

REPORT  
OF THE  
ATTORNEY GENERAL

TO THE  
Governor of Virginia

*From July 1, 1933, to June 30, 1934*

---

RICHMOND:  
DIVISION OF PURCHASE AND PRINTING  
1934



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## Letter of Transmittal

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COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *October 10, 1934.*

HONORABLE GEORGE C. PEERY,  
*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 conditions," as is required by this section, of the causes pending in courts in which the Commonwealth is a party. You will observe also that I have added a number of opinions on questions of public interest.

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,

ABRAM P. STAPLES,  
*Attorney General.*

**Personnel of the Office**  
(Postoffice address Richmond)

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NAME	COUNTY	OFFICIAL TITLE
ABRAM P. STAPLES.....	Roanoke city.....	Attorney General
EDWIN H. GIBSON.....	Culpeper.....	Assistant
W. W. MARTIN.....	Charlotte.....	Assistant
J. WARREN TOPPING.....	Northampton.....	Assistant
G. STANLEY CLARKE.....	Henrico.....	Assistant
D. GARDINER TYLER, JR.....	Charles City.....	Assistant
NERHEA S. EVANS.....	Charlotte.....	Secretary
EVA E. KIBLER.....	Augusta.....	Secretary
LOUISE W. POORE.....	Richmond city.....	Secretary
MARIE LOW.....	Roanoke city.....	Secretary

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**Attorneys General of Virginia**

*From 1776 to 1933*

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EDMUND RANDOLPH.....	1776-1786
JAMES INNES.....	1786-1796
ROBERT BROOKE.....	1796-1799
PHILIP NORBORNE NICHOLAS.....	1799-1819
JAMES ROBERTSON.....	1819-1834
SIDNEY S. BAXTER.....	1834-1852
WILLIS P. 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.....	1918-1934
**ABRAM P. STAPLES.....	1934

\* 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.

\*\* Hon. Abram P. Staples was appointed Attorney General on March 22, 1934, to fill the unexpired term of Hon. Jno. R. Saunders, who died March 17, 1934.

### Cases Decided in the Supreme Court of Appeals of Virginia

1. *Addington, Clarence v. Commonwealth.* From Circuit Court of Scott County. Statutory rape. Reversed.
2. *Brown, Mary v. Commonwealth.* From Hustings Court City of Roanoke. Prohibition. Error confessed.
3. *Campbell, Huron v. Commonwealth.* From Circuit Court of Amherst County. Voluntary manslaughter. Reversed.
4. *Clinton, James v. Commonwealth.* From Circuit Court of Southampton County. Murder. Affirmed.
5. *Compton, John v. Commonwealth.* From Circuit Court of Russell County. Murder. Reversed.
6. *Davis, Aldora v. Commonwealth.* From Corporation Court of City of Radford. Assault. Reversed.
7. *Davis, David Meade v. Commonwealth.* From Corporation Court of City of Danville. Storebreaking. Error confessed.
8. *Dickerson, Lewis and John S. Hawkins v. Commonwealth.* From Circuit Court of Sussex County. Prohibition. Reversed.
9. *Dixon, A. L. v. Commonwealth.* From Circuit Court of Warwick County. Prohibition. Reversed.
10. *Dixon, Clemon v. Commonwealth.* From Corporation Court of City of Lynchburg. Murder. Reversed.
11. *Dolan, Frank and Ernest Wilkerson v. Commonwealth.* From Circuit Court of Nelson County. Larceny. Error confessed.
12. *Dunford, Hob v. Rice M. Youell, Superintendent of the Virginia State Penitentiary.* Habeas corpus. Dismissed.
13. *Elkins, Randolph v. Commonwealth.* From Corporation Court of City of Radford. Contributing to the delinquency of a minor. Reversed.
14. *Evans, McKinley v. Commonwealth.* From Circuit Court of Russell County. Murder. Reversed.
15. *Fisher, W. E. v. Commonwealth.* From Circuit Court of Frederick County. Prohibition. Dismissed.
16. *Galliher, Floyd v. Commonwealth.* From Circuit Court of Smyth County. Interfering with an officer. Affirmed.
17. *Gamble, Joe v. Commonwealth.* From Circuit Court of Scott County. Prohibition. Reversed.
18. *Harris, M. L. v. Commonwealth.* From Circuit Court of Scott County. Prohibition. Reversed.
19. *Hawkins, Russell v. Commonwealth.* From Circuit Court of Brunswick County. Voluntary manslaughter. Reversed.
20. *Hensley, Finley v. Commonwealth.* From Circuit Court of Wise County. Manslaughter. Reversed.
21. *Hoy, John v. Commonwealth.* From Circuit Court of Rockingham County. Seduction. Error confessed.
22. *Mahoney, Nelson D. v. Commonwealth.* From Circuit Court of King George County. Violation of Oyster Law. Affirmed.
23. *Morris Plan Bank of Virginia v. Commonwealth of Virginia, etc.* From Circuit Court of Princess Anne County. Forfeiture of automobile for transportation of ardent spirits. Error confessed.
24. *Mundy, Mrs. Virginia v. Commonwealth.* From Circuit Court of Alleghany County. Subornation of perjury. Affirmed.
25. *Renner, Gilbert v. Commonwealth.* From Circuit Court of Frederick County. Prohibition. Error confessed.
26. *Richards, Boyd R. v. Commonwealth.* From Corporation Court of City of Winchester. Attempted rape. Reversed.
27. *Roller, J. R. v. Commonwealth.* From Circuit Court of Smyth County. Robbery. Reversed.
28. *Roy, George v. Commonwealth.* From Corporation Court of City of Alexandria. Gambling—lottery. Dismissed for want of judgment.

29. *Setliff, George Washington v. Commonwealth.* From Corporation Court of City of Danville. Assault. Reversed.
30. *Smith, Clarence v. Commonwealth.* From Corporation Court of City of Norfolk. Obtaining money under false pretense. Reversed.
31. *Stine, George O. v. Commonwealth.* From Circuit Court of Louisa County. Arson. Reversed.
32. *Venable, George B. v. Commonwealth.* From Circuit Court of Bath County. Illegal disposal of public funds under section 4452 of the Code. Dismissed.
33. *Watson, Herald v. Commonwealth.* From Circuit Court of Washington County. Seduction. Error confessed.

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

1. *Alexandria Water Company v. City Council of Alexandria, Intervenor.* From State Corporation Commission. Reargument. Jurisdictional function of the Court of Appeals on a public utility rate appeal from the Corporation Commission.
2. *Compton, Garland and Reuben v. Commonwealth.* From Circuit Court of Scott County. Murder.
3. *Fletcher, W. A. v. Commonwealth.* From Circuit Court of Wythe County. Grand larceny.
4. *Funk, Fred v. Commonwealth.* From Circuit Court of Wise County. Murder.
5. *Gwynn, Joe. v. Commonwealth.* From Circuit Court of Patrick County. Murder.
6. *Hensley, Layton v. Commonwealth.* From Circuit Court of Rockingham County. Malicious assault.
7. *Little, Mary v. Commonwealth.* From Circuit Court of Wise County. Murder.
8. *Oliver, Bill and Jones, T. v. Commonwealth.* From Hustings Court of City of Roanoke. Prohibition.
9. *Reynolds, R. J. et als. v. Milk Commission of Virginia.* From Law and Equity Court, Part Two, of the City of Richmond. Milk Act, 1934—constitutionality tested.
10. *Salyer, Richard v. Commonwealth.* From Circuit Court of Wise County. Rape.
11. *Stacy, Adam v. Commonwealth.* From Circuit Court of Buchanan County. Grand larceny.

**Cases Pending or Tried in the Circuit Court of the City of Richmond****AT LAW**

1. *Commonwealth v. Richard E. Roberts.*
2. *Commonwealth v. F. C. Lenz, Jr.*

**IN CHANCERY**

1. *Commonwealth v. Hampton Roads Fire & Marine Insurance Company.*
2. *Commonwealth v. Sam'l and Louis Miller.*
3. *State Corporation Commission v. Title Ins. Co. and John M. Purcell, Treas.*
4. *State Corporation Commission v. Missouri State Life Ins. and John M. Purcell, Treas.*
5. *State Corporation Commission v. Lloyds Insurance Company and John M. Purcell, Treas.*
6. *State Corporation Commission v. American Bank and Trust Company.*
7. *State Corporation Commission v. National Surety Company and John M. Purcell, Treas.*
8. *State Corporation Commission v. Inter. Southern Life Ins. Co. and John M. Purcell, Treas.*
9. *State Corporation Commission v. National Benefit Life Ins. Co. and John M. Purcell, Treas.*
10. *State Corporation Commission v. Federal Surety Company and John M. Purcell, Treas.*
11. *State Corporation Commission v. Our Home Life Ins. Co. and John M. Purcell, Treas.*

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# OPINIONS

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## ACTS OF ASSEMBLY—Construction of House Bill No. 341.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 5, 1934.*

HONORABLE A. B. GATHRIGHT,  
*Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

I am in receipt of your letter of April 4, 1934, requesting an opinion of this office as to the proper construction of the act known as House Bill No. 341, amendatory of chapter 360 of the Acts of 1932. The bill adds a new section making available to the State Corporation Commission, for the purposes of enforcing the act, ten per cent of the revenue paid into the Commission under its provisions, provided, however, that the amount shall not exceed the sum of \$6,000.

I am advised that the act did not carry the usual emergency clause. However, it did contain the following provision:

“The provisions of this act shall apply for the year nineteen hundred and thirty-four and for each year thereafter, until otherwise provided by law.”

In my opinion, this is not a sufficient clause to justify construing the act as an emergency act taking effect at once. I am of the opinion, however, that the act does take effect in June.

The amount of the funds set aside shall apply to the receipts by the Commission, under the Act of 1932, for the entire calendar year of 1934 and, if ten per cent of said amount is as much as \$6,000, the entire sum of \$6,000 will be available. On the other hand, if ten per cent of the said receipts is less than \$6,000, then only ten per cent will be available to be paid to the Commission. The date of payment to the Commission, however, must be deferred until the act becomes effective.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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## AGRICULTURE AND IMMIGRATION—Power of Commission to pass regulations—re-infected plants.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 8, 1934.*

HONORABLE G. T. FRENCH,  
*State Entomologist,*  
*Division of Plant Industry,*  
*Department of Agriculture and Immigration,*  
*State Office Building,*  
*Richmond, Virginia.*

DEAR SIR:

This is in reply to your letter of April 30, with reference to the proposed quarantine regulation thereto attached.

You desire the opinion of this office with reference to the power of the Commissioner of Agriculture to issue the regulation, which provides that representatives

of the Department of Agriculture and Immigration may enter all premises whatsoever and destroy living plants of all species of currants and gooseberries found growing thereon, whether or not the same are infected with the white pine blister rust disease.

It is the opinion of this office that the provision of section 871 of the Code confers this power upon the Commissioner of Agriculture. It gives the Commissioner of Agriculture power to provide rules and regulations under which the State Entomologist shall proceed to investigate, control, eradicate and prevent the dissemination of insect pests and diseases of plants, and it further provides that such rules and regulations shall have the full force and effect of law.

If, in the judgment of the Commissioner of Agriculture, it is necessary to destroy plants which are not infected at the time of their destruction in order to prevent the spread of the pest or disease, it is the opinion of this office that this power is conferred by the language above quoted.

It is further the opinion of this office that the powers conferred by section 871-d of the Code, authorizing the Commissioner to give public notice of any insect pest or disease—specifying the plant and plant products infested or infected, or likely to become infested or infected therewith—and also the movement, planting or other use of any such plant or plant product as is likely to carry and disseminate such insect pest or disease, give you authority to prohibit such use. The growing and cultivation of such plants is a use within the meaning of that word as used in said section, and such use may be prohibited by the destruction of the plants involved.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**ALCOHOLIC BEVERAGE CONTROL—Authority of clubs as licensees to sell wine and beer.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 28, 1934.*

HONORABLE G. STANLEY CLARKE,  
*Assistant Attorney General,*  
*Alcoholic Beverage Control Board,*  
*Richmond, Virginia.*

DEAR MR. CLARKE:

This is in reply to your letter of June 19, requesting an official opinion as to the proper interpretation to be placed upon section 18(f) Third, defining the authority which clubs as licensees to sell wine and beer shall have.

The act provides that club licenses "shall authorize the licensees to sell beer in the dining-rooms and other designated rooms thereof, either with or without meals, for consumption on the premises only in such rooms or in private guest rooms thereof." Your inquiry is directed to the question of whether a club which does not have a dining-room may be granted a license.

I am of the opinion that this matter should be controlled entirely by the regulations of the Board. There is no express requirement that the club shall have a dining-room and section 2, subsection (f), which defines a "club" does not require a dining-room as an essential element within the meaning of the act. The effect of the above quoted provision is that the club shall have a right to sell in a dining-room, if it has one, and leaves with the Board the authority to designate other rooms if it seems advisable.

However, I am of the opinion that the Board has the power and authority under the act to issue regulations which will have the effect of rendering any club ineligible for a license unless it has a dining-room. The Board has power to grant a license to any club which does not have a dining-room.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ALCOHOLIC BEVERAGE CONTROL—Authority of manufacturer to clean beer coils on dealers' coolers.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 26, 1934.*

HONORABLE S. HETH TYLER, *Chairman,*  
*Virginia Alcoholic Beverage Control Board,*  
*Central National Bank Building,*  
*Richmond, Virginia.*

DEAR MR. TYLER:

This is in reply to your letter of April 24th, in which you request a ruling from this office as to whether or not it is a violation of section 53 of the Alcoholic Beverage Control Act for manufacturers, bottlers or wholesalers of beer to render the service of keeping clean the beer coils on coolers of the retailers to whom they sell their beer.

Section 53 of the Alcoholic Beverage Control Act makes it a misdemeanor for any such manufacturers, bottlers or wholesalers, either directly or indirectly, to give or lend to any person who holds any retail license thereunder, or to the owner of the premises on which the business of said licensee is conducted, any money, equipment or property with which the business of such retailer is or may be conducted.

It is the opinion of this office that the service above referred to constitutes property within the meaning of said section, and that it is prohibited thereby.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**ALCOHOLIC BEVERAGE CONTROL BOARD—Carrying of concealed weapons by officers, agents and managers of government stores.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 31, 1934.*

HONORABLE WILLIAM R. SHANDS, *Acting Counsel,*  
*Alcoholic Beverage Control Board,*  
*Richmond, Virginia.*

DEAR MR. SHANDS:

This is in reply to your letter of May 23, which is as follows:

"The following language is contained in subsection (i) of section 4 of The Alcoholic Beverage Control Act:

"\* \* \* officers, agents of the Board and managers of government stores are authorized and empowered, upon displaying official badge or reasonable evidence of authority to arrest persons for any disorderly conduct in or about any government stores or property of the Board, or for violations of the provisions of this act upon the premises, committed in their presence."

"The Board desires your opinion as to whether the officers, agents and managers referred to may be armed for the purpose of preserving order and protecting the property of the Board. I shall, therefore, appreciate your advising me whether you consider a permit from any court or local authorities necessary in order to allow the persons referred to to be armed while in the performance of their duties."

Section 4534 of the Code prohibits any person from carrying concealed about his person any pistol, dirk, and so forth, but provides further that the section shall not apply to any conservator of the peace.

In the case of *Withers v. Commonwealth*, 109 Va. 837, it was held that the act

of carrying a concealed weapon about his person by a conservator of the peace is not in violation of law.

A "conservator of the peace" under the common law is an officer who is authorized to arrest for breaches of the peace in his presence, and to preserve or maintain the public peace, *Smith v. Abbott*, 17 N. J. Law Reports, 366; *In re Barker*, 56 Vt. 20; *Jones v. State*, 65 S. W. 92.

The language above quoted from subsection (i) of section 4 of The Alcoholic Beverage Control Act authorizes the officers and agents of the Board and managers of government stores to arrest persons for any disorderly conduct in or about any government stores or property of the Board, or for violations of the provisions of this act upon the premises committed in their presence. While "disorderly conduct" includes some acts which do not constitute breaches of the peace, nevertheless, nearly all breaches of the peace are included within the term disorderly conduct. Therefore, the persons above named are empowered to arrest for breach of the peace, although their powers may also include other offences.

It is my opinion, therefore, that the above named persons, while in or about any government stores or property of the Board, are conservators of the peace, and as such have the right to carry about their persons at said times only the weapons referred to in section 4534 of the Code.

It is further the opinion of this office, however, that when said persons are not at the places where they are authorized to make the arrest, under the above provisions of the alcoholic beverage control act, they are not conservators of the peace and at such times and places do not come within the exception contained in section 4534 of the Code.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

#### ALCOHOLIC BEVERAGE CONTROL—County election—Local option.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 19, 1934.*

HONORABLE S. HETH TYLER, *Chairman,*  
*Alcoholic Beverage Control Board,*  
*Central National Bank Building,*  
*Richmond, Virginia.*

DEAR MR. TYLER:

This is in reply to your letter of April 18th, in which you ask an opinion upon the question raised in a letter to you from Mrs. Howard M. Hoge, Lincoln, Virginia, involving a construction of the local option provision of the Alcoholic Beverage Control Act.

The question raised in Mrs. Hoge's letter is whether or not, under the provisions of section 30 of the Alcoholic Beverage Control Act, a county may hold a local option election, as provided in said section, without the qualified voters living in a town located in said county, having a population of nine hundred or more inhabitants, participating, or having the right to participate, in said local option election.

It is the opinion of this office that the effect of the provisions of subsection (a) of section 30, conferring upon the qualified voters of a town having a population of nine hundred or more inhabitants the right to present a petition to the judge of the circuit court for a local option election and providing that such election shall be called by the judge, is to create such town a separate local option unit or district from the county in which it is located. In other words, such town is one local option unit, in which its qualified voters have a right to call an election and in which the voters of the county will not have a right to participate. On the other hand, if the election is called by the qualified voters of the county, the voters of such town will not have a right to participate therein.

It is further the opinion of this office that this provision separating such town from the county, so far as their constituting local option units are concerned, forbids

their joint action in calling an election and restricts any local option election in a county to the qualified voters residing outside of such town, and also restricts such an election in a town to the qualified voters residing therein and excludes those residing in the county.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ALCOHOLIC BEVERAGE CONTROL—On-premises and off-premises license.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *April 26, 1934.*

HONORABLE S. HETH TYLER, *Chairman,*  
*Virginia Alcoholic Beverage Control Board,*  
*Central National Bank Building,*  
*Richmond, Virginia.*

DEAR MR. TYLER:

This is in reply to your letter of April 23, in which you inquire whether the Virginia Alcoholic Beverage Control Board may grant an on-premises license for the sale of wine and beer to an individual to conduct a business at one place and also grant an off-premises license to a corporation, practically all the stock of which said individual owns, to conduct a business at another place.

It is the opinion of this office that the Board may grant both of such licenses. It is the purpose of the act to prevent one retail business conducted at one place from selling wine and beer for consumption on the premises and also in packages to be taken off the premises. It is further the opinion of this office that the act is directed against the evil of having any two transactions, as is above mentioned, take place on the same premises.

With reference to the second question contained in your letter, it is the opinion of this office that the language found in the act does not expressly prohibit the Board from granting to two separate persons, who are conducting business on the same premises, licenses for the sale of wine and beer—to one an on-premises license and to the other an off-premises license. However, it is further the opinion of this office that the granting of two such licenses for the same premises would be in violation of the spirit of the act. The act confers upon the Board full discretion in granting licenses, and it has ample power to refuse to grant the same if, in its opinion, to do so would violate the spirit and purpose of the act, although not the express provisions thereof.

It is suggested that this question may reasonably be covered by regulations of the Board, which could provide that these two licenses should not be granted to any one or more persons carrying on business on the same premises.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ALCOHOLIC BEVERAGE CONTROL—Distiller's license authorizes blending and bottling of spirits and purchase of alcohol.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *May 4, 1934.*

HONORABLE WILLIAM R. SHANDS, *Acting Counsel,*  
*Alcoholic Beverage Control Board,*  
*Richmond, Virginia.*

DEAR MR. SHANDS:

This is in reply to yours of May 3, requesting the opinion of this office on the two questions hereinafter set out:

"1. Can a person who holds a distiller's license provided for in subsection (a) of section 18 of the Alcoholic Beverage Control Act, engage in the business of blending and bottling alcoholic beverages, provided the necessary alcoholic beverages used in such business are legally secured from the Board?"

It is the opinion of this office that the distiller's license embraces the right to manufacture alcoholic beverages in the manner set out in the above inquiry. The provisions of subsection (a) of section 18 do not confine the method of manufacturing such beverages to actual distillers and, if the alcohol, whiskey, or other spirits, used in the manufacture of said distilled beverages are procured by the manufacturer in accordance with the regulations of the Board and the provisions of the Alcoholic Beverage Control Act, such licensee may engage in the business of blending and bottling such alcoholic beverages.

"2. If a person may engage under a distiller's license in the business of blending alcoholic beverages, is the Board permitted under subsection (f) of section 9 of the act, to sell such person alcohol and spirits in unlimited quantities?"

This subsection provides that not more than one gallon of alcohol or spirits shall be sold to any one person at any one time in any government store, and also provides that this shall not limit the amount which may be sold by the Board in government stores or otherwise for industrial purposes.

It is the opinion of this office that the one gallon limit of such purchases was intended to apply principally to alcoholic beverage sales to persons who might engage in the unlawful resale of such alcoholic beverages, and would not apply to a person holding a distiller's license, or desiring to use the same for other legitimate industrial purposes in accordance with the regulations of the Board.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**ALCOHOLIC BEVERAGE CONTROL—Municipal licenses.**

**COMMONWEALTH OF VIRGINIA.**

OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 12, 1934.

HONORABLE WILLIAM R. SHANDS, *Acting Counsel*,  
*Virginia Alcoholic Beverage Control Board*,  
*Central National Bank Building*,  
*Richmond, Virginia.*

DEAR MR. SHANDS:

This is in reply to your letter of May 9, in which you request the opinion of this office upon three separate cases of sales by a wholesale beer licensee to a person in a city different from the county or city in which such licensee has his place of business, and different from the city in which he has obtained his local license.

It is the opinion of this office that the answer to each of the three questions depends upon whether or not the sale of beer is made in a city in which he does not have his local license.

In the third case set out in your letter it is clear that sale of beer is made in a city in which licensee does not have his place of business, and that such city can require him to take out an additional license therein.

The answer to the first case contained in your letter depends upon whether the solicitor merely solicits an order subject to acceptance by his principal at the place of business in the other city in which he is licensed, or whether said solicitor is authorized to and does conclude an actual sale. If an order is taken and is accepted in the city where the licensee's place of business is located, and he makes delivery to

a common carrier under a contract whereby the carrier acts as the agent of the purchaser, it would seem clear that no additional license could be required in the city in which the order was solicited.

The second case stated in your letter would seem to be controlled by the same principle, whether or not there is an actual sale made within the city seeking to impose an additional license.

The reason for the foregoing is found in the provisions of section 26, subsection (a), of the Alcoholic Beverage Control Act, which provides:

"In addition to the foregoing State licenses \* \* \* the council \* \* \* of each city and town in the State is hereby authorized to provide by ordinance for the issuance of city and town licenses, and to charge and collect license taxes therefor, to persons \* \* \* to \* \* \* sell, within said city or town, alcoholic beverages \* \* \*."

It is the opinion of this office that the language contained in this section specially empowers each city and town to impose and to collect a separate license tax for the privilege of selling alcoholic beverages in such city or town.

Whether or not an actual sale has been made, is largely a question of fact upon which each separate case would turn.

With best wishes, I am

Cordially yours,

ABRAM P. STAPLES,

*Attorney General.*

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**ALCOHOLIC BEVERAGE CONTROL—No authority in Board to grant permit to Jewish Rabbi to purchase wine to sell to congregation.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., June 28, 1934.

HONORABLE G. STANLEY CLARKE,

*Assistant Attorney General,*

*Alcoholic Beverage Control Board,*

*Richmond, Virginia.*

DEAR MR. CLARKE:

This is in reply to your letter of June 27, requesting an opinion from this office upon the question whether, under the provisions of the alcoholic beverage control act, the Board has the authority to grant a permit to a Jewish Rabbi to purchase wine and sell the same to members of his congregation for sacramental purposes.

The law does not make any provision for any such permit. On the other hand, section 40 of the act provides as follows:

"If any person who is not licensed under the provisions of this act to sell alcoholic beverages in this State shall sell any alcoholic beverages other than permitted by the provisions of this act, he shall be guilty of a misdemeanor."

It is obvious from the foregoing that, in order for a Jewish Rabbi to be authorized to sell wine to a congregation, he must procure a license in accordance with the provisions of section 18, subsection (h).

Yours very truly,

ABRAM P. STAPLES,

*Attorney General.*

**ALCOHOLIC BEVERAGE CONTROL—Posting of notices.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 12, 1934.*

HONORABLE C. M. CHICHESTER, *Acting Secretary,*  
*Alcoholic Beverage Control Board,*  
*Richmond, Virginia.*

DEAR MR. CHICHESTER:

I am in receipt of yours of April 11th, inquiring whether the posting of notice in a vacant lot, or other unimproved property, will constitute a compliance with the requirements of section 19 of the alcoholic beverage control act.

Section 19 provides that such notice shall be posted "on the front door of the building, place or room" where the applicant proposes to engage in business. If there is no building on the property, and no fence or gate along the front of the property, there cannot in any sense of the word be a "front door" on which to post the notice. If there is a gate leading into the property, it is the opinion of this office that the gate would be construed as a "front door." However, if there is no gate, then, if the notice is posted in a conspicuous manner on a post or signboard at the front of the lot, this is as near a compliance with the technical provisions of the act as possible, and should be considered a substantial compliance so as to authorize the Board to grant the license applied for.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ALCOHOLIC BEVERAGE CONTROL—Right to give away beer with sale of kitchen cabinet.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 12, 1934.*

MESSRS. PHELPS & ARMISTEAD, INC.,  
*111-113 Campbell Avenue, W.,*  
*Roanoke, Virginia.*

GENTLEMEN:

There has been referred to this office for reply a letter addressed by you, under date of April 6th, to Mr. Tyler, Chairman of the Alcoholic Beverage Control Board, inquiring whether it will be permissible for you to give away beer with the sale of each kitchen cabinet.

It is the opinion of this office that such a transaction is in legal effect a sale of the beer and the cabinet as a whole.

Under the provisions of section 40 of the alcoholic beverage control act, any person not licensed to sell alcoholic beverages, and shall sell the same, is guilty of a misdemeanor.

If you are licensed to sell beer, there is no legal objection to the transaction about which you make inquiry. However, if you are not licensed to sell beer, such a transaction is in violation of section 40 of the alcoholic beverage control act, if the beer is of greater alcoholic content than 3.2 per cent by weight. If the beer is of less alcoholic content than 3.2 per cent by weight, the sale is in violation of section 16, of chapter 3, of the Acts of the General Assembly enacted at the extra session of 1933.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ALCOHOLIC BEVERAGE CONTROL—Sections 50, 55 and 56 construed—  
Duties of enforcement officers.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *April 10, 1934.*

HONORABLE R. W. B. HART,  
*City Manager,*  
*Lynchburg, Virginia.*

DEAR MR. HART:

With reference to the provisions of section 50 of the Alcoholic Beverage Control Act, regarding liquor acquired in violation of the act, I do not think there is any doubt about the fact that a violation of this section, which is made a misdemeanor, stands upon exactly the same footing as every other misdemeanor under our laws. It is the duty of every police officer and sheriff to apprehend and arrest, and assist in the prosecution, in so far as it is proper in other cases.

With reference to the provisions of section 56, I wish to advise that this concerns only chancery suits for the purpose of enjoining the maintenance of premises declared to be a nuisance in section 55.

Section 55 deals with maintaining premises therein described where alcoholic beverages are manufactured, stored, sold, dispensed, given away or used contrary to law. In my opinion, it is the duty of the police to report any such nuisance to the attorney for the Commonwealth and, if the attorney for the Commonwealth deems it advisable to proceed under section 56, he may do so; or, he may have a warrant sworn out for the person maintaining the nuisance, or have him indicted, as to him might seem best.

As to what instructions you should give the local police with reference to violations of section 50, my opinion is that the police should be instructed to arrest such violators.

As to instructions with reference to section 55, this will largely depend upon the policy agreed on between the city manager and the attorney for the Commonwealth as to whether it is more effective to arrest persons violating this section, and charge them with a misdemeanor, or to proceed under section 56 and undertake to abate or enjoin the maintenance of the nuisance. This seems to me to be more a question of policy than one of law, as either remedy is open to the discretion of the attorney for the Commonwealth.

With best wishes, I am

Cordially yours,

ABRAM P. STAPLES,

*Attorney General.***ALCOHOLIC BEVERAGE CONTROL—Transportations companies—Storage  
and sale on boats.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *April 23, 1934.*

HONORABLE C. M. CHICHESTER,  
*Acting Assistant Secretary,*  
*Virginia Alcoholic Beverage Control Board,*  
*Central National Bank Building,*  
*Richmond, Virginia.*

DEAR MR. CHICHESTER:

I am in receipt of your letter of April 17, in which you request that this office reply to certain questions contained in a letter from Mr. A. E. Porter, General Agent, Merchants and Miners Transportation Company, Norfolk, Virginia, concerning the proper construction of subsections (b), (c) and (d) of section 58 of the Alcoholic Beverage Control Act.

The first question asked is, Who are deemed to be licensees who are not prohibited from having in their possession, or from storing, alcoholic beverages on passenger boats duly licensed under the provisions of the act?

It is the opinion of this office that the licensees referred to in subsection (d) of section 58 are those holding retail on-premises wine and beer licenses, as provided in the fourth paragraph of subsection (f) of section 18, described as persons operating boats, conferring upon such persons the right to sell wine and beer in the dining-rooms and other designated rooms of the boats, either with or without meals, for consumption on the premises.

The second question asked is, whether or not such licensees are prohibited from storing on such boats whiskey which they are not permitted to sell under said licenses.

It is the opinion of this office that the act does not *per se* prohibit the storing of such whiskey, but, under the general provisions thereof, this question comes within the regulatory powers of the Board to be covered by appropriate regulations.

The third question asked is, Under what conditions may the above mentioned Transportation Company transport from outside of the State whiskey for delivery in Virginia?

The answer to this question is found in the provisions of subsection (a) of section 58 of the act, which provide that no whiskey shall be transported into this State for delivery unless the same be consigned to the Board; subject, however, to the following exceptions: (1) The Board may permit direct delivery of whiskey and distilled liquors ordered by it from without the State to persons for industrial purposes in the manufacture of medicines and medicinal preparations described in section 32, toilet and antiseptic preparations not intended for internal human use nor to be sold as beverages, and flavoring extracts manufactured and sold for cooking and culinary purposes only; (2) the Board may also permit direct delivery of whiskey ordered by it without the State to wholesale druggists, retail druggists and hospitals. It will be noted that affirmative permit of the Board is required for such delivery, and that all whiskey so delivered must be upon an order placed by the Board.

The fourth question asked is, Under what conditions may the above mentioned Transportation Company transport from outside of the State wine for delivery in Virginia?

The answer to this question is found in the provisions of subsection (d) of section 58 of the act, which provides that such wine must be either (1) consigned to the Board, or (2) to persons holding wholesale wine distributors' licenses, or (3) under permits of the Board, authorizing wine ordered by it from persons without the State to be shipped or transported direct to such licensees as may be granted such permits by the Board.

The fifth question asked is, What duty rests upon the Transportation Company to ascertain whether or not persons to whom wine may be consigned for delivery in Virginia actually are licensed as wholesale wine distributors?

It is the opinion of this office that the duty rests upon the Transportation Company to ascertain by inquiry from the Board, or in such other manner as it may deem proper, whether or not the consignee is a wholesale wine distributor, and that the carrier acts at its own peril in delivering such shipment if the consignee should not hold such a license.

The sixth question asked is, Under what conditions may beer be shipped into Virginia?

The act confers upon the Board the power and authority to make such reasonable and appropriate regulations upon this subject as it may deem proper.

The seventh question asked is, whether there are any restrictions in the act prohibiting a common carrier from transporting in interstate commerce whiskey and other alcoholic beverages through Virginia for delivery into State where it may be lawfully received.

The act contains no such prohibition, but it is the opinion of this office that, while the Board may not prohibit such shipments, it may issue reasonable regulations governing the same.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**APPROPRIATIONS—Board of Agriculture and Immigration—Inspection of fresh meats in packing houses.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 29, 1934.*

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,*  
*Richmond, Virginia.*

DEAR GOVERNOR PEERY:

I have your letter of May 28th, which is as follows:

"The general appropriation act for the next biennium contains an annual appropriation of \$53,995.00 for 'Administration of Feeding Stuffs, Dairy, Pure Food Laws and Cold Storage Law' by the Board of Agriculture and Immigration. The appropriation for this activity contains the following paragraph:

"For inspection of fresh meats in the packing houses, a sum sufficient, not to exceed \$1,500.00 shall be paid from the above appropriation of \$53,995.00."

"I wish to ask your opinion as to whether it is discretionary with the Board of Agriculture and Immigration as to whether the sum of \$1,500.00 shall be expended for the inspection of fresh meats in the packing houses, or whether it is mandatory on the board to make this expenditure of \$1,500.00 for the purpose indicated."

It will be noted that the following language is used providing for this appropriation:

"A sum sufficient, not to exceed \$1,500."

It is my opinion that the effect of the language above quoted is to vest in the Board of Agriculture and Immigration discretionary authority to expend such sum as may be reasonably necessary for the inspection of fresh meats in the packing houses, but in no event shall the amount expended for that purpose exceed the sum of \$1,500. It is not incumbent upon the Board to expend the entire sum unless the same is deemed reasonably necessary.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**APPROPRIATIONS—General Assembly—Reduction of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *August 23, 1933.*

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

MY DEAR MR. COMBS:

I beg to acknowledge receipt of your letter just received, reading as follows:

"We attach hereto copy of report of the Committee on Appropriations addressed to the House of Delegates, together with resolution passed by the House on August 22, 1933, and will thank you to advise whether or not, in your opinion, checks should be issued without deductions for the full amount provided by law for the salary and mileage of members, clerks, etc., of the General Assembly. Also advise whether or not we should disregard that part of your opinion of August 9, 1932, on the same subject."

This matter was informally brought to my attention by your office on last Friday, at which time I suggested that it be discussed with the Governor. Contrary to the general opinion which seems to have gone abroad, no opinion has been given, heretofore, relative to the applicability of reductions to mileage and salaries of members of the General Assembly now in session.

Under date of August 9, 1932, more than a year ago, I gave you my opinion upon the applicability of the reduction ordered by the Governor pursuant to section 30 of the Appropriation Act to eighteen specific appropriations made for the fiscal year ending June 30, 1933. The specific questions then presented by you did not contain the question now presented, but the governing principle is the same.

The power to make appropriations lies, of course, with the General Assembly. For the current fiscal year it has appropriated \$167,285.00 "for legislating for the State." Out of this appropriation is to be paid the salaries and mileage of its members. By section 30, the General Assembly gave to the Governor a power which does not inherently belong to his office, a power which, from a reading of the whole section, unquestionably authorized him to reduce prorata all appropriations out of the general fund so as to prevent a deficit. The Governor has exercised this power, and, the Legislature having authorized him so to do, his order applies to all appropriations payable out of the general fund, unless there be a constitutional bar as in the case of the salaries of the judiciary. The legislative appropriation is payable out of the general fund, and by express action of the Legislature itself it has, for the current fiscal year, been placed on a parity with other appropriations payable out of that fund. Checks issued for salaries and mileage are, therefore, subject to the reductions ordered by the Governor.

The Legislature may, of course, if it sees fit, amend the Appropriation Act so as to relieve the legislative appropriation from the burden placed by it on other appropriations payable out of the general fund, but, until and unless it does so, you must be guided by the law as it today stands. The report of the Committee on Appropriations addressed to the House of Delegates, and the resolution passed by the House on yesterday do not effect an alteration in the law; they constitute simply an expression of an opinion. Only by a formal Act can the present law be changed and the legislative appropriation relieved from the reductions to which, pursuant to legislative act, it has been subjected.

The test is not what was meant to be done, but what was done. For the fiscal year ending June 30, 1933, the Legislature relieved its appropriation of a 10 per cent reduction applicable to other appropriations under section 2 of the Act. No such provision was adopted, however, as to reductions pursuant to section 30. It may be that the individual members did not mean that section to apply to their appropriation; it may be, as has frequently been said, that they did not mean it to apply to Confederate pensions, to schools and other activities, but they made no exceptions and, until they do make exceptions, you must follow the clear requirements of the law. It has been a matter of deep personal regret to me that there was no way by which Confederate pensions and some other appropriations could be relieved, but the legislative mandate has been specific and must be obeyed.

Yours very sincerely,

JNO. R. SAUNDERS,  
*Attorney General.*

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**APPROPRIATIONS—Schools—Authority of city council to make allotments of.**

RICHMOND, VA., *February 12, 1934.*

MR. THOMAS C. WILLIAMS, *Superintendent,*  
*Alexandria City Public Schools,*  
*Alexandria, Virginia.*

DEAR MR. WILLIAMS:

Your letter of Saturday has been received at the Attorney General's office in the absence of Colonel Saunders, who is convalescing from an attack of bronchial pneumonia at his home at Saluda.

I assume from your letter that your city council has made a sufficient appropriation for the calendar year 1934 amounting to \$159,000. You then state that \$95,400 of this appropriation has been allotted to the first six months of 1934, and the residue of \$63,600 to the second six months. You then ask whether or not the council is legally authorized to make such an allotment provision.

There is nothing in the law which prevents your city council from making the provision.

Section 136 of the State Constitution provides that each county, city or town, if the same be a separate school district, etc., may raise monies for school purposes. This section does not require that the local authorities shall make any such provision.

Section 698 of the School Code carries out the provisions of section 136 of the Constitution and gives each county and city discretionary authority to levy for school purposes, or, in lieu thereof, to make cash contributions in an amount not less than the sum required by the county school board in its school budget. There is nothing, however, providing how the levy shall be apportioned or allotted.

In the absence of specific provision, I am of the opinion that the city council may make the allotment as stated in your letter.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

#### **AUTOMOBILES—Compensation allowed where official furnishes own car.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 20, 1934.*

HONORABLE A. B. GATHRIGHT,  
*State Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

I understand a question has arisen as to the obligation of the State to pay garage charges for automobiles used by State officials.

In my opinion, the question should be divided.

1. When State owned cars are used by officials on business of the State, garage charges are included in the legitimate items of expense, just as officials have a right to charge for gas and oil.

2. Where the official furnishes his own automobile, the statute allows him a flat per mile rate of compensation. In such a case, I do not think the official is entitled to reimbursement for garage charges any more than he would be for gas and oil, change of tires, or other incidental expenses connected with the use of his own automobile.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

#### **BAIL BOND—Collection and counsel fees.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 12, 1934.*

HONORABLE LLOYD E. WARREN,  
*Attorney for the Commonwealth,*  
*Portsmouth, Virginia.*

DEAR SENATOR WARREN:

This is in reply to your letter of April 27, which I must apologize for not having answered sooner.

Your inquiry is whether or not a chancery suit to collect unsatisfied judgments in favor of the Commonwealth entered on forfeited bail bonds in criminal cases should be brought in the name of the Auditor of Public Accounts or in the name of the Comptroller.

It is my opinion that, under the provisions of the acts of the special session of the General Assembly of 1927, page 108, all of the duties and powers of the Auditor of Public Accounts contained in the statutes at that time were transferred to the Comptroller, and under the provisions of section 2510 of the Code of 1919, which provides that the Auditor of Public Accounts shall institute and prosecute all proceedings proper to enforce payment of money to the Commonwealth, this duty and authority is now imposed on and vested in the Comptroller.

I will call your attention, however, to section 2563 of the Code, from which it appears that the revisors of the Code of 1919 omitted from section 2563 the provisions of the last clause of chapter 474 of the Acts of 1916, which was an amendment to the Code of 1887. The Code of 1919 re-enacted the same section of the Code of 1887, leaving out the amendment and addition thereto contained in chapter 474 of the Acts of 1916, in effect repealing same.

I am calling your attention to this because it may be that some question might be raised about your right to compensation for the services rendered, or the authority of the Comptroller to employ you for that purpose.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**BANKING LAWS—Authority of Corporation Commission to allow removal of bank.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 1, 1934.

STATE CORPORATION COMMISSION,  
*State Office Building,  
Richmond, Virginia.*

GENTLEMEN :

This is in reply to your inquiry of April 24, requesting the opinion of this office upon the construction of sections 15 and 16 of the Banking Act of 1932 (section 4149 (15)-4149(16) of the Code). The pertinent provisions in these sections are quoted in your letter, so it is unnecessary to again quote them in this reply. The question presented is, whether or not a bank with a capital stock of less than \$50,000 now engaged in business in one town in Virginia may move its place of business to another town in this State, provided the State Corporation Commission shall grant it a certificate of authority so to do.

While section 16 of said Banking Act denies the Commission power to issue a charter to a bank with a minimum capital stock of less than \$50,000, there is no prohibition against issuing an amendment to a charter issued prior to 1932. It is the opinion of this office, therefore, that the Corporation Commission has the power to issue such an amendment to the charter of such a banking corporation.

It is further the opinion of this office, however, that, inasmuch as the removal of the place of business of a bank from one town to another is a very material and substantial change in the object for which the corporation was originally chartered, such an amendment to the charter can be granted by the Commission only with the unanimous consent of all of the stockholders, as provided in section 3780 of the Code.

It is also the opinion of this office that before any such bank can begin business in the place designated in the charter amendment, it must obtain from the State Corporation Commission the certificate of authority provided for in section 15 of the Banking Act of 1932. Under the provisions of this section, no such certificate shall be issued by the Commission unless there is a public necessity for banking facilities or additional banking facilities in the town to which it is proposed to move the place of business of said bank.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**BANKING LAWS—Industrial loan association is not a “bank” within meaning of statutory definition.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *November 15, 1933.*

HON. M. E. BRISTOW,

*Commissioner of Insurance and Banking,**State Office Building,**Richmond, Virginia.*

DEAR MR. BRISTOW :

I beg to acknowledge receipt of your letter of recent date, in which you ask me whether an industrial loan association (sections 4168 (1) to 4168 (11e)) is a bank within the meaning of section 4149(1) of the banking laws, the purpose of your question being to ascertain whether or not such an association is entitled to sell preferred stock to the R. F. C. and to obtain the benefits of the Federal deposit insurance.

Sections 4168(1) to 4168(11e) as they now stand govern industrial loan associations. Such an association is given all the general powers conferred upon a corporation by the general corporation law, and it is given power to lend money on the industrial plan. It is made subject to the supervision of the State Corporation Commission and is annually to be examined by the bank examiners.

So far as the powers of such an association are concerned, they have been the same to all intents and purposes since the adoption of the original Act in 1920.

Section 4149 (73) of the banking act provides that “no bank” shall thereafter be granted authority to do the business of an industrial loan association, and that no industrial loan association shall thereafter be granted authority to do a banking business, or use in its title the words “bank,” “banking,” “savings” and “trusts,” provided that nothing therein shall be construed as limiting the authority of existing State banks to conduct such a business as theretofore they had been lawfully conducting. As you know, this section to which I have referred was adopted in 1928.

By section 1 of the banking act (4149(1)) the word “bank” wherever it appears in the act includes “banks of deposit and discount, savings banks, savings societies, savings institutions, and trust companies now chartered, or which may hereafter be chartered, and any other corporation now chartered to receive deposits or to do any banking business.”

Reading together subsections (1) and (73) of the banking act and the industrial loan association law, I am compelled to reach the conclusion that an industrial loan association is not a “bank” within the meaning of the statutory definition of that word. You will note that in the statutory definition any corporation which is chartered to do any banking business is a bank. This language, taken by itself, would, in my opinion, be broad enough to include an industrial loan association, but, when read with subsection (73) of the banking act and when read with the language of the industrial loan association law, I am of the opinion that any corporation chartered as an industrial loan association is not a “bank” within the statutory definition.

I need not quote to you the authorities, which are very numerous, that define the term “bank” generally as an institution which accepts deposits or lends money or issues notes or performs all or any number of those functions. Within the general definition of a bank as given in the decisions and by the commentaries, an institution incorporated under the Virginia Industrial Loan Association law would be included, because it is permitted to lend money, and indeed that is its business. The statutory definition is more narrow, as I see it, than is the general definition, and, while it cannot be said that, under our industrial loan association law, an industrial loan association is a bank within the meaning of our statutory definition, nevertheless, I think it can accurately be stated that it is an institution which is given limited banking powers—using the term “banking” in its general sense.

I think, therefore, that it might be said that an industrial loan association is a bank within the generally accepted meaning of that term, but that it is not a bank within the definition of the Virginia statute.

As I see it, therefore, the institution to which you refer in your letter must take up with the Federal authorities whether the benefits given by the Federal legislation above mentioned apply only to institutions which may in each State be included within the statutory definition of that State of the term "bank", or whether they apply to institutions which have certain powers commonly known as banking powers and to institutions which, therefore, within the general meaning of the term are banks. It is perfectly evident that the various States may have, and probably do have, different statutory definitions of the term "bank"; and, if the benefits of the Federal legislation are to be applied in accordance with the State definition, then institutions of exactly the same character and exactly the same powers, if they exist in one State, may have the benefits of the law, whereas, if they exist in another State, they would not be given its benefits.

What I have said, of course, applies to institutions organized under the industrial loan association law. Prior to 1928, I understand that some institutions, under a banking charter, conducted an industrial loan business. They, of course, are banks both within the meaning of the State statute and within the general meaning of the term.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**BANK HOLIDAY—Authority for the promulgation by Governor.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 7, 1933.*

HON. M. E. BRISTOW,  
*Commissioner of Insurance and Banking,*  
*Richmond, Virginia.*

MY DEAR MR. BRISTOW:

In response to your request, I beg to advise that the authority for the promulgation by the Governor of the present legal holiday is to be found in the Act of February 11, 1932 (Acts 1932, page 12). The Act under which this action was taken specifically provides, among other things, that the appointing of a day as a legal holiday shall not be construed "to prevent any bank, banker, banking corporation, firm or association from keeping their doors open and transacting any lawful business" on that day.

I am, therefore, of the opinion that it is no violation of the Governor's proclamation for a bank in this State to do such business as it may desire. The appointing of a day as a legal holiday, of course, extends the maturity of paper, etc.

Unquestionably, the proclamation of the President is applicable to State banks, and State banks are bound thereby to the same extent as are National banks. Since the Governor's proclamation does not prohibit the doing of business, a State bank is permitted to do any of those acts not violative of the State laws which are permitted by Federal regulations issued pursuant to the authority of the President's proclamation.

Yours very truly,

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

**BANK STOCKS—Collection of levy.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 18, 1933.*

HON. SIDNEY B. HALL,  
*Superintendent Public Instruction,  
State Office Building,  
Richmond, Virginia.*

DEAR DR. HALL:

I am in receipt of your letter of yesterday, in which you ask me for an opinion on the questions submitted to you in a letter of the 13th instant from Mr. O. L. Emerick, Division Superintendent of Schools of Loudoun County.

Section 2 of chapter 300 of the Acts of 1926 is explicit as to the provision covering the one-third of the revenue levied upon bank stock in incorporated towns in the county of Loudoun, and as to how the money shall be handled.

The law requires the collection of a levy upon bank stock in incorporated towns, to be collected by the town, and one-third of the amount paid by the town treasurer to the county treasurer, to be by him placed as a credit to the district school fund of the district in which the bank is located upon whose stock the levies were made.

The law does not authorize the division superintendents of schools to make collections, and such a practice should be discontinued.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**BILLS—Constitutionality of Senate Bill 21.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 19, 1934.*

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,  
Richmond, Virginia.*

MY DEAR GOVERNOR:

Your letter of the 14th instant, asking for an opinion upon the constitutionality of Senate Bill 21, has been received. You will understand the cause of delay in answering.

Accompanying your letter are copies of two letters to you from Honorable Dave E. Satterfield, Jr., and Mr. Robert E. Butcher, under date of the 12th instant, in which is set up briefly the objection these gentlemen raise to the approval by you of the Senate Bill. There does not seem to be, so far as these letters show, objection to the merits of the Bill. Objection is based solely upon the allegation that the Bill did not pass the State Senate in compliance with the provisions of sections 50 and 186 of the Constitution of Virginia. The letters of Mr. Satterfield and Mr. Butcher do not give in detail the full and complete record covering the passage of the Bill. Reference is made on page 2 of one of the letters to the fact that the Bill did not pass by a constitutional majority, consisting of a majority of the members elected to the State Senate.

I have taken the trouble of making an investigation of the course of procedure covering the *first* Senate vote on Senate Bill 21, the action of the House in which certain amendments were made to the Senate Bill, passed in the House by a constitutional majority, returned to the Senate, and the Senate amendments or the Bill as amended agreed to in the Senate by a constitutional majority of, I understand, 27 to 0.

In considering whether or not the Senate Bill was constitutionally passed, I have given consideration to three aspects:

1. While the Bill did not pass the Senate upon its first vote by a constitutional majority of the Senate, a question is raised as to whether such a majority was necessary to secure the passage of the Bill. If the Bill may be classed as an appropriation bill, it did not pass the Senate by a constitutional majority. Then the question presents itself as to whether Senate Bill 21 is an appropriation bill.

It may be said without hesitation and, I assume, without conflicting opinion that the object of the Senate Bill was to provide for the continuation of the operation of the DeJarnette Sanatorium, near Staunton, Virginia, as a low-priced hospital for the treatment of persons afflicted with mental trouble or the intemperate use of beverages or narcotics. The Bill specifically provides in section 6:

“Such rates and charges shall be sufficient to provide and maintain the DeJarnette Sanatorium, without any appropriations from the State for the costs of the maintenance and operation of such sanatorium and standard of care and treatment equal to that of efficient and well-managed private sanatoriums.”

The language quoted plainly indicates that the sanatorium was to be conducted without costs to the State, specifically providing that it shall be without appropriations. It is true that pursuant to later-day governmental, administrative accounting, the Bill provides that the charges received shall be paid into the State treasury, that the funds shall be kept separate and apart from the general fund of the State treasury and shall constitute a separate fund for the maintenance and operation of the sanatorium, and that these funds, after going into the State treasury, are appropriated by the Bill to be paid out by the State Treasurer on warrants of the Comptroller by vouchers signed by the Superintendent of the Western State Hospital and for the maintenance and operation of the sanatorium. Unless Senate Bill 21 may be construed as an appropriation bill, section 50 of the Constitution does not apply.

While it is true that the Bill speaks of the money as being appropriated, I have reached the conclusion, from the purpose and the language of the entire Act, that it does not come within the prohibition contained in the Constitution. The money received for the treatment of patients in the sanatorium is set apart for the maintenance and operation of the sanatorium. While it is payable into the State treasury, it does not, in my opinion, come within the inhibition of section 50 of the Constitution, providing that no bill making an appropriation of public or trust money can be passed without an affirmative vote of all of the members elected to both Houses of the General Assembly.

As to the passage in the Senate, I have today called up Honorable James H. Price, Lieutenant-Governor, and asked him for his recollection of any incident occurring upon the first passage of the Bill, and asked if I may quote him upon the subject. Mr. Price replied that he would be pleased to have me quote him; that he remembered the incident of its passage distinctly, and that a question was raised as to whether the Bill was an appropriation bill which required an affirmative aye and nay vote of twenty-one members of the Senate, and that, after certain exchanges between himself and members of the Senate, he was of the opinion that the Bill was not an appropriation bill, so ruled and declared the Bill duly passed by the Senate.

2. The Bill took its usual course and was finally amended in the House and passed by a constitutional majority. As amended, the Bill was presented to the Senate and the House amendments agreed to by a constitutional majority in the Senate.

I have taken the liberty of asking both Honorable Thomas W. Ozlin, who was three times Speaker of the House of Delegates, and Lieutenant-Governor Price as to the effect of the adoption of the House amendments by the Senate by a constitutional majority, conceding that the Bill was an appropriation bill, and, though it did not pass the Senate by a constitutional majority, was sent to the House as having passed the Senate.

Mr. Ozlin expressed the positive opinion that the adoption by the Senate of the amendments was in effect a passage of the Bill by the Senate, and that, even though the Bill was an appropriation bill and did not pass the Senate by a constitutional majority in the first instance, the action of the Senate upon the Bill as amended by

the House was a passage by the Senate of the Bill in its amended form and the action of the Senate cured any defect upon its first passage. Mr. Ozlin authorized me to quote him to that effect.

Mr. Price was asked the same question and ruled the same way.

3. In two recent cases serious questions were raised as to whether two Acts of the General Assembly had been passed in accordance with the provisions of the Constitution.

#### THE CULPEPER CASE

In this case chapter 26 of the Acts of the Special Session of the General Assembly of 1933, page 47, was attacked by the Virginia Public Service Corporation and others as ineffective on account of the fact that the Bill had not, under the provisions of section 51 of the Code, been referred to the standing joint committee of the General Assembly on special private and local legislation. The Bill had been introduced as a general Bill and had been cut down in effect by amendments excepting the cities of Danville and Roanoke from the operation thereof. This, it was claimed by petitioners for an injunction, made the Bill special and void, as it had not been referred to the special committee, but to some other general committee of the House. In reply to that attack, counsel for the town of Culpeper, whose council had authorized the issue of bonds for the purpose of establishing a light and power plant, asserted as a principle of law that courts could not go behind the certificates of the President of the Senate and the Speaker of the House as to the manner in which the Bill had been passed. It was also claimed by defendant that, so far as the requirement as to a special committee was concerned, section 51 was directory and not mandatory and that it was laying down the method of procedure and did not constitute a bar upon the action of the House in its legislative procedure. Quite a few other questions were raised, but that of procedure was mainly relied upon by petitioners.

The lower court refused the injunction. Upon application for an appeal, the petition set out the same claim as to the violation of the constitutional provision contained in section 51. The Court of Appeals, without delivering an opinion, denied an appeal.

#### THE HOPEWELL CASE

In this case an attack was made by a litigant in the corporation court upon the Act of the General Assembly passed in January of this year abolishing the corporation court and transferring all business to the circuit court of the city of Hopewell. Among other questions was one as to whether or not the Act abolishing the corporation court of the city of Hopewell was a special Act and, as such, should have been referred, under the provisions of section 51 of the Constitution, to the special committee of the General Assembly before being referred, under the provisions of section 50, to another committee. Question was also raised as to the legality of the Act of the Legislature changing or amending the title to the original Bill. A writ of prohibition had been asked restraining the judge of the circuit court of the city of Hopewell from taking over litigation pending in the corporation court. The question was ably argued by counsel on both sides, and the court refused the writ of prohibition without delivering an opinion. The brief of counsel for the defendant argued at length the question as to the right of a court to inquire into the proceedings of the Legislature and, while the question has not been definitely settled in Virginia, I have arrived at the conclusion that the weight of authority in the country at large, as well as the soundness of the contention, sustained the view that a court should not go behind the solemn Acts of the General Assembly. I have arrived at the conclusions—

1. That Senate Bill 21 is not an appropriation bill in the sense in which section 50 of the Constitution prohibits an appropriation of public or trust funds, without an affirmative vote of a majority of both Houses of the General Assembly.

2 That the action of the Senate in accepting amendments of the House by a constitutional majority constituted a passage of the Senate Bill by a constitutional majority.

3. That courts should not go behind the Acts of the General Assembly as evidenced by the signature of the President of the Senate and Speaker of the House to consider questions as to whether or not a Bill has been properly passed.

Having arrived at the above conclusions, I am of the opinion that Senate Bill 21, if signed by Your Excellency, will have been constitutionally passed.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**BOARD OF MEDICAL EXAMINERS—Authority of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., November 22, 1933.

DR. J. W. PRESTON, *Secretary-Treasurer,*  
*Virginia State Board of Medical Examiners,*  
*Roanoke, Virginia.*

DEAR DR. PRESTON:

I am in receipt of your letter of the 10th instant, from which for purposes of reply I quote:

"In accordance with section 1615 (d) 4th paragraph of the statute, our board is authorized to examine students who have successfully completed two years of their course upon the branches there set out. After consultation with the Deans of the two schools of our State our board finds that the students wish to add to the list of subjects mentioned in this section five others, viz: Pathology, Bacteriology, Materia Medica, Therapeutics and Toxicology, which subjects are completed in the first two years of the medical course, but have heretofore been examined upon after their graduation. In conformity with this desire upon the part of the students and faculties of the schools and for other reasons which we believe to be to the best interests of all concerned, our board is desirous of this change in the event in your opinion it would not be illegal to do so."

I cannot see from a careful examination of chapter 68 of the Code of 1930 "regulating the practice of medicine" that there are any restrictions or regulations upon the Board of Medical Examiners as to how they are to conduct the examination of applicants for license to practice medicine, homeopathy, osteopathy and/or chiropractic, while the board is given express authority in the fourth paragraph of subsection (d) of section 1615 to admit applicants conditionally to examination in anatomy, histology, physiology, embryology and chemistry upon the completion of a two years course. As nothing is said as to the subjects mentioned in your letter, I take it that the board is specifically empowered by law to pass applicants as provided in the paragraph and relieve them from further examinations. I do not think that the board is thereby restricted from enacting rules and regulations by which applicants or students may be passed and relieved from future examinations upon subjects other than those enumerated when, in the judgment of the board, the applicant or student has made satisfactory progress and has mastered other subjects in medical courses which in its discretion renders it unnecessary for the student to further pursue such subjects and be again subject to examination.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**BOARD OF SUPERVISORS—Authority to use district funds to pay for right of way taken over by Highway Department.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., May 24, 1934.

MR. G. W. RHOTON,

*Member of the Board of Supervisors,**Hortons Summit, Virginia.*

DEAR MR. RHOTON:

This is in reply to yours of May 22, inquiring whether or not the board of supervisors would have authority to use funds of the Taylor Road District to pay for the right of way to change a road which was taken over by the State Highway Department as a secondary highway under what is known as the Byrd Road Act of 1932. I note from your letter that the funds which are proposed to be used to purchase this right of way were derived from the sale to the Highway Department by the Taylor District of road equipment on hand at the time the Byrd Act went into effect.

Section 3 of the Act above referred to contains the following:

"All balances in the hands of the local authorities for county or district road purposes and any taxes hertofore 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."

From the foregoing, it is observed that it is the general principle of this Act to require that all monies on hand July 1, 1932, in the county or district road funds should be used either to pay the then existing obligations, or applied to general county or district purposes.

Section 6 of said Act provides for the taking over by the Highway Department of road equipment, machinery, and so forth, on hand or belonging to the local road districts, and that, if sold to the Department, the funds shall be disposed of as follows:

"Any sums received by the local road authorities under the provision of this section shall, so far as may be necessary, be applied on account of obligations heretofore contracted for county or district road purposes and the balance, if any, for general county purposes."

There is no provision in the Act authorizing any county or district money on hand July 1, 1932, to be used in the improvement or changing of any roads, and it is clearly provided in the language above quoted that the fund derived from the sale of your equipment shall be either used to pay past existing obligations, or else devoted to general county purposes.

Section 8 of the Act provides that the local road authorities shall continue to have vested in them power for the establishment of *new roads* in their respective counties to become parts of the secondary system of the State highways; provided, however, that no expenditures shall be required by the State except such as may be approved by the Highway Commission.

I infer from this provision that the board of supervisors is given power to establish *new roads* for the purpose of being taken over in the secondary system, and to expend county funds for that purpose. However, I am of the opinion that the board has no power to expend any such money, either to improve or to change the location of any road, or a part of the secondary system of State highways.

Some question may arise as to whether the new right of way would be acquired in the establishment of a new road, or whether it would be a change of location. Your letter refers to it as a change of location. Whether it would constitute one or the other is largely a question of fact.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**BOARD OF SUPERVISORS—Authority—School levies and appropriations.  
Adoption of budget.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 30, 1934.*

HONORABLE W. N. HANNAH,  
*Attorney for the Commonwealth,  
Palmyra, Virginia.*

DEAR MR. HANNAH:

This is in reply to your letter of April 28, containing four inquiries with reference to the proposed actions of the board of supervisors concerning levies and appropriations in regard to schools.

Regarding your first inquiry as to whether or not the board may finally approve its budget at an adjourned meeting, it is the opinion of this office that this question is controlled by the provisions of section 2577m of the Code, which, in so far as here pertinent, are as follows:

"The said boards \* \* \* may recess or adjourn from day to day or time to time as may be deemed proper before the final adoption of the budget, provided that the final adoption of the county budget by the board of supervisors shall not be later than the date on which the annual levy is made."

The second question is, whether or not the board of supervisors may make a levy in the entire county for more than one dollar on the one hundred dollars of assessed valuation of personal and real property for school purposes.

It is the opinion of this office that, so far as a levy over the entire county is concerned, the provisions of section 698 of the Code restrict the power of the board to levies not in excess of one dollar. In the particular magisterial district in which the money is to be expended, an additional levy not in excess of twenty-five cents per hundred is permitted, but the provisions of said section expressly restrict such additional levy to that particular district.

The third question is, whether or not the board of supervisors may, out of funds in the treasury otherwise unexpended, make a cash appropriation to pay a school indebtedness to be incurred during the fiscal year 1934.

It is the opinion of this office that the board does possess such power. Section 698 of the Code contains the following provision:

"The board of supervisors of any county \* \* \* may appropriate from any funds available such sums as in the judgment of such board or council or such city may be necessary or expedient for the establishment, maintenance and operation of the public schools in such county or city."

The words, "establishment, maintenance and operation," in my opinion, include the construction of a new building as well as paying current operating expenses.

The fourth question contained in your letter is, whether the requirements of the State as to the lending of monies from the Literary Fund and its repayment will be satisfied by the insertion in the school budget of an amount necessary to provide for same, and for the budget to show that said amount is to be derived from and is to constitute a part of the one dollar levy for school purposes.

It is the opinion of this office that such requirements will be met by a provision of this kind being incorporated in the budget. Section 644 of the Code provides that the board of supervisors shall include in the county levies, a levy sufficient to raise such a fund as may be necessary to care for the obligation of the Literary Fund loan, but it also provides in the alternative that, in lieu thereof, the board of supervisors may appropriate a fund sufficient to take care of the same. There is no provision, so far as I have been able to find, which requires that such funds shall not be derived from the general school levy.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**BOARD OF SUPERVISORS—Authority to allow members payment for service on relief committee.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 16, 1934.*

HONORABLE F. F. CHANDLER,  
*Attorney for the Commonwealth,  
Montross, Virginia.*

DEAR MR. CHANDLER:

Complying with the request contained in your letter of the 25th of last month, as reiterated in our personal interview of yesterday, I am advising you that, in my opinion, a board of supervisors may not allow the individual members of the board payment for service upon unemployment relief committees.

It is very true, as stated by you in our interview, that members of the board have performed very valuable service in connection with relief activities, but I think the law very plain that no public official is entitled to pay out of public funds for services rendered, except as specifically provided by law.

Boards of supervisors are specifically prohibited from having contracts with their counties. They are only entitled to pay for the performance of official duties as prescribed by law, and then at the rate of pay prescribed.

I do not understand that boards of supervisors are by law required to perform unemployment relief services, and I do not think that a board can employ others to perform any service except such as may come within the statutory provisions of law conferring authority upon boards of supervisors.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**BOARD OF SUPERVISORS—Ordinances—Fishing on Sunday.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 24, 1934.*

HONORABLE CARL H. NOLTING, *Chairman,*  
*Commission of Game and Inland Fisheries,*  
*Richmond, Virginia.*

DEAR MR. NOLTING:

This is in reply to your request for an official opinion from this office upon the question whether or not the boards of supervisors in the respective counties in the State have the power, by resolution or ordinance, to prohibit fishing in the streams in said counties on Sunday.

The boards of supervisors of counties possess only such powers as are conferred upon them by law under the provisions of section 111 of the Constitution, which is the only section dealing with this question. It is provided that the board of supervisors of the county shall "perform such duties as may be required by law."

Section 2743 of the Code of Virginia confers the general powers possessed by the boards of supervisors except in counties adjoining cities with a population of more than one hundred and twenty-five thousand, which is covered by section 2743a, and in counties adjoining any such city that has a density of population of five hundred or more, which is covered by section 2743b contained in the 1932 supplement to the Code. In these last two sections, the boards of those respective counties are given the same powers as councils are given in the cities.

As these counties are exceptions to the general rule, they will not be dealt with in this opinion; nor does this opinion undertake to deal with any special acts of the General Assembly which may have conferred special powers upon the boards of supervisors in any particular county. This opinion, therefore, is confined only to

counties in which the powers of the boards of supervisors are controlled by the general laws of the State.

Prior to the Acts of the General Assembly of 1930, section 2743 of the Code, dealing with the general powers of the boards of supervisors, conferred upon said boards the power "To prevent the destruction of game, fish, wild fowls, birds, and fur-bearing animals, and to limit still further than is provided by general law the time, manner, and means by which they may be taken or killed; the number that may be taken or removed from the county in a given time, and the manner and condition of such removal."

The General Assembly, at its session in 1930, in chapter 247 of the Acts, beginning at page 634, adopted what is known as The Game, Inland Fish and Dog Code of Virginia. This Act creates the Commission of Game and Inland Fisheries, and vests in it very broad powers to regulate fishing and hunting, and the catching of fish and the killing of game. It is the opinion of this office that it was the purpose of this Act to vest in this Commission, except in so far as may be inconsistent with other statutes and special acts, the exclusive regulation and control of fishing and hunting in this State. On page 664 of the Acts, which is a part of this chapter, it is expressly provided that the above quoted provision of section 2743 of the Code, conferring the power upon the boards of supervisors with reference to game and fish, is repealed.

It appears, therefore, that it is the clear purpose of The Game, Inland Fish and Dog Code to withdraw this power from the boards of supervisors and vest it in the Commission, and that the boards of supervisors in the respective counties no longer possess any powers whatsoever with respect to hunting and fishing.

For the reasons above stated, therefore, it is the opinion of this office that any resolution or ordinance passed by the board of supervisors of any county, unless such power is expressly conferred upon the board by a special act of the General Assembly, which may undertake to in any manner limit the time in which fish may be caught in a stream in said county, or to prevent the taking of fish in said stream on Sunday, is in conflict with the general laws of this State conferring such powers on the Commission of Game and Inland Fisheries and is, therefore, void.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

#### **BONDS—County treasurer—Amount paid on premium by State.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *February 1, 1934.*

HONORABLE A. B. GATHRIGHT, *Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

I am in receipt of your letter of yesterday, with which you enclose a letter of the 30th from Paul L. Ruehrmund, Inc.

In the Ruehrmund letter you are notified that, unless the State's proportionate part of one-third of the premium on the bond of T. J. Todd, Treasurer of Henrico county, is promptly paid, the insurance company represented by Paul L. Ruehrmund, Inc., will petition the court to be relieved of its liability upon Mr. Todd's bond.

For purposes of my reply, while your letter is of some length, I am quoting it in full:

"I am enclosing herewith copy of a letter received today from Mr. Paul L. Ruehrmund, President, Paul L. Ruehrmund, Incorporated, having reference to the proportionate part of premium due by the State on account of the bond of Mr. T. J. Todd, Treasurer, Henrico County.

"You will recall conference had in this office yesterday afternoon in connection with this matter.

"I understand that the Board of Supervisors of Henrico County has paid

the two-thirds of the premium on this bond payable by the county. It is my further understanding that Mr. Todd continues to function as Treasurer of Henrico County, and as evidence of the continuation of this service there was today received from Mr. Todd a check, payable to the Treasurer of Virginia, in the amount of \$4,000.00, tendered the Commonwealth in part settlement of his collections during the month of January for State license taxes.

"Pursuant to verbal advice from your office some time ago, we have withheld payment to Henrico County of any monies which, but for existing circumstances, with which you are familiar, would have been paid to this county pending determination by the Supreme Court of Virginia of the status of certain officers of this county.

"The amount of gas tax which ordinarily would have been paid to Henrico around the tenth of January has not been paid, and I understand that within a few days there will be certified to this office for payment to the treasurer of this county the proportionate part of school funds payable to Henrico county.

"I wish to be advised if we shall pay to the bonding company the sum of \$387.50, which amount represents the one-third of the premium on Mr. Todd's bond payable by the State, and also if we shall pay to Mr. Todd as Treasurer of Henrico county, the gas tax now being withheld, the one-third of State capitation taxes returnable to Henrico county and the school monies payable to Henrico county which may be certified to this office for payment by the Superintendent of Public Instruction."

You call attention to my verbal advice to your office some time ago, when I advised that all State monies allotted to Henrico county be withheld.

The occasion to which you refer occurred before the first of January, this year. What may be termed the old board of supervisors of the county were contesting in court the right of what may be called the new board of supervisors to begin to officiate on the first day of January, 1934, the old board claiming that, although the county of Henrico had voted to change its county system of government, members of the old board of supervisors having been elected for a definite term and the office to which each had been elected not having been abolished by law, they as constitutional officers were entitled to hold during the entire term of office for which they had each been elected. Proceedings were brought in the circuit court of Henrico county to test the rights of the old members and the rights of the new members to function as the board of supervisors for the county of Henrico.

It was in anticipation that the new board would organize and undertake to function as the board of supervisors and to set up a county form of government, as provided in the act under which the election referred to was held. My advice was with especial consideration of the anticipated appointment of a fiscal officer for the county as successor to Mr. Todd, who had been duly elected treasurer of the county of Henrico and whose office will not expire until the 31st day of December, 1936. Thus, at the time that my previous verbal advice was given, I anticipated not only a contest over the question as to which of the contesting boards of supervisors was the legally constituted board for the county of Henrico, but I had in mind a contest over what may be termed the office of county treasurer.

The ruling of Honorable Julien Gunn, Judge of the Circuit Court of Henrico county, was being carried by way of appeal to the Supreme Court of Appeals of Virginia, and I anticipated a decision in time to clarify the very much muddled governmental-set-up situation in Henrico county prior to the time an acute financial crisis would occur in that county.

It was under these circumstances that I advised you to withhold all monies going to Henrico county.

The case as to the supervisors, while it would not necessarily control the question as to who was the fiscal authority of the county, was expected to establish the principles of law upon which the Attorney General's office could base its opinion. However, the Court of Appeals adjourned last week until its March term without handing down an opinion.

The new board of supervisors have not undertaken to assume the duties of the office or to set up the form of county government which they would be authorized to establish should the Court of Appeals reverse the judgment of the lower court.

What may be termed the new board not having undertaken to act in the premises pending an appeal and no contest as to the authority of Mr. Todd to continue to act having been made, I am of the opinion that he is treasurer of Henrico county either by virtue of his election or as holding over as treasurer, as provided for by section 132 of the Code of Virginia, which, after providing terms of office, continues:

"They shall continue to discharge the duties of their respective offices until their successors shall have been qualified."

Unless the law is thus construed, there is no person authorized to discharge the duties as fiscal officer of the county of Henrico, and thus a most unfortunate situation arises in carrying on the necessary activities and functions of the county.

It is consequently my opinion that you should pay to the insurance company one-third of the premium upon Mr. Todd's bond and, further, that you should pay to Mr. Todd the State capitation taxes returnable to Henrico county, the gas tax allotted to that county and the school monies payable to that county which have been certified to your office for payment by the Superintendent of Public Instruction.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**BONDS—Road—Calling of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 23, 1934.

MRS. MAY K. SEEDS,  
*Deputy Treasurer,  
Waverly, Virginia.*

DEAR MRS. SEEDS:

Honorable L. McCarthy Downs has referred to me your letter of May 21, with the request that I reply to same.

It appears from your letter that your board of supervisors has already passed a resolution directing the treasurer to call five thousand dollars of the Waverly District road bonds at the next interest bearing date, which is July 1, 1934.

I note from your letter that you state the owners are required to be given six months notice before the bonds can be called. Not having the bonds before me, I am unable to give you any information upon this question. It must be that you are referring to some particular provision contained in the bonds which require six months notice to be given prior to their being called. However, the resolution of the board of supervisors states that the bonds will be subject to call July 1, 1934, which is the date of the next interest payment.

Under the provisions of section 2124h of the Code, if the bonds are subject to call, the chairman of the board of supervisors may give notice of the count's readiness to redeem such bonds. Such notice may be given to the holder in person or by publication thereof once a week for two successive weeks or nearest thereto. It is sufficient in the notice to give the number and amount of such bonds desired to be called, and fix a day for the presentation of same for payment, which shall not be less than ten days from the date of personal service of the notice, or the completion of the publication thereof in the newspapers, as the case may be. It is further provided in said section that, if the bonds be not presented on the day fixed for their redemption, interest thereon shall cease from that day.

It may be that the provisions of the foregoing section are not applicable to the bonds you refer to in your letter by reason of some particular provision contained in the bonds. As I do not have any such provisions before me, I am unable to advise you on this point. However, if the bonds are now callable by their terms, you may proceed in accordance with the above provisions of section 2124h of the Code. Notice, as you will observe, is to be given by the chairman of the board of supervisors.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**BONDS—Schools—Payment of interest.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 15, 1933.

HON. L. MCCARTHY DOWNS,  
*Auditor of Public Accounts,*  
*Richmond, Virginia.*

DEAR MR. DOWNS:

I am in receipt of your letter of yesterday, which for purposes of my reply I quote:

"I have received the following letter from the treasurer of Alleghany county:

"I would like a legal opinion from you and the Attorney General in regard to the payment of interest on unpaid Alleghany county school bonds in amount of \$50,000. These bonds were due and payable May 1, 1933.

"These are 5 per cent bonds with all coupons paid in full, but the question has now arisen whether the county should pay interest from the day of default until the date of payment.

"I now have money on hand to pay these bonds so would appreciate it very much if you would get an opinion on this matter and advise me immediately.

"Trusting that you will give this your prompt attention, I beg to remain

"Yours very truly,

R. FRAZIER SMITH,  
*County Treasurer.'*

"Will you kindly give me your opinion in accordance with the request in the above communication?"

In my opinion, interest is payable on the unpaid Alleghany county school bonds from the date upon which the last interest thereon was paid until the date of payment of the principal of the bonds.

The fact that coupons evidencing interest have been paid in full has no bearing upon the payment of interest on the principal of the bonds from the date of the last payment.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**BRIDGES—Toll—Free transportation to school bus drivers.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., February 2, 1934.

HONORABLE G. A. HARRIS,  
*House of Delegates,*  
*Richmond, Virginia.*

DEAR MR. HARRIS:

Dr. Sidney B. Hall, Superintendent of Public Instruction, has written me that you desire the opinion of the Attorney General's office as to the right of a bus driver to free transportation over a privately owned toll bridge, when such driver is on his way to pick up school children for the purpose of carrying them to a public school and returning to his home after he had discharged all of the school children upon a return trip.

I do not think that a bus driver is entitled to free use of a toll bridge at any time other than when his "vehicle is carrying any pupil or student to or from attendance upon any school, college, or other educational institution in this State."

The quotation is from section 694 of the School Code of Virginia, which section further provides that each pupil, student, or the parent or guardian of each pupil or student may apply for and receive from the principal of a school, college, or educational institution, a card certifying that the child or person is a pupil or student regularly attending the school, college, or educational institution, and that the card, when exhibited to the keeper or person in charge of the toll gate or bridge, shall be accepted in lieu of all charges for passage through a toll gate of such pupil, or horse ridden by a pupil, or any horse-drawn or motor-driven vehicle carrying "any such pupil or student to or from immediate attendance upon any such school, college or educational institution."

If it is proposed to provide free transportation for school buses at any other time, section 694 of the School Code must be amended.

However, careful consideration should be given to the constitutionality of any such provision of law before it is introduced and passed.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**CITY COUNCIL—Authority to erect school building.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *April 10, 1934.*

MR. CARL L. BUDWESKY,  
*Attorney at Law,*  
*Alexandria, Virginia.*

DEAR SIR:

This will acknowledge yours of the 31st ultimo, sending me a copy of the agreement covering the \$300,000 loan from the Federal Emergency Public Works Administration to the city of Alexandria.

The contract in question clearly contemplates that the city of Alexandria shall expend the funds, make contracts and sub-contracts in connection with the construction of the project and generally supervise the entire construction of the project. The contract being between this agency of the Federal government and the city of Alexandria, and covering not only the advancement of this money, but also the expenditure thereof, the purpose of same contemplates that the governing body of the city which has authorized the contract and the project shall likewise be empowered to carry out the performance of the contract in accordance with its original scope and purpose.

While the general laws prior to the special session of the General Assembly of 1933 vested in the local school boards exclusive authority in connection with the supervision and construction of school buildings, this authority of the board was purely statutory and not a constitutional power. While, under the provisions of section 133 of the State Constitution, there is placed on the school boards the duty of supervising the schools in each city and county, it is the opinion of this office that this supervision embraced in his constitutional provision does not extend to the actual construction of school buildings, but is confined to the operation of the schools.

Under the provisions of chapter 26 of the Acts of the General Assembly at the special session of 1933, the governing body, which is defined to mean the councils of cities, is granted broad powers in reference to the borrowing of funds from the Federal Emergency Administrator of Public Works, and, by sub-section (g) of section 2, the city is authorized to make and execute all contracts and instruments necessary or convenient in or for the furtherance of any project. The building of the high school at Alexandria is defined to be the project in the contract in question. By sub-section (i) the city is further authorized to do all things necessary or convenient to carry out the powers expressly given in the act and to carry out any project.

In view of the foregoing provisions and the provisions of the contract, it is the opinion of this office that the council of the city of Alexandria is charged with

the responsibility of the construction of the new high school, which is designated in said contract as the project for which the loan has been made.

I am returning herewith the copy of the contract which you sent.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**CITIES AND TOWNS—Authority to levy license tax on automobile dealers.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL.

RICHMOND, VA., *April 25, 1934.*

HONORABLE J. L. MANNING, *Superintendent,*

*Department of Police,*

*Roanoke, Virginia.*

DEAR MR. MANNING:

Referring further to your letter of April 13, in which you ask for an official opinion from this office as to the right of local governments to enact ordinances requiring a license of automobile dealers for the privilege of soliciting business in the respective counties, cities, and towns, after looking into the matter, I beg to advise you that the opinion of this office is as follows:

1. No county has the right or power to levy any such license tax on automobile dealers, or in any case, except a representative of a distributor for beer containing less than 3.2 per cent of alcohol by weight.

2. No city or town has the right to levy any such license tax unless the charter of such city or town specifically confers such power upon its council.

3. Where the charter of such city or town does specifically and expressly confer such power upon the council of such city or town, it is lawful and proper for the city or town, in accordance with its charter, to enact an ordinance levying such license tax on automobile dealers soliciting business therein.

I am sending a copy of this letter to Mr. L. O. Key, of Key-Antrim, Incorporated, at whose request you have written me.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**COMMONWEALTH'S ATTORNEYS—Appropriation—Reduction of.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL.

RICHMOND, VA., *December 11, 1933.*

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

*Richmond, Virginia.*

MY DEAR MR. COMBS:

I am in receipt of a letter of recent date, signed by the Chief Clerk Expenditure Section, enclosing a letter received by him from Honorable Albert V. Bryan, Commonwealth's Attorney, Alexandria, Virginia, which letter deals with the application of the reduction ordered by the Governor pursuant to section 30 of the Appropriation Act and the maximum allowance to Commonwealth's attorneys provided for in section 3505.

I have read Mr. Bryan's letter with some care. He takes the position that you are correct in deducting 30 per cent of the fees as they are allowed, but that you have no right to reduce the maximum established by section 3505.

I cannot agree with Mr. Bryan in his construction of these Acts. Section 30 of the Appropriation Act sets out to accomplish the express purpose that there shall not be any overdraft or deficit, and the extraordinary power there given to the Governor is given to him so as to carry into effect that purpose. So far as Common-

wealth's attorneys are to be reduced so as to aid in the carrying out of that purpose, it becomes necessary to construe the appropriate legislation as requiring a reduction of the maximum, else the very purpose of the legislation would be defeated.

Yours very truly

JNO. R. SAUNDERS,  
*Attorney General.*

**COMMISSIONERS OF REVENUE—Disposition of transfer and State license fees collected by.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *May 16, 1934.*

HONORABLE A. B. GATHRIGHT, *Chairman,*  
*State Fee Commission,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

This is in reply to your letter of May 15, in which you request of this office a definite construction of the so-called Moffett Act and the county government Act, in so far as the disposition of the transfer fees and State license fees collected by the Commissioners of the Revenue is involved.

Under date of April 12, 1934, this office expressed the opinion that the State should pay one-third of the costs of discharging the duties of assessing and collecting taxes in the offices of the Directors of Finance in Henrico and Albemarle counties. In that letter it was stated that, in as much as the county government Act provides for all fees to be paid into the county treasury, and in as much as there is no express provision in said Act for any contribution by the State to the expense of collecting and assessing taxes, all such fees should be so applied, and that the State should pay one-third of the residue of the costs. At that time the provisions of the Moffett Act, requiring State license fees to be paid into the State treasury, had not been called to my attention.

Upon considering these two statutes together and the reasons advanced in your letter of May 15, in which I concur, you are advised that it is the opinion of this office that the principles of the Moffett Act should be applied in their entirety, in so far as the costs of assessing and collecting taxes are concerned, in said counties of Henrico and Albemarle, and that the State license fees of the Commissioners of the Revenue should be paid into the office of the State treasury, and the provisions of the Moffett Act applied in so far as other fees are concerned.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**COMMONWEALTH'S ATTORNEYS—Fee allowances.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *April 7, 1934.*

HONORABLE A. B. GATHRIGHT, *Comptroller,*  
*Richmond, Virginia*

DEAR MR. GATHRIGHT:

I am in receipt of your letter of March 14, 1934, addressed to this office, requesting a construction of section 3505 of the Code, as amended.

The particular point upon which you desire a construction is whether or not the fact that the recent Act, known as Senate Bill No. 180, abolishes the fee system, effective July 1, 1934, also operates to reduce by fifty per cent the maximum amounts provided in section 3505 which can be paid to the attorneys for the Commonwealth out of the State treasury for fees earned by such attorneys under the rates applicable during the first half of the year.

Your attention is called to the fact that, beginning February 15, the fees of the attorneys for the Commonwealth for prosecutions under the prohibition law and the violation of all laws relating to intoxicating liquors have been reduced from \$25.00, so that such fees are now the same as in any other misdemeanor or felony cases, as the case may be.

It is the opinion of this office that, in as much as no amendment has been made to section 3505 of the Code, the same should be construed according to its actual provisions, and that there is no authority of law to restrict the attorneys for the Commonwealth who actually earn the fees before July 1, 1934, from receiving the maximum amounts provided for in section 3505 of the Code.

It is, therefore, the opinion of this office that, in all cases where such fees are actually earned by the attorney for the Commonwealth prior to July 1, 1934, the maximum amounts provided for in section 3505 may be paid, or such part of the amount as may be actually earned by said attorney for the Commonwealth within the first six months.

Respectfully yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**COMMONWEALTH'S ATTORNEY—Fees—Appearing in preliminary hearing of felony charge.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *July 5, 1933.*

HON. ALBERT V. BRYAN,  
*Attorney for the Commonwealth,*  
*Alexandria, Virginia.*

DEAR MR. BRYAN:

I am in receipt of your letter of the 1st instant, in which you make inquiry as to my opinion in regard to the fee due an attorney for the Commonwealth for appearing in a preliminary hearing upon a charge of felony before a police court or justice where the officer trying the case is of the opinion that the facts only sustain the charge of misdemeanor.

In my opinion, the charge being a felony, the attorney for the Commonwealth is entitled to a fee of \$5.00 for appearing.

Your second question is "whether or not under section 4705, allowing an attorney's fee of \$10.00 'in every case of conviction' for a violation of the gaming laws of this State, the Commonwealth's attorney prosecuting the case is entitled to have such a fee taxed in the costs when the defendant pleads guilty. The question is if 'conviction' includes a plea of guilty."

In my opinion, the word "conviction" includes a plea of guilty, and an attorney for the Commonwealth is entitled to his fee where he appears at a trial and a plea of guilty is entered.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**COMMONWEALTH'S ATTORNEYS—Fee of—Prohibition cases.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *April 17, 1934.*

HONORABLE A. B. GATHRIGHT,  
*Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

This will acknowledge your reference to this office, for an opinion on the question

therein presented, of a letter under date of April 4, from Mr. Edward C. Burks, Attorney for the Commonwealth, of Bedford, Virginia, and also a letter of the same date from Mr. J. Livingstone Dillow, Attorney for the Commonwealth of Giles County.

Each of these letters raises the question as to whether or not the fees of the attorney for the Commonwealth for prosecuting prohibition cases shall be controlled by the Layman Act, or by the law applicable since the repeal of the prohibition fees provided for in the Layman Act, which repeal became effective on February 15, 1934.

It is the opinion of this office that the fee to be allowed the attorney for the Commonwealth is dependent upon the time the service was rendered; that is, the trial was actually had. If such trial was had after February 15, the new and reduced scale of fees will apply; while, if the trial was held prior to February 15, the scale of fees provided for in the Layman Act will control.

You also inquire as to the rules which would be applicable to sheriffs for arresting persons for violations of the Layman Act.

These same rules would apply in the cases of the sheriffs. If the arrest was made before the repeal, the scale in the Layman Act should determine the amount of the sheriff's fee; whereas, if the arrest was made after the repeal, the new scale of fees would apply.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

#### CONSTITUTIONALITY OF ACTS—Public works act.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *September 19, 1933.*

HONORABLE A. M. AIKEN,  
*City Attorney,*  
*Danville, Virginia.*

DEAR JUDGE AIKEN:

In reply to your inquiry as to the constitutionality of the Virginia Public Works Act, which was passed by the special session of the General Assembly a few days ago and approved by the Governor on September 7, 1933, I beg to state that there is no doubt in my mind as to its constitutionality.

You inform me that some objection has been made to its constitutionality on account of the fact that the second paragraph of section 14 provides that, before the cities of Roanoke and Danville can issue bonds or incur indebtedness, elections must be held in order to give the voters an opportunity to pass upon the question.

In my judgment, this provision in no way affects the constitutionality of the Act. For many years the Legislature has enacted laws with similar provisions contained therein and, so far as I know, none of such Acts have been declared unconstitutional.

I have read with care the letter written to you by Honorable William R. Shands, Director of the Division of Statutory Research and Drafting, who prepared the bill which became a law on September 7, 1933, and I fully concur in the views expressed therein.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**COUNTIES—Director of Finance—Proportionate part of salary to be paid by State.**

## COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL.

RICHMOND, VA., *April 12, 1934.*

HONORABLE HAROLD M. RATCLIFFE,  
*Attorney for the Commonwealth,*  
*402 Travelers Building,*  
*Richmond, Virginia.*

DEAR MR. RATCLIFFE:

I am in receipt of your letter of April 11, in which you request an opinion from this office upon the question as to whether the State of Virginia should pay one-third of the salaries of the directors of finance, and expenses of conducting the offices, in the counties of Henrico and Albemarle, which have adopted the county executive form of government. I wish to thank you very much for calling my attention to the sections of the Code to which you refer in your letter.

I have also received a letter from Mr. Fife, Attorney for the Commonwealth for Albemarle county, dealing with this same question and citing various provisions of the statutes concerning the question.

It is very clear from the provisions of the statutes to which you refer in your letter, and that of Mr. Fife's, that the duties of the offices of treasurer and commissioner of the revenue have been combined and transferred in toto to the director of finance. The office of the director of finance is now charged with the duty of assessing property for taxation, and collecting and distributing records of assessments, and also with the duty of collecting State taxes.

While there is no specific express provision in the statutes for paying this officer for his services, section 3516g, as amended by the Acts of 1932, provides that one-third of the salaries and expenses of the offices of the treasurers and commissioners of the revenue, who are charged with the same duty, shall be paid by the State. This definitely fixes and establishes a fair proportion of the salaries and expenses of such offices to be borne by the State.

On page 251 of the Acts of Assembly, 1932, there appears in the Appropriation Act for the fiscal year 1933-1934 the following appropriations:

"For assessing property for taxation and collecting and distributing records of assessments, a sum sufficient, estimated at \$225,000.

"Out of this appropriation shall be paid commissions to commissioners of the revenue and examiners of records, and the postage and express charges on land and property books, etc.

"For collecting State taxes, a sum sufficient, estimated at \$255,000.

"Out of this appropriation shall be paid to county and city treasurers and clerks of courts the commissions to which they are entitled by law for the collection of State taxes."

It will be observed, therefore, that, while the language in the above appropriations specifically provides for the payment of commissions to the commissioners of the revenue and treasurers, there is no prohibition against the payment of other proper charges and expenses in connection with the assessing of property for taxation and collecting the State taxes.

It will be further noted that, although the language used in the above appropriations, so far as the same authorizes payments to be made to commissioners of the revenue and treasurers, covers commissions only and makes no reference to salaries, nevertheless, by an act passed at the same General Assembly, these officers were placed on a salary basis and the salaries of such officers have been paid out of these appropriations.

There is no restriction whatever in the language used in making these appropriations which would confine the use of the funds appropriated to the payment of commissioners of the revenue and treasurers. It is a fair and reasonable implication that any proper work or service performed by any officer under authority of law, in making such assessments or collections, shall be paid for out of these appropriations.

Since the law clearly authorizes and requires the directors of finance in these counties to perform these services, it is the opinion of this office that one-third of the proper expenses incurred by said directors in assessing and collecting taxes should be paid by the State out of the monies appropriated for those purposes as above set forth.

There arises, however, the question of the determination of what constitutes one-third of the cost and expense of assessing and collecting State taxes.

Under section 2773 (34) of the Code, 1932 Supplement, the director of finance is or may be charged with the performance of numerous duties which are not embraced in the offices of county treasurer and commissioner of the revenue. For this reason, it will not be proper to assess against the State one-third of the cost of conducting the entire office. The proper amount to be paid by the State is one-third of the cost of doing the same work now required of the offices of commissioner of revenue and treasurer. This should include such proportionate part of the salary of the director of finance as his work in discharging the duties of commissioner of revenue and treasurer bear to his whole work. In addition thereto, it should include such part of the salaries and other expenses of deputies and employees in the office as is properly chargeable against the performance of the duties of the treasurer and commissioner of the revenue.

There is no express provision in the statutes for determining this amount. However, under section 3516f, of the 1932 Supplement (Acts 1932, page 893), the board of supervisors and the State fee commission are charged jointly with the duty of fixing the proper allowance for the expenses of the offices of county treasurer and commissioner of the revenue.

It is the opinion of this office that, in so far as possible, this same method of fixing the proper expense of the office of the director of finance, which should be chargeable to the assessment and collection of taxes, should be followed. The board of supervisors and the State fee commission should undertake to agree upon a fair amount to be paid by the State for the discharging of these duties. In the event of disagreement, then, under the provisions of section 3516e (Acts of 1932, page 892), the final decision will rest with the circuit court of the county or the judge thereof in vacation.

It should be added in connection with the determination of the amount to be paid by the State that section 2773-n, subsection 25, provides that all fees and commissions collected by the director of finance shall be paid into the county treasurer under the county executive form of government. Section 2773-n, subsection 51, contains a similar provision as to the county manager form of government.

Taking all of these provisions into consideration with the general provisions of the other statutes, it is the opinion of this office that all such fees so collected by said director of finance should be applied by the county to the expense of performing the duties of said office, in so far as the same may be applicable to the assessment and collection of taxes, and that, in determining the one-third part of the expense which the State is to pay, the said one-third should be confined to the balance of the cost of such work after so applying the said fees and commissions.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

COUNTIES—Legality to use cash in sinking fund for purchase of own bonds.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *October 31, 1933.*

HON. W. O. FIFE,  
*Attorney for the Commonwealth,  
Charlottesville, Virginia.*

DEAR MR. FIFE:

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

"We should like to have the benefit of your opinion as to whether a county can legally use cash now in its sinking fund for the purchase of its own bonds, where these bonds are selling on the market at a premium, or above par.

"Section 2116 of the Code of Virginia prohibits a sale of county bonds at less than par, but we can find no legal objection to the use of sinking fund for purchase above par."

Sinking funds are expressly provided for the retirement of bonds for which a levy was made. There is no provision in the law providing a sinking fund as to the manner in which bonds are to be retired or the price to be paid therefor. In the absence of such law, a board of supervisors has authority to redeem bonds before maturity at their market value at the time of purchase, even though that value is above par. The transaction is a matter of business, in which the board of supervisors are required to use good judgment and to act for the best interest of the county.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**COURTS—Corporation—Authority of General Assembly to abolish.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *January 24, 1934.*

HONORABLE W. O. ROGERS,  
*State Senate,*  
*Richmond, Virginia.*

DEAR SENATOR:

I have your personal request for my opinion as to the constitutional provision providing for corporation courts in cities of the first class.

By the provisions of section 98 of the Constitution of Virginia, before the new Constitution of 1928 became effective, it was provided:

"In each city of the first class, there shall be, in addition to the circuit court, a corporation court."

Therefore, the old Constitution required legislation providing for a corporation court in each city of the first class.

The language of the Constitution of 1928 very materially changes the provisions of section 98 as applicable to corporation courts in cities of the first class. In the new Constitution, it is provided:

"In each city of the first class, there may be, in addition to the circuit court, a corporation court."

The change substitutes for the provision in the old Constitution of the word "shall" in section 98, the word "may" in the same section of the new Constitution. This change from the word "shall" in the old Constitution to the word "may" in the new Constitution substitutes a discretionary authority in the General Assembly for the mandatory provision in the old Constitution requiring a corporation court in cities of the first class.

In my opinion, therefore, it is entirely within the authority of the General Assembly to abolish corporation courts in all cities of the first class.

The revisors of the Constitution of 1928 construe section 98 of that Constitution just as I have done.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**DEATH CERTIFICATE—Preparation of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *October 23, 1933.*

DR. B. H. SWAIN, *Coroner,*  
*Ballston, Virginia.*

MY DEAR DOCTOR:

I am in receipt of your letter of the 18th instant, in which you ask my construction of section 4806 of the Code as it applies to a physician's duty, and especially as to whether the coroner should write the death certificate or the physician in the case, where the physician has not seen the patient for several weeks or months, of death from tuberculosis, etc. and whether or not there is a penalty for failure to report.

I do not think that section 4806 covers the subject of your inquiry.

Section 1568 of chapter 66 of the Code, under the title of Vital Statistics, provides that, in the case of death without medical attention, it is the duty of the undertaker or other person acting as such to notify the local registrar of the death, and that the registrar shall inform the nearest member of the county board of health and refer the case to him for immediate investigation and certification.

Under the provisions of this section, where the coroner holds the inquest, I take it that it is his duty to make the certificate of death required for the burial permit, and shall state certain facts in such certificate.

Section 1578 requires the local registrar on the 10th day of each month to transmit to the State registrar all original certificates of births and deaths occurring in the previous month.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**DEPOSITS—County—Acceptability of Home Owners' Loan bonds as collateral security.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL.  
RICHMOND, VA., *April 5, 1934.*

HONORABLE L. MCCARTHY DOWNS,  
*Auditor of Public Accounts,*  
*Richmond, Virginia.*

DEAR MR. DOWNS:

There has just been brought to my attention your letter of March 16, addressed to this office, with reference to the acceptability of Home Owners' Loan bonds as collateral security required to be provided by a bank to protect deposits of county treasurers.

By an act of the special session of the General Assembly of 1933, section 2158 of the Code was so amended as to permit bonds of the Home Owners' Loan Corporation to be accepted as security for State deposits, provided they were taken at ninety per cent of the market value thereof on date of deposit, and not to exceed fifty per cent of the security required.

Under the provisions of section 350 of the Tax Code, which was also amended at the special session of 1933, Acts of Assembly, page 63, it is provided that securities of the character required to protect deposits made by the State Treasurer pursuant to the provisions of section 2158 of the Code shall likewise be acceptable as security to protect county treasurers for banks which act as depositories.

It is also provided in section 350 of the Tax Code that securities described in section 5431 of the Code are likewise acceptable as security. In section 5431, subsection 2, of the Code, such securities are described as follows:

"In the bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the principal and interest, including the bonds of the District of

Columbia, and farm loan bonds issued under an act of Congress approved July seventeenth, nineteen hundred and sixteen, known as the Federal farm loan act."

I am advised by Senator Wicker, local president of the Home Owners' Loan Corporation, that Congress has passed an act providing that the United States Government guarantees both the payment of the principal and interest of all Home Owners' Loan Corporation bonds. This act, as I understand it, has not yet gone into effect, which I suppose is when the President signs it. These Home Owners' Loan bonds will be acceptable at face value just as other United States government bonds are acceptable.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**DEPOSITS—County—Security required from banks of depository.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 8, 1934.

HONORABLE J. FRANK WYSOR,  
*Treasurer,*  
*Pulaski, Virginia.*

DEAR MR. WYSOR:

Mr. Downs, Auditor of Public Accounts, has asked me to reply to your letter to him concerning the amount of collateral to be required from banks of depository in which county treasurers deposit funds.

Mr. Downs has sent me a copy of his letter to you under date of May 5, in which he refers to recent acts of the special session of the General Assembly.

Chapter 37 of the Acts of 1933, section 350, subsection (f) of the Tax Code (Acts of 1933, page 65) has been amended so as to read as set out in Mr. Downs' letter to you. Also, subsection (g) of said section has been amended so as to read as follows:

"No treasurer or executive officer of any depository shall permit the amount of money on deposit with any depository at any time pursuant to the provisions of this section to exceed the amount of bond given or the value, computed as hereinbefore provided, of the securities pledged and deposited to secure such money, plus the amount insured by the said Federal Deposit Insurance Corporation."

In view of the foregoing provisions of section 350 of the Tax Code, as amended, it is the opinion of this office that the banks should be given a credit to the extent of \$2500, or such amount as such bank may be insured by the Federal Deposit Insurance Corporation.

With best wishes, I am

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**DIVISION OF MARKETS—Excess fees collected by revert to general fund.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 1, 1934.

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,*  
*Richmond, Virginia.*

DEAR GOVERNOR PEERY:

This is in reply to your letter of April 27, requesting the opinion of this office upon

the question of whether or not the excess fees, if any, collected by the Division of Markets for voluntary inspection of agricultural products reverts to the general fund of the treasury at the end of the current biennium, or whether same shall be carried forward as a special fund to the next biennium.

The appropriations for the current biennium for this voluntary inspection are found on pages 207 and 208 of the Acts of Assembly, 1932, for the first year of the biennium, and on page 281 for the last year of the biennium. The appropriation is for \$93,975, but there is no provision that same shall be paid out of any special fund. The following language is contained in this appropriation for both years:

"It is provided, however, that the division of markets may, with the written consent and approval of the governor, first obtained, expend for the voluntary inspection of agricultural products, in addition to this appropriation of \$93,975, the amount of fees, if any, collected and paid into the State treasury for such voluntary inspection service, in excess of \$93,975, where later developments are believed to make such additional expenditures necessary."

It seems clear from the foregoing language that it was the intention that the fund derived from these fees was to be used for the payment of the operating expenses of the service and, since no special fund is created, it would naturally be assumed that such fees derived from the service should go into the general fund. This intention would seem to follow from the fact that, before the division is permitted to expend any amount in excess of the appropriation, the receipts from its inspection service in the form of fees must exceed the amount of the appropriation to the extent of any such additional expenditures.

Section 8 of the Appropriation Act provides that all monies collected by the Division of Markets of the Department of Agriculture and Immigration shall be converted into the general fund of the State treasury, but this language is found in that section: "This paragraph does not include the fund known as the voluntary inspection fund."

However, section 11 of the Appropriation Act, on page 316, provides that all fees collected by the Department of Agriculture and Immigration, from whatever source, or any division or section thereof, shall be paid promptly and directly into the general fund of the State treasury. This paragraph also includes certain special funds specifically mentioned, "and such other special funds as are hereinbefore described." Inasmuch as the fund derived from voluntary inspection had been previously described in section 8, the language is broad enough to expressly include such special fund and to convert the same into the general fund of the treasury as and when the monies collected from the voluntary inspection service are paid into the State treasury.

It is the opinion of this office, therefore, in view of the foregoing provisions of the Appropriation Act for the year 1932, that all monies derived from the voluntary inspection of agricultural products by the Division of Markets of the Department of Agriculture and Immigration are required to be paid into the State treasury and, when so paid, immediately become a part of the general fund of the treasury created by said Appropriation Act.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**DIVISION OF MOTOR VEHICLES—Authority to issue free license tags to  
Brazilian Consul.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 25, 1933.*

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

DEAR MR. FRAZIER:

Pardon my not having sooner replied to your letter of the 8th instant, in which

you enclose your file covering the question as to your authority to issue free license tags to the Brazilian Consul at Norfolk, but I was awaiting the construction placed upon the agreement entered into between the United States of America and other American Republics contained in a pamphlet marked Treaty Series No. 843, which has been signed both by the United States of America and by the Brazilian government.

According to a letter of the Honorable J. Warren Topping, your counsel, under date of the 16th instant, sixteen of the States of the Union have refused to issue free licenses to vehicles operated by foreign consular officers; free licenses are provided by statutes in five States, and in six States free licenses are issued, as is said in Mr. Topping's letter, "as a matter of practice," and that Wisconsin is withholding free license pending an opinion of the Attorney General of that State, and Pennsylvania and Delaware give free registration where there is reciprocity.

I understand from Mr. Topping that the issue of free licenses by Virginia will impose an undue burden upon Virginia, as this State would be called upon to issue many more free licenses than any other State, as, on account of its proximity to the District of Columbia, a large number of officials of foreign governments have their residence within the State of Virginia.

In my opinion, a test should be made of the application of the convention between the United States and other foreign countries before the construction which is sought to be put upon it by the Federal government is applied in the State of Virginia. If the law is construed as entitling the Brazilian Consul at Norfolk to a free license for his automobile, the same construction should be placed upon the law by all of the States of the Union. I infer from the fact that sixteen States, including Virginia, have refused free licenses under laws similar to that of Virginia that the Legal Department of those States failed to concur in the opinion that consular agents are entitled to free automobile licenses, and that for Virginia to agree to allow the issue of free licenses would put an unusual burden upon this State.

I do not think that the motor vehicle law of Virginia, quoted in the letter of the 24th of August to Governor Pollard by the Acting Secretary of State of the United States, can be construed as authorizing you to issue tax-free licenses to the Brazilian Consul at Norfolk, as I construe subsection (e) of section 23 of chapter 342 of the Acts of the General Assembly of Virginia of 1932 as allowing reciprocal privileges to foreign-owned vehicles and not as providing for free licenses to foreign-owned vehicles. Neither do I understand that subsection (g) of section 23 covers the situation as to free licenses to the Brazilian Consul at Norfolk.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**DIVISION OF MOTOR VEHICLES—Employment of counsel to defend officers.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 20, 1933.*

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

MY DEAR GOVERNOR:

Pardon my not having sooner replied to your letter of the 5th instant, in which you enclosed a letter of the same date from Honorable T. McCall Frazier, Director of the Division of Motor Vehicles, in which Mr. Frazier stated certain facts in connection with the employment of counsel in connection with the defense of Lieutenant H. B. Nicholas and Sergeant J. W. Watkins, of the Division of Motor Vehicles, charged with the murder of one Herndon Pollard.

I note from Mr. Frazier's letter that at the time of employment of counsel it was understood that the services of the attorney would be paid for by the National

Surety Company, in which Nicholas and Watkins were insured, and I assume that it was not at that time the understanding of Mr. Frazier that the services of the attorney were in any event to be payable out of the State treasury.

It is regrettable that the National Surety Company should have failed before the attorney was compensated for his services.

However, I do not know of any provision in the law which authorizes the State to assume and pay for legal services which were rendered under the circumstances detailed in Mr. Frazier's letter.

Yours very truly,

JOHN R. SAUNDERS,  
*Attorney General.*

#### **DIVISION OF PURCHASE AND PRINTING—Authority of Director.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *November 21, 1933.*

HON. CHARLES A. OSBORNE, *Director,*  
*Division of Purchase and Printing,*  
*State Office Building,*  
*Richmond, Virginia.*

DEAR MR. OSBORNE:

I am in receipt of your letter of the 14th, which for purposes of reply I quote:

"Please refer to section 6-a, chapter 61, Acts of the General Assembly of 1933, and let me have your construction of same.

"The Act referred to states specifically that the State Highway Commission and all other State Departments and Institutions are given authority in making purchases. When purchases are made for State Institutions it is not unusual for representatives of the several Institutions to be present and I am particularly interested in knowing what my authority is in the event that I see fit to make a purchase from a firm co-operating with the NRA and paying a higher price than that at which the same article might be purchased from a firm not co-operating with the NRA in the event of the representative of the Institution desiring to make the purchase at the low price."

The provisions of chapter 61, page 115, of the Acts of the Special Session of 1933, embody the policy of the National Administration as contained in the National Industry Recovery Act passed by Congress and approved June 16, 1933, and commits the State of Virginia to the policy of the Federal Act providing "for the general welfare by co-operating with and assisting the national government in promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, \* \* \* to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and conserve natural resources, \* \* \*." And further providing: "The violation of such standards by any person engaged in such trade or industry or subdivision thereof within this State shall be deemed the use of unfair methods of competition." And again, "If, when a code of fair competition has been approved or prescribed by the President under the National Industrial Recovery Act, any person shall violate any provision thereof in any transaction within this State not in or affecting 'interstate or foreign commerce' \* \* \*, such person shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred (\$500.00) dollars for each offense, and each day such violation continues shall be deemed a separate offense."

Section 6-a, to which you refer, in my opinion, authorizes the State Purchasing Agent to observe the same principles as are applicable to the State Highway Commission, and gives you authority to purchase from firms operating under the National Recovery Act at a higher price than that at which the same article may be purchased

from firms not operating under that Act, and your authority is not limited or affected by the fact that representatives of the institution for which you make purchases preferred the lower bid and desired you to make purchases at a lower price from firms not co-operating with the Federal Administration under the provisions of the National Recovery Act.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**DIVISION OF PURCHASE AND PRINTING—Payment of increase of contract price.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *January 2, 1934.*

HONORABLE CHARLES A. OSBORNE, *Director,*  
*Division of Purchase and Printing,*  
*State Office Building,*  
*Richmond, Virginia.*

DEAR MR. OSBORNE:

I am in receipt of your letter of even date, from which for purposes of reply I quote:

"A majority of coal contracts for furnishing coal to the State Institutions of Virginia are subject to what is known as the wage clause, which means that if the pay of the miner is increased such increase is to be borne by the consumer. The firms with whom we have contracts have advised from time to time certain increases, none of which have been paid for the reason that we did not know of our own knowledge that the increase claimed was correct.

"We are now desirous of paying these increases subject to adjustment; that is if we find that the increase claimed by the coal company is too much, we are to be reimbursed by the coal company."

In my opinion, unless you have substantial information that the charge made by the coal contractors against the Commonwealth for an increase of the contract price by the amount of increased costs of coal production by reason of the increase of wages, the item or items charged for such wage increase or increases should be paid subject to adjustment, provided the charges on account of the increased of wages are not more than the actual increase incurred.

While it is practically impossible to arrive at an exact mathematical costs increase, a settlement upon the best information obtainable is all that can be required of you as State Purchasing Agent, and, if you are satisfied that the items charged are substantially in line with a fair estimate, I am of the opinion that those items should be paid along with the bill for the contract price, or, if they have not been paid, should be paid in addition to the contract price.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**DOG LAWS—Killing of rabbits.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 24, 1934.*

MR. MARVIN A. TROUT,  
*Clerk of Warren County,*  
*Front Royal, Virginia.*

DEAR MR. TROUT:

Your letter of yesterday was received at this office in the absence of the Attorney General.

Subsection b of section 60 of the game, inland fish and dog laws provides:

"The word 'livestock' includes cattle, sheep, goats, swine, and enclosed *domestic rabbits or hares.*" (Italics supplied.)

According to the definition quoted, rabbits which are kept within an enclosure and which are killed or injured by dogs should be paid for just as any other livestock under the provisions of section 74 of the game laws.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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**ELECTIONS—Application for absent voter's ballot—Time limit.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 2, 1934.*

MR. C. L. BOOTH, *Registrar,*  
*Danville, Virginia.*

DEAR MR. BOOTH:

Your letter of the 28th of February has been received at the Attorney General's office in the absence of Colonel Saunders, who is at his home in Saluda.

In my opinion, section 203 of the Virginia election laws, providing the time within which application must be made to a registrar for an absent voter's ballot, requires the application to be in the hands of the registrar five days prior to the primary or general election, and it is not sufficient to post the application five days before such election.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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**ELECTIONS—Candidates—Filing of expense accounts.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 17, 1934.*

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

DEAR MR. McDOWELL:

I am in receipt of your letter of the 13th instant, in which you ask to be advised as to the proper place for the filing of expense accounts of candidates in the Democratic primary for nomination for membership in the council of the city of Richmond.

You also ask as to the manner in which notice is given of the candidacy of persons nominated in a primary election.

As you write, sections 232 and 253 of the Code make somewhat inconsistent provisions as to the filing of statements of expenditures by candidates participating in primaries. Section 232 is included in chapter 15, under the title of primary elections, and provides for the filing of a sworn, itemized, written statement of expenses with the clerk of the county or city in which the candidate resides. That section does not make any provision for filing expense accounts with the officer or board authorized by law to issue certificates of election, as is provided in section 253 of the Code, chapter 16, under the head of pure elections. However, section 253 goes further than section 232 and provides for filing a sworn, written, detailed statement of expenditures with the officer or board authorized to issue certificates of nomination to candidates participating in a primary, and requires a duplicate thereof to be filed with the clerk of the circuit court of the county or corporation court of the city in which the candidate resides.

While I do not know that a question has ever been raised as to the exact procedure, or whether or not candidates should file both with the officer or board authorized to issue certificates of nomination and the clerk, I suggest, out of an abundance of precaution, that a statement be filed with the officer or board and with the clerk.

The answer to your other question is contained in section 154 of the Code, and provides that the names of party nominations shall be furnished to secretaries of electoral boards by the persons to whom abstract election returns shall be furnished.

Section 241 provides that certain abstracts signed by the commissioners of election and attested by the secretary shall be deposited in the office of the clerk of the court and forwarded to the chairman of the county or city committee. The last paragraph of the section provides that the chairman or chairmen receiving certain copies of the abstracts shall publish the results of the primary election; that, if the abstracts are not received within eight days after the primary is held, the chairman or chairmen of the party shall dispatch messengers to obtain copies from the secretary of the board of election commissioners.

It is, therefore, my opinion that the chairman of the committees to whom election reports are certified is the proper person to issue certificates of nomination and to notify electoral boards of the names of all candidates nominated in primary elections.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

#### **ELECTIONS BALLOTS—Erasure of name in case of death of candidate.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 7, 1933.

HON. BERNARD MAHON,  
*Attorney for the Commonwealth,  
Bowling Green, Virginia.*

DEAR MR. MAHON:

I am in receipt of your letter of today, which for purposes of reply I quote:

“When two candidates regularly file their declaration of candidacy for nomination to the House of Delegates in the Democratic Primary more than sixty days prior to the Democratic Primary on August 1, 1933, and within thirty days prior to that date one of the candidates dies, can the name of any person who is qualified to hold office be inserted (stamped or written) on the ballot by the voters on the day of the primary election?”

1. There is no provision for a candidate for the Democratic nomination for House of Delegates to be voted for in the Democratic Primary August 1, 1933, to file his declaration of candidacy and have his name inserted on the printed ballot.
2. However, section 224 of the Code of Virginia provides among other things:

“All the provisions and requirements of the statutes of this State in relation to the holding of elections, the counting of ballots, the making and certifying of the terms, and all other kindred subjects shall apply to all primaries insofar as they are consistent with this chapter.”

In my judgment, the quotation covers section 162 of the Code, the last paragraph of which provides:

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

The two paragraphs read together, in my opinion, make it entirely legal for a voter to erase and substitute a name in the place and stead of a name appearing on an official ballot, and the judges of election should count each of such ballots for the person whose name appears thereon, either printed or written, and make returns thereof according to law.

3. I think it entirely proper to call your attention to the last sentence of section 221 of chapter 15 dealing with primary elections, which I quote:

"The provisions of this chapter shall be liberally construed so that the will of the electors may not be defeated by any informality."

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ELECTIONS—Capitation tax.—Voting on tax receipt.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 5, 1933.

MR. LAWSON WORRELL,  
*Chairman Electoral Board,*  
*Roanoke, Virginia.*

DEAR MR. WORRELL:

I am in receipt of your letter of the 30th of June, which did not reach the office until today on account of holidays. You ask certain questions:

"Can a voter who has lived part of the three years in another jurisdiction, but is now eligible to vote in Roanoke city, vote on his tax tickets obtained in the place of his former residence, or is it necessary that he obtain a *certificate* from the treasurer to whom he paid such taxes?"

Section 115 of the Code provides that, where a voter has been transferred from one city or county to another city or county and has paid his capitation taxes in his former place of residence, "such voter may exhibit to the judges of election the certificate of the treasurer of the city or county wherein the said taxes were paid, showing such payment, and that the same was made at least six months prior to the election, by the person offering to vote, such certificate shall be conclusive evidence of the facts therein stated for the purpose of voting."

"Can a voter who has paid the necessary three years taxes in Roanoke city, but whose name *does not* appear upon the printed list and who does not have the list corrected within the time limit—

"(a) Vote upon exhibition of his receipted tax ticket?

"(b) Upon the certificate of the *treasurer* of Roanoke city that he has properly paid his taxes as required?"

The law requires that the names of persons who have paid their capitation taxes in the county or city in which they live and are assessed, and who offer to vote, must appear upon the printed list. If the names do not appear upon the printed list and the list is not corrected, the persons whose names are omitted are not entitled to vote. See sections 109 and 110 of the Code.

Yours very truly,

JOHN R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Capitation tax.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 12, 1934.*

HONORABLE JOHN M. HART,  
*Commissioner of the Revenue,  
Roanoke, Virginia.*

MY DEAR JUDGE:

Your letter of Saturday addressed to the Attorney General, in connection with the assessment of the capitation tax of a person under circumstances as detailed in your letter, has been received in the absence of Colonel Saunders.

For purposes of reply I quote this letter:

"A came to Virginia on the 1st day of January, 1933, with the intention of remaining here only in the event that he could find employment. Some weeks later he did find employment and determined to make Virginia his home. Should he be assessed for head tax for the year 1933 or for the year 1934 or for both? He insists that, not having definitely decided to make Virginia his home until sometime after the first of January, the first year taxes assessable against him are those for 1934."

In my opinion, the date as of which a person is assessable with a capitation tax is that upon which, having come into Virginia, he definitely decides to give up his former place of residence and establish a residence in Virginia.

In the case to which you refer, I take it that you as commissioner of the revenue must pass upon the bona fides of his claim as to that date. Until he has definitely decided to settle in Virginia, he is not assessable with a capitation tax, although he may actually have come from another State into Virginia looking for employment. Such a proposition as you propose to the Attorney General is more factual and practical than technical or legal.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ELECTIONS—Capitation tax.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 1, 1934.*

HONORABLE S. W. WATKINS,  
*Treasurer, Prince Edward County,  
Farmville, Virginia.*

DEAR MR. WATKINS:

Your letter of yesterday has been received at the Attorney General's office.

You desire to be advised as to the last day upon which a person becoming twenty-one years of age after January 1, 1933, may pay the capitation tax and register to vote. You desire this information both as to a primary and a general election.

There is no statute specifying within what time a person becoming of age after the first day of January of the year preceding the year in which he offers to register and vote must pay his capitation tax. It is only necessary that this capitation tax be paid on or before the last registration day. In counties, in order to vote in a primary, a youth becoming of age may pay his capitation tax up to and on the primary election day, provided the registrar is convenient and the judges of election allow the registration books to be used by the registrar. Of course, before registering, the youth must be assessed by the commissioner of the revenue and pay the capitation tax to the treasurer. Cities and towns close their registration books after the third

Tuesday in May, previous to June municipal elections. The capitation tax paid by a youth of age in 1933 is credited on the 1934 capitation tax, while, if the youth becomes of age in 1934, his or her capitation tax is credited on the year 1935.

You ask as to the payment of a capitation tax by a person moving into the State. The only difference between a person moving into the State after the first day of January, 1933, and a youth becoming of age lies in the fact that no capitation tax is required of such a person in order to register and vote.

This situation has been brought about by the fact that the law only provides that persons must pay capitation tax or taxes assessed or assessable against them for the year previous to the year in which they offer to vote, and, the residence period having been reduced from two years to one year, a person coming into the State after the first day of January of the previous year has been in the State long enough to become eligible to vote although not long enough to have been subject to the payment of a capitation tax.

I trust that all of your questions have been satisfactorily answered.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ELECTIONS—Capitation tax.—Last day for payment of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 17, 1934.*

HONORABLE H. A. HADEN,  
*Director of Finance,*  
*Charlottesville, Virginia.*

DEAR SIR:

I am in receipt of your letter of the 12th instant, in which you ask to be advised as to the last day upon which a person desiring to qualify to vote in the election to be held on the 6th day of November, 1934, may pay capitation taxes, this question being asked on account of the fact that the 6th day of May, which is six months prior to the November election, is on Sunday.

As section 21 of the Constitution of Virginia provides that capitation taxes must be paid at least six months prior to the election, I am of the opinion that, where the last day upon which capitation taxes might otherwise have been paid falls on Sunday, the taxes must be paid on the previous day and cannot be paid on the succeeding day.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ELECTIONS—Eligibility of candidates—Printing of name on ballots.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 7, 1934.*

MR. THOS. W. BLACKSTONE,  
*Secretary of the Electoral Board,*  
*Accomack, Virginia.*

DEAR MR. BLACKSTONE:

I hope you will pardon my delay in replying to your letter of April 24, but the work has been very congested in the office and this is the first opportunity I have had to investigate the questions contained in your letter.

The first question is, whether or not you should print on the ballots for an election to be held on June 12, the names of candidates who are not qualified to vote in the election.

Section 154 of the Code states that no person who is not qualified to vote in the election in which he offers as a candidate shall have his name printed on the ballots provided for such election.

If it shall come to the attention of the electoral board, and the board is satisfied that any person whose name is certified to by the clerk as a candidate is not qualified to vote in the election, it is the opinion of this office that the electoral board should notify such person, stating the reason why the board believes he is not qualified and that it is not the intention of the electoral board to print the name of such candidate on the ballot. I think this should be done so as to enable the candidate to institute court proceedings, if he so desires, to test his qualifications to vote, or any other matter involved.

Your second question is, whether it is too late for persons to notify the county clerk of their intention to become a candidate.

The same section of the Code provides that such notice shall be given at least sixty days before the election.

Your third question is as to the time ballots should be printed for the June election.

Section 155 of the Code provides that it shall be the duty of the electoral boards, as soon as may be practicable after the secretary shall be officially notified of the names of the candidates and at least thirty days prior to the election, to cause the ballots to be printed.

Your fourth question is, whether or not a judge of an election may be a registrar, or whether the registrar can serve as a judge.

Section 86 of the Code provides that a registrar shall not hold any other office, either elective or appointive, during his term except that of precinct judge of election. Under this exception, it is the opinion of this office that the registrar may serve as a precinct judge of election.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**ELECTIONS—Informative ballots.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 18, 1933.

ORANGE COUNTY ELECTORAL BOARD,  
*Orange, Virginia.*

DEAR SIRs:

*Attention Mr. W. B. Mason, Sec'y.*

Your letter of the 17th instant was received at the office in the absence of Colonel Saunders, who is at home on account of a slight indisposition.

For purposes of reply I quote your letter:

"We have had several requests for informative ballots for the primary election to be held on August 1st. We would like to know if it is in order for us to have them printed provided that they are printed on colored paper as they were in the fall election."

In my opinion, informative ballots may be used in the coming primary under the provisions of section 167 of the Code of Virginia, as amended by chapter 427 of the Acts of 1932, page 896.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ELECTIONS—Eligibility of judges of election—Must be qualified voters at time of their appointment.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., June 6, 1934.

HONORABLE WILMER L. O'FLAHERTY, *Secretary,*  
*Electoral Board,*  
*Richmond, Virginia.*

DEAR MR. O'FLAHERTY :

This is in answer to your letter of June 4, 1934, in which, after quoting section 148 of the Code, you inquire whether or not a person who failed to pay his poll tax within the time required in order to render him eligible to vote in the June 12, 1934, election is eligible to act as a judge in the said election.

The language quoted from section 148 attaches to the citizens to be appointed as judges for the year the requirement that they shall be qualified voters. It is the opinion of this office that they must be qualified voters, at the time of their appointments, to vote in all elections in which they may be called upon to act, in so far as the payment of poll taxes already assessed against them is required to render them so eligible. Of course, the judges must have the other qualifications to render them eligible to vote in the particular precinct for which they are appointed.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**ELECTIONS—Judge of—Deputy sheriff may serve.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 29, 1933.

MR. VIRGIL F. SKEEN, *Secretary,*  
*Dickenson County Electoral Board,*  
*Clintwood, Virginia.*

DEAR MR. SKEEN :

Your letter, although dated the 26th of this month, was not received at the Attorney General's office until this morning.

You desire to have an opinion as to whether the election laws of the State prohibit a deputy sheriff from serving as judge of election.

The laws do not prohibit a deputy sheriff from serving as judge of election except, under the provisions of section 149 of the Code, a deputy may not serve as judge or clerk of an election in which his principal is a candidate for election.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ELECTIONS—Judges—Mileage allowed for returning ballots from precinct to commissioners canvassing returns.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., September 19, 1933.

HON. J. F. WOODHOUSE, *Clerk,*  
*Princess Anne Circuit Court,*  
*Princess Anne, Virginia.*

DEAR MR. WOODHOUSE :

I am in receipt of your letter of yesterday, in connection with the question raised

by Mr. W. P. Lipscomb, of Virginia Beach, as to the pay and mileage allowed judges returning ballots from voting precincts to the courthouse of counties and to commissioners of elections canvassing the returns.

As requested by you, I am enclosing copy of my letter to Mr. Lipscomb.

I agree with you that there is ambiguity as to the per diem of judges carrying returns to and from courthouses and to commissioners of elections canvassing returns.

The first sentence of section 200 of the Code provides a per diem compensation to judges, clerks, registrars, and commissioners of elections for their services of the sum of \$3.00 each for each day's service rendered, and to the judge carrying the returns and tickets to and from his voting place to the county clerk's office and the commissioners of elections shall be paid the per diem and the mileage now allowed to jurors for each mile necessarily traveled. Were not judges and commissioners of election coupled, there would be more force to your opinion that judges carrying ballots and commissioners of election are limited by way of compensation to the pay of jurors and the mileage allowed jurors. The statute may have undertaken by the language used to differentiate between the pay of judges for their election day services and their services in the carrying of ballots, as they perform different characters of service in sitting at elections from that of carrying returns. However, commissioners of election perform only one service—that of canvassing returns, and certainly the pay of commissioners of election is fixed by the first part of the sentence at \$3.00 per day for each day's service rendered.

If your construction is correct, then in no event is it possible for a commissioner of election to receive the per diem of \$3.00 per day for his services in canvassing returns, and such officials would be limited in all cases to the same pay a juror receives together with the mileage allowed jurors.

It has been my opinion, therefore, that in carrying ballots judges are performing a day's service, for which a per diem of \$3.00 is allowed, plus the mileage allowed to jurors for each mile necessarily traveled, and that commissioners of election are paid a per diem of \$3.00 for their services in canvassing returns, plus the mileage allowed jurors.

I construe the language of section 200, applying to the pay of judges carrying ballots and commissioners of election for canvassing returns, to mean that they shall receive the per diem theretofore provided in the section and the mileage allowed to jurors, and the commissioners of election are to receive the same per diem and mileage.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Legality of primary election—Printing of candidates names on official ballots.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 7, 1934.

HONORABLE N. J. WEBB, *Chairman,*  
*Electoral Board,*  
*Newport News, Virginia.*

DEAR MR. WEBB:

This is in reply to your inquiry with reference to the names to be printed on the ballot in your city election to be held on June 12, 1934, for the election of the members of your city council. The facts involved in your inquiry are as follows:

Mr. George R. Mould, Chairman of the Republican City Committee, has certified to you in writing, under date of May 4, 1934, being attested by J. B. Britt, Secretary, that W. T. Hopkins and C. M. Sifford received the majority of the votes cast in the Republican primary held in said city under the supervision of the Republican City Committee, as provided by the party plan of organization, on May 3, 1934, and requests that the names of said nominees be printed on the official ballots for the election to be held June 12, 1934.

I am advised by you that the following apparent irregularities occurred with reference to the holding of said primary :

1. That same was held on May 3, 1934, instead of the first Tuesday in April, as provided by section 223 of the Code relating to primary elections.

2. That the primary election was held between the hours of 4:00 P. M. and 10:00 P. M., instead of between sunrise and sunset, as provided by section 152 of the Code.

3. That the judges of said primary election were selected by the Republican party officials, and were not appointed by the Electoral Board as required by section 224 of the Code.

4. That no official ballots were printed for said election.

In view of the foregoing facts, you have requested a ruling from this office as to whether or not it is the duty of the Electoral Board, in printing the ballots for the said election to be held in the city of Newport News on June 12, 1934, to print on said ballots the names of Mr. W. T. Hopkins and Mr. C. M. Sifford.

Section 224 of the Code provides that all of the provisions and requirements of the statutes of this State in relation to the holding of elections shall apply to all primaries insofar as they are consistent with chapter 15 of the Election Laws.

Section 227 provides that "A primary when held shall be conducted in all respects under the provisions of this chapter."

As above indicated, section 223 of the Code provides that a primary for the nomination of party candidates for offices to be voted for on the second Tuesday in June in the city and towns of the State shall be held on the first Tuesday in April next preceding such election.

Section 224 of the Code, being a part of said chapter 15, provides that such primary shall be held by three judges appointed for each party participating from members of that party by the electoral boards of the respective cities and counties in the State.

Section 152 provides as follows :

"At all elections by the people, the polls shall be opened at each voting place at sunrise of the day on which the election is directed to be had, and closed at sunset of the same day."

I am further advised by you that Messrs. Hopkins and Sifford have not given to the clerk of the corporation court of the city of Newport News any notice of their intention to become candidates for the office of city council in said election. Section 154 of the Code provides that any person who intends to be a candidate for any such office shall give notice at least sixty days before such election to the clerk of the corporation court of the city whose electors vote for such office, which notice shall be in writing and attested by two witnesses, and shall state the intention of the party to become a candidate. The said section provides further as follows :

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

The question which arises, therefore, under the provisions of the statute is, whether or not Messrs. Hopkins and Sifford are party primary nominees within the meaning of the language above quoted from section 154.

It is the opinion of this office that said persons are not party primary nominees within the meaning of said section. In order to come within the definition of the party primary nominee, as contained in the Virginia statutes relating to elections, the primary election must be held substantially in compliance with the statutes relating to same.

It appears, however, that the alleged primary for the nomination of the Republican candidates in the Newport News election to be held on June 12, 1934, instead of being held on the first Tuesday in April was held on May 3, 1934; that the judges who conducted said election were not appointed in the manner prescribed by the statutes

above quoted, and that the hours of voting were in violation of the above quoted provisions from section 152 of the Code.

For these reasons, it is the opinion of this office that the electoral board should not print on the ballots for the said election to be held on June 12, 1934, the names of said Mr. W. T. Hopkins and Mr. C. M. Sifford.

Respectfully yours,

ABRAM P. STAPLES,  
*Attorney General.*

**ELECTIONS—Name of primary nominee must be certified to electoral board.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *October 20, 1933.*

HONORABLE GEORGE A. BOWLES,  
*Bureau of Insurance and Banking,  
Richmond, Virginia.*

DEAR COLONEL BOWLES:

I am in receipt of your letter of October 18, which for purposes of my reply I quote:

"Goochland County Electoral Board failed to have the name of the regular Democratic nominee, Mr. S. W. Shelton, printed on the ballot to be voted November 7.

"My interpretation of the Election Law is that no notice is required to be given to the Electoral Board nor is it contemplated that the nominee's name be officially certified to the Electoral Board by the County Chairman or any one else, it being presumed that the Electoral Board is familiar with the law and the Democratic party plan.

"In the instant case, please advise me who is responsible for this error."

I note your interpretation of the primary election law as to the manner in which primary nominees have their names certified to the electoral board or electoral boards, of counties composing a legislative district. I cannot agree with you that no notice is required to be given to the electoral board.

In my opinion, the question is covered by next to the last sentence in section 154 of the Election Laws of the State, in which it is provided:

"The names of party primary nominees to be voted on in the several counties and cities shall be furnished the secretaries of the respective electoral boards thereof by the several persons to whom abstracts of primary elections must be furnished under section two hundred and forty-one."

Section 241 provides that, as to legislative districts, the commissioners of election of each county certify the primary results to the clerk of the circuit court of the county, and that each clerk shall "under seal certify copies of returns \* \* \* for member of the House of Delegates, to the chairman, or several chairmen, of the county or counties and cities comprising the district; \* \* \*."

The method of procedure, as provided by the two sections, requires:

1. Commissioners of election to sign and attest county election returns, which certificates are deposited with the clerk of the county.
2. The clerk of each county is required to certify the returns to the chairman or several chairmen of each legislative districts.
3. The chairman, or it may be the several chairmen, of the legislative district is required under the provisions of section 154 to certify the name of the party primary nominees to the secretary or secretaries of the electoral board or boards of county or counties comprising the legislative district.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Poll books—Number to be furnished each precinct.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 25, 1933.*

HON. PETER SAUNDERS,  
*Secretary of the Commonwealth,  
Richmond, Virginia.*

DEAR COLONEL SAUNDERS:

You have asked me as to whether two poll books or only one should be furnished by you to election officers throughout the cities and counties of the State, for use in the two elections to be held on the 3rd of next month pursuant to chapter 2, approved August 28, 1933, providing for the election of delegates to a constitutional convention to pass upon the repeal of the Eighteenth Amendment, and chapter 4, approved August 29, 1933, submitting to the people questions of the continuation of State prohibition, or, in lieu thereof, a plan of liquor control.

In my opinion, it is only necessary for you to furnish one poll book for each precinct.

Chapter 2, covering the election of delegates to a constitutional convention, provides in section 1 that the election of delegates shall be held and conducted by the regular election officers, with the exception that no clerks shall be used, but that one of the judges of election shall act as clerk.

Chapter 4, providing for a referendum upon the question of liquor control, provides that this last election shall be held upon the same day as the election provided for in chapter 2, and in section 3 provides that the election upon the question of liquor control shall be held and conducted by the same officials who hold and conduct the election for the selection of delegates to the constitutional convention, without extra compensation. The only provision in either of the acts referred to which can be construed as differentiating one election from another is contained in the last sentence of section 3 of chapter 4, which provides that separate ballot boxes shall be provided for each election.

With only one clerk, no good purpose can be served by having two poll books. In fact, it will be practically impossible in a number of precincts in which a heavy vote is cast for one clerk to perform the services required should two poll books be used.

In my opinion, one poll book should be furnished and in that poll book should be provided separate blank forms to be used by the three judges of election of each precinct in certifying returns and separate returns certified by the judges as to the result of each of the elections held pursuant to chapters 2 and 4 of the Acts of the Special Session of the General Assembly of 1933.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *July 18, 1933.*

HONORABLE CHARLES W. CROWDER,  
*Member of House of Delegates,  
Richmond, Virginia.*

MY DEAR MR. CROWDER:

I am in receipt of your letter of yesterday in which you, as you did in our personal conference, very strongly put the contention which you and others made that the provisions of section 227 of the Code authorizes the Democratic Committee

of the city of Richmond to provide by its rules and regulations that voters in the August 1 primary, in order to select Democratic nominees for the House of Delegates to be voted for in the November general election, must vote for as many as six candidates, or have their ballots which contain less than six names not counted and thrown out by the judges of election, and no report made by the judges to the city commissioners of election.

As on yesterday, I cannot agree with the construction you have placed upon section 227 of the Primary Election Law.

This same question was presented to the Attorney General by Honorable Richard T. Wilson, then mayor of the city of Petersburg but now judge of the corporation court of that city. The question presented by Judge Wilson is on all fours with that submitted to me. The opinion of the Attorney General coincides with that verbally given you, and a number of other persons who have inquired, concerning the right of electors to vote for less than six candidates for nomination to the House of Delegates to represent Richmond in the General Assembly of 1934, although the Democratic City Committee has provided that no ballot shall be valid and counted unless it contains the names of six candidates.

The letter to Judge Wilson is found on page 58 of the Report of the Attorney General for the year 1929-1930, and is quoted herein in full:

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

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

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

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

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

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

Because of the Attorney General's letter, which I have quoted in full, I will not proceed further with my own opinion.

However, I desire to illustrate the injustice to participants in the primary if your construction of section 227 of the Primary Law is a correct one.

As applicable to the present primary in Richmond, there are thirty candidates for nomination to fill six memberships in the House of Delegates. I understand that twenty-nine of the candidates have declared themselves for the legalization of 3.2 beer and the repeal of the Eighteenth Amendment; one candidate opposes both propositions. In order for a dry to be entitled to vote in the primary for the purpose of expressing a stand upon the beer law and the repeal of the Eighteenth Amendment, and, in order to vote for a candidate who agrees with his principles, he can only vote for that candidate by voting for five other candidates whose position as to 3.2 beer and the repeal of the Eighteenth Amendment he opposes.

Such a construction of the law would in the particular incident deprive a large number of citizens of the right to express an opinion as to the choice of their representatives. With this fact, however, I have nothing to do. My only concern is a

fair and impartial construction of the Primary Law which was passed by the General Assembly.

Party committees have full and complete authority to make such rules and regulations concerning party matters as they may choose. They may select the method of nominating candidates. The Democratic Committee of the city of Richmond may have selected some other method than that of a direct primary. They may have called a convention. If so, the conduct and procedure of the convention would have been entirely under the control of the committee and must have been held pursuant to its rules and regulations.

I construe the word "method" in section 227, which gives the committee the right to select the method, as a choice, among other things, between a convention and a primary. If, however, the committee decides upon the primary, it is my opinion that the provisions of section 224, which are quoted in Colonel Saunders' letter to Judge Wilson, and section 179 of the Code, control, and that a voter may vote for as many as six candidates and as few as one candidate for nomination to represent Richmond city in the House of Delegates of the General Assembly of 1934, and that the judges of the election have no authority under the law to reject and refuse to count such ballots, and to certify the returns to the commissioners of election for the city of Richmond.

With kind personal regards, I am

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

#### **ELECTIONS—Primary nominees—Certification to electoral boards.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *August 31, 1933.*

HON. R. J. WATSON, *Clerk,*  
*Hustings Court,*  
*Roanoke, Virginia.*

DEAR MR. WATSON:

I am in receipt of your letter of yesterday, in which you desire my opinion as to how primary nominees of a political party are certified to electoral boards in order to have their names appear upon the official ballot to be used in the November election.

Party nominees may individually file notices of candidacy. This, however, is not required, as under the provisions of section 154 of the Code it is provided that no person not announcing his candidacy shall have his name printed on official ballots, unless he be a party primary nominee.

It thus becomes necessary, in the event the candidate does not personally file his notice, to examine the primary election laws.

Section 241 of the Code provides that the secretary of the commissioners of election shall make out abstracts of certificates of votes, and as to nominees for House of Delegates provides that the secretary shall notify the chairman or chairmen of the county or counties and cities comprising the House district, and that the chairman or chairmen shall notify the secretary of each electoral board of the district of the names of the party nominees. It is true that section 241 does not expressly provide for a notice by the chairman or chairmen, but that is, in my opinion, the effect of the section, as it is the only reasonable construction which can be placed thereon.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**ELECTIONS—Re-registration of voters prior to biannual municipal election.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 22, 1934.

HONORABLE LEWIS JONES,  
*Attorney for the Commonwealth,  
Urbanna, Virginia.*

DEAR MR. JONES:

This is in reply to your letter of May 18, requesting an opinion from this office upon the question of whether it is necessary for the registrar to re-register all of the voters before the biannual municipal election.

This question is controlled by the provisions of section 2995 of the Code. This section imposes upon the registrar the duty to register before any town election all resident voters of any of the precincts of the town who have previously registered as voters in the county. It is the opinion of this office that this provision is intended to cover persons who were formerly residents of the county and have moved their residence into the town. It would be in effect a transfer from a county precinct to a town precinct, rather than a new registration.

This section refers to a precinct registrar who is appointed by the electoral board not less than fifteen days before the town election. This precinct registrar apparently has no authority to register any person other than those who had previously been registered in the county or counties, or either of them in which the town or part thereof is situated, where the town is situated partly in two or more counties.

I do not know of any provision in the law which could be construed to require a re-registration prior to an election.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**ELECTIONS—Registrar—Duty of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 28, 1933.

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

DEAR MR. JOHNSON:

I am in receipt of your letter of yesterday, in which you enclose a slip which is evidently an instruction to registrars covering the registration of persons becoming of age since January 1, 1932. You ask if the statement contained in the slip to the following effect is correct:

"If there are still any voters who have become of age since January 1, 1932, who have not yet paid their capitation taxes and registered, I urge that you see they do this and also that all transfers are secured. Please remember, such voter may register, transfer and pay the tax up to and including primary day."

The above is a correct statement of the law as to the registration of persons becoming of age since the first day of January, 1932.

Registrars do not have to close their registration books thirty days prior to a special or primary election except in certain cities.

There is this I should add: Registrars are required to deliver their books to judges of election at or before sunrise on the morning of an election, general, special or primary. The books are in the possession of the judges for the whole of

election day and until they are returned to the registrar after the close of the polls. The registrar may register a person on election day, provided the judges of election are willing to surrender temporary custody to the registrar. The registrar is not compelled to act and neither are the judges required to let the registrar have possession for the purpose of registering a voter on election day.

The registrar should, if he is present at an election, register persons who have removed from one election district to another in the same county and who have resided thirty days in the new election district, and the judges of election should, upon his request, deliver the registration books to the registrar for that purpose.

If the registrar is not present, one of the judges of election may register persons transferring from one election district to another. You will see this covered in section 173 of the Code or of the pamphlet entitled Virginia Election Laws.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### **ELECTIONS—Registration books—Closing of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 7, 1934.*

MISS ELIZABETH WOODS,  
*Central Registrar,*  
*Roanoke, Virginia.*

DEAR MISS WOODS:

This is in reply to your inquiry of May 5th, as to whether or not the laws of Virginia require the closing of registration books thirty days before any general election.

I have been unable to find such a provision in the statutes. Section 94a of the Code (Acts of 1928, page 34) provides for the closing of the registration books in cities of over fifty thousand inhabitants fifteen days before any *special or primary election*.

In the recent Acts of the General Assembly (Acts of 1934, page 305), the above statute was amended so that in such cities the registration books are closed, for the purpose of registering and transferring voters, for a period of fifteen days next preceding the day of any special or primary election. I have been unable to find any such provision, however, with reference to general elections.

With best wishes, I am

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

#### **ELECTIONS—Registration of voters.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 30, 1934.*

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

DEAR MR. CAMPBELL:

Pardon my not having sooner replied to your letter of the 20th instant, but we have been very busy in the office getting matters straight since the death of Colonel Saunders.

You ask a number of questions as to the registration of voters. In order to

reply to your letter, I think that they should be repeated and an answer given each question.

"1. Can anyone who has paid all capitation taxes register up to June 1st to vote in town election to be held on June 2, 1934?"

The general law as to registrations, contained in section 98 of the Virginia Election Laws and of the Code, provides that registrars in cities and towns of the State shall annually on the third Tuesday in May at his voting place proceed to register the name of all qualified voters within his election district not previously registered in said district, and provides for a registration thirty days previous to November elections in the cities, counties and towns of the State at large. It would seem from this provision of the law that a town registrar may not register voters after the third Tuesday in May and prior to the June municipal election.

"2. Can one becoming of age before November 6th register and vote in said election?"

Persons becoming of age on or before the municipal election may register and vote in said election. One becoming of age after the municipal election, but before the November election, cannot register and vote in the municipal election.

"3. Can those just becoming of age on or before June 6th register? What is the last day they can pay capitation tax?"

This question has partially been answered in reply to the second question. A person becoming of age on or before the municipal election in any one year and after the first day of January of the previous year may have himself assessed by the commissioner of the revenue, pay his capitation tax to the treasurer, and register up to and including the third Tuesday in May of the year in which the municipal election is held.

"4. Will a voter who paid his capitation tax of \$1.50 last November be entitled to vote in said election?"

The answer to your fourth question all depends upon what year the capitation tax of \$1.50 paid last November was assessed or assessable. If it was paid for the year 1933 and other assessed or assessable taxes for the years 1931 and 1932 have been paid, he is entitled to vote in the June municipal election.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

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

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 8, 1934.

MR. L. STANLEY DELANO, *Registrar,*  
*Oldhams, Virginia.*

DEAR MR. DELANO:

This is in reply to your letter of May 7th, inquiring with reference to eligibility for registration in this State of three separate groups of persons now residing in the District of Columbia. Following are the groups to which you refer:

"1. Persons born in Westmoreland county and the above precinct, owning property, paying taxes, and claiming this as their domicile, but living in the District of Columbia."

It is the opinion of this office that the persons above described, if they so desire, may claim their legal residence in Westmoreland county, and are eligible to register and vote therein if their poll taxes are properly paid.

"2. Children of Group 1 born in and living in the District of Columbia, but desiring to register and vote in this State and precinct."

It is the opinion of this office that the persons described in Group 2 may also claim their residence in Westmoreland county, and are eligible to register and vote therein if their poll taxes are properly paid.

"3. Husbands and wives of groups 1 and 2 born in this and other States, and the District of Columbia, who have never voted before, but wish to register and vote in this State and precinct."

It is likewise the opinion of this office that the persons described in Group No. 3, if they have the actual intention in their minds to establish their legal residence in Virginia, may do so and register and vote in this State.

The last question contained in your letter is, whether or not a person registered in another State, but who has resided in Virginia for two years or more, is required to secure a transfer from the registrar from such other State in order to register and vote in Virginia.

The laws of Virginia do not recognize any other State's registration, and no such transfer is necessary. The registration in Virginia is an original act, and has no connection with the registration of a person in another State. Whether or not his registration in Virginia, and voting here, will disqualify him from voting in the State of his former residence depends upon the laws of such other State, and is not controlled by the laws of Virginia.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

#### **ELECTIONS—Special—Printing of names of primary nominees—On Ballots.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., July 27, 1933.

MR. C. W. WOODSON, *Clerk,*  
*Rustburg, Virginia.*

DEAR MR. WOODSON:

I am in receipt of your letter of Tuesday, which for purposes of my reply I quote:

"Governor Pollard has ordered a special election held in Lynchburg and Campbell county on August 10, 1933, for the purpose of electing a State Senator to take the place of the late Honorable Frank B. Varney.

"A primary election will be held in the city and county on August 1st for the purpose of nominating a Democratic candidate for State Senator in the election to be held in November of this year.

"Immediately after the primary election the chairman of the Democratic party in Campbell county will certify to the county electoral board the name of the nominee in the primary election held on August 1st.

"Will you please advise me if the electoral board of Campbell county should place the name of the nominee on the ballot to be used in the special election on August 10th.

"Unless this is done, as I understand the situation the ballot used in the special election on the 10th will be a blank."

In my opinion, the electoral boards of Campbell county and the city of Lynchburg should place the name of the Democratic nominee on the ballot prepared for use in the special election of August 10th.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**ELECTIONS—Special—Repeal Eighteenth Amendment.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 15, 1933.*

MR. C. M. CHILES, *Chairman,*  
*Electoral Board of Shenandoah County,*  
*Strasburg, Virginia.*

DEAR MR. CHILES :

I am in receipt of your letter of the 13th instant, in which you request certain information as to how the special election of October 3rd is to be held and as to the heading of the ballots.

Section 1 of chapter 2 of the Acts of the General Assembly, 1933, submitting the question of repeal of the Eighteenth Amendment to the people, provides that the election shall be held and conducted by the regular election officers, except that the services of the regular clerks of election shall be dispensed with and one of the judges of election at each voting precinct shall perform the duties of clerk. By virtue of this provision, the three regular judges who have already been appointed and who are to hold the November election are the judges to hold the special election.

There is no reference as to which political party the judges shall belong, or as to whether they shall be wet or dry, but the general law provides for the appointment of a Republican as one of the three regular judges appointed by the electoral board. I take it that their stand on prohibition has nothing to do with their qualification to act as judges.

Honorable Peter Saunders, Secretary of the Commonwealth, is having prepared sample ballots, which he is sending to electoral boards of counties and cities of the State. I presume this will contain the information you desire as to the heading of the ticket. If no heading is given, I suggest that it may be headed "Virginia, Shenandoah County, Special Election, October 3, 1933," to be followed by the sample ballot furnished you by Colonel Peter Saunders.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**EMBALMING—State Board of—Authority to adopt regulation imposing qualification upon applicants for license as embalmer.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 28, 1934.*

HONORABLE L. T. CHRISTIAN, *Secretary,*  
*State Board of Embalming,*  
*Richmond, Virginia.*

DEAR MR. CHRISTIAN :

This is in reply to your letter of May 25th, inquiring whether or not, under the provisions of section 1719 of the Code of Virginia, the State Board of Embalming may adopt a regulation imposing a qualification upon applicants for license as embalmers that they shall have completed a twenty-six weeks' course in an accredited and recognized school teaching embalming.

Pertinent provisions in section 1719 are as follows:

"The Board shall, from time to time, adopt rules, regulations, and by-laws not inconsistent with the laws of this State or of the United States, whereby the performance of the duties of said Board, and the practice of embalming of dead human bodies, and the conduct of schools for teaching embalming, shall be regulated. The Board may conduct, or aid in the conducting of, schools for teaching embalming, and scientific branches relating thereto, out of its own funds; but shall not thereby reduce the funds in the treasury of said Board below the sum of three hundred dollars."

You will note that the powers of the Board, with reference to the adoption of regulations, are restricted by the further provision that such regulations shall be "not inconsistent with the laws of this State."

Section 1720 of the Code, in so far as here pertinent, provides as follows:

"Every resident of this State hereafter desiring to engage in the practice of embalming dead human bodies within the State of Virginia, who is at least twenty-one years old, and has completed a seventh-grade public school education or its equivalent, and who has had at least a two year's apprenticeship under a licensed embalmer, shall make a written application to the State Board of Embalming for a license, \* \* \* whereupon the applicant shall present himself or herself before said board at a time and place to be fixed by said board; and if the board shall find upon due examination that the applicant is of good moral character, possessed of skill and knowledge of said science of embalming, and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies, etc. \* \* \* the board shall issue to said applicant a license to practice said science of embalming, \* \* \*."

The foregoing language is very clear and makes it mandatory upon the board to issue the license in question to any person complying with the requirements of the said section. The said section does not require that an applicant for license shall have attended any school of embalming, and it is, therefore, beyond the powers of the board to add any such additional qualification for such an applicant.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

#### FEES—Commissioner of revenue—Land transfers.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., January 3, 1934.

HON. R. C. HUNT,  
*Commissioner of the Revenue,*  
*Poquoson, Virginia.*

DEAR MR. HUNT:

Your letter of the 26th of December has been received, and I note your request for my opinion as to whom fees for land transfers made during the year 1931 and collected by county clerks are payable.

In my opinion, land transfer fees collected by a clerk during the year 1931 are but advanced deposits with the clerk for the payment of fees to commissioners of the revenue for services performed by them in effecting transfers upon their land books during the succeeding year.

As applied to your case, the collections made by your clerk for the commissioner of the revenue during the year 1931 are fees which the law requires to be

deposited with the clerk, to be paid by him to you upon your completion of your land books during the year 1932.

The law as to salaries and fees of commissioners of the revenue having been changed beginning with the 1st day of January, 1932, providing a straight salary to commissioners and for the payment of land transfer fees into county treasuries, and you having received a salary instead of fees for the entire year of 1932, I do not think that you are personally entitled to transfer fees collected by your clerk during the year 1931, but that those fees should be turned over to your county treasurer.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**FINES—Remission of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 5, 1934.*

HONORABLE P. W. ACKISS,  
*Attorney for the Commonwealth,  
Virginia Beach, Virginia.*

DEAR MR. ACKISS:

I am in receipt of your letter of March 26th, and your previous inquiry to the Auditor of Public Accounts, which was referred by him to the Comptroller and in turn referred to this office some time ago.

The laws of Virginia provide that no fine shall be remitted except by the Governor, as provided in section 2569 of the Code, after complying with the proceedings in the Code sections following same.

The only remedy there appears to be for the situation to which you refer is for the Governor to remit so much of the fine as cannot be paid from the proceeds of the sale of the real estate. This would be after proceedings in accordance with the provisions of section 2570 of the Code, which provides for the filing of the petition in the court, and the following sections for the proceedings to be taken thereon.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**FORTUNE TELLERS—Licenses required.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 17, 1934.*

HONORABLE J. J. TEMPLE,  
*Attorney for the Commonwealth,  
Prince George, Virginia.*

DEAR MR. TEMPLE:

This is in reply to yours of May 15th, relating to the construction of section 179a of the Tax Code regarding fortune tellers.

You request the opinion of this office upon the question of whether or not it will be a violation of said section for a person holding a restaurant license to charge seventy-five cents for a regular meal, which will entitle the purchaser of the meal to have his or her fortune told from the dregs of the coffee or tea cup without any additional charge. This entertainment is to be furnished only to those who purchase a seventy-five cents luncheon and not to any other customers.

As you are doubtless aware, the section of the Tax Code above referred to provides that any person who, for compensation, shall pretend to tell fortunes shall pay an annual State license tax of \$500 in each county or city in which any such

business is done. The question which arises here is whether or not the seventy-five cents which the patron pays for the meal is in reality in part a charge for telling the fortune.

It is the opinion of this office that the two cannot be separated; that the charge for the meal must be considered a general charge, both for the meal and the service for telling the fortune. In order to receive this service, the person is required to buy a seventy-five cent meal. Therefore, it is obvious that the seventy-five cents purchases not only the meal, but the fortune telling.

I am, therefore, of the opinion that it will be necessary for such a restaurant licensee to also obtain the license required under section 179a of the Tax Code in order to do a business of the type referred to in your letter.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**GAME AND INLAND FISHERIES—Authority of Commission to extend shad and herring season—Potomac river.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 19, 1934.

HONORABLE HARRY F. BYRD,  
*United States Senate,*  
*Washington, D. C.*

DEAR GOVERNOR:

I have your letter of May 17th, with reference to the right of the Virginia Commission of Fisheries to extend the season within which shad and herring may be caught in the Potomac river.

According to the telegram which you received from Governor Ritchie, it seems that no official in Maryland has the power to extend the season. The question then arises whether, under section 14 of the Code which is a compact between Virginia and Maryland, the State of Virginia can promulgate a regulation which is in violation of the Maryland laws. Clause No. "eighth" provides as follows:

"All laws and regulations which may be necessary for the preservation of fish \* \* \* in the river Potowmack \* \* \* shall be made with the mutual consent and approbation of both States."

In view of the foregoing provisions, it is my opinion that the Virginia Commission of Fisheries would not have the power to promulgate a regulation except with the consent and approbation of the State of Maryland.

With best wishes, I am

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**GAME AND INLAND FISHERIES—Authority of Commission to prohibit dredging of crabs.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., April 23, 1934.

COMMISSION OF FISHERIES,  
*Newport News, Virginia.*

GENTLEMEN:

Your letter of March 20th had not been brought to my attention until receipt of your letter of April 20th, asking that the matter be given attention.

The first question contained in your letter is, whether or not the provisions of section 3292, subsection 6, of the Code of Virginia, authorizes the Commission to prohibit the dredging of crabs in any water except natural rock, private planting ground, or water which has been set aside for public clamming?

It is the opinion of this office that no such authority can be found in the section to which you refer, nor has this office been able to find any section in the Code which would authorize the Commission to prohibit such dredging except in the waters described above.

Your second question is, whether or not the Commission has authority, under section 3246 of the Code, to prohibit the dredging of crabs west of the lines therein designated.

This office is of the opinion that section 3246 of the Code is confined in its application solely to oysters, and that the Commission derives no authority under said section to prohibit the dredging of crabs in said waters.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**GARNISHMENT—Salary of member of General Assembly.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 19, 1934.*

HONORABLE A. B. GATHRIGHT,  
*State Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

You have asked as to the effect of a garnishment proceedings served upon you on account of an execution against a member of the General Assembly, and you desire advice as to whether the salary of a member of the General Assembly may be garnisheed.

I am of the opinion that the salary of a member of the General Assembly is exempt from garnishment proceedings and that his salary should be paid him notwithstanding such proceedings.

Section 6559 of the Code of Virginia provides:

"Unless otherwise exempted, the wages and salaries of all employees of this State, other than State officers, shall be subject to garnishment or execution upon any judgment rendered against them. \* \* \*"

Prior to the Code of 1919, the salaries of all State officers and employees were subject to garnishment. In an address upon the Code of 1919 delivered by Judge Martin P. Burks, of the Supreme Court of Appeals, and one of the Code revisors, contained in full in Virginia Law Register, Volume 5, New Series, on page 138, Judge Burks said:

"The salaries of all State officials and employees, unless otherwise exempted, are now subject to garnishment. The revisors were of opinion that the State should not be garnished in any case, but knowing that the law had operated beneficially and effectively as to mere day laborers and employees of the State, enabling them to get credit when otherwise they could not have secured it, they struck out the provision concerning State officers and limited the section to employees. The places of mere employees can, in most instances, be more readily supplied than those of State officers, and if, for instance, the salaries of the Governor, Attorney General and judges were entirely taken away by garnishment, the State might at some time be left impotent to discharge its functions."

In a recent letter to Honorable C. T. Smith, Chairman of the School Board of Carolina County, I expressed the opinion that a member of the General Assembly is a State officer. A member of the General Assembly is not only a State officer, but he is a constitutional State officer and, as such, his salary is not subject to garnishment. An opinion to this effect is found in *Blair, Attorney General, vs. Marye, Auditor*, 80 Va. 497, in which the court held:

"The services and salary of a public officer are founded in constitutional grant, and not in *contract*; and they have none of the affinities or liabilities under the law of contract. The salary of the Attorney General is of constitutional grant and of public official right; and the doctrine of *offset* cannot be applied to it, as the auditor asserts a right to do in this case. It is not liable to *attachment*, nor to be *garnisheed*; nor to assignment in bankruptcy, and, upon principles of *public policy*, it has absolute immunity from detention for debt or counter-claim." Citing a number of cases.

The Supreme Court held in the Blair case that it was not within the power of the Legislature to authorize the withholding of the salary of the Attorney General.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

#### GARNISHMENTS—Wages of relief workers not subject to.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 12, 1934.

EMERGENCY RELIEF ADMINISTRATION,  
*Work Division,*  
*11 South Twelfth Street,*  
*Richmond, Virginia.*

DEAR SIR:

*Attention Mr. Asher W. Harman, Assistant State Engineer.*

I am in receipt of your letter of yesterday, which for purposes of reply I am quoting in full:

"Questions have been asked our local Projects Engineer concerning people who are working for relief under the Work Division which indicate intentions of attempting to garnishee salaries of these workers.

"For your information, there is appointed in each political subdivision of the State, a Projects Engineer with certain administrative employees who are not necessarily subject to relief. These people listed as administrative personnel, are, of course, termed as State employees and the question does not concern them at all. The people whom we are interested in, are those who have been investigated by the local Relief Directors and found to be eligible for work. The procedure in this is as follows:

"The person applies at the relief office for relief. The Relief Director makes investigation regarding the person's needs, certifying the name to the Projects Engineer, if relief is found to be necessary and the person can work. The Relief Director also sets up a weekly budget which is only sufficient to take care of the minimum needs of the worker. The Projects Engineer puts the person to work as soon as he has an approved project, and at the end of the week, certifies the payroll to the Relief Director who pays the worker by check, or in groceries, clothing or other goods.

"Another interesting point concerning this question is the fact that certain counties of the State are termed as 'urban,' due to population and industry, while others are termed as 'rural.' In all 'rural' counties pay for work must be in the form of goods.

"We will appreciate it a great deal if you will give us your opinion and advice in this matter, so that we will have sound advice to give our Projects Engineer, if the matter definitely comes to a head."

I see from your letter that you anticipate that garnishment proceedings will be undertaken against persons employed by the Work Division of the Emergency Relief Administration upon certain projects paid for exclusively out of monies appropriated by the Federal government and allotted to the States of the Union for the purpose of providing subsistence employment for those unfortunate people, who would otherwise be in need of public charity.

In your letter you specifically point out that your employees are in no sense selected on account of labor necessary for work being done upon ordinary commercial or business projects, with the expectation of making a profit from such work, but that rather a survey is made of needy persons and they are given what may be termed made work, with no thought of profitable reimbursement along ordinary business lines, but for the sole purpose of maintaining the worker, if single, or his family, if married, without the necessity of having such workers supplied directly and exclusively out of charity funds. In other words, the purpose of your administration is to provide indigent unemployed with work paying a minimum living compensation, instead of being maintained by a direct dole.

In my opinion, such compensation as is due workers, payable out of the funds of your administration, is not subject to garnishment.

Under the provisions of section 2730 of the Code, boards of supervisors are expressly authorized to provide means of subsistence for those threatened with starvation and unable to provide for themselves, and to make levies for that purpose.

Under the provisions of section 2795 of the Code, every county is required to provide for the support of the poor and must make an annual levy to provide for such support.

Under the head of Board of Public Welfare, there is provided in section 1904 of the Code a board of poor commissioners for each county and city, whose duty is to make certain investigations as to the poor and to report twice a year to the State Board of Public Welfare.

In addition to the provisions of the sections quoted, which refer to duties of counties to provide for the poor, section 2800 provides for an application by or on behalf of anyone who is unable to maintain himself, or by or on behalf of the family of a person unable to maintain it, and such person shall be provided for or assisted by the county, town or city in which he or the family have a legal settlement. Under the provisions of section 2801, where relief is refused by the overseer of the poor, or by the council, the circuit court of the county or the corporation court of the city may direct relief to be furnished.

The system employed by your organization is a substitute for provisions of statute law under which cities, towns and counties are required to furnish subsistence relief to indigent persons, and this is so, while the relief furnished each person employed by your Work Division is nominally paid compensation for labor.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**GOVERNOR—Authority to loan to the Republic of France the Houdon Bust of Marquis de Lafayette.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 10, 1934.*

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,  
Richmond, Virginia.*

DEAR GOVERNOR PEERY:

You have requested of this office an opinion upon the power of the Governor to

loan to the Republic of France for exhibition purposes at a Lafayette celebration during the coming year the Houdon Bust of Marquis de Lafayette.

After a careful and exhaustive investigation of the laws of this State, both statutory and constitutional, I have been unable to find any grant of authority to the Governor, either expressed or implied, to allow the removal from the Commonwealth of any of the State's property.

It is said in the case of *Lewis v. Whittle*, 77 Va. 415, 420:

"\* \* \* Under our system of government, the Governor has and can rightly exercise no power except such as may be bestowed upon him by the constitution and the laws. \* \* \*"

Section 402 of the Code of Virginia provides that the Superintendent of Grounds and Buildings shall have under his care all public property at the seat of government not placed in the charge of others, and shall protect the same from depredations and injury. There is no provision placing the Bust in question in charge of others, so that by the above section the same is committed to his care. There is no grant of authority by any statute or constitutional provision to this officer to permit the removal of any such property from the seat of government at Richmond.

It has been the uniform custom and practice in the past, whenever any property of the State has been loaned for exhibition purposes out of the State, or has been removed from the State, to authorize the same by a joint resolution of the General Assembly of Virginia.

Therefore, in view of the want of expressed or implied statutory or constitutional provision authorizing the Governor, or any officer under his supervision, to remove or permit the removal of State property from the Commonwealth, and of the customary granting of such authority passed by a joint resolution of the General Assembly of Virginia, it is the opinion of this office that the Governor does not have the power to loan to the Republic of France, or permit the removal from the State of Virginia, the property in question.

Respectfully yours,

ABRAM P. STAPLES,  
*Attorney General.*

#### **INSANE, EPILEPTIC AND FEEBLE-MINDED—Admission to hospitals.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 25, 1934.

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,*  
*Richmond, Virginia.*

DEAR GOVERNOR PEERY:

I have yours of May 23rd, requesting the opinion of this office upon the question of whether any person can exercise the authority conferred on the Commissioner of State Hospitals by sections 1022 and 1023 of the Code, to direct the sheriff or sergeant having custody of an insane or feeble-minded person to what State hospital application shall be made for the admission of such persons in his custody.

The office of the Commissioner of State hospitals was abolished by section 152 of the amendment to the State Constitution, but I do not find any general provision of law transferring the powers vested in such Commissioner to any other officer.

Under the provisions of 1006 of the Code, the general board of directors for the management and control of State hospitals for the insane and the departments thereof is created and consists of all of the members of the special boards of directors of the various hospitals. The general board is given power by rules and regulations to provide for the management and inspection of the hospitals, and it is empowered to elect the superintendents of the several hospitals.

Under the provisions of section 1022 of the Code, it is made the duty of the sheriff or sergeant, unless otherwise instructed by the Commissioner of State Hospitals, to make application to the nearest appropriate hospital for the admission of any incompetent person in his custody.

If the conditions at Williamsburg are such as to render that hospital no longer appropriate for the admission of new patients, the sheriffs and sergeants living in the territory which would naturally make application to the Williamsburg hospital should be instructed by the proper authority that such hospital is no longer appropriate for the receipt of such patients, and inform them of the fact that the nearest hospital at this time is the Western State Hospital.

While there is no express provision of the law as to who is authorized to so instruct and advise sheriffs and sergeants of this fact, it is the opinion of this office that the superintendent of the Eastern State Hospital would have this authority until there is a meeting of the special board of directors of that hospital, which action by the superintendent may be ratified or reversed, as the case may be, by the board of directors of that institution. The action of the special board would be subject to review and correction by the general hospital board at its meeting.

It is the opinion of this office that the question depends upon what is the nearest appropriate hospital to which the sergeants and sheriffs should make application, and that the determination of the fact of whether or not the Eastern State Hospital is appropriate for the purpose of admission of patients at this time is a question to be determined first by the superintendent of the hospital, whose action may be reviewed by the special board of directors of that hospital, with an ultimate review by the general hospital board of the State.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**INSANE, EPILEPTIC AND FEEBLE-MINDED—Admission to State institution—Residence.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 17, 1934.*

DR. J. S. DEJARNETTE, *Superintendent,*  
*Western State Hospital,*  
*Staunton, Virginia.*

DEAR DOCTOR DEJARNETTE:

I am in receipt of your letter of April 14th, inquiring whether or not a man who came into Virginia less than a year ago, and who was insane when he came into the State, can acquire a residence in Virginia, by remaining here continuously thereafter, for the purpose of being admitted into the Western State Hospital.

Section 1030 of the Code of Virginia provides that any non-resident insane person who may be admitted into any institution or committed to jail, the superintendent in the one case, or the court in the other, shall, as soon as practicable, cause him to be returned to his friends, if known, or the proper authorities of the State or county from which he came. The expense incident to the transportation shall be borne by the county or city wherein the commission of lunacy was held.

In view of the foregoing provisions, it is the opinion of this office, if it can be legally ascertained that such person was insane when he entered this State, that he can acquire no rights by residence to admission into the State hospital, but should be returned in accordance with the provisions of the above quoted section. The mere fact that he remains in the custody of his friends for any length of time, if he be insane during the stay, does not establish a residence in Virginia.

With kind regards, I am

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**INSANE, EPILEPTIC AND FEEBLE-MINDED—Recommittal necessary for discharged patient.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 28, 1934.*

HONORABLE A. H. CRISMOND,  
*Clerk of Court,*  
*Spotsylvania, Virginia.*

DEAR MR. CRISMOND:

Your letter of the 17th of March addressed to Honorable John R. Saunders has, since my appointment as his successor, reached me for attention.

Section 1046 of the Code covers the subject of your inquiry. In my opinion, where an adjudged lunatic has been discharged as improved by the superintendent, there is no specific law authorizing the asylum authorities to again take him into custody without proceeding again to have him adjudged insane and committed to an asylum.

A discharge under the provisions of section 1046 is entirely different from the furlough of a lunatic under the provisions of section 1041, which authorizes the return of the lunatic to the asylum.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**INSURANCE—Officer or director of insurance corporation borrowing money therefrom prohibited with exceptions.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 1, 1934.*

HONORABLE THOS. W. OZLIN, *Commissioner,*  
*State Corporation Commission,*  
*Richmond, Virginia.*

DEAR MR. OZLIN:

This is in reply to your letter of April 24th, asking for an interpretation of Senate Bill No. 208, which you advise me is carried into the Acts of 1934 as chapter 365. I have been unable to obtain a printed copy of the act as finally passed, but Mr. George Bowles has handed me a copy of the bill with certain changes therein, which he tells me is the final form in which the act was passed.

Based on this bill, as Mr. Bowles presents it to me, it is the opinion of this office that said bill, which is an amendment to the Code by adding thereto a new section numbered 4257-d, does prevent an officer or director of any insurance corporation doing business in this State from borrowing any money from such corporation in which he is such officer or director, unless the sum borrowed is a loan made upon a policy held therein by the borrower not in excess of the net value thereof.

The second question contained in your letter is, what effect does the foregoing provision have upon an officer or director who is now indebted to his insurance company.

This question is answered by the following language contained in the act:

"Provided that existing loans, in which a director or officer is pecuniarily interested may be renewed from time to time until June thirtieth, nine hundred and thirty-nine, provided such loans have been legally and properly made, notwithstanding the provisions of this section."

It is clear from the foregoing that any such officer who is now indebted to the

company on a loan properly and legally made to him by the company may, with the consent of the company, continue to renew the same until June 30, 1939.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**JAILS AND PRISONERS—Compensation of sheriffs and city sergeants for board of prisoners in jail.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 10, 1934.

HONORABLE A. GORDON BROWN, *Judge,*  
*Juvenile and Domestic Relations Court,*  
*Hampton, Virginia.*

DEAR JUDGE BROWN:

This is in further reply to your letter of April 18th, which I have been delayed in investigating.

Your letter requests the opinion from this office as to whether or not the feeding of a meal to a prisoner on the day after his arrest, or any day after his prior confinement, would entitle the jailer to charge for an additional day on account of same.

Thus, in example No. 1 contained in your letter, John Doe might be arrested at 11:30 o'clock on the night of April 4th, and be served his breakfast on the morning of April 5th, and discharged at 9:00 o'clock A. M., and you ask if the jailer who had only kept him one night and fed him one meal should charge for one day or two days.

Your attention is directed to the language contained in the publication issued June 21, 1928, by the State Comptroller, for the use of judges, clerks of courts, and other officers. In that publication, on page 19 thereof, appears the following:

"Board for each day can be charged for except the day of discharge, but if the prisoner is received and discharged the same day one day's board can be charged."

I am advised by the Comptroller's office that this has been the rule in force for many years. It is the opinion of the Comptroller that the number of meals served on the day of receipt of the prisoner and the day of discharge will average up about the same, and on the whole this method of compensation of the jailer is fair and has proven satisfactory.

In view of this interpretation, which has been placed upon the statutes for years, it is the opinion of this office that no charge should be made for the prisoner for any meals served on the day of his discharge, and such day of discharge should not be counted as a day.

It is further the opinion of this office that the rule above quoted from the Comptroller's office is the proper rule to be applied in determining compensation of sheriffs and city sergeants for board of prisoners in jail.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**JAILS AND PRISONERS—Power of circuit court to revoke suspension of sentence.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 4, 1934.

MAJOR R. M. YOEUELL, *Superintendent,*  
*The Penitentiary,*  
*Richmond, Virginia.*

DEAR MAJOR YOEUELL:

This is in reply to your letter of April 18th, enclosing a copy of a judgment of conviction rendered by the circuit court of Princess Anne county convicting Irving Werner of the crime of malicious cutting, and sentencing the prisoner to two years in the penitentiary, with a provision for the suspension of one year of said sentence.

It appears from your letter to Judge White that the conduct of this prisoner has been such as to make it advisable to revoke this suspension, and you request an official opinion from this office as to whether the circuit court of Princess Anne county has the power to revoke the same.

The power of the court to grant this suspension is found in section 1922b of the Code, which provides as follows:

"The court may revoke the suspension of sentence and cause the defendant to be arrested and brought before the court at any time within the probation period, or within the maximum period for which the defendant might originally have been sentenced to be imprisoned, whereupon, in case the imposition of sentence has been suspended, the court may pronounce whatever sentence might have been originally imposed; and in case the execution of the sentence has been suspended, the original sentence shall be in full force and effect, \* \* \*."

This provision has been construed in the case of *Richardson v. Commonwealth*, 131 Va. 811, as conferring express power on the court to revoke the suspension. It is not necessary under this section to have any cause or reason for said revocation, and it is the opinion of this office that said court possesses the power to enter an order revoking the provision contained in the original judgment of conviction for suspension of one year of the sentence, and that the effect of this order will be to eliminate such suspension provision of the original judgment of conviction.

I am returning herewith the correspondence between you and Judge White, and also the copy of the judgment of conviction.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**JAILS AND PRISONERS—Sentences—Concurrent—Consecutive.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 15, 1934.

CAPTAIN R. R. PENN, *Superintendent,*  
*State Farm,*  
*State Farm, Virginia.*

DEAR CAPTAIN PENN:

This is in reply to your recent communication with reference to the three judgments imposing sentence on one George Mann.

The first is a judgment of the circuit court of Clarke county, imposing a six months' sentence sentencing him to the State convict road force.

The next is a certificate from the trial justice of Clarke county that he has been convicted for violating the prohibition law and sentenced to six months in the county

jail. The date of this judgment is October 9, 1933, and on the same day the same trial justice also convicted the said George Mann of the offense of destroying evidence and sentenced him to three months in jail.

You request the opinion of this office as to whether these sentences shall run concurrently.

Each of the two certificates from the trial justice states as follows:

"This sentence not to run concurrently with any sentence of this court or any other court."

The judgment of the circuit court of Clarke county was rendered after the other two judgments, namely, on November 29, 1933. There is, however, no provision in the order of the court, a copy of which you attach to your letter, in any way stating or implying that the sentence shall run concurrently with any other sentence imposed against him by any other court.

This office is, therefore, of the opinion that, in accordance with its former rulings, all of these sentences run consecutively.

Since your first communication, however, you have transmitted to us under date of April 25th, the certified copy of an order from the trial justice of Clarke county suspending from the conditions therein stated six months of the nine months sentence imposed by said justice. The effect of this suspension, as under the recent alcoholic beverage control act, is to authorize you to release the said George Mann as soon as he has served the sentence imposed by the circuit court of Clarke county, and three months of the sentence imposed by the trial justice court of said county.

I am returning you herewith the various papers which you sent me in connection with this case.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**JUDGES—Corporation court—Authority to appoint justices of the peace.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *July 13, 1933.*

MR. H. F. MINTER,  
*City Attorney,*  
*Hopewell, Virginia.*

DEAR MR. MINTER:

I am in receipt of your letter of the 11th instant, in which, after reciting certain facts concerning sundry appointments of Mr. H. H. Kamps to office in the city of Hopewell and certain litigation connected with his official acts, you write that on the 22nd of last month Mr. Kamps was appointed justice of the peace by the judge of the corporation court of the city of Hopewell, by virtue of authority supposedly vested in him under section 3092 of the Code.

After making a statement of Mr. Kamps' appointment as justice of the peace, you call my attention to section 108 of the Constitution of Virginia, giving the General Assembly authority to provide for the appointment of justices of the peace and for their jurisdiction; also to sections 3 and 4 of chapter 153 of the Acts of 1930, page 392, amending in some respects the charter of the city of Hopewell.

I have examined section 3092 of the Code and sections 3 and 4 of chapter 153 of the Acts of 1930, and agree with you that there is no authority of the judge of the corporation court of the city of Hopewell by virtue of section 3092 of the Code to appoint additional justices of the peace for that city, as, in my opinion, sections 3 and 4 of the amended charter of that city provide for the appointment of civil and trial justices and justices of the peace; and, having made such provision, section 3092 of the Code so far as the appointment of justices of the peace for cities is concerned is inoperative.

In my opinion, the provisions of section 3092, even as to appointments by the corporation courts of cities, are qualified and restricted by the language in the first sentence to cities in which "no provision is made for the election of justices of the peace," and that the authority of the judge of a corporation court is confined to its exercise in those cities in which no provision is made for the election of justices and a single justice for each ward is provided, in which case the judge of a corporation court may in his discretion provide for the election of an additional justice or justices and for *ad interim* appointments.

Yours very truly,

JOHN R. SAUNDERS,  
*Attorney General.*

**JURORS—Expense of to be taxed against State.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 10, 1934.*

HONORABLE A. B. GATHRIGHT, *Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

There has just come to my attention a communication from you addressed to this office, under date of March 23rd, enclosing a letter from Mr. William E. Sandidge, clerk of the circuit court of Amherst county, concerning the taxing of costs in a criminal case in which the town of Amherst was plaintiff and the defendant was dismissed, on his motion, at the cost of the town of Amherst.

The inquiry is whether or not the expense of the jury should be taxed against the town.

Section 4928 of the Code, 1930, provides that, except as otherwise therein provided, the amounts for attendance and mileage of jurors shall be paid out of the State treasury. It further provides, however, that, "when during the same day a person has served as a juror, for which he is entitled to be paid out of the public treasury, and has also served as a juror, for which he is entitled to be paid out of the county or corporation levy, the court shall divide equally the pay and mileage for such day between the State and the county or corporation."

The foregoing section applies to jurors in criminal cases. It is not at all clear what jurors are referred to in the language concerning those whose attendance and mileage costs should be paid out of the county or corporation levy.

Upon reference, however, to section 6007 of the Code, which is one of a number of sections dealing with the pay of jurors in civil cases, it would seem that the duty of the county or corporation to pay for jury service is confined to civil cases. It would seem, therefore, that the provisions for dividing these costs would be applicable where both a civil and criminal case were tried on the same day by the same jury.

Under these circumstances, therefore, this office is of the opinion that the expense of the jury should be taxed against the State and not the town, unless on that same day the same jury was engaged in the trial of a civil case, in which event the costs should be divided equally between the county and the State.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**JUSTICE OF THE PEACE—No authority to issue warrants for attendance or other claims.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *October 18, 1933.*

HONORABLE LEE STANLEY,  
*Clerk,*  
*Clintwood, Virginia.*

MY DEAR MR. STANLEY:

Honorable E. R. Combs has handed me your letter, which is as follows:

"For the past while the witness attendance claims issued by the justices of the peace for our county have been rapidly increasing to such an extent that Judge Lively felt that the legality of these claims should be investigated, and he asked that I communicate with you on this matter.

"I am enclosing herewith a blank form, such as those used by the justices and delivered to the persons summoned and appearing before them in criminal cases, which certificates they deliver to us at court and ask that we issue them claims payable out of the public treasury in lieu of these certificates.

"I wish you would make an investigation of this certificate, when properly filled in by the justice of the peace, and advise me by return mail the legality of the same, and whether or not we should continue to take in these certificates and in lieu thereof issue claims on the public treasury, and this information will enable us to handle this more satisfactory at court, and I am sure Judge Lively will also appreciate your courtesy in this matter."

I have carefully examined the blank form which you enclosed in your letter.

I know of no law which authorizes a justice of the peace to issue a claim of this character. All criminal warrants tried by justices of the peace should be returned to the clerk's office, and this is so whether there is a conviction or an acquittal. Upon the warrant, or, if there is not sufficient room thereon, the justice should upon another paper make up an account of costs, and, so far as witnesses are concerned, the justice should show the name of the witnesses, the number of days of attendance and the amount due such witnesses.

In those cases in which the Commonwealth is required to pay costs, the warrant, or other papers, returned to the justice should be presented to the judge of the circuit court and from an inspection of these papers the judge could ascertain and allow the amount due officers and witnesses in all criminal cases.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**JUSTICE OF THE PEACE—Right of Commonwealth to appeal from decision of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 5, 1934.*

HONORABLE J. F. SERGENT,  
*Attorney for the Commonwealth,*  
*Gate City, Virginia.*

DEAR MR. SERGENT:

I have received a letter from Mr. Frank M. Tompkins, game warden, stating that you desire an opinion from this office upon the question of the right of the Commonwealth to appeal from a decision of a justice of the peace acquitting a person of a charge of hunting without a license, and also of a charge for having in his possession an unlicensed dog.

Under the provisions of section 53, of chapter 247 of the Acts of 1930, the Commonwealth is given the right of appeal from a judgment of acquittal rendered by a justice of the peace in any case relating to State revenue.

Inasmuch as both of the cases involve the question of the payment of State licenses, they do relate to the State revenue and the Commonwealth has the right to appeal in such cases to the circuit court of the county from the judgment of the justice of the peace.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**LICENSES—Rental managers of real estate.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, V.A., *September 18, 1933.*

VIRGINIA REAL ESTATE COMMISSION,  
*Richmond Trust Building,  
Richmond, Virginia.*

DEAR SIRs:

Mr. W. B. Rudd, your executive secretary, has just been in the office and left with me a copy of an order recently entered by your board, in which you desire the opinion of the Attorney General as to whether rental managers of real estate are required to obtain a license and, if so, what license.

In my opinion, a rental manager comes within the classification of real estate salesman under the provisions of section 2 of the real estate license law approved March 25, 1926.

That part of the section which I understand to cover the occupation of a rental manager reads as follows:

"A real estate salesman within the meaning of this act is any person who for a compensation or valuable consideration is employed either directly or indirectly by a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase or sale or exchange of real estate, or to lease, or to rent, or offer for rent any real estate, or to negotiate the lease thereof, or the improvements thereon, as a whole or partial vocation."

My opinion is based upon my understanding that it is the duty of a rental manager for a real estate firm to effect leases and/or to rent or offer real estate for rent and/or to negotiate leases on real estate, and that the services of a rental manager are performed for compensation or valuable consideration, and that he is employed for the purposes aforesaid by a real estate broker.

If the rental manager is acting for himself or as a member of a firm, partnership, co-partnership, association or corporation, he then is required to take out a broker's license. If he is acting for a real estate broker, then he is required to take out a real estate salesman's license.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**LITERARY FUND—Authority of board of supervisor to borrow from.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, V.A., *October 31, 1933.*

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

DEAR MR. MCGAVOCK:

I am in receipt of your letter of yesterday, which for purposes of my reply I quote:

"As a member of the board of supervisors of Wythe county, I was appointed to get the information from you in regard to Wythe borrowing money to build a school building.

"We want to know if we can borrow this money, \$25,000 to \$75,000, from the literary fund and pay the men \$1.50 per day instead of the State wage of \$3.00 or Federal of \$4.50 per day.

"Can we borrow this money without putting it to a vote of the people?

"Please let me hear from you at once, as we meet again in a few days."

Loans from the literary fund for any one project are limited, under the provisions of chapter 50, page 95, of the Acts of 1933, to \$50,000.

In my opinion, there are no rules or regulations restricting a school board as to the employment of workmen or prescribing the rates of pay.

The erection of a school building does not come within the provisions of the Federal National Recovery Act.

While section 115a of the Constitution prohibits a school board from contracting indebtedness, the Court of Appeals in *Board of Supervisors of King and Queen County vs. W. S. Cox, et als.*, 135 Va. 687, holds that that section of the Constitution does not apply to loans from the literary fund. I am, therefore, of the opinion that it is not necessary to submit the question of the loan from the literary fund to a vote of the people.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**MAYORS—Trial of cases by—Disposition of fines for violation of town ordinances—Trial justices—Trial of cases by.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 12, 1934.

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

DEAR MR. TODD:

This is in reply to yours of April 25th, inquiring whether, if the town of Galax should elect not to continue its mayor as its trial officer, the fees and fines in cases of conviction for a violation of town ordinances would go to the town or to the county.

The last sentence on the bottom of page 5, continuing to the top of page 6, of the special pamphlet of the trial justice act, a copy of which I have sent you, provides for the collection of fees by the trial justice in criminal cases, and that same be turned into the treasury of the county or city within his jurisdiction in which the offense was committed. It also provides that fines for violation of town ordinances shall be turned into the treasury of the town whose ordinance has been violated.

Under the provision of section 4988-g, subsection 7, referred to in my former letter, if the mayor is continued as the trial officer, he collects the fines and pays them into the treasury of the town.

The net result of the foregoing is that fines paid for violation of town ordinances go into the treasury of the town regardless of whether or not the mayor is continued as trial justice. On the other hand, if the mayor is continued as trial justice, the fees go into the treasury of the town, but, if he is not so continued, the fees go into the treasury of the county.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**MEDICAL COLLEGE OF VIRGINIA—Authority of board to pledge endowment income as security.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *January 24, 1934.*

MR. W. T. REED, *Chairman,*  
*Board of Visitors,*  
*Medical College of Virginia,*  
*Richmond, Virginia.*

DEAR MR. REED:

I am today in receipt of two letters of even date from Dr. W. T. Sanger, President of the Medical College of Virginia, with which he encloses a resolution of the executive committee of the board of visitors of the college pledging endowment income for the security of a loan of approximately \$100,000 and of a grant of approximately \$30,000 from the Public Works Administration of the Federal government for the purpose of constructing a central heating and power plant at the Medical College of Virginia.

Included in the plants of the Medical College of Virginia is the St. Philip hospital and dormitory. This hospital will be heated from the plant to be established with the proposed loan.

I note from Dr. Sanger's letter that the present cost of heating and providing steam for cooking at the St. Philip hospital and dormitory is in excess of \$7,100, and that the estimated carrying charge of the loan, including a mortization thereof over a twenty-year period, is the average annual sum of \$7,100.

In one of Dr. Sanger's letters he states that there is in the endowment fund of the St. Philip hospital one item of \$144,147.50 derived from the residuary estate of the late Martha Allen Wise, which at present yields for use to the St. Philip hospital an income of \$8,648.85.

I am asked as to the authority of the board to pledge \$7,100 of the endowment income of the St. Philip hospital as security for the loan applied for.

There being no restrictive provisions as to the disposition of the Wise endowment and as that institution will receive an annual benefit aggregating in excess of the present cost of heating and hospital and dormitory, I am of the opinion that so much of the endowment income of the St. Philip hospital as is necessary to secure the Federal loan may be pledged as security for the repayment of that loan.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**MEDICINE—Practice of—Clinical laboratory.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 5, 1934.*

MEDICAL SOCIETY OF VIRGINIA,  
*1200 East Clay Street,*  
*Richmond, Virginia.*

GENTLEMEN:

I am in receipt of your letter of March 29th, inquiring whether or not the State of Virginia considers conducting a clinical laboratory to be practice of medicine.

Section 1622 of the Code of Virginia, 1930, defines the practice of medicine. It embraces only persons who open an office for such purpose, or announce to the public a readiness to practice medicine, or prescribe for, or give surgical assistance, diagnoses or treatments, or heal, cure or relieve those suffering from injury or deformity, or disease of mind or body or persons who advertise or announce to the public their ability to heal, cure or relieve those who may be suffering from injury

or deformity, or disease of mind or body for compensation. It embraces also persons who use in connection with their names the words or letters "Dr.," "Doctor," "Professor," "M. D." or "Healer," or any title, word, letter or designation intended to imply or designate them as practitioners of medicine in any of its branches, or of being able to heal, cure or relieve those who may be suffering from injury or deformity or disease of mind or body. This section also applies to corporations.

Whether or not conducting a clinical laboratory can be considered the practice of medicine will depend, therefore, upon whether or not the person conducting the same holds himself out as a practitioner of medicine within the meaning of the provisions above referred to. Unless the person conducting such laboratory holds himself out as able and willing to do more than merely make clinical analyses by chemical experiments of such substances as may be submitted to the laboratory, it is the opinion of this office that such person would not be a practitioner of medicine within the meaning of the laws of Virginia.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**MILEAGE—Allowance made public officials—Use of personal auto.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 17, 1934.

HONORABLE A. B. GATHRIGHT,  
*State Comptroller,  
Richmond, Virginia.*

DEAR MR. GATHRIGHT:

This is in reply to your letter of May 14th, requesting the opinion of this office on the proper construction of section 27 of the 1932 General Appropriation Act concerning the allowances to be made to public officials and others for mileage for use of their personal automobile in discharge of their official duties.

The section above referred to provides that such mileage shall be six cents per mile, and you inquire whether or not this figure should include "costs of gas, oil, repairs, chauffeur hire, and hotel and meals for chauffeur, if one is employed in connection with the operation of such automobile."

It is the opinion of this office that the allowance for mileage should include all of the costs and expenses of operation of the automobile, including the chauffeur and his expenses if one is used.

You also inquire in said letter whether or not, in a case where the State officer or employee hires an automobile, the allowance shall be limited to six cents per mile for actual miles traveled for the State's business.

It is the opinion of this office that the six cents per mile limitation contained in section 27 of said act has no application to a case where an automobile is hired, and that it is proper to charge such reasonable amount as may be expended for the hire of the car, gas, oil, chauffeur, and other expenses of operation.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**MILITARY LAW—Inquiry proceedings privileged.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 17, 1934.*

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,*  
*Richmond, Virginia.*

DEAR GOVERNOR PEERY :

I am in receipt of your letter of February 22nd, addressed to this office, in which you ask an opinion upon the legal question involved in certain correspondence between Mr. James G. Martin, attorney at law, Norfolk, Virginia, and the Adjutant General of the State, with respect to the privilege character of the records in the Adjutant General's office of the court of inquiry investigating an accident which happened to Robert H. Forrest, Battery D, 111th Field Artillery. At the time of this accident, Private Forrest was a member of the Virginia National Guard and was in attendance at an encampment at Virginia Beach. He was receiving compensation, and his expenses were being paid by the United States government.

The records which Mr. Martin requested should be made available for his inspection, or a copy thereof furnished to him, consist of a written narrative of the statements made by the witnesses and persons furnishing information before the court of inquiry during its investigation of said accident.

The request from Mr. Martin comes by reason of his representing the receivers of the Norfolk Southern Railroad Company, against whom Private Forrest has instituted an action at law for damages for personal injuries sustained by him in said accident. It appears from the correspondence that he suffered an amputation of his legs by reason of their being crushed or run over by one of the electric railway cars operated by said receivers.

The Adjutant General, who is the head of this military bureau, has declined to accede to Mr. Martin's request for an inspection or production of said records on the ground that said records are privileged under the rules of military law applicable. He further states that it is the opinion of his office that it would be an unwise policy to make such statements of witnesses public, for the reason that it would make it more difficult to induce persons, from whom information is sought, to disclose the desired information in such proceedings.

The position of the Adjutant General that said records are privilege is sustained by what I am informed is the leading authority of military laws in the United States, the author of which is George B. Davis. On page 287 of said authority is stated, concerning a privileged matter, as follows:

"It includes \* \* \* all communications between the principal officers of the several executive departments on matters of public business, together with the proceedings of commissions, courts-martial, and courts of inquiry, and generally all written communications in which the production of documents or oral disclosures of any kind restrained by law or would, in the opinion of the executive, be detrimental to the public interests."

From the foregoing authority, it is clear that the records herein involved are privileged, as they consist of the proceedings of a court of inquiry. In the opinion of the Adjutant General, it would be detrimental to the public interests to allow records of this kind to be made public for the reason above stated—that it would in the future hamper such proceedings and investigations.

Therefore, it is the opinion of this office, first, that the records in question are privileged, and, second, that the Governor, being the executive, has the power, if in his opinion it is a wise policy so to do, to require said documents to be disclosed.

Your letter asks that this office advise you as to what action should be taken in the premises. It is the advice of this office that the position of the Adjutant General should be sustained.

Respectfully yours,

ABRAM P. STAPLES,  
*Attorney General.*

**NOTARIES PUBLIC—Requirement to note expiration of commission on affidavits.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *November 2, 1933.*

MR. M. C. LEWIS,  
*Farnham, Virginia.*

DEAR MR. LEWIS:

I am in receipt of your letter of yesterday, in which you ask—

“Does the 1919 Code of Virginia, or any of the subsequent Acts of Assembly require ‘Notaries Public’ to note the expiration of their commission on *affidavits*?”

The original Act requiring a notary public to note the expiration of his commission was passed by the General Assembly of Virginia at its 1910 session. See page 119. The title to that Act requires notaries “to affix to certificates of acknowledgments hereafter taken by them upon writings which are admitted to record the date when their terms of office shall expire \* \* \*.”

This provision of law is carried into section 5210, chapter 211, of the Code of 1930, the title of the chapter applying to “Authentication and Record of Deeds and Other Writings; Factors and Agents.”

Chapter 18 of the Code of 1930, beginning with section 269, provides for the taking of oaths and averments. Section 274 expressly authorizes a notary to take any oath or affidavit required by law which is not of such a nature that it must be made in court. There is no provision in this chapter requiring a notary or any other of the officers authorized to take an oath or affidavit to state the expiration of their terms of office.

Apparently the provision of law to which you refer has reference to acknowledgments by notaries of papers for recordation purposes and does not seem to apply to the taking of affidavits.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Compatibility of—District supervisor and district school trustee.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *January 24, 1934.*

HONORABLE Y. MELVIN HODGES,  
*House of Delegates,*  
*Richmond, Virginia.*

DEAR MR. HODGES:

Your letter of January 16, addressed to Attorney General Saunders, in which you desire an opinion as to whether the General Assembly may consolidate the offices of district supervisor and district school trustee, has been received in his absence. Colonel Saunders has been confined to his room and, much of the time, to his bed, and has not been in his office since your letter was received.

In the absence of Colonel Saunders, I have given considerable study to the question as to whether the offices of district supervisor and district school trustee may be consolidated. I do not think that the two offices may be consolidated, as the Constitution provides for a separate class of offices.

In article 7 of the Constitution, under the head of Organization and Government of Counties, section 111, it provides for district supervisors.

Section 133 of article 9 of the Constitution, under the head of Education and

Public Instruction, provides for a school board to be composed of trustees to be selected in the manner, for the term and to the number provided by law.

Section 113 of article 7 provides that, subject to the provisions of section 110, no person shall at the same time hold more than one of the offices mentioned in that article. School trustees are not mentioned in article 7, so section 113 does not apply to those offices.

There is no provision in article 9 prohibiting school trustees from holding any other office.

I am, therefore, of the opinion that, while the offices of supervisor and school trustee cannot be consolidated, the same person may hold the two offices at the same time.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**OFFICES—Member of electoral board serving as member of equalization board.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 24, 1934.*

HONORABLE P. W. ACKISS, JR.,  
*Attorney for the Commonwealth,  
Virginia Beach, Virginia.*

DEAR MR. ACKISS:

I have been delayed in replying to yours of April 19, due to absence from the city.

The question raised in your letter is, whether or not there is any violation of law for a person to hold the office as a member of the county electoral board, serving in the capacity of secretary of said board, and also that as a member of the equalization board of the county of Princess Anne.

The provisions of section 31 of the Constitution and section 84 of the Code do not in any way render the holding of both of these offices at the same time incompatible; nor is there any prohibition against the same contained in section 344 of the Tax Code, providing for the equalization board.

Since both of these offices are executive offices, they do not come within the prohibition of section 39 of the Constitution, as you suggest in your letter.

It is the opinion of this office, therefore, that one person may hold the office of secretary of the electoral board and that of chairman of the equalization board at the same time.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**OFFICES—Compatibility of—Mayor serving as member of General Assembly.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *January 4, 1934.*

HON. A. D. WATKINS,  
*Attorney for the Town of Farmville,  
Farmville, Virginia.*

DEAR MR. WATKINS:

Your letter of the 30th of December was received in my absence, I not having been in the office since the letter arrived until today.

I have very carefully examined both the Constitution and the Code and find no

law in either prohibiting the mayor of a town from continuing to hold that position while serving as a member of the General Assembly.

At any rate, I assume Mr. Sanford will qualify as a member of the General Assembly and, should any question arise as to his continuing to hold the office of mayor, it will then be time enough for a decision as to his rights to hold over as mayor.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Eligibility of mayor for appointment as member of school trustee electoral board.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 20, 1934.*

HONORABLE A. H. HOPKINS,  
*Rocky Mount, Virginia.*

DEAR JUDGE HOPKINS:

The Attorney General's office is in receipt of your letter of yesterday, in which you desire the opinion of the Attorney General as to the eligibility of the mayor of the town of Bedford for appointment as a member of the school trustee electoral board of Bedford county.

Colonel Saunders is at present detained at his home in Saluda recuperating from an attack of bronchial pneumonia.

In my opinion, the mayor of a town is eligible to appointment on a county school trustee electoral board, as mayors of towns are not county or State officers and are not expressly disqualified from serving upon a county school trustee electoral board.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**OFFICES—Eligibility of clerk of court to appointment as clerk of trial justice court.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 17, 1934.*

HONORABLE W. M. MINTER,  
*Attorney for the Commonwealth,  
Mathews, Virginia.*

DEAR MR. MINTER:

This is in reply to your letter of May 15, inquiring whether or not a clerk of the circuit court of a county is eligible to appointment as clerk of the trial justice court under the provisions of section 4988-h of the Code, as amended in chapter 294 of the Acts of 1934, known as the Trial Justice Act.

Section 2702 of the Code provides expressly that no person holding the office of county clerk shall hold any other office, elective or appointive, at the same time, with certain exceptions, which are not material. It further provides that if, while holding the office of clerk, he be appointed or elected to any other office, his qualification in such other office shall thereby vacate his title to the office of clerk.

While I agree with you that it would probably be a wise provision of the law to permit the clerk of the court to also act as clerk of the trial justice court, it is my opinion that the provisions above referred to, which are contained in section 2702 of the Code, are so clear and explicit as to prevent this from being done.

Even, should this office be of the opinion that the clerk of the circuit court is eligible to the appointment as clerk of the trial justice court, this would be in no way

binding upon the courts and would not be any protection to your circuit court clerk in the event proceedings were instituted against him to test his title to the office of the clerk of the circuit court should he qualify as the trial justice court clerk.

It is my opinion, therefore, that it would be very unwise for the clerk of your circuit court to accept such an appointment, as he would run a great risk of losing his present position.

With best wishes, I am

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**OFFICES—Eligibility of deputy clerk to hold office of judge of juvenile and domestic relations court.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *October 9, 1933.*

HONORABLE W. E. NEBLETT,  
*Attorney for the Commonwealth,  
Lunenburg, Virginia.*

DEAR MR. NEBLETT:

I am in receipt of your letter of October 6, in which you desire my opinion as to the eligibility of a deputy clerk of the circuit court to hold the office of judge of the juvenile and domestic relations court.

I do not think that a deputy clerk can hold any other office, elective or appointive, while acting as such deputy clerk.

Section 2702 of the Code, among other things, provides that "No person holding the office of \* \* \* county clerk \* \* \* shall hold any other office, elective or appointive, at the same time \* \* \*."

Section 2701 of the Code provides that any county clerk may, with the consent of the court of which he is clerk, appoint one or more deputies, who may discharge any of the official duties of their principal during his continuance in office.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Engineer to Commission of Fisheries cannot take charge of United States Coast Survey.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *December 5, 1933.*

MR. FRED E. RUEDIGER,  
*Engineer to Commission of Fisheries,  
Newport News, Virginia.*

DEAR MR. RUEDIGER:

I am in receipt of your letter of the 1st instant, in which after referring me to chapter 266, page 775, Acts 1928, you quote from a letter from the Director of the United States Coast Survey, requesting you to take charge of the proposed State survey contemplated by the Coast Survey Bureau under the Emergency Relief Act, and in which you ask whether or not you as an employee of the State Commission of Fisheries have the right to accept the employment offered.

I do not think that you can accept the employment offered you while you serve as a civil engineer, by virtue of the law which you quote. The second paragraph of the Act provides:

"Such engineer shall give his entire time to the discharge of his duties,

and shall receive as compensation for his services the sum of three thousand dollars per annum."

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Member of school board cannot serve in General Assembly.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *November 29, 1933.*

HON. C. T. SMITH, *Chairman,*  
*County School Board,*  
*Bowling Green, Virginia.*

DEAR MR. SMITH:

I am in receipt of your letter of yesterday, in which you desire my opinion as to the right of a person to hold the office of member of a school board and membership in the General Assembly at the same time.

I do not think that a person can hold both of these offices at the same time.

Section 644a of the School Code provides that "no Federal, State or county officer can be chosen and allowed to act as a member of the county school board of his county."

With kind personal regards, I am

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**OFFICES—Member of school board cannot be appointed doctor for transient camp.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 23, 1934.*

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

DEAR MR. WHITEHEAD:

This is in reply to your inquiry of April 21, asking the opinion of this office as to whether or not a member of the county school board can at the same time be appointed a doctor for the government transient camp located near Chatham.

I imply from the last paragraph of your letter that this position carries with it a salary, which is paid by the United States government.

It is the opinion of this office that, by virtue of the provisions of section 290 of the Code of Virginia, a member of the school board cannot lawfully hold in section of doctor for a transient camp if it carries a salary paid by the United States government. This office does not come within any of the exceptions mentioned in section 291 of the Code.

It will be observed that section 290 provides that no person shall be capable of holding any office or post mentioned in section 289, who holds any office or post of profit, trust, or emolument, under the government of the United States, or who is in the employment of such government, or who receives from it in any way any emolument, or the acceptance of any emolument whatever. The offices referred to in section 289 embrace the offices of honor, profit, or trust, under the Constitution of Virginia.

Membership on the school board is an office under the Constitution of Virginia, and is provided for under section 133 of our State Constitution.

Cordially yours,

ABRAM P. STAPLES,  
*Attorney General.*

**OFFICES—Employee of State and Federal Extension Bureau serving as member of school board or other office.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 28, 1934.

HONORABLE SIDNEY B. HALL,  
*Superintendent of Public Instruction,  
Richmond, Virginia.*

DEAR MR. HALL:

I have yours of May 24, enclosing a letter addressed to you by Mr. J. A. Burke, division superintendent of schools of Appomattox county. In Mr. Burke's letter he inquires of you whether or not an employee of the State and Federal Agricultural Extension Bureau is, by reason of such employment, disqualified from becoming a member of the school board of his county or district.

Section 290 of the Code is very clear and explicit in its provisions that no person shall be allowed to hold any office or post of profit, trust, or emolument, under the Constitution of Virginia who, at the same time, holds any office or post of profit, trust, or emolument, under the government of the United States, or who is an employee of such government. This clearly disqualifies any employee of the Federal government from acting as a school trustee or member of the school board, because the same is an officer provided for by section 133 of the State Constitution and comes expressly within the provisions of section 290 of the Code.

It is true that section 291 of the Code makes certain exceptions to the provisions of section 290, and permits certain officers and employees of the United States government therein specified to also act as school trustees. However, it is clear that the person referred to in Mr. Burke's letter does not come within these exceptions.

Mr. Burke, in his letter, refers to the provision contained at the end of section 291 permitting "clerks and employees of the Federal government engaged in the departmental services in Washington" to act as school trustees. This clearly is confined to persons working inside the city of Washington, and was an exception inserted in the Code by reason of the fact that so many of the residents of Arlington and Fairfax counties work in Washington and it was desired to have the benefit of the services of a number of these on the school board.

It is very clear, however, that an employee of the Federal government residing and working in the county of Appomattox does not come within this exception, or any other exception contained in the law.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**OFFICERS—Municipal—Right to make arrest beyond corporate limits.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 29, 1934.

HONORABLE JAMES TALBOT,  
*Chief of Police,  
Portsmouth, Virginia.*

DEAR MR. TALBOT:

This is in reply to your letter of May 28, in which you ask for the opinion of this office concerning the right of a city officer to make an arrest in Norfolk county beyond the corporate limits of the city.

Section 3006 of the Code of Virginia provides that the jurisdiction of the corporation authorities of each city in criminal matters shall extend one mile beyond the corporate limits of such city.

It is the opinion of this office, therefore, that the police officers of the city of Portsmouth have the jurisdiction and authority to make arrests in Norfolk county, or any place therein, not a greater distance than one mile from the corporation limits of the city of Portsmouth. The power of arrest within such mile limitation is the same as within the city itself.

Yours sincerely,

ABRAM P. STAPLES,  
*Attorney General.*

**PASSES—Use of by member of county board.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *March 2, 1934.*

HONORABLE C. B. GARNETT,  
*Attorney at Law,*  
*Tower Building,*  
*Washington, D. C.*

DEAR MR. GARNETT:

The Attorney General's office is in receipt of your letter of yesterday, in which you state that you have been appointed a member of the county board of Arlington county; that the law firm of which you are a member is local counsel at Fairfax, Virginia, for several railways and, as a part of the compensation to the firm for their services, the railroads grant a pass to each member of the firm.

You wish to be advised as to the opinion of this office as to whether or not section 161 of the Constitution of Virginia prohibits you as a local official from making use of this pass, and you refer to *Commonwealth v. Gleason*, 111 Va. 383.

I do not find that the Attorney General has expressed an opinion in recent years upon your question. However, I have been consistently of the opinion that an official who is counsel for a transportation company and receives free transportation as a part of such compensation does not come within the prohibition of section 161 of the Constitution, there being no law in Virginia prohibiting an official from employment by transportation companies.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**PILOTS—Branch—State license required.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *November 21, 1933.*

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

DEAR MR. COMBS:

I beg to acknowledge receipt of your letter of November 17, with which you enclose correspondence had with Honorable James S. Barron relative to State licenses required of branch pilots.

I notice from the correspondence that it has been the practice to have branch pilots pay their licenses during June, and it is the opinion of the president of the Board of Pilot Commissioners that, under the practice that has grown up, a license is for the period of July 1 one year until June 30 the succeeding year. In order to put this matter on a calendar basis, Senator Barron proposes that the branch pilots pay \$27.50 apiece for a six months' license, and he says that, if it meets with your approval, he will arrange to have it done.

Section 3615 of the Code provides for a license for a year and for an annual license fee of \$55.00. I can find no authority in that section which would permit the issuance of a six months' license on the payment of one-half of the fee.

I am, therefore, of the opinion that this plan cannot be carried into effect.

Yours very truly,

JOHN R. SAUNDERS,  
*Attorney General.*

**PRISON BOARD—Departments, institutions and agencies to purchase from.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 19, 1934.*

HONORABLE A. B. GATHRIGHT, *Comptroller,*  
*Richmond, Virginia.*

DEAR MR. GATHRIGHT:

This is in reply to your letter of April 19, inquiring as to the construction of chapter 62 of the Acts of the Extra Session of the General Assembly, 1933, amending Code section 2073 and adding two sections, numbered 2073-a and 2073-b, pertaining to the State convict road force, the employment of convicts and misdemeanants and the purchase of articles produced and manufactured thereby.

Section 2073-a provides that on and after January 1, 1934, all departments, institutions and agencies of the State, which are supported in whole or in part by the State, shall purchase from the State Prison Board all articles required by such departments, institutions and agencies of the State, where such articles are produced or manufactured by the State Prison Board by such convicts and misdemeanants, including products of the penitentiary and State farms.

Your inquiry is whether or not, under the provisions of the foregoing Acts, jailors, sheriffs and sergeants shall be required to purchase from the State Prison Board clothing, or any other articles or products, which the board may have produced in the manner required in the Acts and may have for sale.

Your inquiry raises the sole question whether or not jails are institutions and agencies of the State which are supported in whole or in part by the State.

Our statutes provide for contributions by the State for the maintenance and support of said jails by payments to the sheriffs or sergeants of an allowance for the custody, care and feeding of prisoners convicted for violations of State laws.

Section 4956 of the Code provides that upon the direction of a court the Commonwealth shall provide, not exceeding \$10.00 in any one year for each prisoner, funds for the purchase of clothing for such prisoners.

In view of the foregoing provisions of our statutes, it is the opinion of this office that said jails are State institutions and agencies and come directly within the provisions of chapter 62 of the Acts of the Extra Session of the General Assembly, 1933, and that jailors, sheriffs and sergeants are required, by virtue of the provisions of said chapter, to make the purchases therein designated from the State Prison Board.

The foregoing, however, is subject to the exception contained in second 2073-a of said chapter, which permits a board composed of the Governor, Comptroller and Director of the Division of Purchase and Printing, or a majority of them, to except from the operation of said section any article so produced which does not meet the reasonable requirements of a particular jail, or in any case where the State Prison Board is unable to furnish the articles or supplies on account of an insufficient supply.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**PROCESSING TAX—Payment of by State departments and institutions.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,

RICHMOND, VA., *October 12, 1933.*HONORABLE E. R. COMBS, *Comptroller,*  
*Richmond, Virginia.*

DEAR MR. COMBS:

You have handed me for attention the original of your letter of October 3, 1933, to His Excellency, John Garland Pollard, Governor of Virginia, in which you wrote:

"In order that this office may dispose of several invoices which we have been holding on account of U. S. processing tax being included, we will thank you to advise whether or not it will be your purpose to enter a protest against the payment of said tax by State departments and institutions."

This letter was returned to you with the notation, signed by the Governor:

"Kindly get written recommendation from the Attorney General on this point."

Just what is meant by the Governor's notation I do not fully understand. There are two very important questions to be determined as to the payment of processing taxes upon State purchases.

The first involves the attitude of the State of Virginia towards the National Recovery Act and the Agricultural Adjustment Act, legislation passed by Congress for the purpose of relieving the nation-wide economic depression. The processing tax is not a revenue measure to raise taxes for the support of the Federal government, but an excise levy upon the manufacture and/or sale of a specific number of agricultural products, the proceeds of which are intended for use in raising the price of the articles included for the benefit of the producer or/and laborers engaged in the production of such articles.

If it is the policy of the State to voluntarily co-operate with the Federal government in its purpose to relieve distress, reduce unemployment, and to raise prices of agricultural products and wages of labor, the Comptroller should audit accounts against the State with the processing tax included. If the government of Virginia does not join in such a purpose and is inclined to insist upon its sovereign rights to exemption from the processing tax, I call your attention to the legal rights of the State in the following paragraph.

Second, as to contracts made and entered into prior to the effective date of the Agricultural Adjustment Act, in which is included provision for a processing tax, I have advised the State Purchasing Agent, and the same advice should be followed by all officers of the State government, that there is no authority in law for the State to pay the processing tax upon merchandise bought for future delivery and delivered after the processing tax shall have become operative. In other words, the State should only pay the actual prices at which the seller agreed to deliver goods to purchasing agencies of the State.

There is considerable doubt as to the strict legal right of the Federal government to impose a processing tax, which must ultimately be paid by the State government. However, I understand that the Department of Agriculture of the United States has been advised by its legal staff that what is commonly known as the processing tax is not in fact a tax, but an increase of costs which may be lawfully included in the sale price of processed commodities even when sold to the State. The tax is first imposed upon the manufacturer or producer and he must account therefor to the government under existing Federal legislation. There are some few exceptions to the imposition of this tax included in the Agricultural Adjustment Act, purely eleemosynary or charitable institutions being exempted from the payment of the tax.

Mr. J. H. Grubbs, of the staff of the State Purchasing Agent, has been in touch

with the office of the Collector of Internal Revenue of the United States and can give you full information as to how exemptions may be secured.

As the law is now being administered, State agencies, as well as private individuals, with exceptions of the kind indicated, are being required to pay the processing tax.

If the Governor desires to insist upon exemption from the processing tax upon State purchases, I advise that he get in communication with the Commissioner of Internal Revenue of the United States, and make such claims for exemption as in his judgment should be presented to that official.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

**PUBLIC WELFARE—Disposition of children committed to Children's Home Society by juvenile courts.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 19, 1933.*

HON. ARTHUR W. JAMES,  
*Commissioner of Public Welfare,  
State Office Building,  
Richmond, Virginia.*

DEAR MR. JAMES:

I am in receipt of your letter in which you enclose a letter from Mr. F. D. Preston, General Secretary of the Children's Home Society of Virginia, from which for purposes of reply I quote:

"May I invite your attention to the third paragraph of section 1910 of the Code of Virginia, being a part of the law relating to delinquent, dependent and neglected children.

"The question is frequently arising in this organization as to what disposition we may make of children committed to the Society by juvenile courts throughout the State in times past when a large number of children were accepted without any definite agreement with the court as to responsibility in case the Society is financially or otherwise unable to afford that child the kind of care which is necessary.

"The question arises most frequently, of course, in the instances of children of borderline or defective mentality for whom we are unable to make satisfactory free home placements. We have not the funds to continue long time boarding home care for these children as much as we would like or as strongly as we appreciate the fact that this is the type of care most needed and best suited to the interests of the child and the State.

"We have taken the position that since this commitment to the Children's Home Society was for an indeterminate period subject to revocation and modification from time to time by the court, that the Society also had a right (inherent in the statute though not specifically proclaimed) to discharge the child under such conditions and to return the child, the guardianship and responsibility for future care, to the local community from which the child came to us through the medium of the committing court. This right, which we have assumed, has been disputed recently by two or three juvenile courts throughout the State, who claim that they do not have proper facilities for giving care to such children.

"I recognize, of course, the truthfulness of these assertions by the juvenile courts, but the same applies with equal force to the Children's Home Society."

An examination of section 1910 of the Code of 1930, referred to in Mr. Preston's letter, and which seems to be the only section bearing upon the subject, discloses the

fact, as suggested in his letter, that there are no provisions of law as to when and how a society, such as the Children's Home Society, may divest themselves of the care and custody of children committed to their care by the courts of the Commonwealth, under the provisions of chapter 78 of the Code, covering delinquent, dependent and destitute children.

It is, therefore, impossible for me to express a decided opinion as to the manner in which the Children's Home Society may return children committed to and accepted and received by it to the courts which have committed such children to the Society.

However, the law should be administered and construed liberally, and I do not see how a society can keep the custody and provide for the maintenance of children beyond its financial ability. While societies have no absolute right to return children arbitrarily, courts should, upon a reasonable showing of their financial incapacity to continue the care of all of the children committed, allow the return of some of the children to the custody of the court, and the court should make such further and other disposition as it may do under the circumstances of the case.

That provision of the law which allows the court to authorize a child to be boarded out necessarily implies an obligation upon the State to pay for the care of such child. And again the court is authorized, after making provisions as to commitments to the State Board of Public Welfare, or to societies, associations and/or institutions, to make any other order or judgment as the court may deem best for the interests of the child and for the proper protection of the public interests.

I may suggest that, where custody has been committed to associations of a volunteer character, upon application, children should be returned to the courts and committed to the State Board of Public Welfare, and that that Board should make the best possible arrangements for the care and custody of the child.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**REAL ESTATE COMMISSION—Status of funds collected by.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 2, 1934.

HONORABLE R. L. RUSH,  
*Member of Real Estate Commission,*  
*11 Franklin Road,*  
*Roanoke, Virginia.*

DEAR BOB:

This is in reply to your letter of April 30, and I regret that I have been so rushed in the office that this is the first opportunity I have had to look into the question of the status of the funds collected by the Real Estate Commission.

I find that section 13 of the Appropriation Act (Acts of 1932, page 316) provides as follows:

"All fees and charges collected by or on behalf of the Virginia real estate commission for licensing and regulating real estate brokers and real estate salesmen, in accordance with the provisions of chapter 461 of the acts of assembly of 1924, or any amendment thereto, shall be paid promptly and directly into the general fund of the State treasury."

The effect of the foregoing provision is that all money in the general fund of the treasury at the end of the fiscal year July 1, 1934, occupies exactly the same status, so far as your commission is concerned, regardless of the source from which it is derived.

The money collected by your commission does not constitute a special fund and, therefore, you will not be entitled, by virtue of the provisions in the Acts of 1934, to

carry over from the general fund of the previous biennium monies paid into that fund through your office. The effect of the provisions in the 1934 Appropriation Act is to limit your appropriation to the actual amount received into the State treasury, from your office during the 1934-1936 biennium.

With best wishes, I am

Cordially yours,

ABRAM P. STAPLES,  
*Attorney General.*

**REWARDS—Payment out of prisoner's fund.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 7, 1934.*

HONORABLE WALKER C. COTTRELL, *Chairman,*  
*State Prison Board,*  
*City Hall,*  
*Richmond, Virginia.*

DEAR MR. COTTRELL:

Your letter of the 25th of last month was received in this office in the absence of the Attorney General, whom I desired to consult before replying to your letter, but who has not yet returned to the office since his spell of sickness at his home in Saluda.

I do not think that rewards for the escape of inmates of the State industrial farm for women can be charged to and paid out of interests on prisoners' fund and canteen fund by other institutions in the system.

I would advise that rewards be paid out of the maintenance and operation fund of the State industrial farm for women. I cannot point to specific authority for the opinion which I have given.

Reward for the capture of escaped inmates of the farm is, I take it, one of the incidental items which, though not specifically mentioned, should be included in and may be paid out of funds for the maintenance and operation of the institution. Otherwise, there is no provision made for the payment of reward for the capture of escaped persons.

If the prison board is not willing to allow the payment of rewards for escaped inmates, the superintendent should be so notified.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**ROADS—Secondary system—Streets of towns included.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *January 24, 1934.*

HONORABLE I. T. WILKINSON,  
*House of Delegates,*  
*Richmond, Virginia.*

DEAR MR. WILKINSON:

I have gone very fully into the law covering the question as to whether streets of towns of population under 3,500 are automatically included in the secondary system of State highways as established by the Byrd road plan, being House Bill No. 242, page 872, chapter 415, of the Acts of 1932.

In my opinion, the Byrd plan makes no provision for streets in incorporated towns containing less than 3,500 inhabitants by the census of 1920. This is certainly,

so as to incorporate towns which were maintaining their own streets at the time the Byrd road law went into effect. The only provision of law applicable to streets and roads in incorporated towns with a population of 3,500 and less is found in chapter 64, page 76, of the Acts of 1930. This act provides that the Highway Commission may in its discretion, with the consent of the chief executive of the town, incorporate streets and roads in such towns within the State highway system and may also abandon such roads or streets from the highway system. The act gives unlimited discretion to the Highway Commission to incorporate or leave out of the State highway system streets and roads in towns of 3,500 and less.

If it is desirable to require the Highway Commission to incorporate all streets and roads in small towns in the State highway system, it will be necessary for the General Assembly to pass legislation to effectuate that purpose.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**SALARIES—Officers and Employees—House of Delegates.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *September 14, 1933.*

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

MY DEAR MR. COMBS:

I am in receipt of your letter of September 14, which reads as follows:

"In view of the provisions of an Act which became a law on August 25, 1933, the provisions of House Bill No. 60, and resolution agreed to by the House of Delegates on September 2, 1933, copy of which is attached, are the clerk of the House of Delegates and the janitor of the House of Delegates entitled to be reimbursed for amount deducted from their salaries since July 1, 1932?

"We beg to call your attention to your opinion of August 9, 1932, under your answer to our question No. 1."

I have carefully considered an Act which became a law on August 25, 1933, and a resolution passed by the House of Delegates on September 2, 1933, copies of which you enclose.

The Act provides, among other things, that out of that appropriation shall be paid the "incidental expenses of the General Assembly and such other amounts as may be authorized by either house, not exceeding the sum of Three Thousand Dollars, each for the Senate and House of Delegates."

The resolution provides that the "Comptroller be directed to issue his warrants on the Treasurer in favor of the Clerk and Janitor of the House of Delegates for the amounts deducted from their salaries, and charge the same to the contingent fund of the House of Delegates."

Under the provisions of the Act and the resolution, the amounts heretofore deducted from the salaries of the clerk and janitor of the House of Delegates are properly and legally payable.

In your letter you call attention to my opinion of August 9, 1932, in answer to your question No. 1.

That opinion was based on the law as it then existed and is not applicable to the question now in issue, as the General Assembly has modified the law and made the salaries of the clerk and janitor of the House of Delegates payable in full without deductions.

Yours very truly,

JOHN R. SAUNDERS,  
*Attorney General.*

**SALARIES—Payment of prior to appointment and qualification of officer.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 10, 1934.*

HONORABLE WILMER L. HALL,  
*State Librarian,*  
*Richmond, Virginia.*

DEAR MR. HALL:

This is in reply to your letter of May 1, inquiring whether or not the State Library Board has the right to authorize the payment to you by the Comptroller of the salary of the State Librarian prior to your appointment and qualification for that office.

I have been delayed in writing you because I wanted to give the matter some thought and investigation. After doing so, I regret to have to advise you that, in my opinion, it is very clear that the compensation of all State officers is fixed by statute and the Board has no right to authorize the payment of a salary to an officer prior to his appointment and qualification.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**SALARIES—Penitentiary guards—Deduction of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *February 15, 1934.*

MAJOR R. M. YOEUELL, *Superintendent,*  
*The State Penitentiary,*  
*Richmond, Virginia.*

DEAR MAJOR YOEUELL:

The Attorney General's office is in receipt of your letter of the 14th instant, in which you ask for a construction as to the deductions to be made from the pay of the penitentiary guards under the circumstances detailed in your letter.

The guard to whom you refer receives what may be termed the sum of \$125 per month for regular guard duty, this being the compensation for all guards of that class. In addition to regular guard duty, the guard to whom you refer is allowed additional compensation of \$35 per month for his services in performing all of the electrocutions at the penitentiary. From your letter I understand that the monthly compensation of \$35 is not at all based upon the number of electrocutions and, consequently, not estimated on the basis of the number of days upon which electrocutions take place, but instead is based upon the performance of all electrocutions.

In my opinion, the pay of the guard at \$125 per month is compensation for regular daily services during each month. The monthly compensation of \$125 per month should be adjusted for loss time just as adjustments are made with other guards for the same class of work.

I do not think that this same method should be applied for the loss of time in considering his compensation of \$35 per month, which is allowed for special or extraordinary services, unless his absence from duty is on occasions when his services for which the \$35 per month allowance is made are required. I think that he is entitled to the total amount of \$35 per month subject to an adjustment where some other guard performs services in lieu of the regular guard and is paid for such services out of the public funds.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**SHERIFFS—Legal authority in incorporated town of county.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 26, 1934.*

HONORABLE T. H. LILLARD,  
*Sheriff of Madison County,  
Graves Mills, Virginia.*

DEAR MR. LILLARD:

This is in reply to your letter of April 23, inquiring whether or not the sheriff of a county has legal authority in an incorporated town of about four hundred population.

There is no question whatever that the jurisdiction of the sheriff extends to all towns and second class cities within his county. The residents of towns, and also second class cities, are qualified to vote for the sheriff, and, under the provisions of section 2894 of the Code, the sheriff has the same rights and privileges, performs the same duties, and receives the same compensation therefor in cities of the second class as he does in towns.

Under the provisions of section 2822 of the Code, the sheriff is given the right, where a warrant or process is lawfully directed to him, to execute the same in any city included within the boundaries of his county.

With best wishes, I am

Cordially yours,

ABRAM P. STAPLES,  
*Attorney General.*

**SLOT MACHINES—Construction of statutes relating to.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 26, 1934.*

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,  
Richmond, Virginia.*

*In re: Construction of Slot Machine Statutes.*

DEAR GOVERNOR PEERY:

This is in reply to your letter of April 25, enclosing a letter to you from Honorable William T. Spencer, Commonwealth's Attorney for the city of Lynchburg, and requesting an opinion from this office upon the questions relating to the construction of the Virginia Slot Machine statutes which Mr. Spencer asks an official ruling.

The question raised is as follows:

1. Where a slot machine into which a coin is inserted always delivers merchandise of the fair equivalent value of the coin, and may or may not deliver in addition thereto slugs or tokens in uncertain or varying numbers, which have no redemption value either in money or merchandise, but which may be used solely for the purpose of operating the slot machine for amusement only; does the keeping or exhibiting for use of such a machine constitute a violation of the statutes of this State relating to slot machines?

There are three statutes on the subject. In a letter dated April 18, 1934, to Mr. George H. Marshall, city attorney of Martinsville, this office ruled that the recent act amending section 198 of the Tax Code is a revenue measure only, and does not in any way modify or repeal sections 4676 and 4685 of the Code, which render certain slot machines unlawful. It merely requires a license and imposes a tax on machines permitted under the last mentioned sections.

Section 4676 makes it unlawful for any person to keep or exhibit any slot machine or other apparatus therein described, for the purpose of gaming.

Section 4685 relates specifically to punch boards and slot machines. With respect to the latter, it contains this language:

"If any person keep or exhibit for use \* \* \* any slot machine or similar device of any kind or character, or any other device that operates on the nickel in the slot principle, in the operation of which any element of chance whatever may enter, or through or from which it may be possible for one person to get any article of more value than that which any other person could and would get, \* \* \* he shall be guilty of a misdemeanor. \* \* \* Any slot machine \* \* \* which does not uniformly return to the customer in each transaction the equivalent in value and kind of merchandise, *unaccompanied* by coins, trade checks or other items of monetary value that it returned in each preceding transaction, shall be deemed to embody the element of chance."

Applying these provisions of the statutes to the facts stated in Mr. Spencer's letter, it is clear that the following questions are presented for decision:

1. Does any element of chance whatever enter into the operation of said machine as described by him?

2. Do the slugs or tokens, which have no redemption value, but may be used to operate the machine for amusement, have a monetary value?

With reference to the first question—since the number of slugs or tokens which the player may receive is uncertain—he may receive none or he may receive many—it is obvious that the element of chance does enter directly into the operation of the machine.

Coming then to the second question—whether the right to use the slugs or tokens received from the play for the purpose of continuing to play the machine for amusement or entertainment, gives such tokens or slugs a monetary value, within the meaning of the act, the answer depends on whether furnishing entertainment or amusement has a monetary value. Obviously it has. Daily many persons pay money for admission to motion pictures, baseball and football games, theatres and other entertainments, which provide lucrative returns to those who provide them. In fact, the amusement business ranks among those at the top in point of volume of receipts. On the other hand, why should a person deposit his coin in a slot machine rather than buy the article over the counter in the same store (as is frequently the case), except for the entertainment he derives from operating the machine? And does not a person who receives the privilege of operating the machine twenty times for his nickel, receive twenty times as much amusement as he who is permitted to operate only once?

However, the question is not a new one in the courts of other States, though there has never been a decision of it by our Supreme Court of Appeals. Thus in the case of *Painter v. State*, 45 S. W. (2d) 46, the Supreme Court of Tennessee, in January, 1932, decided that a slot machine operated in almost the identical manner as the one here under consideration, violated a statute not nearly so specific or broad as ours, but which merely prohibited "keeping or exhibiting any device for gaming." It was there contended by the keeper of the machine that the tokens had no value, because they could be used only for further playing the machine; but the court said: "A thing or value to be the subject of gambling may be anything affording the necessary lure to indulge the gambling instinct. Any incitement which would impel the player to stake his money on a chance of winning would produce the evil consequences at which the enactment is aimed"; and the court held the right to operate the machine for pleasure, conferred by receiving the tokens, was a "thing of value."

It is unnecessary, and would unduly prolong this letter to quote further from the numerous opinions in the various States, all substantially to the same effect, though differing slightly in statutory provisions and the details of operating the machines. Attention is called, however, to the following leading cases in these States:

New Hampshire—*State v. Mint Vending Machine Co.*, 154 Atl. 224.

Maryland—*Gaither v. Cate*, 144 Atl. 239.

Iowa—*State v. Marvin*, 233 N. W. 486.

South Carolina—*Harvie v. Heise*, 148 S. E. 66.

Connecticut—*Green v. Hart*, 41 Fed. (2d) 855.

Arkansas—*Rankin v. Mills Novelty Co.*, 32 S. W. (2d) 161.

Maine—*State v. Baitler*, 161 Atl. 671.

Kansas—*Boynton, Atty. Gen. v. Ellis* (C. C. A.), 57 Fed. (2d) 664.

Georgia—*Jenner v. State*, 159 S. E. 564.

Oklahoma—*Colbert v. Superior Co.*, 6 Pac. (2d) 791.

Numerous other cases might be cited, but the foregoing, nearly all of which have been decided in the last two or three years, are sufficient to show the views the highest courts of other States have entertained on this question.

For the reasons stated, it is the opinion of the Attorney General, therefore, that the exhibiting and keeping of the slot machine referred to in the letter of Mr. Spencer constitutes a violation of the laws of this State.

Respectfully,

ABRAM P. STAPLES,  
*Attorney General.*

#### SLOT MACHINES—Legality of.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 16, 1934.*

HONORABLE GEORGE H. MARSHALL,  
*City Attorney,*  
*Martinsville, Virginia.*

DEAR MR. MARSHALL:

Referring further to your inquiry of April 13, with reference to the construction of the slot machine act, I beg to advise that I have just this morning received a copy of said act.

The first inquiry you make in your letter is whether or not this act repeals by implication sections 4676 and 4685 of the Code of Virginia.

It is the opinion of this office that the slot machine act, which is an amendment to the Tax Code, is a revenue measure and is not intended in any sense as a repeal of the two sections above referred to. You will observe that the recent act expressly provides that nothing therein contained shall be construed as permitting any person, firm or corporation to keep, maintain, exhibit or operate any slot machine or other device, in the operation of which gaming is permitted by the person in charge thereof. This throws upon the person in charge of the machine the duty and obligation to see that no gaming is permitted on the machine.

It is further provided that the applicant for a license must state on oath that no element of chance enters into the operation of the machine for which a license is desired.

This recent act should be construed in connection with the other two sections of the Code to which you refer, and I do not see that there is any irreconcilable conflict between them. It is the opinion of this office that the commissioner of the revenue should not license any machine which is in violation of any one of these three statutes.

Your second inquiry is as to whether or not the affidavit of the applicant that no element of chance enters into the operation of the machine for which a license is desired shall apply to machines vending merchandise, as well as other machines.

It is the opinion of this office that this provision applies to all machines, and that any machine which delivers a greater quantity of merchandise on one play than it does on another would be in violation of the act and should not be licensed.

Your third inquiry is whether the act contemplates the licensing of the machines to be played for money.

If by this you mean machines in which a coin is dropped and the machine either pays or does not pay other coins or slugs which are redeemable in coin or mer-

chandise, it is the opinion of this office that the act does not contemplate the licensing of any such machines.

You further inquire as to why persons under sixteen years of age should not be allowed to operate slot machines which are not used for gambling purposes.

There are a number of machines which are used purely for purposes of amusement, such as where balls roll into pockets with numbers, and are a temptation for a person to play and make a high score. It is evidently the policy of the act to discourage persons under sixteen years of age from spending any money in that form of amusement. Such machines do not pay anything or have any gambling element, but are for amusement purposes only and would be within the prohibition of the clause referred to with reference to children under sixteen years of age.

Trusting that this answers your inquiries, I am

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**SLOT MACHINES—Taxation of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 25, 1934.*

HONORABLE JOSEPH C. HUTCHESON,  
*Member of the House of Delegates,*  
*Edinburg, Virginia.*

DEAR MR. HUTCHESON :

This is in reply to your inquiry of April 24, asking for a construction of the provisions of the recent Act of the General Assembly, amending section 198 of the Tax Code, relating to slot machines.

Your first question is, whether or not the said Act imposes any license tax on a penny vending machine that issues a penny's worth of candy or gum in return for the coin.

The Act in question provides for the levy of a tax as follows :

"on vending and amusement machines operated by the insertion of one cent there is hereby levied a State license tax of two dollars per year for each machine; \* \* \*"

In addition to the tax above referred to, the board of supervisors of the county and the council or other governing body of any city or incorporated town may impose and collect a license tax upon such slot machine.

The Act also provides for what is known as a slot machine operator's license. This refers to a person who places a machine, or perhaps a large number of machines, in stores owned by other persons. This operator's license tax would not apply to the machine you refer to if it sells only chewing gum, shoestrings, or postage stamps, but would apply if the machine vends candy. This operator's license, however, would not apply to a merchant owning his own machine, nor would the operator's license tax be placed on the merchant, but on the person who placed the machine in the store of the merchant.

This Act is effective July 1, 1934.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**SCHOOL BOARD—Authority to apply excess of sinking fund levy to payment of cost of repairing school building.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 21, 1934.*MR. B. E. COPENHAVER, *Superintendent,*  
*Smyth County School Board,*  
*Marion, Virginia.*

DEAR MR. COPENHAVER:

I have your letter of June 18 before me, in which you ask whether or not it would be legal to apply an excess of \$2,000.00, which was secured from the sinking fund levy, to the payment of the cost of repairing a certain school building.

I take it that this excess is not an excess over and above the entire loan, but an excess beyond the amount required to be on hand at the present time.

In the case of *State v. Lawson* (W. Va.), 157 S. E. 589, the court held:

"Funds derived from taxes levied for particular purpose cannot be legally expended for another purpose; mandamus will lie on proper showing to restore funds, derived from taxes levied for particular purpose, to such purpose when illegally diverted."

Again in 61 C. J., at page 1521, the general principle of law is set forth:

"\* \* \* Where the law provides that money raised by the taxation of particular property in a municipality shall be held by the county treasurer as a sinking fund for the redemption of bonds issued by that municipality in aid of a railroad, the money so raised is appropriated to the specific purpose mentioned and cannot be diverted to any other \* \* \*."

It is, therefore, my opinion that this excess which you have on hand cannot be used for the proposed improvement and should be kept for the payment of the bonds to become due in the future.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.***SCHOOL BOARDS—Authority to borrow from sinking fund.**

COMMONWEALTH OF VIRGINIA,

OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 10, 1934.*HONORABLE L. MCCARTHY DOWNS,  
*Auditor of Public Accounts,*  
*Richmond, Virginia.*

DEAR MR. DOWNS:

This will acknowledge yours of April 9, in which you request an opinion from this office as to whether or not the county school board of Smyth county may legally borrow the sum of \$1,300.00, or so much thereof as may be necessary for improvements to certain school buildings in said county, same to be borrowed from the Marion District School Sinking Fund and to be repaid to such fund whenever necessary to avoid shortage therein.

Section 675 of the Code, as amended by Acts 1932, page 549, authorizes a county school board, which may find it necessary to make temporary loans, to borrow a sum of money not to exceed one-half of the amount produced by the county school levy for the year in which the loan is negotiated, or not to exceed one-half of the

amount of the cash appropriation which was made for schools for the preceding year. It provides that such loans must have the approval of the tax levying body, which is the board of supervisors, and also that no additional temporary loan shall be made until all prior temporary loans shall have been paid.

It does not appear from the face of the copy of the resolution and of the letter attached to your communication to me whether or not the amount of this loan exceeds one-half of the amount produced by the county school levy in Smyth county for the year 1934, or one-half of the cash appropriation for the year 1933, nor does it appear whether or not there is already outstanding any temporary loan which has not been paid.

It will be further noted that the language of section 675 of the Code, as amended, is that any school board, which may "find it necessary to make temporary loans," is hereby authorized to borrow, etc.

It is the opinion of this office that, before such a loan may be authorized, there should be an opinion of the school board as to the reasonable necessity for same; that it should be temporary in character, and that there should be no outstanding temporary loans at the time.

Your attention is also called to the fact that the resolution of the board of supervisors does not necessarily confine the loan to a temporary loan, but authorizes it to continue so long as the repayment of the same is not necessary to avoid a shortage in the Marion District School Sinking Fund. However, the resolution of the board of supervisors is merely permission to the school board and the loan itself, when made, should be of a temporary character.

Subject to the qualifications above stated, this office is of the opinion that a loan may be made by the county school board of Smyth county, and that the resolution of the board of supervisors is sufficient in so far as the consent of the board is necessary to authorize same.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

#### SCHOOL BOARD—Legislation regulating duties constitutional.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 14, 1934.

HONORABLE SIDNEY B. HALL,  
*Superintendent Public Instruction,  
Richmond, Virginia.*

DEAR DOCTOR HALL:

This is in reply to your letter of April 26, in which you request an opinion from this office upon the constitutionality of sections 2073 and 2073a of the Code of Virginia, in so far as the same contain mandatory provisions requiring all institutions, departments, and agencies, of the State, or such institutions as are supported in part by the State, to make purchases from the State Prison Board.

Along with your letter, you enclose one addressed to you by Mr. F. F. Jenkins, superintendent of the Southampton county schools, in which he raises the question that, under the provisions of section 136 of the Constitution, the power is conferred upon the local school authorities to expend taxes raised from local levies in such manner as in their judgment the public welfare may require. His position is that the General Assembly has no power to restrict the manner in which such funds shall be expended by the local authorities.

It is the opinion of this office that the above contention is not well founded. Section 136 of the Constitution is as follows:

"Each county, city or town, if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, subject to local taxation, not to exceed in the aggregate in any one year a rate

of levy to be fixed by law, to be apportioned and expended by the local school authorities of said counties, cities, towns and districts in establishing and maintaining such schools as in their judgment the public welfare may require; provided that such primary schools as may be established in any school year shall be maintained at least four months of that school year, before any part of the fund assessed and collected may be devoted to the establishment of schools of higher grade. The boards of supervisors of the several counties, and the councils of the several cities and towns, if the same be separate school districts, shall provide for the levy and collection of such local school taxes."

This section was construed by the Supreme Court of Appeals of Virginia, in the case of *Commonwealth v. School Board*, 109 Va. 346. In that case the Supreme Court upheld, as not in violation with the above provisions, a statute which empowered the State Board of Education to select textbooks, school furniture, and educational appliances for use in the public school in the State of Virginia. In that case, the court held that section 136 of the Constitution does not give the local authorities any express power to expend school funds, but that such matters may be regulated and controlled by such laws as the General Assembly may enact.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**SCHOOL BOARD—Residence of member.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., June 20, 1934.

DOCTOR SIDNEY B. HALL,  
*Superintendent of Public Instruction,  
State Office Building,  
Richmond, Virginia.*

DEAR DOCTOR HALL:

I have your letter of June 19, requesting an opinion upon a question which has been asked you and is as follows:

"If a person legally voting within the limits of the city of Hopewell, but now residing in the county of Prince George, can legally be appointed as a school board member of the city of Hopewell?"

Section 786 of the Code provides that every school trustee (which is equivalent to every member of a school board in a city) shall, at the time of his appointment, be a resident of the school district for which he is appointed and, if he shall cease to be a resident thereof, his office shall be deemed vacant.

In the language above quoted stating the question upon which you desire an opinion, you will note that this language is used: "Now residing in the county of Prince George."

While it is possible for a person to have a technical residence in more than one place, the general meaning of the term "residence" as customarily used in statutes, particularly in statutes applying to qualifications for office, is that the person shall actually have his domicile within the particular locality referred to. Generally speaking, a person may actually be domiciled in a county and have his residence in a city provided he entertains an actual intention to return to the city and regards his domicile in the county as temporary.

If the person referred to in your question, therefore, has his "residence," or is "residing," in the county, it is my opinion that he would not be qualified to hold the position of school trustee in the city, unless there is some contrary provision in the city charter. As stated above, the facts in the case and the man's intention as to his

residence might alter the situation and there is no general rule which can be stated as applicable.

A temporary removal from the city, such as moving his family to a cottage for the summer with an intention to return, would not deprive that person of his legal residence in the city within the meaning of this section. However, if he really does not intend to return to live in the city, it is my opinion he would not be a resident within the meaning of the statute prescribing the qualifications of school trustees.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**SCHOOL BOARD—Right of board to enter into contract with member of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 17, 1934.*

MR. T. C. MOYERS, *Chairman,*  
*Green County School Board,*  
*Stanardsville, Virginia.*

DEAR MR. MOYERS:

This is in reply to your letter of April 14, in which you inquire whether or not it is lawful for the school board to enter into a contract with one of its members to supervise for compensation the construction of a new school building at Ruckersville and an addition of two rooms to the school building at Stanardsville.

Section 708 of the Code of Virginia provides that it shall be unlawful for any member of the school board, except by permission of the State Board of Education evidenced by resolution spread on the minutes of said board, to have any pecuniary interest, directly or indirectly, in any contract for building a public school house.

In view of the foregoing provisions, it is the opinion of this office that, if application is made by your school board to the State Board of Education for permission to enter into the contract above referred to, and the State Board of Education grants the permission requested, evidenced by resolution spread on the minutes of said board, then it will be proper to enter into the contract in question.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**SCHOOL BOARD—Employment of member to supervise work in connection with erection and repairing school buildings.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 9, 1934.*

HONORABLE S. P. SUTHERLAND,  
*Member of School Board,*  
*Honaker, Virginia.*

DEAR MR. SUTHERLAND:

This is in reply to your letter of May 8, inquiring whether or not the school board of Russell county can employ you, a member of said board, as a foreman to supervise the work in connection with the building and repairing of school buildings.

Your attention is called to section 708 of the Code, which provides that it is unlawful for any member of the school board to have pecuniary interest in any contract for building a public schoolhouse, or generally in any contract with the school, "*except by permission of the State Board of Education evidenced by resolution spread on the minutes of said board.*"

In view of the provisions of this section, it is the opinion of this office that, if your local school board will pass a resolution authorizing your employment as foreman, and provide for the payment of your salary out of the school funds of the county, or out of any other county funds available (not out of any Federal funds), and, if the State Board of Education, by resolution spread on its minutes, approves such resolution and grants permission to your local board to employ you, it will then be proper and lawful for you to be employed as a foreman in connection with the construction of such schoolhouse in your county.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**STATE HOSPITALS—Erection of addition to DeJarnette State Sanatorium—  
Governor's approval necessary.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 11, 1934.*

HONORABLE GEORGE C. PEERY,  
*Governor of Virginia,  
Richmond, Virginia.*

DEAR GOVERNOR:

I am in receipt of your letter of June 1, 1934, in which you say:

"The superintendent and certain members of the Special Board of Directors of the Western State Hospital inform me that plans are under consideration for the construction of an addition to the DeJarnette State Sanatorium for the purpose of enabling an increased number of patients to be treated by this institution. An Act of the General Assembly relating to the maintenance and operation of the DeJarnette State Sanatorium will be found on pages 728-730, inclusive, of the Acts of Assembly of 1934.

"The Special Board of Directors of the Western State Hospital, I am informed, has approved, by appropriate resolution, the construction of this addition to the DeJarnette State Sanatorium but no action thereon has been taken by the General Hospital Board. I wish to ask your opinion as to whether it is necessary for the General Hospital Board to approve the proposed enlargement of the DeJarnette State Sanatorium before the Special Board of Directors can legally proceed with this improvement.

"In the event that legal prerequisites, such as the approval of the Special Board of Directors and the General Hospital Board, if such approval is necessary, are duly complied with, please give me your opinion as to whether or not it is necessary for the Governor's approval to be obtained before the addition can be made to the DeJarnette State Sanatorium.

"It is proposed by the Special Board of Directors of the Western State Hospital to pay for this improvement out of funds under the control of the Special Board, including surplus earnings of the Sanatorium and certain trust funds controlled by the Board."

The question whether the special board of directors has authority along to authorize the expenditure of the funds in question for the erection of an addition to the DeJarnette State Sanatorium is dependent upon the proper construction of section 1006 of the Code. This section, after providing for a special board of directors of three members for each hospital, continues with the following provision:

"Such board shall have the management of the hospital or colony for which it is appointed, under the supervision and control of the general board of directors constituted by the Constitution of Virginia, and hereinafter mentioned."

This section also provides that the General Board of Directors shall consist of all of the various special boards referred to in the section.

The recent act of the General Assembly of 1934, page 728-730, provides that the control and management of the DeJarnette State Sanatorium shall be vested in the superintendent, the special board of directors of the Western State Hospital, and also the general board of directors of State Hospitals, to the same extent that the Western State Hospital is subject to such control and management.

It is my opinion that, under these provisions, the special board of directors would not have authority to expend a large sum of money for the erection of an addition to the hospital, which is of the nature of a capital improvement, without the approval and ratification of the general hospital board.

In view of the fact that the control and management of this hospital is vested by the foregoing section in the superintendent, special board, and general board, it is my opinion that it is not necessary that the Governor's approval be obtained in order that the addition to the Sanatorium can be constructed. I find no express provision in the statute requiring any such approval, and the general language of section 1006 confers full powers on these two boards where the action of the special board is approved by the general board under its supervisory power.

Yours very sincerely,

ABRAM P. STAPLES,  
*Attorney General.*

**SUNDAY LAW—Amateur baseball. Whether lawful to charge admission.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 12, 1934.

HONORABLE LLOYD E. WARREN,  
*Attorney for the Commonwealth,  
New Kirn Building,  
Portsmouth, Virginia.*

DEAR SENATOR WARREN:

This is in reply to your letter of May 8, inquiring whether or not it is in violation of section 4570 of the Code to charge an admission of twenty-five cents to an amateur game of baseball on Sunday where the proceeds are used to pay the expenses of the game, such as rent of the ball park, cost of the uniforms and equipment, no part of which is received by the players either directly or indirectly; the uniforms belonging to the ball park and not to the individual players.

Section 4570 of the Code has relation only to a person laboring at any trade or calling, or employing apprentices or servants in labor or other business.

Under the facts above stated, it is the opinion of this office that the amateur baseball players would not be guilty of a violation of this section.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**TAXATION—Authority of State to collect recordation tax on deeds and other instruments.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., November 6, 1933.

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

DEAR MR. BRADFORD:

I am in receipt of your letter of November 3, which for purposes of reply I quote:

"The Governor has been asked to eliminate from the estimates of State revenue for the next biennium estimated revenue from the tax levied on deeds and other instruments of transfer admitted to record, on the ground that the State cannot legally collect and retain this tax, under the provisions of the State Constitution as amended.

"The Governor has asked me to obtain from you an opinion as to whether or not the State can legally collect and retain this tax."

Until my office called you and asked for the basis of the suggestion that the Governor eliminate from estimates of State revenue for the next biennium revenue derived from taxes on the recordation of deeds and other instruments, I was not advised as to any ground upon which localities could challenge the right of the State to levy recordation taxes.

I understand from you that the request for the elimination of these taxes is based upon the constitutional provision of the segregation of taxes, which prohibits the State from levying taxes upon land.

I do not think that the recordation tax upon the transfer of land, or upon any other property, is a direct tax upon the property, but is an excise tax and as such may be legally levied by the State upon the recordation of deeds for land and/or personal property.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**TAXATION—Capitation—Authority of town to levy.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 27, 1934.*

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

DEAR MR. WHITEHEAD:

This is in response to your letter of June 19, requesting from this office an opinion upon the question of the power and authority of the town of Chatham to levy a capitation tax on citizens who reside in the town and have paid the regular State capitation tax.

Section 173 of the Constitution contains the following provision:

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

You will observe from the foregoing provision that the General Assembly may authorize the council of any town to levy such an additional capitation tax.

Pursuant to the foregoing power, the General Assembly has enacted section 293 of the Tax Code which is as follows:

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

It is my opinion that the above quoted section vests in the council of every city and town the authority to levy an additional capitation tax upon every person not exempt by law from the payment of the State capitation tax. The language used, "The levy so ordered may be upon the persons in the said city or town," certainly includes the capitation tax. I know of no other tax which may be levied directly upon a person than the capitation tax.

Sincerely yours,  
ABRAM P. STAPLES,  
*Attorney General.*

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**TAXATION—Capitation tax—Portion to be set aside for public free schools.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *December 20, 1933.*

HONORABLE SIDNEY B. HALL,  
*Superintendent of Public Instruction,*  
*Richmond, Virginia.*

DEAR DR. HALL:

I am in receipt of your letter in which you desire an opinion as to just exactly what part of the capitation tax levied by the General Assembly of Virginia by virtue of section 173 of the Constitution of the Commonwealth is to be set aside in aid of the public free schools and what part of the tax is to be returned by the State to counties and cities in which collected.

In my opinion, that part of section 173 of the Constitution providing—

"\* \* \* one dollar of which shall be applied exclusively in aid of the public free schools, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was to be collected, \* \* \*."

controls, and, in construing the quotation, I am of the further opinion that the provision for the aid of schools requires the allotment of one dollar to the public free schools, and that that allotment is not to be reduced or cut down by apportioning any part of commissions or other costs incident to the levy and collection of capitation taxes, and that the provision that the residue shall be returned to cities and counties wherein capitation taxes are collected is to be construed as providing for the return of any residue after deducting one dollar for public free school purposes plus the costs incident to the levy and collection of capitation taxes.

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

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**TAXATION—Machinery and tools—Assessment of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 27, 1934.*

HONORABLE H. B. SHUFFLEBARGER,  
*Treasurer Bland County,*  
*Bland, Virginia.*

DEAR MR. SHUFFLEBARGER:

I have your letter of June 20, inquiring whether or not machinery and tools shall be assessed for taxation separately from the real estate to which it is affixed.

The general rule is that the machinery and tools which are so affixed to real estate as to be part of the building shall be assessed as real estate. However, section

73 of the Tax Code provides a different rule with reference to the manufacturing or mining business, and in such cases it provides that machinery and tools shall not be hereafter assessed as real estate, nor shall it be taxed as capital, but it shall be assessed for local taxation as tangible personal property, and the rate shall not be higher than the rate imposed upon other tangible personal property in the city or county.

Under this section, if the machinery and tools are part of the real estate of the mining or manufacturing business, it should be assessed as tangible personal property; if it is a part of the real estate of a different kind of business, it should be assessed as real estate.

With best wishes, I am

Cordially yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**TAXATION—Payment of franchise tax.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *December 13, 1933.*

MR. A. T. DODSON,  
*Chief Clerk Revenue Section,  
Comptroller's Office,  
Richmond, Virginia.*

DEAR MR. DODSON:

I have read with care the letter of November 29, 1933, sent to you by Mr. Alvin B. Hutzler, an attorney of this city, from which it appears that Stokes and Dunn, Incorporated, in December, 1930, made a deed of assignment to the Central National Bank of Richmond, Virginia, conveying to the bank all its accounts receivable and tangible assets for the benefit of certain specified creditors. At that time there were no taxes due the State.

I am informed by Mr. Hutzler that, while under the deed of assignment the trustee was given power to operate the business of Stokes and Dunn, Incorporated, it never did so, but it sold all the tangible assets to a new corporation and, since that time, has been liquidating the accounts receivable.

Stokes and Dunn, Incorporated, did not desolve. The question now presented is whether the franchise taxes assessed against Stokes and Dunn, Incorporated, for the year 1931, and thereafter, are to be paid by the trustee out of sums realized from the liquidation.

I cannot agree with Mr. Hutzler's contention that the trustee is not obligated to pay these taxes. It is true that they were assessed after the deed of assignment, but section 429 of the Tax Code seems to me to govern the case. It specifically provides that in any distribution of the assets of a corporation assessed with taxes the claims of the Commonwealth shall be paramount. Mr. Hutzler takes the position that taxes due at the time of the assignment are to be paid, but it will be noted that the section of the Tax Code does not refer to the time of an assignment, or other such action, but it refers to the time of distribution.

Yours very truly,

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

**TAXATION—Remainderman not liable for taxes assessed against life tenant.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *November 28, 1933.*

HON. GEORGE F. WHITLEY,  
*Attorney for the Commonwealth,  
Smithfield, Virginia.*

DEAR MR. WHITLEY:

I am in receipt of your letter of yesterday, enclosing copy of your letter of the same date to Honorable C. H. Morrissett, State Tax Commissioner, and I note the facts stated as to the assessment of taxes on a piece of land as of the years 1923-27, inclusive, during the life tenancy of one person, and your question as to whether, after the termination of the life tenancy, the land is liable to a lien of the taxes for those years in the hands of the remainderman.

In my opinion, the land is not liable for the taxes.

Beginning with *Tabb v. Commonwealth*, 98 Va. 47, and running through a line of cases ending with *Commonwealth v. Wilson*, 116 Va. 141, the Court of Appeals has held that taxes assessed against land while in the possession of a life tenant do not constitute a lien upon the same land after it has passed into the hands of the remainderman.

I have called Mr. Morrissett several times, but he was out of his office, so I do not know whether he concurs with my opinion.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

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**TOWN COUNCIL—Authority to enact ordinance imposing license tax—Wholesale beer dealers.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 18, 1934.*

HONORABLE B. BAILEY,  
*Mayor,  
St. Charles, Virginia.*

DEAR SIR:

This is in reply to your letter of April 17, in which you ask this office for an official opinion as to the right of the town council of the town of St. Charles to enact an ordinance imposing a town license tax on wholesale dealers in beer who sell and deliver the same in the town of St. Charles.

Inasmuch as your letter refers to existing conditions, I assume that you have reference to the sale of beer containing not more than 3.2 per cent of alcohol by weight. The act covering this subject is contained in chapter 3 of the Acts of the extra session of the General Assembly in the year 1933.

The act first provides that every person desiring to manufacture, sell, or distribute, such beer shall apply for and receive a State license tax. After such State license tax has been received, the act then provides that, in addition to same, the council of each town is authorized to provide by ordinance for the issuance of town licenses, and to charge and collect license taxes therefor, to persons to manufacture, bottle, and sell, within said town, the beverages dealt with in the act. It further provides that the license taxes for each wholesaler's license shall not be in excess of one thousand dollars per annum.

From what you say in your letter, I assume that you are dealing with the wholesaler's license.

It is the opinion of this office that each town has the right to impose such a license tax upon all wholesale dealers in beer, who sell the said beer in the said town.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**TOWN COUNCIL—Member of cannot be employed to supervise work under C. W. A.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *December 30, 1933.*

MR. L. A. BODINE, *Town Clerk,*  
*Bowling Green, Virginia.*

DEAR MR. BODINE:

Your letter of yesterday has been received at the Attorney General's office in the absence of Colonel Saunders and, as the matter about which you write may need prompt attention, I am replying thereto.

From your letter I see that you were in the office of the Attorney General on the 18th instant, and you report him as having told you orally that it was proper for the town of Bowling Green to employ you to superintend Civil Works Administration projects in the town, and that no one could keep the town from employing you and your getting your money if you wished to do the work.

It is more than likely Colonel Saunders had reference to the provisions of section 2 of chapter 61, page 116, of the Acts of the Special Session of 1933, in which section it is provided that the President may, with the consent of the Governor of Virginia, employ State, county, city, town and district officers on work being done under the provisions of the National Recovery Act. This provision was necessary on account of the fact that section 290 would otherwise prevent State, county, city, town and district officers from holding any office or post of profit, trust or emolument under the government of the United States, or be employed by that government, or receive any emolument in any way from that government. Section 2 of chapter 61 of the Acts of 1933 eliminates that prohibition and allows the officers mentioned, with the consent of the Governor, to accept an office or employment under the National Recovery Act and, consequently, to receive compensation for the service performed.

I do not think, however, that the legislation to which I have referred in any way modifies the provisions of section 2708 of the Code, which prohibits a member of a town council or any other officer or agent from being interested, directly or indirectly, in any contract or the profits of any contract, or in services to be performed for any city or town.

Section 2708 makes any such contract void and provides for a forfeiture to the Commonwealth of the full amount stipulated in the contract, and, if money has been paid, it may be recovered by the city or town within two years after payment.

I do not think the fact that the project which is being paid for by funds allotted to the town of Bowling Green under the provisions of the Civil Works Administration empowers the town council to employ one of its members for an officer of the town to contract with the town for work or for his services in performing the work.

Mr. Thomas H. Blanton, attorney at law, Bowling Green, Virginia, wrote a letter to Colonel Saunders under date of the 16th instant, asking his opinion as to the legality of the employment by the town council of a member thereof for the purpose of supervising work being done in Bowling Green under the provisions of the Civil Works Administration.

In the absence of Colonel Saunders, a letter was written to Mr. Blanton on the 27th instant by Honorable Collins Denny, Jr., and the name of Colonel Saunders signed thereto by Mr. Denny, a copy of which letter I am enclosing.

Yours very truly,

EDWIN H. GIBSON,  
*Assistant Attorney General.*

**TOWN COUNCIL—Member of cannot be employed to supervise work under C. W. A.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *December 27, 1933.*

MR. THOS. H. BLANTON,  
*Attorney at Law,*  
*Bowling Green, Virginia.*

DEAR SIR:

I am in receipt of yours of December 16, in which you ask my opinion upon the question whether a member of the council of the town of Bowling Green may be employed by the town council to supervise certain civil works administration work on a percentage basis, the compensation to be paid out of the town treasury.

I am of the opinion that section 2708 of the Code would forbid such a procedure.

Very truly yours,

JNO. R. SAUNDERS,  
*Attorney General.*

**TOWN COUNCIL—Power to enact ordinance requiring restaurant-filling stations to close.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *May 23, 1934.*

HONORABLE H. C. DESHIELDS,  
*Mayor,*  
*Tappahannock, Virginia.*

DEAR MR. DESHIELDS:

This is in reply to your letter of May 19, requesting the opinion of this office upon the question of whether or not the town of Tappahannock has the power through its council to enact an ordinance requiring restaurant-filling stations to close their places of business at twelve o'clock at night.

It appears from the provisions of section 13 of your charter (Acts of 1914, page 687) that your council has the power "to do any and all other things or thing necessary and proper to protect the health, the lives and safety of the town and its citizens."

The effect of the language quoted is to confer upon your council what is known as general police power.

The question of whether the particular ordinance, which is the subject of this inquiry, comes within the general police power of the town depends upon the reasonableness of the regulation. In 19 R. C. L., section 168 on page 867, the following appears:

"A municipal corporation has no power, however, in the absence of express authority from the legislature to require the cessation of labor and the closing of stores upon holidays. \* \* \* A municipal corporation may not, however, limit the hours of labor of persons in private employment, or prescribe the hour in the evening at which places of business within the municipal limits must close, unless the business is of such a character that the public health or morals are likely to be endangered if it is carried on during the late hours of the night."

I note from your letter that the place in question, being that of Mr. E. P. Bowers, is operated as "kind of a beer parlor on the main highway running through the town."

Your attention is called to the provisions of section 65 of the Alcoholic Beverage Control Act, which provides that no county, city or town shall pass or adopt any ordinance or resolution regulating the sale or dispensing of alcoholic beverages; the only exception being the right to impose a local license tax on persons licensed by the

Alcoholic Beverage Control Board. The Board is vested with exclusive authority to regulate the hours of business of its licensees.

The town would have no power to prevent the keeping open of this place of business for the sale of alcoholic beverages under a license from the Alcoholic Beverage Control Board for such time as may be permissible under the Board's regulations. Nevertheless, if any other business should be carried on on the same premises, the town ordinance may restrict the hours in which same could be conducted, provided the nature of such other business is of a character which might be calculated to endanger public health or morals if carried on during the late hours of the night. This, of course, is a question of fact which would have to be determined by the court upon such evidence as might be brought before it.

It is very probable that the Alcoholic Beverage Control Board will, in the near future, promulgate regulations covering the question of the hours of sale of intoxicating beverages. If any such regulations have been issued up to this time, this office has no knowledge of the fact.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**TREASURER—Deposit of county funds.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 8, 1934.

HONORABLE V. S. PITTMAN, *Treasurer,*  
*Courtland, Virginia.*

DEAR MR. PITTMAN:

This is in reply to your letter of April 27, in which you inquire whether or not a treasurer may deposit county funds in a bank, provided the amount does not exceed \$2,500 and provided such bank is insured by the Federal Deposit Insurance Corporation.

Subsection (f) of section 350 of the Tax Code, as amended by chapter 37 of the Acts of the Extra Session of the General Assembly, 1933, provides that the amount of the bond required from any such bank shall be equal to the amount of money on deposit, "less such amount thereof as shall be insured by the Federal Deposit Insurance Corporation, a corporation created by an act of the Congress of the United States," etc.

Subsection (g) of said section provides that no treasurer shall permit the amount of money on deposit with any depository at any time to exceed the amount of the bond given to secure such money, "plus the amount insured by the said Federal Deposit Insurance Corporation."

From the foregoing, therefore, it is obvious that, if the bank to which you refer is insured to the extent of \$2,500 on your deposit you may deposit such funds to that extent in said bank without requiring additional security.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

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**TREASURERS—Emergency relief funds secured by bonds of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., October 30, 1933.

HON. L. MCCARTHY DOWNS,  
*Auditor of Public Accounts,*  
*Richmond, Virginia.*

DEAR MR. DOWNS:

I am in receipt of your letter of the 16th instant, in which you call my attention

to the fact that the Federal government has allotted to the Commonwealth of Virginia certain emergency relief funds, which are allotted by the Commonwealth to the several cities, towns and counties of the State for relief purposes.

You also say that both the Federal administration and the State Emergency Relief Administration regard these Federal funds as being county funds after they have reached the counties and have been placed in the hands of county treasurers, subject to expenditure by the boards of supervisors of counties.

You ask whether in my opinion the present surety bonds of county treasurers cover these emergency relief funds, or whether it will be necessary for county treasurers to give separate bonds to cover emergency relief liabilities, and whether, if treasurers are under-bonded, they will be required to give increased bonds.

In my opinion, all monies going to counties for county purposes and converted into the county treasury are protected by the present treasurers' security bonds conditioned for the faithful discharge of the duties of the office.

In those counties in which it is thought that existing surety obligations are not sufficient to cover the increased liability of treasurers on account of the addition of emergency relief funds to the amount already handled by treasurers, I am of the opinion that circuit courts can require additional security.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

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**TREASURERS—Leasing of real estate for delinquent taxes.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 24, 1934.

HONORABLE W. V. CHAFFIN,  
*Treasurer,*  
*Halifax, Virginia.*

DEAR MR. CHAFFIN:

I have your letter of May 21, inquiring whether or not the treasurer is authorized, when leasing real estate for the purpose of enforcing the payment of taxes, to lease the same for a period sufficiently long to pay all of the taxes past due, including current taxes, or whether he is limited to the amount of taxes for the preceding year.

This procedure is provided for by section 378 of the Tax Code, which uses the following language:

"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."

It is my opinion that, in case of any leasing under this section, it is mandatory that the terms of the lease shall be for cash sufficient to pay all taxes and levies due. This, of course, would include not only taxes for the preceding year, but would include all taxes. The leasing is also restricted to a period of one year. In the event that the amount of the taxes for the past years was so great that the rent for one year would not be enough to pay same, together with the costs and charges, then I am of the opinion that the officer would have no authority to lease the property, and the State would have to result to other methods provided by law for the actual sale of the property in order to satisfy the taxes.

I note from your letter that you state you have advertised certain property for sale to satisfy taxes due for the current year 1933. If your advertisement restricts the sale to taxes for that year, I do not believe it would be a sufficient compliance with the statute and that, if the notice undertakes to state the amount of the taxes in arrears and for what years they were assessed, it should include all of the past due

taxes as well as for the year 1933. I do not believe you could advertise for 1933 taxes and then sell for more than your advertisement or notice states you are selling.

With best wishes, I am

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**TREASURERS—Responsibility for public money lost by robbery.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *November 6, 1933.*

HON. A. M. BOWMAN, JR., *Treasurer,*  
*Salem, Virginia.*

MY DEAR MR. BOWMAN :

I regret that the very heavy pressure of other work and the approaching term of the Court of Appeals, which begins Wednesday, has prevented an earlier reply to your letter of October 19, in which you ask whether you would be personally responsible for any public monies that might be lost as a result of robbery or burglary and whether you or the county should pay the premiums on robbery and burglary policies.

Prior to the Act of 1932, which set up the county finance board and provided that a treasurer should be relieved of his personal responsibility for monies deposited in an approved depository, the treasurer was, in all respects, an insurer of monies collected by him. This was true to such an extent that, if the bank in which he had deposited monies failed, he and his sureties were responsible therefor.

The Act of 1932, as stated, relieves the treasurer of this heavy liability for monies deposited in an approved depository, but I know of nothing which relieves him of his liability as insurer for other monies not deposited.

It appears to me that insurance premiums to protect cash in the hands of the treasurer pending deposit, or the petty cash fund which of necessity he must keep in his office, should be treated along with the other expenses of his office. This would, of course, necessitate an estimate of the insurance premiums being included in the proposed expenses of the office which are submitted to the Board of Supervisors and to the State Fee Commission, and, upon their approval, the ultimate effect would be that the county would pay two-thirds of the premiums and the State one-third. Unless the insurance premiums have been included in the expenses which have been allowed, I think the treasurer will have to pay the premiums.

With kindest regards, I am

Yours very truly,

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

**TREASURERS—Salaries—Reduction of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *October 2, 1933.*

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

DEAR MR. COMBS :

Pardon me for not having sooner replied in writing to your letter of the 19th of August, in which you requested an opinion upon the questions raised in a letter to Honorable J. M. Rasnick, treasurer of Dickenson county, Virginia. While I did not reply in writing, I understood that the questions raised in Mr. Rasnick's letter had been the subject of conferences.

For purposes of my reply, I am quoting the first two paragraphs of Mr. Rasnick's letter:

"The Acts of the General Assembly for the year 1932, provides for deduction in all salaries of 10 per cent covering the period from July 1, 1932, to July 1, 1933. On January 1, 1933, the Governor added an additional deduction of 10 per cent, covering the period from January 1, 1933, to July 1, 1933. On the latter date a further 10 per cent deduction was made, thereby deducting the gross amount of 30 per cent from basic salaries. This deduction has been applied to this office and its deputies.

"The newspaper reports and order affecting the State departments proper, fixes the deduction of employees working for salaries of \$1,350.00 per annum, or less at 15 per cent. Please advise why the deputy officer of a treasurer should be required to take a 30 per cent cut in comparison to 15 per cent cut prevailing in the State departments."

The salaries of treasurers and deputies are not covered by the provisions of section 2 of the Appropriation Bill. The reductions of compensation are being made under section 30 of that Act. Treasurers and deputies and other employees are not understood to be affected by the order of the Governor undertaking to regulate the deduction of employees with salaries of \$1,350.00 per annum and less.

The compensation of treasurers and officials of their offices are provided for in a general appropriation covering the assessment and collection of taxes. That appropriation has been reduced 30 per cent by orders of the Governor. The only practical way that the reduction can be applied to the salaries of treasurers and employees in their offices is to reduce the compensation of all of them the percentage of reduction ordered by the Governor in the appropriation made for the collection of taxes.

Yours very truly,

JNO. R. SAUNDERS,  
*Attorney General.*

#### TRIAL JUSTICE—Appointee.

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 23, 1934.*

MR. N. J. B. ETHERIDGE,  
*Justice of the Peace,*  
*Princess Anne, Virginia.*

DEAR MR. ETHERIDGE:

Pursuant to the request contained in your letter of April 21, I am enclosing you under separate cover a copy of the alcoholic beverage control act.

Referring to the inquiry contained in your letter as to whether or not the new trial justice act requires that a lawyer should be appointed to that position, I beg to advise that, under the provisions of section 4988-b, the following language appears:

"if an attorney at law is appointed a trial justice under this act he shall not appear as counsel in any case civil or criminal pending in his court or on appeal or removal therefrom."

You can see from the foregoing language that it is not necessary that the appointee be a lawyer.

I am also sending you a copy of the trial justice act, in case you do not already have one.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**TRIAL JUSTICE—Bond required—Non-eligibility of minor to appointment.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 28, 1934.*

HONORABLE J. N. BOSANG,  
*Clerk,*  
*Pulaski, Virginia.*

DEAR MR. BOSANG:

This is in reply to your letter of June 27, inquiring with reference to the proper interpretation of the trial justice act which was enacted at the recent session of the General Assembly and is contained in the Acts of 1934.

Your first inquiry is whether a trial justice may qualify by giving bond before the clerk of the court.

Section 4988-e expressly provides that a bond shall be entered into before the circuit court of the county, and that the surety shall be approved by said court.

Section 279 of the Code recognizes a clear distinction between a bond to be approved by the clerk of the court and one which is required to be approved by the court. It provides as follows:

"Every bond required by law to be taken or approved by or given before any court, board, or officer, unless otherwise provided, shall be made payable to the Commonwealth of Virginia, with surety deemed sufficient by such court, board, or officer, \* \* \* and when required to be taken or approved by or before the Governor, a court, or the clerk of a court, shall be proved or acknowledged before the Governor or court or clerk, as the case may be, \* \* \*."

It is the opinion of this office that the bond and surety thereon must be entered into before the circuit court, and that the clerk has no authority to act with reference to same.

You also inquire whether or not a person under the age of twenty-one years is competent to be appointed to the position of trial justice clerk.

It is a well defined policy of the law in Virginia that only persons who are at least able to qualify to vote shall hold office. No person is eligible to vote, or to qualify to vote, who has not reached the age of twenty-one years. Section 32 of the Constitution, while it does not expressly provide that persons under twenty-one years of age may not hold office, does so by implication, since it does expressly provide that persons eighteen years of age shall be eligible to the office of notary public and qualified to execute the bonds required of them in that capacity. Section 4988-e requires the clerk to enter into a bond and it is the general rule of law in this State that a minor is not capable of entering into a contract except for the purchase of the necessities of life, and perhaps other exceptions not here material.

For the foregoing reasons, therefore, it is the opinion of this office that a minor is not eligible for appointment, and is unable to qualify, as a trial justice clerk.

Yours very truly,

ABRAM P. STAPLES,  
*Attorney General.*

**TRIAL JUSTICE—Residence of.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *April 13, 1934.*

HONORABLE C. G. QUESENBERY,  
*Member of the House of Delegates,*  
*Waynesboro, Virginia.*

DEAR MR. QUESENBERY:

Referring to your inquiry of March 30, 1934, which I was unable to answer on

account of not having a copy of the Trial Justice Act, I beg to advise that I have received a specially printed copy of the Act and I am enclosing you one herewith.

Your inquiry was directed to the question whether or not a resident of the city of Staunton would be eligible for appointment as a trial justice for Augusta county.

In section 4988-b of the Act of the recent General Assembly, there appears the following provision:

"Such justice shall be a resident of the territory for which he is appointed."

Regardless of any provisions in the general laws to the contrary, the effect of this is to repeal any conflicting provisions in other statutes and, in my opinion, a resident of the city of Staunton is not eligible to the appointment as a trial justice for the county of Augusta.

With best wishes, I am

Yours very sincerely,

ABRAM P. STAPLES,  
*Attorney General.*

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**TRIAL JUSTICES—Serving as judge juvenile and domestic relations court.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., May 12, 1934.

HONORABLE PAUL C. RICHARDS, JR.,  
*Member of the House of Delegates,  
Warrenton, Virginia.*

DEAR MR. RICHARDS:

This is in reply to your letter of May 2, concerning the apparent conflict between section 4988-n, appearing on page 473 of the Acts of 1934, and chapter 250 of said acts, appearing on page 370, regarding the effect of the appointment of trial justices in so far as such officers are also constituted judges of the juvenile and domestic relations courts.

Section 4988-n is a part of the county trial justice act and, in my opinion, under the scope of the title of the act its provisions are not broad enough to include cities.

The said act was approved, as you state in your letter, one day later than chapter 250 of the acts and, so far as there is any conflict, would operate to repeal any inconsistent provisions contained in chapter 250.

Both of the acts provide for the appointment of this justice by the same tribunal, namely, the judge of the circuit court, and it is the opinion of this office that the justice appointed under section 4988-n would be the judge of the juvenile and domestic relations court in counties, and that, so far as cities containing less than 25,000 inhabitants are concerned, the special justice appointed under chapter 250 of the said acts would be the judge of the juvenile and domestic relations court in the city.

Sincerely yours,

ABRAM P. STAPLES,  
*Attorney General.*

**WAR MEMORIAL COMMISSION—Authority of Art Commission in connection therewith.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *December 30, 1933.*

MR. BOLLING H. HANDY, *Chairman,*  
*War Memorial Commission,*  
*222 East Broad Street,*  
*Richmond, Virginia.*

DEAR MR. HANDY :

I am in receipt of your letter of December 11, in which you call attention to the original creation of the War Memorial Commission by Act of 1924 and its continuation by Act of 1928, wherein, among other things, it was provided that the Commission "shall be the official custodian of said war memorial, and have complete control thereof."

You state in your letter that the War Memorial Commission has decided to place certain memorial tablets in the Carillon, has prescribed the wording of such tablets and has directed you to let the contracts, which you have accordingly done. You further state that recently the chairman of the Art Commission directed a letter to its secretary, requesting him to inform the War Memorial Commission that the designs for these tablets must be submitted to the Art Commission. You ask my opinion upon the following two questions :

"First: Does the authority vested in the Art Commission authorize it to go into the question of details in Art Designs submitted to it thus substituting itself for the Designer in each particular case, or is the function of that body a more general one simply to prevent Art Monstrosities from being inflicted upon the State and not allowing the Art Commission to do more than pass upon a Design in a general way from an artistic standpoint?

"Second: Specifically, under the Act creating the Art Commission and the Acts creating the War Memorial Commission, and giving it custody and control of the War Memorial, does the Art Commission have any authority whatever in connection with such matters as I have referred to above in reference to the tablets or any other plans of the War Memorial Commission in connection with the War Memorial?"

The point in which you are interested does not necessitate an answer to the first question.

The answer to the second question is, I think, clear from the fact that the Art Commission was created in 1916 and from the fact that the War Memorial Commission was created in 1924 and continued in the year 1928, being given the specific powers above referred to.

It, therefore, appears to me that the Art Commission has no authority with reference to memorial tablets which the War Memorial Commission may approve for the Carillon.

Yours very truly,

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

**WRESTLING—License—Benevolent purpose.**

COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY GENERAL,  
RICHMOND, VA., *June 23, 1934.*

HON. H. B. SHAWEN, *Mayor,*  
*Town of Altavista,*  
*Altavista, Virginia.*

DEAR MR. SHAWEN :

Your letter of the 9th instant, which was addressed to the State Wrestling and Boxing Commission, Richmond, Virginia, was referred by Governor Peery to this office for reply.

Under the provisions of section 157 of the Tax Code, an amateur wrestling match at which admission is charged is required to obtain a license and pay the State tax thereon, unless, however, the purpose of the exhibition is for benevolent, charitable or educational purposes.

It is my opinion that, if all of the proceeds from admissions charged go to the treasurer of the Fire Company's Association, this will be regarded as a benevolent purpose. If, however, any person makes money out of the exhibition, or if the wrestlers receive any compensation, it would not be so considered and a license tax will have to be paid.

With best wishes, I am

Cordially yours,

ABRAM P. STAPLES,  
*Attorney General.*

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