a misdemeanor held awaiting trial, a 50c committal fee being charged. On the fourteenth he was taken back to court and the same day recommitted, still held awaiting trial. On the sixteenth he was again taken to court and recommitted to jail, still held awaiting trial, and a third committal fee being charged. He was also taken to court and recommitted to jail on the eighteenth and again on the twenty-fourth, still held awaiting trial, and a committal fee being charged in both cases. This makes five committal fees charged in this man's case for the same offense and the same period of confinement."

You then refer me to the first paragraph of section 3510 of the Code, reading:

"For receiving a person in jail when first committed, 50c."

Following this quotation you ask three questions:

"1. Is it proper to charge a second committal fee when a prisoner is taken from jail to court, remaining in confinement and recommitted to jail?"

In my opinion, the jailor is only entitled to one fee under the facts stated in this question.

"2. Is it proper to charge a second committal fee when a person having been in jail awaiting trial makes bond for his appearance in court and upon being tried is recommitted to jail?"

In my opinion, the jailor is entitled to a second fee upon the facts stated in this question.

"3. Is it proper to charge a second committal fee when a prisoner is recommitted to jail after escaping or after being taken to some other place and remaining there in confinement for a period?"

This question should be divided. I do not think that a jailor is entitled to a second fee in case a prisoner, who has escaped, is recaptured and returned

to jail. If, however, a prisoner, who has been committed to jail, is taken to some other place and remains there in confinement and is returned to the jail of his first commitment, I am of the opinion that the jailor is entitled to a second fee for receiving him into jail.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JAILS AND PRISONERS—Official receipts required for discharge of prisoner.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 3, 1931.*

CAPTAIN R. R. PENN,
*Superintendent of State Farm,
State Farm, Virginia.*

MY DEAR CAPTAIN:

I am in receipt of your letter of the 25th of last month, in which you enclose receipts for fines and costs imposed upon persons sentenced to the State Farm for non-payment thereof, and one receipt for costs, there being no fine imposed.

I notice that two of these receipts are signed by the sheriff of a county, one by a judge of a juvenile court, one by a justice of the peace, and one by some person whose name I cannot decipher and who does not give his official title.

In our conversation and in your letter you ask whether or not these receipts comply with the State law governing receipts for fines and costs or costs alone.

None of the five receipts furnished complies with the law. The whole subject of receipts for fines and costs is covered by chapter 102 of the Code.

(1) Where fines are imposed in courts of record, the collection thereof is made by clerks, who alone are authorized to issue official receipts. When not paid before committal to jail, the penitentiary or the State Farm, and the commitment directs that the accused be held until fine and costs, or costs alone, are paid, it is the duty of the keeper of the jail or other officer to detain the person convicted, according to other provisions of law, until the fine and costs are paid and a receipt of the clerk of the court imposing the fine is furnished.

(2) Where fines are imposed by trial justices or justices of the peace and the fines are paid, the person convicted should then be committed only for the period of his jail sentence, and should show the order of the justice committing the person to jail. In those cases where the fines and costs, or costs alone, are not paid before commitment, it becomes the duty of the trial officer to certify fine and costs, or costs alone, to the clerk of the court. He alone is authorized, except as hereafter mentioned, to receipt for fines and costs, or costs, and it is only upon his official receipt that a prisoner is entitled to discharge from confinement.

(3) A person who was not committed to jail for the non-payment of fine and costs may be subsequently arrested upon a *capias pro* fine issued by a clerk of court. This process is directed to a sheriff or other officer, commanding him to take the body of the accused until the fine and costs are paid. It may, or may not, be necessary under a *capias pro* fine for the prisoner to furnish the receipt of the clerk, but, if he relies upon the receipt of the sheriff, it should be upon an official form and show that the collection was made under a *capias pro* fine, as no sheriff or other officer except the clerk is authorized to collect the fine which is payable to a clerk.

(4) I know of no law which allows a judge of a juvenile court greater authority than that of trial justice or other justice of the peace. In those cases where he has committed a person to jail for non-payment of fine and costs, or

costs, he should certify the fact to the clerk, and the clerk, upon the payment thereof, should issue his official receipt.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

JUDGES—Compensation—Holding courts for others.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 14, 1932.*

HONORABLE CHARLES L. HUTCHINS,
Clerk,
Suffolk, Virginia.

DEAR SIR:

I have your letter of April 9 regarding the compensation to be paid to a judge designated by the Governor to sit for your local judge in cases in which he thinks it improper for him to sit.

If the judge of another court is designated to sit, it seems to me that he is entitled to the compensation referred to in section 5898 of the Code. Should the Governor name a judge *pro tempore*, then section 5901a governs.

I do not understand that there is a conflict between the provisions of either of these sections, providing that mileage and compensation should be paid out of the local treasury, and sections 3467 and 3468, relating to the holding of the courts in a circuit by the judge of that circuit. These last-mentioned sections refer to the usual situation of a judge traveling in his own circuit. The first-mentioned sections relate to the unusual situation of a judge from another circuit being called in, or to the appointment of a judge *pro tempore*.

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

JURY—Persons over sixty exempt from service.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 28, 1931.*

MR. H. G. HICKOK,
534 Wycliffe Avenue, South,
Roanoke, Virginia.

DEAR SIR:

I have for reply your letter of recent date, asking whether a man over sixty years of age is exempt from jury service.

Section 4852 of the Code provides that no male citizen over sixty years of age can be compelled to serve as a grand juror.

Prior to 1930, page 624, a similar provision was contained in section 5984 of the Code as to petit jurors. However, that provision was eliminated by the Act of 1930.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Authority in county with trial justice.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *March 19, 1932.*

MR. P. A. FINNERTY,

Highland Springs, Virginia.

DEAR MR. FINNERTY:

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

"I was elected a justice of the peace from Fairfield district, Henrico county, November election, 1931, for a term of four years beginning January 1, 1932. There is a trial justice in said county. I am informed that the clerk of the court, which is an appointed justice of the peace, is the only justice that has the power to write a civil warrant. I, being a constitutional officer, claim that I have the right to do so.

"Please let me have your opinion on this matter."

Under the provisions of an act passed in 1924 and amended in 1926 (Acts 1924, p. 401; Acts 1926, p. 20), a trial justice is appointed for every county adjoining a city having a population of 170,000 or more. By the further provisions of this act, a trial justice may appoint a clerk who is made a justice of the peace. This section gives the clerk exclusive jurisdiction to issue process under chapters 223 and 250 of the Code, and all warrants for violations of the ordinances or by-laws of a county and all subpoenas for witnesses or other process in connection with the violation of such ordinances or by-laws, and prohibits warrants, subpoenas or other process being issued by any other officers, except where the plaintiff in a civil warrant is a resident of such county, but neither resides nor has an office or regular place of business within ten miles of the county seat. A civil warrant and subpoenas for witnesses may be issued by some other justice of the peace of the county in this latter case.

I note that you claim in your letter to be a constitutional officer and that you have a right as a justice of the peace to issue civil warrants.

In my opinion, you are in error as to a justice of the peace being a constitutional officer. Section 108 of the Constitution provides:

"The General Assembly may provide for the appointment or election of justices of the peace and prescribe their jurisdiction."

You will see from this section that the office of justice of the peace is one created by the General Assembly of Virginia, under authority of section 108 of the Constitution, and you will notice further that that section gives the General Assembly the right to prescribe the jurisdiction of justices.

In my opinion, this has been done by the act of 1926 to which I have referred you.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***JUSTICE OF THE PEACE—Extent of jurisdiction.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *May 26, 1932.*

MR. LESLIE F. FERGUSON,

*Attorney at Law,**Appomattox, Virginia.*

MY DEAR LESLIE:

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

"I shall appreciate it very much if you will be kind enough to write me a short opinion as to whether a justice of the peace, elected by the voters

of one magisterial district of Appomattox county, has jurisdiction to try civil cases in other districts of Appomattox county in which he was not elected by the people. There is some question in my mind as to whether he has jurisdiction outside of his own magisterial district, in which he was elected. Yet, I cannot find any Virginia decisions in which this point of law has been decided."

I am enclosing copy of a letter written by me November 26, 1927, to Professor Julius F. Prufer, Roanoke College, Salem, Virginia. This letter, I think, covers the subject of your inquiry.

As there has been no judicial determination as to the territorial limits of the jurisdiction of a justice of the peace, I cannot express a positive opinion, but, as I wrote Professor Prufer, it has been the general custom for a justice of a district to issue warrants returnable before him or some other justice in that district. I do not think that there is a limitation on the authority of other justices associated with the justice issuing the warrant. See section 6022 of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Payment of fees by city.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 22, 1932.

HON. JOHN P. GOODMAN,
*Attorney for the Commonwealth,
Hopewell, Virginia.*

DEAR MR. GOODMAN:

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

"Mr. H. H. Kamps, issuing justice for the city of Hopewell, has asked that I give him an opinion as to whether he is entitled to be paid for criminal and search warrants that are issued by him.

"If he is entitled to any fees for the writing of these warrants, to whom should he present his bill for such services?"

Mr. Kamps is entitled to pay for his services for issuing criminal warrants and search warrants in all cases in which he acts. In those cases in which his fees cannot be recovered against individual violators of the law, he is entitled to be paid by the Commonwealth of Virginia, where the crime with which he is charged is a violation of a State law.

In those cases where the crime alleged is a violation of the city ordinance, the city should pay his fees unless he is otherwise compensated by the city.

When payable by the Commonwealth, accounts should be made out and approved by the corporation court of Hopewell, just as all other criminal expense accounts are handled.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICE OF THE PEACE—Unlawful to operate collection agency.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 4, 1932.

MR. T. A. REPASS,
Justice of the Peace,
Tazewell, Virginia,

DEAR MR. REPASS:

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

"Will you please advise me if I may run either in my own name, or the name of my son, or wife, a collection agency?

"If so, will you kindly advise me what would be necessary to be done to enable me to run such an agency in connection with my office as justice of the peace?

"If it is unlawful for me to run such an agency, of course, I would not desire to organize it."

In my opinion, it is unlawful for you to operate a collection agency either in your own name or the name of your son or wife. To do so is prohibited by section 6019 of the Code of 1930 and is a misdemeanor.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JUSTICES—Jurisdiction of prohibition cases—Penalties.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 27, 1932.

HON. R. CROCKETT GWYN, JR.,
Attorney for the Commonwealth,
Marion, Virginia.

DEAR MR. GWYN:

I am in receipt of your letter of yesterday, in which you quote from section 4675(33) of the Code, covering pleas of guilty to misdemeanors before justices of the peace.

In my opinion, you correctly construe the section which you quote in your letter to the effect that a justice is not limited as to the extent of jail punishment or the amount of fine upon a plea of guilty to a misdemeanor, with the consent of the attorney for the Commonwealth. He has full authority to fix the punishment within the limit provided for the highest grade of offense carried in the warrant. The justice may give the accused the maximum or minimum punishment or any intermediate punishment.

As to the specific case mentioned in your letter, to-wit, that of possession of ardent spirits, the punishment for a first offense is by a fine of not less than fifty nor more than five hundred dollars and confinement in jail not less than one nor more than six months.

If the charge is for a second offense, then the punishment is by confinement in jail not less than three nor more than twelve months and by a fine not exceeding five hundred dollars. You will see from this that the punishment for the first offense may be as low as one month in jail and the fine as low as fifty dollars, while for the second offense it may be as low as three months in jail with a fine not exceeding five hundred dollars.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LAND GRANTS—Prohibited in navigable streams.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 4, 1932.

HON. PETER SAUNDERS,
*Secretary of the Commonwealth,
Richmond, Virginia.*

DEAR COLONEL SAUNDERS:

I am in receipt of your letter of the 2nd instant, in which you ask my opinion as to your duty to issue land grants for islands created in the James River through dredging operations, together with a copy of chapter 139 of the Acts of 1932, amending section 459 of the Code of Virginia, said act having been approved March 15 and effective from its passage.

This act, in my opinion, absolutely restricts the issue of land grants, or any interest therein, in islands created in the navigable waters of the State by dredging operations conducted by the United States, and renders such grants void. The act recognizes the title to grants issued prior to the passage of the act, but restricts the power to issue grants where they were not actually issued prior to the 15th day of March, 1932.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

LICENSE—Exemption—Distributors of motor fuels.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 15, 1932.

HON. L. B. SMITH, *Mayor,*
South Hill, Virginia.

DEAR MR. SMITH:

I am in receipt of your letter of the 11th instant, which, for purposes of my reply, I quote in full:

"As mayor of South Hill, Virginia, I would be pleased for you to give me an opinion construing chapter 392, page 829, of the 1930 Acts of the Assembly.

"It seems to me that, after giving authority to towns to impose town license tax on all persons with the exception of distributors, etc., of motor fuels, etc., who sell and deliver at the same time merchandise to licensed dealers, etc., other than at definite places of business, the act provides that the existing power of towns to impose license taxes shall not be impaired. If there is any provision in the law prohibiting towns from charging distributors of motor fuels license taxes, I have been unable to find it. Therefore, in this respect, the act seems to be contradictory.

"At the present time we are charging oil companies the same license tax as required of any other merchants; if there is no authority for so doing, we will have to repeal our ordinance as to them.

"Thanking you to let me have your opinion as to just what license towns may require of oil companies operating service station and bulk plant within the corporate limits of said town."

As I construe chapter 392 of the Acts of 1930, amending section 192-a of the Tax Code of Virginia, the exemption from city and town taxes is limited to persons distributing and vending motor fuels and petroleum products and persons engaged in certain other business who have no fixed place of business in the city or town.

You write that you are at present charging oil companies the same license

as is required of other merchants. You have a right to do this only provided these people have a location in your town. I am of the opinion that you have a right to tax distributors and vendors of motor vehicle fuels and petroleum products and service stations where their plant is within the corporate limits of the town, but that you have no right to require a license tax on such persons where their place of business is outside of your town and who sell and deliver their products in your town.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MARRIAGE AND DIVORCE—Orders of publication.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 11, 1932.*

HON. J. W. ADAMS, *Clerk,*
Fredericksburg, Virginia.

DEAR MR. ADAMS:

I am in receipt of your letter of the 8th instant, in which you write:

"In the matter of orders of publication, section 6070 requires appearance within ten days after due publication. Section 5108, referring to orders of publication in divorce proceedings, states that no depositions shall be commenced until at least fifteen days shall have elapsed.

"Should the party in divorce proceedings be summoned to appear ten days after publication or fifteen days thereafter?"

In my opinion, section 5108 of the Code, contained in chapter 205, covering the subject of divorce, applies as to proceedings in divorce cases after the maturity of orders of publication. No proceedings of any character should be held, including the taking of depositions, until at least fifteen days shall have elapsed after an order of publication in a divorce case shall have matured.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MARRIAGE AND DIVORCE—Violations of section 4540 of the Code.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 25, 1932.*

HON. MELVIN FLEGENHEIMER,
Attorney at Law,
Richmond, Virginia.

DEAR MR. FLEGENHEIMER:

I am in receipt of your letter of the 22nd instant, which I quote in full:

"Mr. Benjamin Arenstein, a resident of Richmond, Virginia, and a citizen of the United States, last August visited his native country, Poland, and there for the first time met his niece. Subsequently, they were lawfully married in Poland, having obtained a marriage license from the Polish authorities. I understood it is not a violation of the laws of Poland for a man to marry his niece. When Mr. Arenstein left this country for Poland he had no intention of marrying his niece. As a matter of fact, he had not previously known her.

"Mr. Arenstein has returned to his home in this city. He desires to have his wife come to Richmond and live with him as man and wife.

"Kindly inform me, under the facts set forth above, if Mr. and Mrs. Arenstein can lawfully live together as man and wife in the State of Virginia."

Assuming that your understanding of the law of Poland is correct to the effect that a man may marry his niece in that country, I am of the opinion that he may lawfully bring his wife to Virginia and reside here as man and wife.

While it is true that the marriage of an uncle and niece is prohibited by section 5084 of the Code, there is no provision of law making it an offense for persons to marry within such a prohibited degree of relationship when the marriage took place in a country where it is lawful, it only being unlawful, under the provisions of section 4540, for persons living within the State of Virginia to go out of the State for the purpose of marrying and with the intention of returning, where in fact they do return and live together as man and wife.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MAYORS—Authority to issue civil warrants.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 22, 1931.*

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

DEAR SIR:

I am in receipt of your letter of September 17, asking my opinion upon the question whether the mayor of a town can issue a warrant returnable before the trial justice of a county. I assume that your question relates to the town of Altavista and to the county of Campbell.

There are two statutes under which a trial justice court may have been established in Campbell county. The first of these statutes was adopted in 1912. It was amended on various occasions, and was finally amended and re-enacted in Acts 1930, page 783. For the purposes of this letter, we may say that it refers to a county having six thousand inhabitants or more. The other statute is found in Acts 1922, page 650, as amended by Acts 1924, page 701, and makes mandatory the appointment of a trial justice in every county having a population of thirty thousand or more, and in every county adjoining one or more cities having a population of thirty thousand or more. The trial justice for Campbell county may have been appointed under one or the other of these statutes, which, in some respects, are different.

In the first-mentioned statute there are two provisions that have a bearing upon your question. In section (5), subsection (b), it is provided:

"Nothing herein contained shall be construed to prevent justices of the peace from issuing attachments, and warrants in civil and criminal cases under general law."

This provision was first incorporated in this act in 1928.

The other provision is found in section (5), subsection (d), of the act and is as follows:

"* * * nothing in this section shall be construed to interfere with or abridge the rights of the justices of the peace and mayors to issue warrants and subpoenas in criminal cases," etc.

This provision is first found in Acts 1926, and was retained in Acts 1928 and 1930.

Section 3011 of the Code provides that mayors "shall be clothed with all the powers and authority of a justice in civil and criminal matters within" their towns.

It might be argued that, since the trial justice statute expressly retains the right of a justice of the peace to issue civil and criminal warrants, and expressly retains in another place the right of mayors and justices of the peace to issue civil warrants, the Legislature did not intend to continue the authority of a mayor to issue civil warrants in a county having a trial justice under this act. I am persuaded that is not the intention of the act for the reason that, by virtue of the provisions of section 3011, a mayor in his town has the powers of a justice of the peace, and those powers, having been specifically conferred by that section, are not to be curtailed by inference, but only by express provision. Reading, then, the trial justice statute in the light of section 3011, I am of the opinion that the mayor of a town located in a county which has a trial justice under the provisions of this trial justice statute, may issue civil warrants.

If, on the other hand, your trial justice court was organized under the provisions of the second trial justice statute above referred to, I am equally of the opinion that the mayor of a town located within that county may issue civil warrants. Section 7 of that act provides:

"Nothing in this act shall be construed to interfere with, or abridge the rights of justices of the peace to issue warrants and subpoenas in both civil and criminal cases * * *. The trial justice shall issue no such warrants."

In this act there is no mention of mayors.

For the reasons above stated, I am of the opinion that, when the Legislature preserved to the justices of the peace their authority to issue civil and criminal warrants, the same authority was preserved to mayors.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MEDICINE—School terms necessary to graduate.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 29, 1932.

DR. J. W. PRESTON, *Secretary-Treasurer,*
Virginia State Board of Medical Examiners,
Roanoke, Virginia.

MY DEAR DR. PRESTON:

I am in receipt of your letter of February 22, in which you call my attention to the fact that a number of the leading medical schools are now omitting the usual summer vacations and operating on a plan of four annual semesters rather than three, the same time and the same training being given as heretofore. You ask the question whether the requirements of subsection (d) of section 1615 of the Code are met under such conditions.

I am of the opinion that they are. When the law requires that a candidate shall have studied medicine for at least four years, including four satisfactory courses of at least eight months each in four different calendar years, it is my opinion that this language refers to the usual college course of eight months per year for four years. The mere fact that a long vacation is not given and that a student takes the same course in less time, although actually in four calendar years, would not seem to render him ineligible. The purpose of the law is to require a certain training, and, as I understand your letter, that training is given in those schools that have effected this new arrangement.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILITARY—State employees entitled to pay.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *September 2, 1931.*

DR. J. S. DEJARNETTE, *Superintendent,*
Western State Hospital,
Staunton, Virginia.

DEAR DR. DEJARNETTE:

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

"One of our attendants here is a member of the militia here in Staunton and attended camp from August 2 to August 15, 1931. He wants pay for the two weeks he served in camp and also wants pay for two weeks' furlough which he received before he went to camp. The hospital only allows two weeks' furlough to any employee during the year. Please advise me if we should pay the second claim of the soldier while in camp or would it be better to hold the furlough hereafter until he goes to camp and let his two weeks in camp go as his furlough time."

The inquiry contained in your letter is covered by section 1 of article VIII of the Military Code of Virginia, under the head of Privileges of National Guard and Naval Militia, which section reads as follows:

"All officers and employees of the State who shall be members of the national guard or naval militia shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast defense training, ordered or authorized under the provisions of this act."

You will see from this that the employee of your institution is entitled to pay for his two weeks' furlough and also for the time spent by him in military service.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILLERS—Custom millers required to grind for toll.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *May 26, 1932.*

MR. E. M. SMITH,
Raccoon Ford, Virginia.

DEAR MR. SMITH:

I am in receipt of your letter of the 23rd instant, in which you desire my opinion as to the obligations of millers under the provisions of chapter 421, page 886, of the Acts of 1932, to grind wheat for toll, and I note you say that the millers of your neighborhood have expressed a determination not to grind for toll, but to buy wheat and sell flour.

The act of the General Assembly to which you refer is an amendment to the present law contained in section 3594 of the Code of Virginia. The present act is word for word a re-enactment of the old law down to the last two sentences of the old law. The old law requires every miller grinding grain to grind for toll, and provides that for every violation of the law the proprietor shall forfeit \$10 to the party injured, with the following proviso contained in the last sentence:

"But nothing in this section shall apply to any commercial mill. The words 'commercial mill' shall embrace every mill which buys grain on its own account and makes sales of flour and meal therefrom, but shall not

include any mill that accepts grain to be ground in turn and toll taken from the identical grain ground."

Undoubtedly, the provision which I have quoted authorizes mills grinding grain to refuse to grind for toll and to change to a system embodying the purchase of wheat and the sale of flour.

The law as amended and effective June 21, 1932, omits the provisions of law which I have quoted and undertakes to require millers to grind grain for toll or to exchange flour and meal for grain without allowing millers the option to operate, as they have heretofore done, as commercial mills.

The new law contains four sections. After eliminating the "commercial mill" provision in section 1 of the new law, authority is given in section 2 to the State Corporation Commission, upon complaint of any person or corporation affected by the provisions of the act, or upon information from the Commissioner of Agriculture, to investigate the practices of persons or corporations engaged in the business of grinding grain and "from time to time to promulgate rules and regulations that govern and control such practices, and to fix and establish from time to time such rate or rates of toll as in the judgment of said Commission may be reasonable and proper."

I understand that a number of millers are questioning the validity of the act upon the ground that it interferes with private business and because of its onerous burdens, and the failure to provide adequate compensation for the value of the services performed is confiscatory and, consequently, is unconstitutional.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILLS—Toll and regulation Act.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 13, 1932.

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

DEAR MR. KOINER:

Since writing you on the 7th instant, in reply to your letter of the 3rd, in which you ask my opinion as to the constitutionality of chapter 421, page 886, of the Acts of 1932, amending section 3594 of the Code, I have given careful consideration to the legal principles involved in arriving at a conclusion as to the constitutionality of the act.

Section 3594 of the Code of Virginia, previous to the amendment, required every mill grinding grain, whether or not the same was established under an order of court, to grind all grain carried to the mill in turn, and fixed the toll, and provided under certain circumstances for an exchange of meal or flour for grain or wheat. The last paragraph of the section exempted from its operation commercial mills and defined a commercial mill to be one buying grain and selling meal and flour, and excluded from the exemption mills accepting grain to be ground in turn with toll taken from the identical grain so ground.

Except for the provision as to commercial mills, section 3594 is of very ancient origin.

The amendment to section 3594 omits the provision as to commercial mills and, because of this omission, the terms of the section becoming operative the 21st day of this month require all mills grinding grain to grind for toll in turn or to exchange under the provisions of the section.

There is but one section in the law as it now stands. The amended act adds three sections.

The second authorizes the State Corporation Commission, upon complaint of any person in interest or upon information from the Commissioner of Agriculture,

to investigate the business of grinding grain from time to time, to promulgate rules and regulations to govern the business, and from time to time to establish rates of toll.

The third section provides an appeal from the action of the Commission to the Supreme Court of Appeals of Virginia.

The fourth section provides that, if any part or parts of the act are declared unconstitutional, the remainder of the act shall remain in force.

1. The General Assembly undoubtedly has authority to regulate the business and fix the toll of mills established under orders of court.

2. In my opinion, mills grinding grain, whether established by orders of court or not, making it a practice to grind grain in turn for toll for the general public carrying grain to be ground, may be regulated by law, and the General Assembly has authority to regulate the business of such mills and fix the toll. Such mills are not compellable to continue this public service, but may withdraw from business as a public mill.

3. In my opinion, the General Assembly does not have authority to regulate mills that were not established by orders of court or that do not follow the practice of grinding grain for the public in turn for toll.

4. Under the amended act, any person interested may apply to the State Corporation Commission to investigate the plan under which mills are operated and the reasonableness of tolls charged. Under this provision, which is contained in section 2 of the act, complaint may be made that the rate of toll is too high or mill owners may object to the rate of toll on the ground that it is unreasonably low and violates the constitutional provision against taking private property for public use without just compensation. The Commission may investigate and promulgate rules and regulations and fix tolls. An appeal is provided by section 3 from the orders of the Commission to the Supreme Court of Appeals. The court would have authority not only to pass upon the rules and regulations of the Commission, but its action fixing tolls.

5. In my opinion, while the General Assembly may not regulate the private business of persons or corporations engaged in milling, I am of the opinion that so much of section 3594 as undertakes to regulate such business may be eliminated without impairing the effectiveness of the law, and, if that portion is eliminated, the act is constitutional.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MILLS—Regulating tolls and custom grinding of wheat.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 13, 1932.*

MR. C. C. GIBBS,
Shelby Supply Store,
Shelby, Virginia.

DEAR MR. GIBBS:

Mr. J. H. Meek, Director of the Division of Markets, Department of Agriculture and Immigration, has forwarded your letter of the 12th instant, asking me to reply thereto. I quote from your letter:

"Elkton Milling Company, Elkton, Virginia, refused to sell me for cash or trade flour for good wheat. They did once and said wheat was O. K. Their reason is because a merchant four miles from me objected to me having same flour as he handled, and their only reason they could give was they promised not to sell anyone near him. Is there a law to make a miller trade flour for wheat? I want this information and I will appreciate it.

"Page Milling Company, at Luray, refused to trade us flour for wheat

I bought in store. Only way they would trade is to raise your wheat on your own land."

In reply to the inquiry contained in the first paragraph quoted, I will say that the obligation of mill companies to the public is contained in section 3594 of the Code. So far as grinding wheat is concerned, or trading flour for wheat, you will notice that there is an obligation upon a miller to grind wheat into flour for persons bringing or sending same to the mill for the consumption of such persons or their families. There is no obligation upon a miller to grind flour for a person to go into his stock of goods for sale in his store.

A mill obligated to grind wheat for flour may, under certain circumstances, trade flour for wheat. This exchange provision undoubtedly applies to wheat carried to a mill to be ground for home consumption. The obligation of a mill to grind or to exchange is largely reduced by the last two sentences in paragraph 3594, which provide:

"But nothing in this section shall apply to any commercial mill. The words 'commercial mill' shall embrace every mill which buys grain on its own account and makes sales of flour and meal made therefrom, but shall not include any mill that accepts grain to be ground in turn and toll taken from the identical grain so ground."

The Page Milling Company, who you say refused to trade flour for wheat, was apparently within its rights, and my answer to your question concerning the Elkton Milling Company applies equally to the Page Milling Company.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—Authority to issue civil and criminal warrants.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., November 10, 1931.

MR. A. J. PLASTER,
Justice of the Peace,
Raven, Virginia.

DEAR MR. PLASTER:

I am in receipt of your letter of the 4th instant, in which you ask several questions:

"1. Have notaries public a right to issue criminal warrants returnable before some justice of the peace?

"2. Have they a right to issue civil warrants returnable before some justice of the peace?

"3. Would a notary public have the same right to issue any warrant that a justice of the peace would have?"

In reply, I will say that notaries public are not authorized by law to issue either criminal or civil warrants except under the provisions of chapter 189 of the Code, and their authority in this respect is confined to their duty as conservators of the peace.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—Extent of authority—County and city.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 15, 1932.*

MR. JOHN E. DOAR,
P. O. Box 1108,
Norfolk, Virginia.

DEAR MR. DOAR:

I am in receipt of your letter of yesterday, in which you ask certain questions concerning the appointment of notaries public for cities and counties, and especially as to whether the city of Norfolk is in Norfolk county.

I have always understood that the city of Norfolk is in Norfolk county so far as territory is concerned. However, for administrative purposes, the city of Norfolk and the county of Norfolk are separate and independent, neither having any authority over the other.

As to the appointment of notaries public, section 2850 of the Code gives the Governor authority to appoint these officers for the several counties and cities of the State. Under this section the Governor can appoint notaries public for the city of Norfolk, such as I understand you to be, and also for the city of Portsmouth. In the same section it is provided that "notaries in cities and in counties in which cities or parts thereof are located, shall have authority to act as such in each of said localities." Portsmouth is likewise in Norfolk county. A notary public for either the city of Norfolk or the city of Portsmouth can not only exercise his authority in the city for which he is appointed, but may also do so for the county of Norfolk; a notary public appointed for the county of Norfolk can not only exercise his authority in that county, but may also do so in both of the cities of Norfolk and Portsmouth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

NOTARIES PUBLIC—Local jurisdiction.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 22, 1932.*

MR. WILLIAM L. TYLER,
24 North Eighth Street,
Richmond, Virginia.

DEAR MR. TYLER:

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

"I will appreciate it very much if you will kindly let me know if I, as a notary public for the city of Richmond, have the right to take acknowledgments to deeds, etc., outside of the city limits, in the counties of Henrico and Chesterfield.

"In section 2850, page 4, of 'Laws of Virginia Relating to Notaries Public,' from the reading it appears that I have, but I want to be sure about it."

In my opinion, that part of section 2850 providing,

"Notaries in cities and in counties in which cities or parts thereof are located, shall have authority to act as such in each of said localities,"

confers authority upon notaries public commissioned for the city of Richmond to take acknowledgments outside of the city limits within the counties of Henrico

and Chesterfield and authorizes notaries in each of those counties to take acknowledgments in the city of Richmond.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Postmaster and deputy ineligible as registrar and judge of election.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 21, 1932.

MR. T. WOODS JARMAN,
*Registrar, Hillsboro Precinct,
Yancey Mills, Virginia.*

DEAR MR. JARMAN:

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

"Will you kindly answer the following questions:

"Can a postmaster or his deputy serve as registrar or judge of election?

"Can a notary public serve as judge of election or clerk?"

Both a postmaster and his deputy are, in my opinion, ineligible to act as a registrar or judge of election. Postmasters and deputies are Federal officials and, as such, are ineligible under the provisions of section 290 of the Code of Virginia.

There is no law prohibiting a notary public from serving as a judge or clerk of election.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Justice of the peace and member of school board incompatible.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., April 26, 1932.

HONORABLE JAS. M. LEWIS,
*Attorney for the Commonwealth,
Tappahannock, Virginia.*

MY DEAR MR. LEWIS:

I beg leave to acknowledge receipt of your letter of April 26, in which you ask whether or not a justice of the peace can serve as a member of the county school board.

In this connection you call my attention to section 644(1) of the Code, which provides as follows:

"No Federal, State or County officer, or any deputy of such officer, and no supervisor shall be chosen or allowed to act as member of the county school board, * * * ."

The Supreme Court of Appeals of Virginia, in the case of *Burch v. Hardwicke*, 30 Gratt. (71 Va.) 24, 34 (1878), decided that a justice of the peace is a State officer. It, therefore, follows that, inasmuch as the section above quoted prohibits a State officer from acting as a member of the county school board, a justice of the peace cannot serve in this capacity.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Compatibility of—Councilman of town may serve as justice of the peace.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 20, 1932.*

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

DEAR MR. DIZE:

I am in receipt of your letter of yesterday, from which I quote:

"A justice of the peace living in the town of Cape Charles has filed notice of his candidacy for the town council of Cape Charles.

"It occurs to us that he has not the right to hold two elective offices at one and the same time. He was duly elected in November to the office of justice of the peace for Capeville district, Northampton county. He now asks the citizens of Cape Charles to elect him to the council."

In my opinion, a justice of the peace living in Cape Charles may at the same time serve as councilman of the town.

Section 2702 of the Code, providing what officers are ineligible to election or appointment to other offices, does not include justices of the peace or councilmen of cities or towns.

Therefore, unless the two positions are incompatible, the same person may hold the office of justice of the peace of a district in which a town is situated and that of councilman of the town.

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

OFFICES—Eligibility of councilman to be elected to office of treasurer.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *June 7, 1932.*

DR. E. A. HOGUE,
Gate City, Virginia.

MY DEAR DOCTOR:

I am in receipt of a letter signed by you and Mr. G. C. Snodgrass, which I quote:

"It has been stated by certain citizens of our town that a member of the town council cannot legally serve as treasurer of the town. We will appreciate your opinion on this, as we as members of our town council do not want to continue a condition that is contrary to law."

Section 2982 of the Code provides:

"No member of any council shall be eligible, during his tenure of office as such member, or for one year thereafter, to any office to be filled by the council—by election or by appointment."

I understand that the treasurer of the town of Gate City is elected by the town council. If this is true, no member of the council can at the same time serve as town treasurer, and he cannot, by resigning from the council, be appointed until he has been out of office for at least one year.

If I am in error as to the manner of election of the treasurer of your town and you will set me straight, I will advise you further.

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

OFFICES—Office of registrar and notary public incompatible.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., October 28, 1931.

MR. T. S. JOHNSON, *Assistant Cashier,*
First National Bank of Narrows,
Narrows, Virginia.

DEAR MR. JOHNSON:

I am in receipt of yours of October 24, in which you submit the following:

"Being registrar and notary public for Giles county, will you kindly advise me if I can legally act in the capacity as a notary for any person voting by the mail ballot?

"What is the last day that you are supposed to receive application for ballots?"

Under the provisions of section 86 of the Code, no registrar during his term of office is eligible to election or appointment to any office, whereas, should a person hold an office at the time of his appointment as registrar, under the same section, he vacates his other office. A notary public is an officer.

Section 203 of the Code requires that application for an absent voter's ballot should be made not less than five nor more than sixty days prior to a general election. In my opinion, Thursday, October 29, is the last day upon which application for a ballot must reach you.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Incompatibility of coroner and supervisor.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., August 25, 1931.

MR. R. P. WILLIAMS,
Prince George, Virginia.

DEAR SIR:

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

"Can a man be coroner of a county and county district supervisor at the same time? I was defeated on August 4 by a man who is coroner and supervisor of my county. It seems to me that he can't hold both jobs at the same time. If not, am I entitled to the nomination of supervisor, as we were the only ones running for that office?"

Section 2702 expressly prohibits supervisors from holding any other office. Under the provisions of this section, a supervisor may not at the same time act as coroner.

However, your question has to do not with his serving in two offices at the same time, but whether or not a person who holds one office may be nominated and afterwards elected to some other office.

In reply to that inquiry, I will say that he can be either nominated or elected, and can, after his election, determine which office he will hold. If he is coroner and qualifies as supervisor, he thereby vacates the office of coroner, and a coroner should then be appointed.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Registrar cannot accept appointive office.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 23, 1931.*

MR. C. FRANK PLAUGER,
Seven Fountains, Virginia.

DEAR SIR:

I am in receipt of your letter of the 18th instant, in which you state that you are registrar of your precinct and ask whether you can accept an appointive office.

You cannot. Section 86 of the Code provides in part:

" * * * The acceptance of any office, either elective or appointive, by such registrar during his term of office shall, *ipso facto*, vacate the office of registrar. The electoral board shall fill any vacancies that may occur in the office of registrar."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—Holding over after expiration of term.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 27, 1932.*

HON. WALKER C. COTTRELL,
State Prison Board,
State Penitentiary,
Richmond, Virginia.

DEAR MR. COTTRELL:

You asked me yesterday to advise you as to your official status as Director of the Prison Board of the State of Virginia on and after the first day of March, 1932, provided that no appointment is made by the Governor and affirmed by the Senate during this month.

I am of the opinion that, under the provisions of section 33 of the Constitution, you hold over until your successor is appointed and qualifies, it being provided in that section:

" * * * All officers, elective or appointive, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified."

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

OFFICES—Compatibility of reserve corps and clerk of court.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 6, 1932.*

HONORABLE E. F. HARGIS, *Clerk,*
Lebanon, Virginia.

MY DEAR MR. HARGIS:

I am just in receipt of yours of February 4, to which I will reply at once. In this you state that you hold a commission in the Reserve Corps of the

United States Army, and you would like to know whether or not you would forfeit your office as clerk of the circuit court of Russell county should you be called into active military service.

In reply to your question, I beg leave to call your attention to sections 290 and 291 of the Code of Virginia. Section 290 deals with the disability of certain persons holding office under United States. Section 291 contains the qualifications of section 290. In this section you will find the following qualification:

"The preceding section shall not be construed * * * to exclude from offices under the State on account of any pension from the United States, a person to whom such pension has been granted in consequence of an injury or disability received in war, or to exclude from such office or post officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty; * * *."

This provision contained in the statute, in my judgment, would prevent a forfeiture of your office, provided you should be called into actual military service. I do not think there can be any doubt about this.

Very sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

OFFICES—County treasurer not to hold other office.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *February 5, 1932.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

MY DEAR MR. ANDREWS:

I have before me your request for my opinion upon the question whether a county treasurer may be appointed as a delinquent tax collector.

Section 2702 of the Code provides:

"No person holding the office of county treasurer * * * shall hold any other office, elective or appointive, at the same time * * *."

To this prohibition there are certain exceptions, but the office of delinquent tax collector is not one of those exceptions. The section mentioned provides further that, if a person while holding any of the offices enumerated, among which is that of county treasurer, shall be appointed or elected to any other office, his qualification in such office shall thereby vacate the office which he then holds.

Section 396 of the Tax Code provides for the appointment of a delinquent tax collector by the State Tax Commissioner.

In view of these statutes, I am of the opinion that a county treasurer may not, at the same time, accept appointment as a delinquent tax collector.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS—Qualification for appointment.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *February 13, 1932.*

HON. J. E. ROWE, *Mayor,*
Mineral, Virginia.

DEAR MR. ROWE:

I am in receipt of your letter of yesterday, in which you relate the circumstances under which your town is left without a town treasurer, and I note that you ask my opinion as to the method by which this office may now be filled.

I do not understand upon what basis it is contended that there is no qualified voter in the town of Mineral. Every person who paid his capitation tax on or before the 14th day of December, 1931, would be a qualified voter in a town election held on the second Tuesday in June. Any person paying a capitation tax at any time is a qualified voter and if no person in the town of Mineral has paid his or her capitation tax, which seems inconceivable, he or she can do so and will then be a qualified voter beyond question.

There is absolutely no necessity for waiting six months or until a special provision can be made to fill the office of treasurer.

In my opinion, your town council can fill the office according to the provisions of your town charter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General,

OFFICERS—Residence of constables.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *August 3, 1931.*

MR. Z. C. RAMSEY,
Martinsville, Virginia.

DEAR MR. RAMSEY:

I am in receipt of your letter of the 31st ultimo, in which you ask to be advised as to whether or not you, who live in Martinsville, can hold the position of constable in Martinsville district, and I note you say that the sheriff, county treasurer and commissioner of the revenue for the county live in the city of Martinsville.

Your inquiry is covered by section 2703 of the Code, which provides:

"Every district officer shall, at the time of his election or appointment, have resided in the district for which he is elected or appointed thirty days next preceding his election or appointment, and residence in any incorporated town within the district shall be regarded as residence in said district. * * *."

Under the provisions of this law, you cannot serve as constable of Martinsville district by living in the city of Martinsville.

The same section of the Code allows county officers to live in a city where the county court house is located. The section thus makes a distinction between district officers and county officers.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS—Salary of—May not be increased without consent of governor.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *November 30, 1931.*HON. ALLAN EPES,
Blackstone, Virginia.

DEAR MR. EPES:

Pardon my not having sooner answered your letter of the 20th instant; there have been unavoidable delays.

According to your statement, the Commission of Game and Inland Fisheries at its meeting of May 31, 1930, redistricted the State into six supervisory districts, instead of ten as heretofore, and appointed a supervising warden for each district. At the same meeting the salaries of three of the wardens were fixed at \$200 per month and three at \$175 per month, the salaries of the last three having been fixed with an understanding that the Commission, should the last three wardens prove efficient, would increase their salaries to \$200 each per month.

According to your statement, there was appropriated for salaries of wardens for each of the years covered by the budget 1930-32 the sum of \$15,000. This sum so appropriated is ample to take care of the salaries of all the wardens at \$200 per month per man.

You ask whether or not the Commission is authorized to increase the salaries of the three wardens whose salaries have been fixed at \$175 to the sum of \$200 per month.

I do not think that this can be done without the consent of the Governor. Chapter 88, page 86, of the Acts of 1926 provides that the salary of no State officer or employee payable by the State which is not specifically fixed by law and the salary of no officer or employee of any State institution, board, *commission* or agency which is not specifically fixed by law shall be increased or authorized to be increased without prior authorization of said board or commission and the consent of the Governor first obtained in writing in each case. The statute provides that a violation of the Act constitutes misfeasance in office.

While the statute had in contemplation the salaries of persons employed on the day it took effect, I am of the opinion that it covers the salaries of employees of institutions and commissions which are once fixed, and that your commission, having once fixed the salaries of your warden, cannot increase such salaries without the written consent of the Governor.

Yours very truly,

JNO. R. SAUNDERS,
*Attorney General.***OFFICERS—Salaries of commissioners of revenue and treasurers.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *May 24, 1932.*HON. JOSEPH D. PARKER,
*Attorney for the Commonwealth,
Newport News, Virginia.*

DEAR MR. PARKER:

I agree with you in your construction of that part of chapter 426 of the Acts of 1932, page 892, abolishing fees of certain officers and providing salaries and cash expense accounts in lieu thereof.

The board of supervisors are required to pay two-thirds of the salaries

and the office expenses and the State one-third. The monthly payments for the year 1932 cover the entire year so far as salaries are concerned and are, consequently, payable in six monthly instalments.

So far as expense accounts are concerned, the full amount for the first six months of the year is payable on or before August 1, 1932, and for the last six months is payable monthly, just as salary compensation is paid.

I am enclosing copy of three Acts passed at the last session of the Legislature concerning fees and salaries of officers. You may be able to use this advantageously in pamphlet form.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

OFFICERS—Supervisors—Not eligible to office of coroner.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., August 8, 1931.

HON. J. J. TEMPLE,
*Attorney for the Commonwealth,
Union Trust Building,
Petersburg, Virginia.*

DEAR MR. TEMPLE:

I am in receipt of your letter of yesterday, from which I quote:

"Section 2815 of the Code provides that the judge shall appoint a physician, who shall be the coroner of the county. Section 2702 provides that certain officers therein named shall not hold any other office, elective or appointive, at the same time, with certain exceptions therein enumerated. Please advise me whether or not, in your opinion, a supervisor is eligible to the office of coroner. In other words, can one person hold the two offices at the same time?"

Under the provisions of section 2702 of the Code, supervisors are expressly prohibited from holding any other office. Therefore, a supervisor may not be appointed coroner of a county.

Section 644-a of the Virginia school laws of 1930 provides:

" * * * No supervisor shall be chosen or allowed to act as member of the county school board * * * ."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ORPHANS—War veterans—Right to federal compensation.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 29, 1931.

MR. W. GLENN ELLIOTT, *Adjutant,
The American Legion,
State Capitol Building,
Richmond, Virginia.*

MY DEAR MR. ELLIOTT:

I am in receipt of your letter of the 28th, which I quote:

"Reference is made to education of war orphans' law which was House Bill No. 331. Please give me your decision regarding paragraph

1, 'killed in action, etc.' to end of paragraph. Does this mean war orphans limited to children of parent who was killed or died between April 6, 1917, and July 2, 1921, from causes originating in the World War, etc., be eligible? In other words, a World War veteran who eventually died from a service connected disability, although his death took place since July 2, 1921, which was the official termination of the World War?"

In my opinion, the Act referred to is limited to children of veterans killed in action and does not apply to children of veterans who died from causes originating in the war, subsequent to July 2, 1921.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ORPHANS—War veterans—Right to federal compensation.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 29, 1931.

MR. W. GLENN ELLIOTT, *Adjutant,*
The American Legion,
State Capitol Building,
Richmond, Virginia.

MY DEAR MR. ELLIOTT:

I am in receipt of your letter of the 28th instant, which I quote:

"Is it possible for a child wishing to benefit from the education of war orphans' law, who is eligible to participate in this, to attend a public school, which, in my opinion, is a public supported institution, and draw the \$150 provided for in the education of war orphans' law? I will appreciate it very much if you will let me have your decision in this connection as soon as possible."

I do not think that a war veteran's orphan who attends a public school is entitled to \$150 per year compensation under the provisions of chapter 375, page 810, of the Acts of 1930.

Such a construction would amount to a pension to the child, whereas, in my opinion, the law undertakes to make provision in a very limited and inadequate way for tuition, board and incidental expenses of an orphan who attends an educational institution, and then only is the amount payable by vouchers approved by the State Board of Education.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PENSIONS—School teachers—Not payable out of Literary Fund.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., October 12, 1931.

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

DEAR MR. BRADFORD:

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

"Senator James S. Barron, chairman of the committee to study the question of a pension retirement system for judges, State employees and public school teachers, has asked me to obtain an opinion from you as to whether or not the General Assembly can authorize either the principal of the Literary Fund or the income from this fund to be used for the payment of pensions allowed public school teachers.

"If you can let me have your opinion on this matter by noon tomorrow, it will be greatly appreciated."

In my opinion, the General Assembly cannot authorize the use of either the principal or income from the Literary Fund for the payment of pensions provided for public school teachers.

Section 134 of the Constitution provides that the Legislature shall set apart as a permanent and perpetual Literary Fund the Literary Fund then in existence and certain other specified funds.

Section 135 provides:

"The General Assembly shall apply the annual interest on the Literary Fund; * * * to the schools of the primary and grammar grades, for the equal benefit of all the people of the State, to be apportioned on a basis of school population; * * *."

Section 134 preserves the principal of the Literary Fund intact and the Legislature cannot, in my opinion, appropriate any part of the principal for any expendable purpose whatsoever and can only provide for its custody and the manner in which it may be invested for income producing purposes.

The General Assembly is limited and restricted as to the application of the income by the provisions of section 135 of the Constitution, and I do not think that the provision of that section providing for the allotment of the income to schools of the primary and grammar grades includes the power to set apart any of the income for pension purposes.

Yours very truly.

JNO. R. SAUNDERS,
Attorney General.

PENSIONS—Widows of Confederate soldiers.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 18, 1932.

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

DEAR MR. COMBS:

I am in receipt of your letter of even date, in which you enclose letters from Honorable John Garland Pollard, Governor of Virginia, and Mr. John H. Johnson, pension clerk, of your office, both of these last mentioned letters having reference to a construction of Senate Bill 146, amending section 7 of chapter 85 of the Acts of 1918, as amended. I note that the Governor requests my opinion as to the effect of the Senate bill with reference to widows of Confederate soldiers who were married between the years 1890 and 1900.

The evident purpose of the bill was to afford pension relief to widows who married Confederate soldiers on or before the 31st day of December, 1899, the law now in existence only allowing pensions to widows of Confederate soldiers who were married on or before the 31st day of December, 1889.

This amendment must be construed in connection with Class C of section 1 of the Confederate pension law aforesaid and at present in effect. This section allows a pension to all widows of Confederate soldiers, with the unnecessary proviso in Class C allowing a pension to widows of Confederate

soldiers married on or after January 1, 1890, who are over seventy-five years of age.

The all-inclusive provision of Class C of section 1 is restricted by the provisions of section 7. Under the old law, there are quite a number of exceptions to the general provision of Class C allowing pensions to all widows of Confederate soldiers, including a provision that no widow who married after the 31st day of December, 1889, with the exception of widows who are over seventy-five years of age, is entitled to receive a pension.

The only effect of section 7, as amended by Senate Bill 146, is to allow widows who married on or before the 31st day of December, 1899, irrespective of age, to receive a pension.

The bill is a relief measure intended to take care of all widows who married before the 1st day of January, 1900, irrespective of age, and does not in any way interfere with the rights of widows already receiving Confederate pensions.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

PUBLIC WELFARE—Authority of commissioner.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 8, 1932.

HON. ARTHUR W. JAMES,
Commissioner of Public Welfare,
Richmond, Virginia.

DEAR MR. JAMES:

I am in receipt of your letters in which you refer to the fact that, while article 152 of the Constitution of Virginia abolishes the office of Commissioner of State Hospitals, Michie's Unofficial Code of Virginia, 1930, carries as unrepealed a number of sections having to do with the duties and authority of that Commissioner.

I also notice from your letters that, under the provisions of section 585(76), the Commissioner of Public Welfare is made an ex-officio member of numerous boards of directors of institutions and agencies connected with the administration of the Department of Public Welfare.

I agree with you that the General Assembly has passed no statute conferring upon the Commissioner of Public Welfare the authority and duties formerly appertaining to the Commissioner of Hospitals. In the absence of such legislation, I do not think that the Commissioner of Public Welfare is vested with any authority or duty heretofore conferred on the Commissioner of Hospitals.

In most of the sections which I have examined, the Commissioner of Hospitals was associated with other persons in the administration of statutes, and in all except a few instances, and these are not in my opinion of very great importance, the law can be carried out by the agencies heretofore associated with the Commissioner of State Hospitals.

I agree with you that, irrespective of the dignity of the position of the Commissioner of Public Welfare, he has no greater authority than any other member of the boards with which he is associated, enumerated in section 585 (89) of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

REAL ESTATE COMMISSION—Per diem subject to ten per cent cut.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 24, 1932.

MR. W. B. RUDD, *Executive Secretary,*
Virginia Real Estate Commission,
Richmond, Virginia.

DEAR MR. RUDD:

I am in receipt of your letter of the 18th instant, which I quote in full:

"I would like to have your opinion on the following matter, which is covered by a bill passed by the General Assembly of 1932, which authorizes a ten per cent reduction in State employees' salaries. In connection with same I would like to refer you to chapter 489, Acts of Assembly, 1926, as amended, section 3, 'Creation of Commission—Details of Same,' second paragraph, this section, reading as follows:

"'Each member of the commission shall receive as full compensation for each day actually spent on the work of said commission the sum of ten dollars (\$10.00) per day and his actual and necessary expenses incurred in the performance of duties pertaining to this office.'

"It is my interpretation that the bill as passed by the Assembly of 1932 does not correct a per diem as set forth in this section."

On page 145 of the Appropriation Bill, paragraph 2, you will see that it is provided that the compensation of each official and employee of the State government, whether paid or received in the form of salary, wages or special payments, is subject to a deduction of ten per cent of the amount of compensation payable to such persons January 1, 1932.

In my opinion, therefore, and in the opinion of the Director of the Budget, the compensation of members of the Real Estate Commission is affected by the ten per cent cut and that each should receive after July 1, 1932, a per diem of \$9.00, together with his actual and necessary expenses incurred in the line of duty.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

REAL ESTATE COMMISSION—Ten per cent reduction on per diem of commissioners.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 29, 1932.

HON. W. B. RUDD, *Executive Secretary,*
Virginia Real Estate Commission,
Richmond, Virginia.

DEAR MR. RUDD: *In re: Ten per cent cut on per diem of commissioners.*

The Attorney General has handed me your letter of the 25th instant, in which you suggest that the office re-examine that part of the provisions of the appropriation bill quoted by you in your letter and found in paragraph 2, page 145, of the bill; and I further notice your references to the fact that the amount appropriated for the Commission for the salaries of the secretary, field investigator, stenographer and for extra help amounts to \$7,170 and that ten per cent of that is \$717, the amount which the Comptroller is required to deduct from your appropriation under the provisions of section 2, above quoted. You also call attention to the fact that in the appropriation bill, in

addition to the appropriation of \$7,170 for certain officials, there is also appropriated the sum of \$825 as per diem allowances, and your argument is that, as a ten per cent deduction from the total appropriation would exceed the amount which the Comptroller is required to deduct, it was not the intention of the Legislature to apply the ten per cent deduction to the \$10 per diem allowance to members of the Commission.

In this I think you are mistaken. You will notice in section 2 the amount which the Comptroller is required to deduct from appropriations is said to be "the minimum amount which the Comptroller is hereby required to deduct from the appropriations made by this Act for the respective departments, divisions and standing agencies which shall revert to the general fund of the treasury on account of the deductions herein required from the compensation of State officials and employees for the fiscal year which ends June 30, 1933."

I asked Honorable J. H. Bradford as to the intention of the Budget Commission to apply the ten per cent cut to per diem allowances to members of commissions. Under date of June 27, Mr. Bradford wrote the Attorney General that the Governor had been requested by the Comptroller to rule on this question and that the Governor had informed the Comptroller that special payments are subject to the ten per cent reduction. Mr. Bradford was also of the opinion that the per diem allowance to members of commissions was subject to the deductions.

I adhere to the opinion heretofore given your Commission that the per diem allowance to members is subject to a ten per cent cut.

Yours, very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

REWARD—Limit on board of supervisors.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 13, 1931.

HON. H. F. HUTCHESON, *Clerk,*
Boydton, Virginia.

MY DEAR MR. HUTCHESON:

I beg leave to acknowledge receipt of your letter of July 11, and I have carefully considered the question submitted therein for an opinion.

Section 2733 of the Code, which is referred to in your letter, provides:

"The board of supervisors of any county, in its discretion, when any felony has been committed or attempted to be committed therein, may offer a reward, not to exceed one hundred dollars, for the arrest and conviction of said criminal, to be paid out of the county levy."

Section 4675(117) of the Code, which is also referred to in your letter, in my judgment, has no reference whatever to rewards offered by boards of supervisors for the arrest of persons who commit felonies.

After a careful consideration of section 2733, I am convinced that the limit of the amount of any reward, which the board of supervisors are authorized to offer for the arrest and conviction of a person who has committed a felony, is \$100, which amount, of course, is to be paid out of the county levy.

It would, therefore, seem that the board of supervisors of your county, in offering a reward of \$1,000 for the arrest of the two criminals referred to in your letter, exceeded their authority in so doing.

In reply to the question contained in the footnote of your letter as to whether, if only a conviction is had in one case, the board would have to pay

the whole amount, or half of it, I will state that, in my opinion, the board would have to pay the whole amount of the reward, namely, \$100, which they had a right to offer.

I note what you say about the indisposition of your Commonwealth's attorney. I am sorry to hear this and trust he may soon be well.

I assure you it is no imposition whatever to answer your question, and I am not only glad to give you my views in this connection, but in any other matter in which you are interested.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SALARIES—Promotion—Increase of.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *January 12, 1932.*

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

MY DEAR GOVERNOR:

Honorable M. E. Bristow, Commissioner of Insurance and Banking, is in the office with your request that I express an opinion as to the authority of the State Corporation Commission to promote Mr. W. R. Gardner from the position of assistant examiner of banks to that of examiner of banks, thereby increasing his salary from \$1,800 per annum to \$2,400 per annum, without first obtaining your consent in writing in accordance with the provisions of law requiring such consent where the salary of a person in State employment is increased.

Under the provisions of section 55 of the Virginia Banking Act, as amended by chapter 503 of the Acts of 1928, found on page 1330 of the Acts of 1928, the Corporation Commission is authorized to appoint examiners and assistant examiners, clerks and stenographers for the purpose of carrying into effect the provisions of the chapter.

Mr. Gardner is at present an assistant examiner. It is the purpose of the Corporation Commission to promote him to the position of examiner. Assistant examiners are paid \$1,800 and \$2,100 per annum, while examiners are paid \$2,400 and up per annum.

In my opinion, the promotion of Mr. Gardner does not come within the provisions of law requiring your assent in writing covering the increase of his salary as examiner over his salary as assistant examiner, as the new position to which it is intended to promote him is one whose salary is already fixed by the Corporation Commission and does not come within that class where the salary of a person who retains the same position is increased, but is of that class where, upon a promotion of a person who is already in the service of the State, the salary of the officer is already fixed and automatically attaches to his new position.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Authority of board of supervisors to make loan to county school board.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., May 17, 1932.

HON. BRYAN CARVER,

*Attorney for the Commonwealth,**Warm Springs, Virginia.*

DEAR MR. CARVER:

I am in receipt of your letter of the 13th instant, in which you state the exceedingly unfortunate predicament in which Bath county has been placed by the defalcation of the county treasurer and the failure of the bank of Warm Springs, and I note several suggestions you make for the purpose of taking care of the school expenses of your county for the balance of the current session.

I do not think that a board of supervisors is authorized to lend money to a county school board. The board may, under the provisions of section 698 of the school code, not only lay a school levy, but may in addition thereto make an appropriation from any funds available. There is considerable doubt as to the authority of a board of supervisors to borrow money for the purpose of making the appropriation. The law evidently intended to allow this provision to be made by the board out of the funds already on hand, but this construction is open to question and, if there is any discretion vested in a board of supervisors, the present situation of your county undoubtedly justifies a resort by the board of supervisors to the expedient of borrowing to take care of future operations of your schools.

There is no question of the right of the board of supervisors to effect a temporary loan to provide for the operation of the schools. While I do not think the board of supervisors can loan to the school board, the same purpose can be accomplished by appropriating a sum for school purposes under the provisions of section 698 and by subsequently reducing the levy thereafter to be laid by a percentage sufficient to cover the amount appropriated for schools by the board of supervisors.

Of course, if a temporary loan is made by the school board, with the sanction of the board of supervisors, and the board afterwards appropriates to the school for school purposes a sum sufficient to pay off its temporary loan, the school board can then make a new temporary loan under the provisions of section 675 of the school code.

Yours very truly,

JNO. R. SAUNDERS,

*Attorney General.***SCHOOLS—Authority of board to allow religious teaching.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., January 4, 1932.

HON. SIDNEY B. HALL,

*Superintendent of Public Instruction,**Richmond, Virginia.*

DEAR MR. HALL:

I am in receipt of your letter of recent date, with a letter of December 4 from Mr. James G. Johnson, superintendent of schools, Charlottesville, Virginia, enclosed together with certain resolutions from the Charlottesville District Council of Religious Education, Charlottesville White Ministers'

Association, and Charlottesville Colored Ministers' Association. There is also enclosed with your letter a typewritten memoranda prepared by Miss Florence M. Hostetter, director of religious education, entitled "Week Day Schools of Religion—Description of Courses of Study."

I note that you desire my opinion as to whether or not the school board of Charlottesville can comply with the request contained in the resolutions of the religious bodies I have named, in which they ask for a period of not more than forty-five minutes per week for the instruction of children of the fourth, fifth and sixth grades in the public schools of Charlottesville upon the subjects contained in the typewritten memoranda to which I have referred. The request is for the instruction of school children in the Charlottesville public schools upon religious subjects during school hours.

While the subject of the course or courses is of very great importance, and the purpose of the religious bodies extremely meritorious, I very greatly doubt the authority of the school board of the city of Charlottesville to allow the use of the school houses of that city for purposes of religious education. There is no express statute in Virginia covering the teaching of religious subjects in public schools.

In 24 R. C. L., page 663, it is said:

"There is some conflict of authority as to whether school directors may permit a schoolhouse to be used for religious purposes outside of school hours. The better doctrine is that they have no such authority, and if they attempt to do so, an objecting taxpayer may have such use enjoined; but some authorities have held otherwise where the religious services have not been such as to interfere with the use of the building as a school, and have been so infrequent as not to turn the building into a place of worship, and have imposed no burden of expense on the taxpayers. Statutes authorizing school directors to grant such use have been held constitutional. If a school district is in need of a place to hold school sessions, part of a church may be properly leased for such purpose, or even part of a building in which a sectarian school is conducted, provided there is no intermingling of the two. * * *."

With the uncertainty as to the right of the school board to allow the use of school buildings for religious purposes, and the provision of section 58 of the Constitution of Virginia, prohibiting the General Assembly from prescribing any religious tests whatever or conferring any peculiar privileges or advantages on any sect or denomination, and without expressing an opinion as to the wisdom of allowing the use of school buildings for religious purposes, I call your attention to the fact that the practice, if encouraged, might lead to serious questions in other jurisdictions, although, as appears from your file in the present case, the religious associations of Charlottesville are unanimous in making the request of the school board of that city.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Authority of board of supervisors to levy different district taxes.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *February 10, 1932.*

MR. L. FLOYD NOCK, JR.,
Accomac, Virginia.

MY DEAR SIR:

I beg to acknowledge receipt of your letter of February 6, in which you call my attention to chapter 103 of the Acts of 1930, which is an Act empower-

ing the board of supervisors of Accomac county to increase the district school levies in said county. You wish to know whether the terms of that Act may be confined to two specific districts in that county.

You will note that the Act in question confers upon the board of supervisors the right to levy a tax not exceeding \$1.50 in order "to pay existing indebtedness, and to provide for future growth and expansion, of the public free schools, in said county."

If you will refer to section 698 of the Code, you will find that the local authorities are authorized to levy a tax of not less than 50c nor more than \$1.00 for the purpose of establishing, maintaining and operating schools. In addition thereto, you will find in the middle part of that section a provision that "For capital expenditures and for the payment of existing district indebtedness" there may be levied a district tax in the magisterial district in which the money is to be spent, an amount not exceeding 25c, and there then follows certain larger amounts for certain specific counties. I take it that this special Act, referring to Accomac county, applies solely to the latter tax, for the language of the special Act seems to me to refer only to existing indebtedness and to capital expenditures.

If the Legislature is authorized to provide for the several counties different rates of taxation for the purpose of meeting capital expenditures and for the payment of existing district indebtedness, which taxes may or may not be levied in a particular district, I would think that it could provide for a larger maximum in certain districts than in others.

On the other hand, it does not seem to me that you need an amendment to your existing law. By virtue of an opinion handed down by the Court of Appeals in the case of *Watkins v. Barrow*, 121 Va. 236, your board of supervisors, under its present powers, may impose different levies in each district, so long as the levy in each district is uniform and the taxes imposed are confined to the limits of the particular district for the benefit of which these taxes are imposed.

If it is necessary that the rate in the two districts be higher than in the other districts of your county, then, for the benefit of each of these districts, your board could, under the existing law, impose a heavier tax in these districts than in the others.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Appropriation—Payments limited to budget.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., April 15, 1932.

HONORABLE J. WALTER KENNEY,
Superintendent of Schools,
Gloucester, Virginia.

MY DEAR SIR:

I am in receipt of your letters of April 4 and 11. Inquiries such as you have submitted cannot be answered offhand, nor can such a letter as this be attended to as though it were routine correspondence. You have submitted a great many difficult questions and, in order to answer them, it has been necessary for me to give considerable time to the investigation of them. That is the reason you have not received an earlier reply to your first letter.

Pursuant to section 657 of the Code, the division superintendent, with the advice of the school board, makes up the school budget setting forth the amount of money which is necessary to be expended on the various items in connection with the operation and maintenance of the schools. This budget is then submitted to the board of supervisors. That board may either lay a

school levy, or make a cash appropriation. The funds available either from the cash appropriation or from a levy are applicable to the school budget as a whole, but the county treasurer, pursuant to section 656, is authorized to pay the checks drawn on him only in the event the items for which they are drawn are included in the budget which has been approved by the board of supervisors. In other words, the board of supervisors may approve or disapprove the budget. They have nothing to do with the salary that shall be paid to an individual teacher, but they have a right to pass upon the item contained in the budget for teachers' salaries.

Likewise, if the cash appropriation is made, it is not within the province of the school board to distribute that cash appropriation for, under the terms of the last mentioned section, the funds are to be used in accordance with the approved budget.

So far as I know, the question of the right of the school board to shift funds of an approved budget from one item to another has never been passed upon. The purpose of a budget is definitely to allot the amount to be expended in connection with the various items of maintenance and operation and, unquestionably, the board has no right to make radical changes therein. For instance, if the budget provided \$5,000 for repairs to school property, and it had so been approved, the board could not divert that sum from that purpose to teachers' salaries. On the other hand if, after making the necessary repairs, there was an item of a few dollars left over, and the cost of coal had been slightly underestimated, I think that the money left from making repairs could be applied to this other obligation.

The county school board has no funds save those derived from the cash appropriation or from the school levy. This must be expended in accordance with the budget. However, section 615 provides that the local school board may, out of the local funds, supplement the salary of the division superintendent; provided, the specific amounts and purposes for which this supplement is made are reported to and approved by the State Board of Education, and so forth.

It appears from this specific provision of section 615, in connection with section 656, that such an item supplementing the salary of the superintendent, having been first approved by the Board of Education, should be contained in the budget, and with regard to that item it would be incumbent upon the board of supervisors to arrange for funds sufficient to meet it.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Appropriations—Ten per cent cut applicable.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 21, 1932.

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

MY DEAR GOVERNOR:

I am in receipt of your letter of yesterday, which for the purposes of my reply I think it best to quote in full:

"You have no doubt received a copy of the order which I issued on June 13 directing, in accordance with law, that a reduction of ten per cent be made in all appropriations payable out of the general fund of the State treasury for the fiscal year which ends June 30, 1933, in order to prevent a treasury deficit.

"Section 135 of the Constitution requires the State to appropriate for apportionment to the schools of the primary and grammar grades of the State on the basis of school population an amount equal to the total that would be received from an annual tax on property of not less than one nor more than five mills on the dollar. The minimum appropriation required by this section of the Constitution is \$2,335,506. The amount appropriated for apportionment under this section of the Constitution is \$4,917,740.

"A reduction of ten per cent in the amount appropriated for the next fiscal year for apportionment on the basis of school population would reduce this appropriation to \$4,425,966. This is a reduction of \$491,774.

"The Superintendent of Public Instruction has advised me that the ten per cent reduction required under my order of June 13 should be applied only to so much of this appropriation of \$4,917,740 as exceeds the minimum of \$2,335,506 required by section 135 of the Constitution. Under this interpretation of the law, the total reduction that could be made in the appropriation of \$4,917,740 provided for apportionment on the basis of school population is \$258,223.40. If the ten per cent reduction is applied to the entire appropriation, the balance remaining for apportionment on the basis of school population is \$4,425,960. If the ten per cent reduction is applied only to the excess of this appropriation over the minimum amount required by the Constitution, the balance remaining for apportionment on the basis of school population is \$4,659,517.60.

"Will you kindly give me your opinion on the question raised by the Superintendent of Public Instruction?"

In my opinion, the entire amount appropriated by the General Assembly for apportionment to the schools of the primary and grammar grades on the basis of school population is subject to a prorata reduction under the provisions of section 30 of chapter 147 of the Acts of 1932, and that part of the appropriation required as a minimum under the provisions of section 135 of the Constitution is not exempt from the reduction.

Section 105 of the Constitution provides a minimum appropriation for the primary and grammar grade schools of the State. The appropriation largely exceeds the minimum constitutional requirement. For purposes of these schools only the minimum is required by the provisions of the Constitution. The entire appropriation made may be reduced ten per cent and the appropriation left largely in excess of the minimum requirement. While the minimum requirement was obligatory upon the Legislature, the excess of the appropriation was entirely optional, and, while the Legislature could not reduce the appropriation so that the amount available is less than the minimum, it could legally and constitutionally provide for a ratable reduction of the entire appropriation, which, it will be noticed, is in the aggregate and not composed of items so long as the appropriation available is not reduced below the minimum.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Bonds covering accumulated indebtedness—Election required.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 14, 1931.*

HON. J. G. JETER,
*Superintendent of Schools,
Covington, Virginia.*

DEAR MR. JETER:

I am in receipt of your letter of the 11th instant, in which you state that Alleghany county has an accumulated school indebtedness of about \$80,000 and that the school board desires to convert this indebtedness into a long term loan. You then ask whether or not this may be done without an election, as provided for in section 674-a of the Code.

I do not think so. In my opinion, there is no authority to issue bonds of a county except under the provisions of section 674-a of the Code and that section expressly requires an election before a floating indebtedness can be reduced to the form of a long term or bonded indebtedness.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—District bonds may not be assumed by county without election.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 30, 1932.*

DR. SIDNEY B. HALL,
*Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.*

MY DEAR DR. HALL:

I am in receipt of your letter of January 28, in which you enclose a letter from Honorable Roland E. Cook, division superintendent of schools, Salem, Virginia, concerning which you ask my advice. Succinctly, his letter presents the following question:

Prior to the abolishment of the district school boards, the school board of the town of Salem had issued certain bonds. There are now outstanding \$36,000.00 of these bonds issued in 1923. Mr. Cook desires to know whether the school board of Roanoke county can, and should, take over this school indebtedness of the town of Salem, and whether the district school levy which has been laid by the town of Salem can be discontinued and the entire interest and sinking fund necessary on account of these bonds be paid from the county school levy.

I am of the opinion that this cannot be done.

From Mr. Cook's letter I understand that, when these bonds were issued, they were the obligation solely of the town school board, or of the town, and that the county was obligated neither as principal, endorser, surety nor guarantor. Should the county assume this bonded obligation, it would, in effect, be incurring a new debt for which at the present time it is in no way responsible. Section 115a of the Constitution prohibits the doing of this, unless it be approved by a vote of the people of the county. On the other hand, you are aware that a vote of the people is not necessary in the case of loans from the Literary Fund.

It, therefore, of necessity follows that the special tax levied in the town of Salem for the purpose of caring for these bonds must be continued.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Cash appropriation in lieu of county levy.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *March 14, 1932.*

HON. JOHN ALDERMAN,
Commonwealth's Attorney,
Hillsville, Virginia.

MY DEAR SIR:

I have for reply your letter of March 10, in which you direct my attention to section 698 of the Code.

You call my attention to the fact that a county may lay a general school levy of not less than fifty cents nor more than one dollar; that, in lieu of making such a school levy, it may make a cash appropriation of an amount not less than that which would result from the laying of the minimum school levy; and that, in addition thereto, for capital expenditures and for the payment of existing district indebtedness, a tax of twenty-five cents may be levied. You wish to know whether a general cash appropriation of an amount equal to the tax which would be derived from a dollar and a quarter levy is permissible.

In reply to your question, I call your attention to the third sentence of the second paragraph of section 698 of the Code. This sentence gives to the board of supervisors of any county a right in addition to that given in the first two sentences. By virtue of the first sentence, the board may levy a tax of not less than fifty cents nor more than one dollar. By virtue of the second sentence, it may make a cash appropriation in lieu of that levy. By virtue of the third sentence, it may, in addition thereto, appropriate from available funds such additional moneys as it may think proper.

I can, therefore, see no reason why your board of supervisors cannot make such a cash appropriation as that contemplated in your letter.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

**SCHOOLS—Cities—Special levies for capital expenditures and indebtedness—
Cash appropriation.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *January 30, 1932.*

DR. SIDNEY B. HALL,
Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.

MY DEAR DR. HALL:

I am in receipt of your letter of recent date, in which you ask my interpretation of certain features of section 698 of the Code. Your letter contains two questions, which may be summarized as follows:

1. Does this section authorize the council of a city to impose a special twenty-five cent tax for capital expenditures and for the payment of existing district indebtedness?

2. If the authorities of a city elect to make a cash appropriation in lieu of a special tax of not less than fifty cents nor more than one dollar, must that appropriation be at least equal to the sum that would be realized from the assessment of the minimum tax?

In reply to the first of these questions, I beg to advise that, in my opinion, this section does not authorize the city authorities to levy a special twenty-five cent tax for capital expenditures and for the payment of existing district indebtedness. The pertinent portion of the statute reads as follows:

" * * * For capital expenditures and for the payment of existing district indebtedness, the board may levy a district tax in the magisterial district in which the money is to be spent, or the debts exist, not exceeding twenty-five cents," etc.

It seems to me to be plain from this language, and particularly from the use of the words "district," "board," "district tax" and "magisterial district," that the twenty-five cent tax is confined to counties.

In reply to your second question, I beg to advise that, in my opinion, a city which elects to make a cash appropriation for the support of its schools must appropriate a sum at least equal to the amount which would be raised were it to levy the minimum fifty cent tax. The language of the statute pertinent to this question reads as follows:

" * * * In lieu of making such school levy, the board of supervisors in the counties and the councils in the cities may, in their discretion, make a cash appropriation * * * in no event to be less than the amount which would result from the laying of the minimum school levy authorized by this section * * * ."

You call my attention to the fact that in most cases title to school property is in the name of the city and not the school board, and that any indebtedness for capital outlay for the public schools is carried by the city council and not by the school board. You then state:

"It seems to me there is no provision in this section for the use of school funds for this purpose."

In this conclusion I am unable to agree with you. The special tax of not less than fifty cents nor more than one dollar is to be expended by the local school authorities "in establishing, maintaining and operating" the schools; and, if in lieu thereof a cash appropriation is made, it is to be used "for the establishment, maintenance and operation" of the schools. When the Legislature provides that these funds are to be used for establishing and maintaining schools, it seems to me that that language is broad enough to cover the case of capital outlays. In counties, but not in cities, funds for capital expenditures and for the payment of existing district indebtedness may be raised by a special tax for that purpose.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Illegality of county bonds approved only by district vote.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *January 12, 1932.*

DR. SIDNEY B. HALL,

*Superintendent of Public Instruction,**State Board of Education,**Richmond, Virginia.*

DEAR DR. HALL:

I was handed this morning, by Mr. Crosby, a copy of the resolution adopted by the State Board of Education approving the purchase of bonds of Poquoson district, York county, issued in pursuance of a special bond issue election held in said district on July 6, 1931; provided, however, I should first state in writing that the bonds have been legally issued, that they constitute a lien upon the county and that the State Board of Education has a legal right to invest the Literary Fund in said bonds.

One of my assistants, Mr. Denny, had on yesterday a talk with two of the gentlemen from York county who are familiar with the facts in this case and who had seen you earlier in the day, and I likewise had the benefit of the papers attached to the copy of the resolution of the board.

Under that resolution I am asked to pass upon three questions: First, were the bonds legally issued; second, do the bonds constitute a lien upon the funds of the county; and, third, is the State Board of Education permitted to invest in such bonds as these?

Since, for other reasons, I do not think these bonds can be purchased by the State Board of Education, I am omitting any reply to the first question.

In reply to your second question, I am forced to the conclusion that the bonds do not constitute a lien upon the funds of the county. Section 673 of the Code provides that a county school board, for the purpose of erecting a schoolhouse, may contract a loan "on the credit of the county"; provided that, when such schoolhouse is erected at the expense of the school district, the election "shall be held only in the district against which such building will be a charge," etc.

You will note that, under the express terms of this statute, the bonds are issued "on the credit of the county," and the county would be, of course, secondarily responsible for them. Under section 115a of the Constitution a bonded indebtedness, binding upon the county, must be passed upon by the voters thereof. I do not believe that the mere fact that bonds are to be paid out of a levy in a particular district, and that the issuance of those bonds have been approved by the voters of that district, authorizes the erecting of a building on the credit of the county. I am, therefore, of the opinion that these bonds are an obligation resting only on district funds, and that the funds and the credit of the whole county are not, by law, behind them.

It, therefore, inevitably follows, by virtue of the provisions of section 633 of the Code, that the State Board of Education cannot purchase these bonds, for, in addition to Federal and State bonds and bonds of certain railway companies, it can only purchase those made by one or more of the county boards or city school boards; and, if it purchase these bonds, it thereby acquires a lien on all funds of the county. Since, by virtue of the constitutional provision above mentioned, it could not, if it purchased these bonds, acquire a lien on all the funds of the county, I think section 633 of the Code must be interpreted as permitting it to purchase only such county school board bonds as have behind them all funds and income of the county.

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

SCHOOLS—Levies for school buildings.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 20, 1932.*

DR. SIDNEY B. HALL,
*Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.*

DEAR DR. HALL:

I am in receipt of your letter of the 19th instant, which for the purposes of my reply I quote in full:

"I have just had a letter from Mr. R. W. Copeland, Superintendent of Schools of Prince George county and the city of Hopewell, asking for an interpretation of the word 'establishing' in the School Code, section 698. I have been interpreting this section of the Code to mean that the levy of not less than fifty cents nor more than one dollar should be used entirely for the operation and maintenance of the school program, and that any money to be used for the establishment or the construction of buildings should come within the twenty-five cents limit over and above the one dollar for operation and maintenance. I am not sure that this is entirely in agreement with you or your judgment. I therefore would like to ask you to interpret the word 'establishing' in section 698 for me and for Mr. Copeland.

"It seems to me that the section is so worded that the first part of the section deals with the levy of fifty cents to one dollar for establishing, operating and maintaining schools, and then follows with the possibility of an extra levy of twenty-five cents for capital outlay and past indebtedness. It further appears to me that capital outlay and past indebtedness has to do with the establishment or the construction of buildings, and that the word 'establishing' in the early part of the Code does not deal with the actual construction of buildings but rather the organization, operation and maintenance of the schools after they have once been constructed."

The question raised in your letter is both novel and interesting and has not so far received consideration in my office.

If your interpretation of section 698 of the Virginia Tax Code is carried to its logical conclusion, the county unit, so far as it relates to the erection of school houses, is rendered abortive. I have heretofore understood that the law providing for the county unit system and for a county levy included the erection of buildings as well as the operation of the schools. I have been under the impression that the authority given the board of supervisors to levy a district tax was, so far as it is applicable to school buildings, discretionary, although the provision allowing supervisors to levy a district tax of not exceeding twenty-five cents on the one hundred dollars of property covered both capital outlay and the payment of existing indebtedness.

If your construction is correct, then all county construction must be provided by the proceeds of the district levy. I have heretofore held that the Legislature did not intend, nor could it constitutionally provide, a limit upon a district levy to pay district indebtedness incurred at the time the limit on the district levy was provided. In those cases in which the district had already contracted indebtedness, the Constitution, prohibiting the impairment of contracts, would prevent a Legislature from putting a limit on the levy at such a figure as to prevent the payment of existing indebtedness together with interest thereon.

I do not think that this principle of law applies to the building of school houses. It has been my thought that the Legislature intended to give au-

thority to a board of supervisors to provide by a district levy, where the entire district levy did not exceed twenty-five cents on the one hundred dollars, for the purpose of capital outlay, and that capital outlay included the erection of school buildings.

You will see that it is my opinion that the cost of erection of buildings is not placed by law upon a district levy, but that it is ordinarily a county obligation to be taken care of by a county levy, and that it is only in those cases where a district desires a building that the county cannot afford that a district levy may be made for the erection of such a building.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Levies restricted to district.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 13, 1932.*

MR. J. RAYMOND DRUMMOND,
Onancock, Virginia.

DEAR MR. DRUMMOND:

I am in receipt of your letter of November 18, 1931, which has been inadvertently overlooked until today. In your letter you write:

"This spring we had an election in Lee magisterial district (for or against) bonding the said district for the erection of a high school at Accomack.

"The polls, as usual, were open in Onancock, and the voters living near the town were permitted to vote, but due to the fact that Onancock is a separate school district, yet in the said Lee magisterial district, the voters living in Onancock were not given a vote.

"Onancock is as large as any other voting precinct in this district and will be taxed to meet this loan.

"Can one section of a district vote an additional tax on the whole district without giving all voters an opportunity to cast their ballot."

From your letter I infer that Onancock is a separate school district lying in Lee magisterial district. Your statement leads me to the conclusion that there are two separate school districts lying within Lee magisterial district. But for the fact that Onancock has been created a separate school district, Lee magisterial district would constitute one school district and in all questions affecting bonds the issuance thereof must have been left to the voters of the entire district including, of course, the town of Onancock and the outlying portion of Lee magisterial district.

From what you write, an election was held in the outlying portion of Lee magisterial district excluding, of course, the town of Onancock. In this case only residents of the outlying district were entitled to vote. Citizens of Onancock were not entitled to vote. Upon the other hand, a tax to create a sinking fund for the payment of interest and the retirement of the bonds can, in my opinion, only be levied upon the outlying portion—Lee magisterial district, and cannot, as you suggest in your letter, be imposed upon property lying within the town of Onancock.

Yours, very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Removal of division superintendent.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 18, 1932.

DR. SIDNEY B. HALL,
*Superintendent of Public Instruction,
State Board of Education,
Richmond, Virginia.*

MY DEAR DR. HALL:

I have for reply your letter of May 11, in which you desire my opinion upon the question whether the local school board, or the State Board of Education, or both, or neither, is vested with authority to remove from office a division superintendent of schools.

There are two sections of the Code which refer to this matter, namely, sections 628 and 651. As I shall hereafter point out, the former section confers the power of removal upon the State Board of Education; the latter section confers this power upon the State Board of Education or upon the local school board. At the very inception, however, we are confronted with the question whether either of these bodies may remove this officer.

Section 132 of the Constitution provides that the State Board of Education shall certify to the local school board a list of persons having reasonable qualifications for division superintendent of schools, one of whom shall be selected as the superintendent of schools for such division by the said school board, as provided by section 133 of the Constitution.

Section 133 of the Constitution provides that the local board of each school division shall appoint one division superintendent of schools, who shall be selected from a list of eligibles certified by the State Board of Education *and who shall hold office for four years*. Should the local board fail to elect a division superintendent within the time prescribed by law, the State Board of Education may then appoint such division superintendent.

We are, therefore, concerned with an officer mentioned in the Constitution and who, by virtue thereof, is appointed for a specific period of time, the Constitution being silent upon any question of his removal.

In the bitterly fought case of *Fugate v. Weston*, 156 Va. 107, the Court of Appeals, by a four to three decision (and the majority was divided two and two, so far as reasons were concerned), held that a statute which conferred upon the Governor the power to suspend a constitutional officer (the county treasurer), who might have failed properly to perform the duties required of him, was unconstitutional upon the ground that such a power being vested in any person or body, other than a court, was a denial of the constitutional guarantee of due process of law; and, further, that such a statute ran counter to the constitutional provision providing for the separation of the several departments of the government.

The only difference that I can find between the tenure of office of a division superintendent of schools and a county treasurer arises from the method of induction into office. The former is appointed by the local school board from a list of eligibles furnished by the State Board of Education; the latter is elected by the people. It is possible that from this difference a different result upon the question of suspension or removal might arise, but very clearly, if a division superintendent of schools is entitled to the same protection thrown around a county treasurer, neither the local school board nor the State Board of Education could remove a division superintendent. He could be removed only by an ouster proceeding brought pursuant to the provisions of section 2705 of the Code.

The decision in the case of *Fugate v. Weston*, *supra*, was so close and the majority was so hopelessly divided that it is impossible to foretell with any degree of accuracy what might be the view of the court on a case which differed in any particular from that of the *Weston Case*. I shall, therefore, have to reply to your

question upon the assumption that both statutes mentioned above are constitutional.

The above mentioned provisions of the Constitution were new with the amendments of 1928. Prior to that year and pursuant to section 604 of the Code, a division superintendent of schools was appointed by the State Board of Education, subject to the confirmation of the Senate. Under the old Constitution in force prior to 1928, the State Board of Education was given the power to remove a division superintendent for cause and upon notice.

When the Legislature of 1928 was in session, it could not, of course, foretell whether the new sections 132 and 133 of the Constitution would be approved by the people. In its redraft, therefore, of the school law it had to make provision for either contingency. By section 628 of the Code it gave to the State Board of Education power to punish a division superintendent of schools by suspension from office, or by removal from office.

By section 649 of the Code it provided that, unless sections 132 and 133 of the Constitution were amended prior thereto, within thirty days before April 1, 1929, the State Board of Education, subject to the confirmation of the Senate, should appoint the division superintendents of schools. Those sections of the Constitution were amended prior to that date and that portion of section 649, to which I have referred, did not, therefore, become operative for it was superseded by the self-operating provisions of the Constitution.

Section 651 of the Code, as adopted in 1928, provided that a division superintendent of schools might be removed either by the State Board of Education, or other appointing power. Those words, "or other appointing power," unquestionably related to the situation that would exist if the constitutional amendments were adopted. Those amendments having been adopted, the division superintendents of schools for the term beginning July 1, 1929, were appointed by the local board from a list of eligibles named by the State Board of Education.

So far as the statutes, therefore, are concerned, it appears to me that either the local board or the State Board of Education may remove a division superintendent. I take it that the reason back of this alternative power is the purpose of the Legislature that the division superintendent of schools shall be a person agreeable to both boards and that either may, therefore, remove him.

I have pointed out above the constitutional difficulties involved, and the difficulty with which any person is faced who tries with any reasonable degree of certainty to answer the question of constitutionality. I am, however, of the opinion, in the light of the case of *Fugate v. Weston, supra*, and in view of the fact that, prior to 1928, there was an express constitutional provision for the removal of a division superintendent of schools by the State Board of Education, which express power was stricken out of the Constitution, that sections 628 and 651 of the Code, so far as they attempt to provide for the removal of this officer, are unconstitutional.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Teachers—Employment of trustee's relative permissible.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., May 24, 1932.

MR. KYLE T. COX,
*Division Superintendent of Schools,
Independence, Virginia.*

DEAR MR. COX:

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

"Please advise me if a daughter of a member of the school board may be appointed as teacher in this county without violating the Nepotism Act.

"Could she be placed in a district of a trustee or town in which her father does not live?"

Under section 660 of the school code of 1928, no teacher could be employed in the public schools of the county in which her father was a member of the school board. That provision has been omitted from the same section of the 1930 school code and there is now no restriction limiting the appointment of teachers, so that a daughter of a member of the school board may be appointed to serve anywhere in the county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Towns constituting separate district entitled to pro rata of county levy.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 2, 1932.

MR. C. H. EDWARDS,
Altavista, Virginia.

DEAR MR. EDWARDS:

I am in receipt of your letter of yesterday, in which you ask as to the appropriation of the tax the treasurer of the county of Campbell would pay to the treasurer of the town of Altavista, under the provisions of law providing that the treasurer of the county shall pay to the treasurer of the town "its prorata part of such tax" levied by the board of supervisors for county school purposes.

In my opinion, Altavista would be entitled to share in the county school tax in proportion as the total assessed value of property in Altavista bears to the assessed valuation of all property in Campbell county, or, in other words, the town of Altavista would be entitled, subject to the commissions of the commissioner of the revenue and treasurer, to all of the county tax collected on property within the town of Altavista.

I will add that I have consulted with Dr. Sidney B. Hall, superintendent of public instruction, and he concurs with this construction of the law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Towns cannot borrow from Literary Fund.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., December 21, 1931.

HON. WILSON M. FARR,
Commonwealth's Attorney,
Fairfax, Virginia.

DEAR MR. FARR:

I have read with great care your letter of December 10, relating to the application of the town of Herndon for a loan from the Literary Fund, and my assistants and I have again worked through the whole question.

You refer to section 644d of Michie's Code. Upon examination of Acts 1928, page 1227, you will find that that section has been repealed.

The fifth paragraph of section 653, to which you call my attention, seems to sustain your contention; and, as it appears that, under the Constitution, the Legislature may, if it sees fit, provide for loans from the Literary Fund to the town school boards, it would seem that under this paragraph a method of making such loans has been provided. I, therefore, desire that you disregard my letter of December 8, 1931.

On the other hand, I do not think that the town school board of Herndon, as now constituted, can borrow from the Literary Fund. This same section 653, which was amended by Acts 1930, page 884, specifically abolished all special school districts and special town school districts, save those of Leesburg and Lexington, and I am of the opinion that by that legislation the town school district of Herndon was abolished. That Act of 1930 sets up, however, a method by which a town of not less than one thousand inhabitants may be constituted a separate school district, and I am of the opinion that, if you cause the town of Herndon to be constituted a separate school district in accordance with the legislation of 1930, then the State Board of Education would be authorized, if it otherwise sees fit so to do, to make the loan.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Town ordinance cannot require payment of personal property tax as prerequisite to admit child to school.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 15, 1932.*

MR. R. C. BOWTON,
Superintendent of Schools,
Alexandria, Virginia.

DEAR MR. BOWTON:

I am in receipt of your letter of yesterday, in which you enclose a clipping from the local paper, in which is published Ordinance No. 113 of the city of Alexandria, and I note that part of the ordinance to which you call my attention in your letter.

This provision would penalize a child or ward of a parent or guardian because of the nonpayment by the parent or guardian of his personal property taxes for the year previous to the beginning of the scholastic year.

Both the Constitution of Virginia and the School Code provide for an efficient system of public free schools, absolutely without regard to the payment of property taxes of any kind by the parent of a child or the guardian of a ward, and the law not only provides educational facilities, but there is a provision upon the statutes which requires the compulsory attendance of children and penalizes parents and guardians who do not send their children to school.

In my opinion, the section of Ordinance No. 113 restricting permits to pupils whose parents or guardians have paid their property taxes for the previous year is unconstitutional, and every child, irrespective of the parent's or guardian's taxes, is entitled to be admitted to the public free schools of the city of Alexandria.

Yours, very truly,

JNO. R. SAUNDERS,
Attorney General.

SCHOOLS—Trustees—Appointments—Incompatibility.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 19, 1932.*

DR. SIDNEY B. HALL,
*Superintendent of Public Instruction,
Richmond, Virginia.*

DEAR DR. HALL:

I am in receipt of your letter of yesterday, enclosing that of Mr. A. H. Hill, superintendent of the public schools of Richmond, under date of the 14th instant, and note that Mr. Hill desires to know as to the limitations, if any, as to the appointment of city school trustees.

I do not think that section 644a of the School Code applies to the appointment of trustees of city school boards. Section 780 of that Code is the only one I have been able to find as to the appointment of city trustees. That does not prevent the appointment of persons mentioned in section 644a, and, except where the two positions may be incompatible, I see no reason why any of the officials mentioned in section 644a may not be appointed members of the city school board.

In the absence of specific legislation, I suggest that the State Board of Education adopt a rule upon the subject if in the opinion of the board such a rule is desirable.

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

SCHOOLS—Warrants for teachers' salaries.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *May 26, 1932.*

MR. HENRY G. TIGNOR, *Superintendent,
Henry County Public Schools,
Martinsville, Virginia.*

DEAR MR. TIGNOR:

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

"Kindly inform me by return mail if we would be justified in writing school warrants for teachers' salaries to the extent of our budget for the current year and let the teachers use these warrants as collateral until the newly appointed treasurer of the county collects taxes sufficient to meet the payment of these warrants. It is imperative that we pay teachers' salaries if they are to attend summer school, which is in some cases required of them for the renewal of certificates."

In my opinion, you are authorized to issue school warrants for teachers' salaries to the extent of your budget for the current year.

Mr. Crosby, auditor of the State Board of Education, not only agrees that this may be legally done, but advises that it should be done, so that you can include the salaries as having been paid out during the current fiscal year.

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

SCHOOL BOARD—Authority to allow purchase of materials.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 2, 1932.*

DR. SIDNEY B. HALL,
*Superintendent of Public Instruction,
Richmond, Virginia.*

MY DEAR DR. HALL:

I am in receipt of your letter of yesterday, enclosing a letter to you from Mr. C. V. Shoemaker, superintendent of schools of Shenandoah county, Virginia, under date of March 11, in which Mr. Shoemaker writes for information as to the propriety and legality of the school buying coal in carload lots from a member of the school board from Madison district. I note that Mr. Shoemaker says that one of his school trustees, Mr. S. A. Wilkins, has a minor interest in the firm of Triplett, Erwin & Wilkins, and that firm is the only one doing business in Madison district at Edinburg. Mr. Shoemaker writes that the county school board buys its coal in carload lots and does not need to buy much coal except a few tons here and there and occasionally a few bags of cement.

The purchase of cement or coal does not come within the letter of section 708 of the School Code prohibiting certain school officials from having business or interest in contracts for certain purposes, although it may be said to come within the spirit of the prohibition.

However, I see no reason why the State Board of Education, if in its discretion it chooses to do so, should not give permission to the school board of Shenandoah county to purchase such supplies as it chooses to include in the permission from the local firm of Triplett, Erwin & Wilkins.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STATE TREASURER—Deposits by—What may be taken as security for.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *August 8, 1931.*

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

DEAR MR. PURCELL:

I am in receipt of your letter of the 6th instant, in which you desire to be advised as to whether you may, as treasurer, accept, as surety for the deposit of State funds in banks, notes or obligations of the State of Virginia for money borrowed from the banks.

While the provisions of the law do not expressly include as acceptable securities obligations of the State, I see no possible reason why State obligations for money borrowed should not be accepted by you as ample surety for money deposited in banks.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

STREAMS—Penalty for obstruction of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 5, 1932.

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

DEAR MR. HART:

I have at hand copy of a letter from Honorable J. J. Temple, attorney for the Commonwealth of Prince George county, addressed to Mr. W. P. Arwood, Disputanta, Virginia, and Mr. Temple's letter of the 4th instant, enclosing that letter to you, and I note that you ask my views in regard to the legal questions involved.

Section 4747 of the Code, intended to prevent the obstruction of streams, does not make such obstruction a misdemeanor, but fixes a forfeiture of \$2.00 for each 24 hours that the dam or other thing remains in a water course in violation of that section, with a further provision that one-half of the forfeiture shall go to the informant.

I do not think that this section makes the obstruction of a water course a misdemeanor so as to incur the running of the statute of limitations and thus give immunity to the person violating the section. It is true a penalty is imposed, but, in my opinion, the penalty should be recovered in a civil proceeding and not by prosecution. I am not prepared to express an opinion as to the running of the statute of limitations so far as recovery may be sought at \$2.00 a day for each day the obstruction has been in Blackwater swamp since September 5, 1930. However, that question should not be important, as, if a recovery is had for each day's violation within one year from the date suit is instituted, it appears that a sufficient penalty will have been paid by the wrong-doer.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SUNDAY LAW—What constitutes Sunday.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., January 16, 1932.

THE SCHWARZENBACH HUBER COMPANY,
Front Royal, Virginia.

DEAR SIRs:

I am in receipt of your letter of the 13th instant, which I quote in full:

"Several of our male employees engaged in weaving of silk piece goods who work on the night shift have asked the question as to the possibility of working from Saturday evening at 6:30 p. m., to Sunday morning at 6:15 a. m., instead of stopping at 12 midnight on Saturdays.

"Being aware of section 4570 of the Virginia Code which prohibits contracts for employment of operators on Sunday, we have stated that this could not be done and we would appreciate it if you would advise us of the interpretation of this statute, i. e., does this mean from 12 o'clock midnight Sunday or is it permissible to operate to daylight?

"Also please advise us as to whether the enforcement of this section is in the hands of the Department of Labor and Industry or the local enforcement officers or both.

"The reason our employees would desire to work through to 6:15

a. m., Sunday, is that it would relieve them of the necessity to return to work from 12:45 a. m. to 6:15 a. m., Monday morning."

The law governing the subject of your inquiry is, as you write, covered by section 4570 of the Code.

In the case of *Jeffries v. Commonwealth*, 113 Va. 773, Sunday is defined to be the time between 12 o'clock Saturday night and 12 o'clock Sunday night. Under this decision you cannot allow your employees to work through Saturday night until 6:15 Sunday morning, even if it is their preference, although in their opinion it works a hardship upon them to discontinue work at 12 o'clock Saturday night and begin again at 12 o'clock Sunday night.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Assets of insolvent banks.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., March 16, 1932.

MR. C. Q. COUNTS,
Examiner of Records,
Coeburn, Virginia.

DEAR MR. COUNTS:

I am in receipt of your letter of yesterday, in which you ask certain questions concerning the taxation of assets of insolvent banks in the hands of receivers; and I note that you mention sections 81, 96 and 332 of the Tax Code as having some bearing upon the question involved.

In my opinion, the taxation of such assets is controlled by section 96 of the Tax Code, which treats the assets of an insolvent bank in the hands of a receiver as its capital and provides that no tax shall be assessed thereon as capital. It provides for returns to the commissioner of the revenue as of the first day of January of each year of the assets of the bank, and further provides that the commissioner of the revenue shall assess a tax thereon at the rate provided for the taxation of money, and that that assessment shall be in lieu of all other taxes against those beneficially interested, with a further provision for the taxation of the surplus after the payment of depositors and creditors.

I do not think that either section 81 or section 332 qualifies section 96, as the latter is the provision covering all features of the taxation of insolvent banks in the hands of receivers.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Delinquent taxes after land sale collectable by clerks.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 5, 1932.

HON. J. F. SERGENT:
Attorney for the Commonwealth,
Gate City, Virginia.

DEAR MR. SERGENT:

I am in receipt of your letter of the 28th of last month, which, on account

of pressing business before the General Assembly, I have been unable to answer sooner. I quote from your letter:

"1. After the sale of lands for delinquent taxes in January of each year, is it the duty of the county treasurer and his deputies to receive and collect delinquent taxes for local county levies on lands for which the lands have been sold? If so, how long does this duty continue?

"2. If the answer to the foregoing questions shall be in the negative, then it will be the duty of the county clerk to receive payment of all such delinquent taxes in the absence of delinquent tax collectors?"

Section 391 of the Tax Code expressly retains the provisions of chapter 99 of the Code on the subject of delinquent lands except as modified in that section.

Under the provisions of chapter 99 taxes upon real estate for which lands are sold for delinquent taxes and bought in by the Commonwealth are no longer collectable by the county treasurer or his deputies, but are after sales collectable only by the county clerk.

Honorable C. H. Morrisett, State Tax Commissioner, agrees with this view and has expressed his purpose to write me a letter confirming this opinion, copy of which I hope to be able to send you as soon as the original letter is received.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Delinquent taxes before land sale collectable for one year by treasurer.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., January 16, 1932.

HON. D. U. AUSTIN, *Treasurer,*
Fincastle, Virginia.

MY DEAR MR. AUSTIN:

Honorable T. Coleman Andrews, Auditor of Public Accounts, has forwarded to me for attention your letter of January 13, in which you desire to be advised as to your right to collect taxes for the years 1930 and 1931 upon a large tract of land in Botetourt county owned by the Virginia Minerals Corporation of New York. I note that you state that the land was offered for sale on January 4 for the 1930 tax and bought in for the Commonwealth. I also note that you state that there is sufficient timber on the land to pay the taxes for both years, and ask whether or not it will be proper for you personally to buy the timber.

There is no statute covering a sale to yourself, but it is a general principle of law that the same person cannot be the seller and buyer at the same sale, and I am of the opinion that that principle applies to your inquiry. Section 2463 of the Code expressly makes it unlawful for a treasurer to buy land sold by him for delinquent taxes and fixes a penalty of \$50.00 for each purchase.

Under section 393 of the Tax Code, county treasurers are charged with the collection of delinquent taxes for one year following June 15 of the year as of which the delinquent lists speak. In my opinion this provision authorizes you to use the same remedies for the collection of delinquent land taxes for the year 1930 as you could have otherwise used had there been no sale. This power includes the right to sell standing timber upon the land assessed for taxes.

Of course, the amount received for standing timber is to be accounted

for according to law and the proper credit given upon the clerk's records showing the land bought in by the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Law releasing delinquent taxes to cities and counties unconstitutional.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., February 6, 1932.

HON. FRED B. GREER,
*Commonwealth's Attorney,
Wise, Virginia.*

MY DEAR MR. GREER:

I am in receipt of your letter of February 1, in which you refer me to chapter 91 of the Acts of 1930, page 102, which briefly provides that all taxes, which, prior to segregation, were assessed upon land and tangible personal property for State purposes, and which have not been collected, shall be collected by the officer charged with the duty of collecting the same, and that all such delinquent taxes upon land and all sums paid to redeem the same, which but for this Act would be paid to the treasurer of the State, shall be paid to the local treasurer, and all such delinquent taxes upon tangible personal property shall be retained by the treasurer collecting same; and, further, that "all such taxes" shall be retained and used for school purposes.

You wish to know whether this Act authorizes the locality to retain only the delinquent tangible personal property taxes which may be collected; or whether it would authorize the retention also of delinquent real estate taxes.

In my opinion, this Act is of no force and effect whatsoever, as I believe it is violative of section 186 of the Constitution which provides that all taxes "of the State shall be collected by its proper officers and paid into the State treasury. No money shall be paid out of the State treasury except in pursuance of appropriations made by law * * *." Contrary to this constitutional provision, it provides that these funds shall be paid into the local treasury.

The patron of this bill, which became chapter 91 of the Acts of 1930, was advised by this office that, in my opinion, it was unconstitutional. I see no reason to change that opinion which was first authoritatively rendered by me in a letter to Honorable James E. Cannon, city attorney, Richmond, Virginia, on June 26, 1930, found in the Annual Report of the Attorney General, 1929-1930.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TAXATION—Renting delinquent tax property.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 17, 1932.

HON. J. E. ROWE, *Mayor,
Mineral, Virginia.*

DEAR MR. ROWE:

I am in receipt of your letter of the 11th instant, in which you state that you are writing for the treasurer of your town, asking how possession of

property rented by the town treasurer for the non-payment of town taxes may be delivered.

In my opinion, the procedure is provided for in section 378 of the Tax Code, reading as follows:

"Any real estate in the county or corporation belonging to the person or estate assessed with taxes or levies due on such real estate, may be rented or leased by the treasurer, sheriff, constable, sergeant or collector, privately or at public outcry, after due publication, in the discretion of such treasurer, sergeant, sheriff, constable or collector, either at the front door of the courthouse or on the premises, or at some public place in the community where the premises are situated, after giving not less than fifteen days' notice by printed or written notices posted at the front door of the courthouse, and at three or more places in the neighborhood of the real estate to be leased. Such leasing shall be for a term not exceeding one year, and for cash sufficient to pay the taxes or levies due on the real estate so rented, and the costs and charges of advertising and leasing. When a lease is effected, the treasurer, sergeant, collector, sheriff or constable leasing such real estate, shall put the lessee in possession thereof, and for such purpose shall have like powers as those exercised by a sheriff acting under a writ of possession."

A sheriff acting under a writ of possession is authorized to use forcible means to enter a dwelling and to deliver possession to the person to whom it is rented.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TITLES—Commonwealth entitled to made lands in navigable waters.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 5, 1931.*

HON. PETER SAUNDERS,
Secretary of the Commonwealth,
Richmond, Virginia.

DEAR SIR:

I have for reply your letter of recent date, referring to the islands in the James river below City Point which have been formed by deposits caused by dredging the channel, the work of dredging being done by the Federal government. You request my opinion upon the question whether title to islands so formed is in the Commonwealth or in the Federal government.

The Federal government as such has no ownership in the beds of the Virginia rivers. It is well established that the Commonwealth owns the beds of the rivers in which the tide ebbs and flows. It is possible that to this there are some exceptions in certain cases arising by virtue of peculiar circumstances, but I am not aware of any such peculiar circumstances existing in the James river at this point.

It is likewise established, indeed the Supreme Court of the United States has more than once ruled, that, if an island is formed in a river, title to that island vests in the owner of the bed of the river. I am, therefore, of the opinion that title to islands so formed is vested in the Commonwealth.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—Cannot invest sinking fund levies.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *March 2, 1932.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 19th ultimo, in which you write:

"The treasurer of Prince Edward county holds some money which was raised by taxes levied for school debt retirement and interest. He desires to know whether he may invest this money and, if so, in what class or classes of securities he may invest it. I am unable to find anything in the Code covering this subject, so I shall be very much obliged to you if you will determine what statute or statutes cover the situation and communicate your opinion to me at your first convenience."

There is no express statute providing for lending money levied to create a sinking fund and to retire bonds issued for school purposes. Under no circumstances can the treasurer of Prince Edward county invest such money in his hands unless there is a special statute giving him such authority.

However, by analogy to the law covering the investment of money raised for the retirement of road funds, I suggest that the school board of Prince Edward county may, subject to the approval of the circuit court of that county, invest money levied for school debt retirement and interest purposes.

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

TREASURER—Compensation of.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *July 28, 1931.*

MR. J. R. TEMPLE,
Treasurer of Brunswick County,
Lawrenceville, Virginia.

DEAR MR. TEMPLE:

In response to your inquiry as to the amount of compensation to which you, as incoming treasurer, are entitled on funds paid you, as treasurer of your county, by a bonding company, on account of the deficiency due the county by Mr. J. E. Snow, late treasurer of the county, I will say that your compensation, as fixed by section 2431 of the Code of 1930, is two per cent of the amount turned over to you by the bonding company, with the exception that you are only entitled to compensation of one per cent upon so much of the money turned over to you by the bonding company as represents the amount due by Mr. Snow on school funds turned over to him from appropriations by the State and apportionments of the Literary Fund, and to compensation of one-fourth of one per cent of the amount turned over to you as represents funds derived from county or district bond issues.

I will say that I called up Honorable C. H. Morrissett, State Tax Commissioner, and he agreed that you were entitled to the above compensation.

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

TREASURER—Compensation collections—Delinquent taxes intangible personal property.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., July 16, 1931.

MR. J. F. EARLY, *Deputy Treasurer,*
Stanardsville, Virginia.

DEAR MR. EARLY:

I am in receipt of your letter of the 13th instant, in which you ask to be advised as to the compensation of county treasurers for collecting and disbursing delinquent tangible personal property taxes.

There is no provision of law making a special allowance for collecting this character of tax, as there is for receiving delinquent land taxes.

In my opinion, therefore, the amount received for delinquent personal property taxes is to be aggregated with all other collections not carrying a special rate of compensation, and the compensation of county treasurer on all such aggregate is calculated under the provisions of section 2431 of the Code.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—Commonwealth entitled to interest collected by.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., November 13, 1931.

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 9th instant, which I quote in full:

"We find that in one of the counties the treasurer has been receiving interest on his daily bank balances. He has on deposit money belonging to the county, the Commonwealth, and himself. The money which he has been carrying for the Commonwealth consists of taxes collected and remittable to the comptroller and automobile license taxes which, as you know, are remittable to the Motor Vehicle Division. The question has arisen whether interest collected on that part of the money which belonged to the Commonwealth should be remitted to the Commonwealth. Settlements have been made from time to time with both the Motor Vehicle Division and the comptroller at the required time; that is, weekly with the Motor Vehicle Division and monthly with the comptroller, and there has been no requirement by either of these departments that any interest be paid on funds remittable to them for the periods during which it has been held.

"Will you please advise at your first convenience whether this treasurer should account to the Commonwealth for the interest collected by him from time to time on the funds also collected by him when paid over to the two departments as above indicated. It is essential that we have your opinion at once, as we cannot finish the audit of the accounts and records of this treasurer without same and we are almost at the end of our investigation otherwise. I shall, therefore, be very much obliged to you if you will give this matter your usual prompt attention."

I agree with the postscript to your letter, in which you conclude that the

question of interest about which you ask me is covered by section 363 of the Tax Code. Undoubtedly, treasurers are required to account to the State, or to any political subdivision thereof, for all interest collected by them on public funds.

Not only is a treasurer required to account for interest, but section 363 makes it a misdemeanor for a treasurer to fail to account for interest and, upon conviction, he is subject to a fine of not exceeding \$5,000.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—Fees of—Incoming and outgoing.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., December 12, 1931.

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of the 10th instant, in which you ask to be advised as to my opinion concerning the payment of incoming treasurers for money turned over to them by outgoing treasurers.

In my opinion, incoming treasurers are entitled to a commission of two per cent of the money turned over to them, with certain smaller compensation for special funds turned over to them. This compensation, in my opinion, is payable out of the fund and not by the outgoing treasurer.

While the payment of a two per cent commission and other commissions on funds turned over by an outgoing treasurer to incoming treasurer may seem a double payment on account of collection and disbursement of revenues, I call your attention to the fact that the compensation of the incoming treasurer for the collection of tax tickets turned over to him is limited to three and one-half per cent on collections and disbursements.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—Limit on reissue of bonds.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., June 17, 1932.

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

DEAR MR. PURCELL:

I am in receipt of your letter of the 15th instant, which for the purposes of my reply I quote in full:

"In accordance with the records of the State treasurer's office, we have registered in the name of the (Chapel Fund) Western Lunatic Asylum, \$1,700.00 Riddleberger Three's which mature July 1, 1932.

"Dr. DeJarnette, superintendent of the Western State Hospital, advises us that he is unable to locate these securities.

"Under section 2639 of the Code of Virginia, before the State treasurer's office can issue new bonds in lieu of lost securities, it would have been necessary for Dr. DeJarnette, as superintendent of the Western State Hospital, successor of the Western Lunatic Asylum, to have advertised in some newspaper once a week for four successive weeks, also to file an affidavit setting forth the time, place and circumstances of the loss or destruction of these securities, etc.

"As the date the bonds mature is July 1, 1932, it is now impossible for Dr. DeJarnette to comply with the four weeks publication notice, and, as all remaining Riddleberger bonds on July 1, 1932, are void after that date, it becomes necessary for this office to destroy these securities.

"The maturing bonds surrendered to this office on July 1, 1932, act as a voucher for payment and, as Dr. DeJarnette cannot produce these bonds nor can he comply with section 2639 of the Code of Virginia in order to have new securities issued, I respectfully request your opinion as to how I shall proceed in this matter."

From your letter and the sections of the Code of Virginia to which you refer, I do not see how it is possible for you to issue duplicate bonds in case of loss of the Riddleberger bonds, which by their terms mature July 1, 1932, as all of such bonds by their terms must be surrendered to your office on that date for payment. Neither are you in a position to pay bonds which are alleged to have been lost and which undoubtedly have been misplaced, unless such bonds are produced for payment and cancellation.

Under such circumstances as you detail in the case referred to and in other similar cases, persons claiming ownership of lost or destroyed bonds will have to await special Acts of the Legislature or a general Act providing the method by which ownership may be proved and provision for payment thereof made.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—Not entitled to commission on bonds for school purposes.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 26, 1932.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

I am in receipt of your letter of yesterday, from which I quote

"During the course of an audit of the accounts and records of the county of Carroll, on which we are now engaged, we have found that by a special Act of the General Assembly—chapter 226, Acts of 1928, pages 729 to 734, paragraph 4—the treasurer of this county is allowed commission on the proceeds of a bond issue at the same rate that he is allowed commission on current taxes collected."

Under the provisions of section 2431 of the Code, a county treasurer is allowed one-fourth of one per centum "for receiving and disbursing the money derived from the sale of general county * * * or district road, bridge or school bonds" and in addition the cost to which he is put for additional security upon his official bond.

You will notice that section 2431 includes all general county and district road, bridge and school bonds. This provision as to school bonds is controlled by section 702 of the School Tax Code, which provides that a treasurer

shall receive no compensation upon money or funds derived from loans or bond issues for school purposes.

In my opinion, therefore, while a treasurer is not entitled to compensation on school monies or the proceeds of school bonds, he is entitled to compensation on county and district road and bridge funds and the proceeds of bonds issued for road and bridge purposes.

Chapter 226 of the Acts of 1928 provides for issuing \$75,000 of bonds for Pine Creek magisterial district for the purpose of surveying, repairing, improving and constructing certain roads and bridges in the district.

Section 4 of the Act provides that all monies derived from the sale of bonds under the provision of the Act shall be kept separate from other money in his hands and "he shall be paid the same as he is now paid under the general law for the collection and disbursement of other taxes."

Section 63 of the Constitution provides that no special, local or private legislation shall be passed by the General Assembly in a number of instances, including sub-section 10, reading as follows:

"Granting from the treasury of the State, or granting, or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent or contractor."

The provision in section 4 of chapter 226 of the Acts of 1928, in my opinion, grants extra compensation to the treasurer of Carroll county for receiving and disbursing the money received for bonds sold on account of Pine Creek magisterial district and is, therefore, inoperative and void to the extent that it undertakes to provide greater compensation by a special Act than the amount allowed by general law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TREASURER—No commission allowed on school bonds or monies.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *January 22, 1932.*

HON. T. COLEMAN ANDREWS,
Auditor of Public Accounts,
Richmond, Virginia.

DEAR MR. ANDREWS:

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

"During the school session of 1930-31 the school board of Brunswick county borrowed the sum of \$15,000.00 for the purpose of paying teachers' salaries pending receipt of State aid money. On advice of the attorney for the Commonwealth of Brunswick county, the treasurer of the county claimed and received a commission of one per cent on this loan. This is to request that you advise whether a commission was payable on this transaction. In this connection I refer you particularly to sections 702 and 2431 of the Code. A prompt reply is requested as representatives of this office are now engaged upon an audit of the accounts and records of Brunswick county and we shall have to have your opinion before we can conclude this engagement and prepare our report."

There is unquestionably a conflict between the provisions of section 702 of the Code, which section is carried in the School Code of 1930 and which provides that "no treasurer shall receive any commission upon any money

* * * or on funds derived from loans or bond issues;" and section 2431 of the Code, providing for compensation to treasurers, which allows a commission of not exceeding one per cent on money appropriated to counties and cities for school purposes by the General Assembly and on amounts apportioned from the Literary Fund, and, under the head of miscellaneous items, allows a treasurer one per cent on "loans made by boards of supervisors, city councils or county or district school boards, and all other funds ordered to be received by the treasurer by the county, city or school authorities."

In my opinion, section 702 denies a treasurer compensation on money borrowed for school purposes, while section 2431 allows such compensation.

Considering the question as to which section controls, we must look to two general rules of construction; one to the effect that the last expression of the Legislature controls, and the other that, where a statute has specifically referred to a particular item and the other is more general in its character, the one which has reference to the specific object controls.

I am, therefore, of the opinion that the treasurer of Brunswick county is not entitled to a commission on the \$15,000.00 borrowed by the school board for school purposes in anticipation of the collection of school revenues.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

TRIAL JUSTICES—Salaries—Paid by counties.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *October 12, 1931.*

HON. S. P. POWELL,
*Commonwealth's Attorney,
Fredericksburg, Virginia.*

DEAR SIR:

I beg to acknowledge receipt of your letter of October 1, in which you inquire whether the State will contribute anything toward the expenses of the offices of the trial justices in those counties where all fines are paid to the State.

The salaries of the trial justices are set by the board of supervisors and paid out of county funds. I cannot find anything in the several trial justice Acts which authorizes the State to contribute toward the support of the trial justice courts; nor do I know of any law under which fines for violations of State laws can be diverted to the county treasuries.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

VACCINATION—Power of school board.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *February 5, 1932.*

HON. J. F. REYNOLDS,
*Division Superintendent of Schools,
Stuart, Virginia.*

MY DEAR SIR:

I am in receipt of your letter of January 28, in which you refer to that portion of section 690 of the School Code which briefly provides that, where

a child has not been vaccinated, the school board shall proceed to have such child vaccinated, if the parent or guardian fails to do so after notification of the necessity therefor having been given to him by the school board. You wish to know whether the school board is to pay for the vaccination of a child whose parent or guardian consents to it after receiving such notice, or whether it is to pay only for those vaccinations which have to be "forced by legal action."

I think the school board has to pay for both types of vaccination. The last portion of the sentence quoted by you from section 690 of the School Code provides that the cost shall be paid out of the school funds where the parent or guardian, after receiving notice, fails or neglects to have such child vaccinated. A parent who consents to the vaccination of a child, but who does not himself have it done, has "failed" to have such child vaccinated.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

VETERINARIANS—Must pass examination to practice.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *April 20, 1932.*

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

MY DEAR GOVERNOR:

I am in receipt of your letter of yesterday, in which you enclose a letter from Honorable Nehemiah Kelley, of Mount Jackson, Virginia, of the 2nd instant, in which Mr. Kelley writes:

"We have a petition signed by two thousand citizens. The object of this petition is that parties engaged in veterinary practice for fifteen years or more be permitted to practice by paying the regular license fee though not having passed the required examination.

"The relief sought in this petition is because of the depreciated values of live stock. There are, I believe, two registered veterinarians in this country, and the cost, owing to distance, is sometimes more than the animal is worth. What we desire to know is, if there is any relief from this condition other than by legislative Act. Is there any agency that has the power to grant a permit, if only temporary, to unlicensed veterinarians during this period of depreciated values?"

The statute law governing the practice of veterinary medicine in Virginia is contained in chapter 55, sections 1272-1279, of the Code of Virginia. The law requires persons desiring to practice veterinary medicine to stand an examination upon that subject before being licensed to practice. There is no provision authorizing the Board of Veterinary Examiners, or anyone else, to issue a permit to practice, without such person having taken and passed a satisfactory examination.

It is unfortunate that this matter was not called to the attention of the last session of the Legislature, the only government body authorized to make changes in the existing law.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

VETERINARIANS—Examination required.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ATTORNEY GENERAL,
RICHMOND, VA., *December 10, 1931.*

HON. J. M. BAUSERMAN,
Woodstock, Virginia.

DEAR MR. BAUSERMAN:

I am in receipt of your letter of the 8th instant, in which you desire my opinion concerning the right of a friend of yours to practice as a veterinarian without, I assume, having been duly licensed by the State Board of Veterinary Examiners. I note you say that this person was practicing before the Code took effect.

I am of the opinion that the person to whom you refer is practicing illegally.

It is true that section 1272 of the Code provides that all persons should be permitted to practice veterinary medicine or surgery in this State who, "on the day before this Code takes effect, are lawfully practicing veterinary medicine or surgery in this State." If this section was original and your friend was practicing before the Code took effect, then he could practice without an examination. However, as you will notice, the original law covered by section 1272 was passed in 1895-96. That section provides that all persons who prior to the first day of May, 1896, were practicing veterinary medicine or surgery in the State should be permitted to practice, but with the proviso to the effect that before the first day of November, 1896, such person should apply in writing to the State Board of Veterinary Examiners, created by the Act, and furnish satisfactory proof that they had been in practice in the State prior to the first day of May, 1896, in which case it was mandatory upon the Board of Veterinary Examiners to issue a certificate, without fee, allowing them to continue to practice without undergoing the examination as provided by section 7 of the Act.

I looked this matter up some time ago for the State Veterinarian and found that all of the Acts subsequent to the Act of 1895-96 carried the provision allowing all persons who were *lawfully* practicing prior to the time that each of the Acts took effect to practice, and that the Act now in effect contains the same provision.

As there is no person who did not comply with the Act of 1895-96, or who, subsequent to the passage of that Act, was licensed by the State Board of Veterinary Examiners, practicing in the State of Virginia at the time any one of the Acts, including section 1272 of the Code, became effective, no person who did not apply for and receive a certificate before November 1, 1896, that he had been practicing prior to May 1, 1896, or who had subsequently passed an examination, was lawfully practicing in the State of Virginia at the time the last Code took effect.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

WITNESSES—Fees and mileage allowed in Real Estate Commission prosecutions.

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., May 13, 1932.

MR. W. B. RUDD, *Executive Secretary,*
Virginia Real Estate Commission,
Richmond, Virginia.

DEAR MR. RUDD:

The Attorney General has handed me your letter of May 9 for attention.

I note from this letter, and a letter from Mr. L. W. Wood, attorney for the Commonwealth of Charlottesville, Virginia, who represented the commission in a proceeding against Wheeler & King, real estate operators in Charlottesville and vicinity, that in a hearing before your commission it became necessary to summon a Miss Friedel from Greensburg, Pa., a distance from Charlottesville of 310 miles one way. From Mr. Wood's letter, I note that Miss Friedel was the most important witness at the hearing.

You desire to be informed as to the authority of your commission to pay mileage to the witness, Miss Friedel.

In my opinion, the commission is authorized to pay this witness her fees and mileage, or, in lieu of mileage, a fair compensation for her time and the expenses of her trip. Your commission, under section 9 of chapter 489 of the Acts of 1926, is authorized to summon witnesses within the State, or to take testimony of any such person by deposition with the same fees and mileage in the same manner as prescribed by law in judicial procedure in courts of this State in civil cases.

It is true that a very technical construction of this section does not provide for the use of out of State witnesses. I do not, however, think that the General Assembly intended any such exceedingly restrictive measure. The jurisdiction of your commission, as well as the courts of the State, is, of course, restricted to the State boundaries, but courts are empowered to make reasonable provision for the compensation of non-resident witnesses. I do not see why this same principle of law should not apply to your commission, where the evidence of the non-resident is essential to the prosecution of cases before your commission, and I advise the commission to pay Miss Friedel her attendance fees, and allow her the same compensation for traveling as is usually allowed by courts in similar cases.

Yours very truly,

EDWIN H. GIBSON,
Assistant Attorney General.

Statement

Showing the Current Expense of the Office of the Attorney General from June 30, 1931, to July 1, 1932.

General repairs	\$ 69 00
Telegrams	10 54
Telephone service and tolls	459 81
Subscriptions to and purchase of law books	71 50
Postage	133 22
Towels, drinking water, furniture, office supplies	244 37
Office equipment	227 00
Insurance premiums	11 56
Additional stenographic service	40 00
Printing	76 53
Miscellaneous	143 60
	<hr/>
	\$1,487 13

Statement

Showing Amounts Expended from the Appropriation for Traveling Expenses from June 30, 1931, to July 1, 1932.

1931		
Sept.	7. Collins Denny, Jr., expenses to Staunton, attending Court of Appeals	\$ 12 40
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