after the first Monday in June, there are none to which the provisions of section 109, as amended by the act at page 923, can apply.

This is the only construction which reconciles the apparent conflict between the statutes referred to, and it seems to me to be entirely justified by the terms used in the several acts cited.

This response to your inquiry is given as a personal courtesy, as the attorney-general is not required or authorized (see section 3203 of the Code) to give opinions as to questions of local or municipal concern.

Very truly yours,

September 29, 1904.

Hon. D. Q. EGGLESTON,
Secretary of the Commonwealth:

DEAR SIR:

As I understand the letter of Walter Christian, Esq., clerk of the hustings court of the city of Richmond, addressed to you, and by you referred to me, an answer is desired to the following question:

Can a citizen be required to pay *any* poll taxes *at least six months prior to an election*, before he may be *registered* as a voter?

The answer to this inquiry is furnished by section 20 of the Constitution, which is the supreme law upon the subject. The requirement of that section in this regard is that the citizen, before he shall be entitled to *register*, must have "personally paid to the proper officer all State poll taxes assessed or assessable against him under this or the former Constitution for the three years next preceding that in which he offers to register."

There is no requirement whatever prescribed in the Constitution that a citizen, as a prerequisite to the right to *register*, shall have paid these poll taxes six months prior to any election, or even at any fixed period of time prior to his application for registration. The only requirement is that he shall have paid them before he shall be entitled to be registered. He is, therefore, entitled to be registered, if otherwise qualified, whenever he shall furnish the registrar evidence that he has paid the poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register.

There is an apparent conflict between the provision of the Constitution and the terms of section 73, chapter 346, pages 563-564, acts 1902-03-04. The act just cited does require these poll taxes to be paid "at least six months prior to the election," before the citizen shall be entitled to be registered. But, in such case, of course, the plain provision of the Constitution, being the organic and supreme law of the State upon this subject, must prevail.

It is manifest that the Legislature could not, if it so intended, prescribe conditions for registration and for the exercise of the right of suffrage other than or different from those prescribed in the Constitution.

If the Legislature could require these poll taxes to be paid six months in advance of the election, before the citizen might be registered, then it could require said poll taxes to be paid twelve months in advance of the election.

The provisions of the Constitution, being plain and explicit, must be obeyed and, by their express terms, any citizen who has, *at any time before he applies to be registered*, paid the poll taxes specified, shall be entitled to be registered, if otherwise qualified.

The only provision of the Constitution which requires poll taxes to be paid six months before an election is the provision of section 21, which section relates solely to the right to *vote*, and not to the right to register. The section just cited prescribes that, after the first of January, 1904, no person shall be entitled to *vote* in any election (except one who served in the civil war) until and unless he shall have personally paid, to the proper officer, "at least six months prior to the election, all State poll taxes assessed or assessable against him under *this* Constitution, during the three years next preceding that in which he shall offer to vote." In the present year (1904), this provision applies only to the poll tax for 1903, because that is the only poll tax assessed or assessable under the new Constitution for any year preceding 1904.

Very respectfully,

Hon. D. Q. EGGLESTON,

Secretary of the Commonwealth

Richmond, Va.:

DEAR SIR:

You submit to me the following question:

"A citizen's name is on the treasurer's list of persons whose poll taxes assessable under the present Constitution have been paid at least six months prior to the election. Such poll tax, however, was not in fact personally paid by said citizen. Can this fact be shown, and is it a legal ground for challenging and rejecting the vote of such citizen?"

In reply, permit me to say that section 38 of the Constitution declares that the treasurer's list "shall be conclusive evidence of the facts therein stated for the purpose of voting."

It will be observed that this list is made conclusive evidence as to the facts therein stated only; and the fact as to whether the poll taxes were paid personally by the citizen is not one of the facts required or authorized to be stated in said list.

I am of opinion, therefore, that evidence can be heard, upon the challenge of a vote, to show that the poll tax of the challenged person (though the payment is certified in the said list) was not paid by such citizen personally. If it was paid by him personally (that is, out of his own means), it is easy enough for him to show it, for he can be examined for that purpose under section 127 of the Code as amended and embodied in the present election law.

Fraud can always be shown; and if the poll tax in such case was paid by some person other than the citizen assessed therewith, for the purpose of evading the law and entitling such citizen to vote, such payment is plainly in fraud of the law, and a citizen whose poll tax was so paid is not a qualified voter under the Constitution.

While such is my view, I also am of opinion that the burden of showing that a person whose vote is challenged on this account has not personally paid his poll tax is on the challenger; but section 127 of the election law plainly requires that the judges of election shall explain to every person whose right to vote is challenged "the qualifications of an elector, and may examine him as to the same."

I beg leave to also call attention to section 126 of the election law, which provides that, "Any elector may, and it shall be the duty of the judges of election to, challenge the vote of any person who may be known or suspected not to be a duly qualified voter."

Very truly yours,

from another State, has been a resident of this State for only two years, he would only be required to pay his capitation taxes for such two years.

Any male citizen of the State who, on or before the 5th day of May, 1907, shall have paid his State poll tax for the year 1906, for the year 1905, and for the year 1904, or for such of said years as he may have been assessable with such taxes, and who is otherwise qualified by residence, etc., will be entitled to be registered, and to vote at the general election to be held on Tuesday, the 5th day of November, 1907; and unless he be a veteran of the Civil War, he must have paid all of such taxes by or before the 5th day of May, 1907.

If, by any omission or accident, any such citizen has not been assessed with his State poll tax of $1.50 per year for such years or either of them, then under section 508 of the Code, he has a right now to have himself assessed by the commissioner of the revenue for the city or district in which he lives, and thereupon to pay the same to the treasurer of his city or county.

Very truly yours,

WILLIAM A. ANDERSON.

As to lists of voters who have paid poll taxes, which treasurers must make up under section 38 of Constitution.

April 6, 1907.

J. M. PARSONS, ESQ.,

Commonwealth's Attorney, Independence, Grayson county, Virginia.

DEAR SIR:

Your favor of the 1st instant has been received.

The duties of the county treasurers as to furnishing lists of voters who have paid their capitation taxes are prescribed by the Act approved March 10, 1904 (Acts of 1904, p. 131); and that required each treasurer, at least five months prior to each regular election, to furnish the clerk of the circuit court of his county a list of all persons in his county who have paid, not later than six months prior to such election, the State poll taxes required by the Constitution of this State during the three years next preceding that in which such election is held, arranged alphabetically by magisterial districts, and stating the white and colored persons separately.

In my opinion, that Act requires the treasurer to include upon that list all persons who have paid any capitation taxes during any one of said three years; and the list should show for what years any capitation taxes were so paid by each person.

A requirement of this statute, which is precisely the same prescribed in section 38 of the Constitution, is that the list shall include the names of all persons who have paid the capitation taxes required by the Constitution of the State "during the three years next preceding that in which such election is held."

The Constitution requires the tax to be paid for each one of said preceding years, and the list furnished by each treasurer should show precisely what taxes have been so paid.

You will observe that it is necessary that the list to be furnished by the treasurer shall show accurately and with particularity the facts here indicated, for the reason that some voters (for instance, those who have recently reached 21 years of age, or those who have recently become residents of the county or of the State) may not be assessed or assessable in the county, under the Constitution, with poll taxes for more than one or two of said preceding years, as the case may be.

Very truly yours,

WILLIAM A. ANDERSON.

HON. R. S. PARKS, *May 5, 1907.*
Luray, Virginia,

MY DEAR SIR:

Yours of the 7th this instant received.

It is clear that under the provisions of sections 21 and 22 of the Virginia Constitution, no person, except veterans of the Civil War, is entitled to vote in Virginia unless he shall have, at least six months prior to the election at which he shall offer to vote, "*personally*" paid all State poll taxes assessed or assessable against him for the three years preceding that in which he shall offer to vote. My construction of this language is that such taxes must have been paid out of the means of such person, and not with anybody else's money, or by anybody else with the money of anyone else for such person. The test is, I think, whether the State poll taxes were paid out of the means of, or with the money of, the person assessed or assessable therewith.

While a treasurer cannot, I think, refuse to receive payment of any capitation or other taxes, payment of which may be tendered to him by any person, whether the party owing the same or not, it is only personal payment by the person who owes a capitation tax which will entitle him to vote. That is to say, payment with his money, and not with the money of anybody else. The payment of capitation taxes by another person, and with the means of any person other than the person who owes the same, for the purpose of qualifying such person to vote, is in fraud of the law, and would not entitle the citizen whose taxes were so paid to vote.

A payment made by any other person than the citizen offering to vote, of his capitation taxes, is just ground for challenge of his vote, and under article II of the Constitution, and particularly under sections 126 and 127 of the Code of 1904, the vote of any person whose capitation taxes have not been paid personally by himself (that is, out of his own means), may be challenged, and the person offering to vote may be examined by the judges of election as to that matter, and if it be shown upon his examination, or by any other competent evidence that his capitation taxes have been paid by somebody else or with the money of any other person than the citizen offering to vote, it would be the duty of the judges of election to reject his vote.

The question in this case can, I think, be raised by challenge of the right of such person to vote, and if the judges of election have any reason to suspect that the capitation taxes of any elector have been paid by any other person than himself, it would be their duty to challenge his vote, under section 126 of the Code, and to examine him, and to hear any other evidence that may be adduced before them upon that question, and if it be shown that such capitation taxes were paid with the means of any person other than such elector, to reject his vote.

But, as stated above, the treasurer cannot refuse to accept payment of any taxe s which may be tendered to him.

I beg leave to refer you to an opinion given by me to the secretary of the Commonwealth, involving the main question above considered, and found at page 13 of my report for 1904, a copy of which I am now sending you.

Very truly yours,

WILLIAM A. ANDERSON.

As to the list which a treasurer must make up under section 38 of the Constitution, of persons who have paid State poll taxes.

JOHN R. TURNER, ESQ., *May 21, 1907.*
Clerk Fauquier county, Warrenton, Virginia.

DEAR SIR:

A reply to yours of the 30th ult. has been delayed by my successive absences, and other causes.

As to the Status of Children of the Mongolian Race Under the School Laws of Virginia.

RICHMOND, VA., *November* 25, 1908.

Hon. J. D. EGGLESTON, JR.,
Superintendent of Public Instruction,
Richmond, Virginia.

DEAR SIR:

Your favor of the 18th, enclosing letter of Col. K. Kemper, superintendent of schools for the city of Alexandria, has been received, and the question submitted has been carefully considered.

The statutes of Virginia, both those relating to the public school system, and those relating to the interests of the people of the Commonwealth generally, make no separate classification of persons of Mongolian or Chinese descent. Until there shall be some statute expressly defining the status of children of the Mongolian race, it will be difficult to answer Col. Kemper's inquiry.

The only racial classification of the population is as between whites and colored persons or negroes.

By section 49 of the Code it is enacted also that a person having one-fourth or more of Indian blood shall be deemed an Indian.

Section 140 of the Constitution, and section 1492 of the Code, prohibit the co-education of white and colored children, but the statutes have never declared that Mongolian or Chinese children shall be deemed to be colored, though by section 49 of the Code, it is declared that a person having one-fourth or more of negro blood shall be deemed colored.

I suppose there can be no question but that people of the Chinese or Mongolian race are in fact colored people, and yet they are not included in any definition of colored people given by the laws of Virginia.

There is no statute which *expressly* requires them to be excluded either from white schools, or from colored schools.

The city and district boards of school trustees are given by the law very broad powers in the matter of the regulation and government of the public schools, and those boards are empowered by the third paragraph of section 1493 of the Code to determine what school the pupils within their district shall respectively attend in any case where the public interests require such action by such board.

In a case which came up, I think, from Lunenburg county, several years ago involving the question of the right of certain children in that county who it was alleged were of African descent (although there was no proof whatever that they had one-fourth or more of negro blood) to attend a particular white school, which school the proof showed would probably be broken up if the children referred to were admitted as pupils therein, the State Board of Education decided that the district school board had a right to determine which school those children should attend, and that under the circumstances of that case, they should attend the school to which they were assigned by the local authorities if they attended school at all. And so in the case of the Chinese child, if the local school authorities should be satisfied that the admission of such a child into a particular school would lead to the breaking up of that school because of racial antagonism between the chil-

dren attending such school and such Chinese child, I am inclined to think that the local board would be justified in directing such child to be excluded from such school, provided they were satisfied, and it could be shown, that the admission of the child into the school would be so exceedingly injurious to the educational interests involved as to justify such action on the part of the district board.

If the provisions in our Constitution and laws prohibiting the co-education of white and colored children should be held, as it may probably fairly be held by the courts, to apply to children of the Mongolian race, as well as to children of the negro race, then it would be not only permissible, but it would be the duty of the local boards to prohibit the admission of Chinese children into any white school.

I assume that the Chinese child referred to by Col. Kemper is a child of Chinese parents living in Virginia, and who was born in the United States, and is therefore a citizen of the United States, and entitled, under the 14th amendment, to the rights therein guaranteed to citizens of the United States. If such child is not a native of the United States, the power of the State, and the authorities of the State to deal with its status would be perhaps less circumscribed.

I return Col. Kemper's letter.

Very truly yours,

WILLIAM A. ANDERSON.

To the Auditor of Public Accounts.

As to the Amount of State Tax on the Recordation of a Mortgage.

RICHMOND, VA., *January* 23, 1909.

Hon. MORTON MARYE,
Auditor of Public Accounts,
Richmond, Virginia.

MY DEAR SIR:

Your inquiry of this date, accompanied by letter of Messrs. Coke & Pickrell, of date on the 19th instant, has been received, and your request for my opinion thereon noted.

The case presented by the letter of Messrs. Coke & Pickrell is fully covered by an opinion given you on July 18, 1907, as to the tax that should be collected by the clerk for recordation of deeds of trust and mortgages for the security of bonds, and since giving that opinion I have had no reason to change my views on the subject.

I am now of opinion that the clerk of the chancery court collected of the Virginia-Carolina Chemical Company the correct tax imposed by section 13 of the revenue laws for the recordation of the deed of trust to the Central Trust Company of New York, dated November 2, 1908.

My opinion is, therefore, that you have no authority, as auditor, to allow the whole or any part of the claim asserted in the said communication for $11,788.50, which is claimed as overpayment of the tax collected for the recordation of the said deed of trust.

Very truly yours,

WILLIAM A. ANDERSON.

hundred dollars to forty-five cents on the hundred dollars; and, in a third district, the levy to remain as at present. Your question is, can the board of supervisors carry out this scheme according to the desires of the county school board?

Section 168 of the Constitution provides that "all taxes, whether State, local or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Under section 1506 of the Code, as amended, it is provided that the board of supervisors of each county at the regular meeting of April of each year, or as soon thereafter as practicable, or when the division superintendent of schools shall file with the State board the estimates made by the county and district boards in accordance with section 1466, shall levy a tax of not less than ten nor more than forty cents on the one hundred dollars of the assessed value of the real and personal property in the county for the support of the public free schools of the county, and a tax of not less than ten nor more than forty cents on the one hundred dollars of the assessed value of the real and personal property of any school district for district school purposes; with a proviso that if the board of supervisors fail to make a levy sufficient to raise the amounts estimated, then upon a petition, the board of supervisors may call an election to submit the question of the increase to the qualified voters of the county or district; and another proviso that the total levy for county and district school purposes shall not exceed fifty cents on the one hundred dollars of the assessed value of taxable property in both county and district. It is also provided, by the same section, that boards of supervisors may be permitted to make a less rate of levy than the minimum rates of county or district school levies named above in any case, by special order of the State Board of Education.

It is clear, from the constitutional provision quoted above that the county levy must be the same in all three districts; otherwise taxation in the three districts would not be uniform.

It seems clear, from the section of the Code quoted above, that the rate cannot be lowered to five cents, either for county school purposes or for district school purposes, without a special order of the State Board of Education. Observing these qualifications, therefore, I see no objection to the district school levy being reduced in one district and raised in another.

As the facts stated in your letter may not have been correctly apprehended by me, I am not certain that this opinion is clear. If there is any point upon which you wish any more information, I shall be glad to give the same.

Very truly yours,

JNO. GARLAND POLLARD,
Attorney General of Virginia.

Taxation—Who is required to pay poll tax in Virginia? Va. Code 1904, p. 2919.

Mr. S. C. AGEE, RICHMOND, VA., *June* 4, 1914.
Baldwin Station, Va.

DEAR SIR:

Your letter of June 1st, addressed to the Attorney General has just come to hand. In his absence, on official business, I beg leave to submit as follows: The question which you put is whether a person is exempted from paying his poll tax because he is unable to register as a voter. It is clear that, under the

tax laws of Virginia, every white male inhabitant who has attained the age of twenty-one, except those pensioned by this State for military service, and every colored male inhabitant who has attained the age of twenty-one, except those pensioned by the State for military service, are required to pay a poll tax. See act of April 16, 1903, found in volume 2 of the Code, p. 2191.

Very truly yours,

CHRISTOPHER B. GARNETT,
Assistant Attorney General.

Taxation—Homestead declarations. Code, Sec. 3631; Tax Bill, Sec. 13.

Mr. EMERY B. CHASE, RICHMOND, VA., *June* 25, 1914.
Clerk,
Clintwood, Va.

DEAR SIR:

I have your letter of June 18th, asking me to give you my opinion as to whether or not there should be a State tax on homestead declarations. The homestead declaration in chapter 178, section 3631 of the Code is an *ex parte* paper, and while sometimes called a homestead deed, it has none of the requisites of a deed; and, therefore, section 13 of the Tax Bill, amended by act of March 17, 1910, providing that on every deed which is admitted to record there shall be a tax graded according to the consideration of the deed or the actual value of the property conveyed, is not applicable; first, because there is no consideration to a homestead declaration, and, second, because no property is conveyed by the declaration.

As taxes are to be construed most strongly against the Commonwealth, I would conclude, therefore, that there is no State tax required on a homestead declaration; and in this opinion Hon. C. Lee Moore, Auditor of Public Accounts, concurs.

Very truly yours,

JNO. GARLAND POLLARD,
Attorney General of Virginia.

Taxation—Duty of court in a creditor's suit to require taxes to be paid—Of treasurer to levy on property in the hands of the court. Va. Code, Supplement 1910, Sec. 492b. Real Fixtures—Machinery, engine and boilers may be real fixtures.

RICHMOND, VA., *August* 5, 1914.

Hon. C. LEE MOORE,
Auditor of Public Accounts,
Richmond, Va.

DEAR SIR:

You have referred to this office the letter of Chas. R. McCann, treasurer of Frederick county, dated July 23, 1914, in which the following queries are put to you:

"Kindly advise me whether a decree of court in a general creditors' suit directing the sale of real and personal property would bar me from making levy and sale for taxes touching the personal property included in the decree. Also please advise me whether the machinery in the mill, such as gasoline engines, etc., would be considered real or personal property."

As to the first query, it is perfectly clear that the court erred in not decreeing that all taxes should be paid out of the property before general creditors. Section 4926, Va. Code 1904, Supp. 1910, p. 84; *Taylor* v. *Sutherland Meade Tobacco Co.*, 107 Va. 787; and the failure of the court to make such provision is a reversible error.

I find, however, that some courts hold that interference with the possession of property, in *custodia legis*, is contempt of court, even in the case of officers engaged in the collection of taxes, but, on the other hand, there are certain courts which hold that officers engaged in the collection of taxes may interfere with property in *custodia legis*. See note 17 L. R. A. (N. S.) 465.

But after a decree in a creditor's suit, all the other creditors may come in under the decree and prove their debts before the commissioner to whom the cause is referred. *Conrad* v. *Fuller*, 98 Va. 16.

I would advise, therefore, in this case, that it would not be wise, in spite of the error of the court, for the treasurer to make the levy and sale, but if the case is still before the commissioner, let the treasurer appear before the commissioner and prove his claim, or if the matter is in the hands of the court, let him take the matter up directly with the court.

As to the second query, whether machinery in the mills, such as gasoline engines, etc., constitutes real or personal property, this would depend upon the circumstances of each particular case, and no general rule can be laid down from which all cases may be decided. I am appending hereto some rules which may guide the treasurer in deciding the question.

Real fixtures consist of things originally chattels personal, which have been annexed to land, or to things permanently attached to land by the owner of the chattels or with his assent, and with the intention to make the annexation permanent. All other fixtures are personal fixtures. I need not add that real fixtures would be real property, while personal fixtures would be personal property. A thorough discussion of this subject may be found by referring to 1 Minor on Real Property, pp. 32-40, inclusive, where we find the following language (p. 38):

"The fact that the particular fixture is peculiarly adapted for use with the realty is a pregnant indication that it was intended to be permanently annexed, and that it is therefore a real fixture. Especially is this true if the chattel in question is not only useful in connection with the land or building, but usually accompanies such property or is indispensable to its proper or correct enjoyment.

"Thus, machinery, engines, boilers, etc., in mills and factories, without which the business could not be conducted, are real fixtures and not ordinarily susceptible to removal save by the owner of the land."

Very truly yours,

CHRISTOPHER B. GARNETT,
Assistant Attorney General.

Taxation—Personal payment of poll tax. Constitution, Sec. 20.

Mr. ROSCOE BRUCE,
Sperryville, Va.

RICHMOND, VA., *September* 8, 1914.

DEAR SIR:

I have your favor of the 28th instant, asking me whether or not the law of Virginia requires that a person shall pay his poll in person. In reply thereto,

I beg leave to submit as follows: Section 20 of the Constitution, providing who may register after 1904, reads as follows:

> "After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided: First, that he *personally paid* to the proper officer all State poll taxes assessed or assessable against him," etc.

Section 21 of the Constitution provides as follows:

> "Any person registered under either of the last two sections, shall have the right to vote for members of the General Assembly and all other officers elective by the people, subject to the following conditions: That he, unless exempted by section twenty-two, shall, as a prerequisite to the right to vote after the first day of January, nineteen hundred and four, *personally pay*, at least six months prior to the election, all State poll taxes assessed or assessable against him," etc.

In *Tilton* v. *Herman*, 109 Va. 503, the Supreme Court of Virginia construed the law as to what is meant by personal payment, and it was there held that the words "personally paid," as used in the Constitution, means that the tax therein referred to must be paid by the voter out of his own estate or means and not by another out of that other's estate or means. The payment need not be by the voter in proper person. His bodily or physical presence is not necessary. It is enough if the payment be out of the tax payer's estate or means; and the actual payment may be made by the tax-payer himself or by his check, or through the hands of his clerk or authorized agent, or perhaps in other ways.

Very truly yours,

JNO. GARLAND POLLARD,
Attorney General of Virginia.

Copy of agreement required by law to be kept on file in Attorney General's office. Acts 1914, p. 37.

This Agreement, made this 31st day of August, 1914, between the Hollywood Memorial Association, a corporation, and Mrs. E. D. Taylor, Mrs. J. Taylor Ellyson, Mrs. Norman V. Randolph and Mrs. J. D. Crump, Trustees, as hereinafter set forth, of the first part, and the Hollywood Cemetery Company, also a corporation, of the second part.

Whereas, By an act of the General Assembly of Virginia, approved on the 2d day of March, 1914, entitled an act "to appoint trustees from the members of the Hollywood Memorial Association and to make an appropriation to enable said trustees and said association to make a contract with the Hollywood Cemetery Company by which the graves of the Confederate dead in the soldiers' section in Hollywood Cemetery shall be kept in 'perpetual care,' and to relieve the State from further obligation in this behalf," the sum of eight thousand dollars ($8,000.00) was appropriated to enable the parties of the first part to make a contract with the party of the second part binding the said Hollywood Cemetery Company to keep the graves of the Confederate dead buried in the soldier's section in Hollywood Cemetery at Richmond, Va., in "perpetual care," provided that said graves and the section in which they are contained shall continue to be under the supervision and care of the Hollywood Memorial Association.

ELECTIONS—*Notice of candidacy—Publicity—Duty of Secretary of the Commonwealth. Va. Code 1904, Sec. 122a and 122b.*

Notices of candidacy for office filed with the Secretary of the Commonwealth are public documents, open to public inspection at all reasonable times, and it is the duty of the Secretary of the Commonwealth to allow all proper inspection of such notices.

RICHMOND, VA., *October 12, 1914.*

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

DEAR SIR:

Yours of October 8th received. Section 122-1, Va. Code 1904, provides, among other things, as follows:

> "Any member of the electoral board, the printer who shall print the official ballots provided for by this act, any judge of election, or any person who shall give or sell to any person whomsoever, except where it is distinctly provided for by this act, any official ballot or copy, or any fac simile of the same, or any information about the same, or shall counterfeit, or attempt to counterfeit, the same, shall be deemed guilty of a misdemeanor," etc.

I understand you ask whether this provision prohibits you from disclosing the names of candidates for public office who have filed with you a notice of their intention to become candidates, as provided by section 122a, Va. Code 1904. The purpose of the latter section is to require candidates to file their names in your office in order that you may in turn furnish to those charged with the printing of the ballots the names of the candidates. The same section refers to the filing of such notice with you by the candidate as a method of "announcing his candidacy."

In my opinion, so far from keeping the names of candidates from the public, there is every reason why the widest publicity should be given before election day to the names of candidates in order that the electors may properly consider and choose between them. The provision of section 122-1, above mentioned, is not for the purpose of keeping secret the names of the candidates, but to prevent the printer, the judges of election and other persons handling or having access to the ballots from giving such information as would enable persons to commit election frauds through use of copies, fac similes or counterfeits of ballots. I am of the opinion that notices of candidacy filed with you under section 122a are public documents, open to public inspection at all reasonable times, and that it is your duty to allow all proper inspection of such notices, and that you are at liberty, in your discretion to answer all requests for names of candidates who have filed their notices in your office.

Very truly yours,

JNO. GARLAND POLLARD,
Attorney General of Virginia.

ELECTIONS—*Primary election Law—Summary of opinions by Attorney General on Primary Law. Acts 1912, ch. 307.*

RICHMOND, VA., *April 15, 1915.*

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

DEAR SIR:

In response to your request, I am herewith handing you a summary of my

opinions upon chapter 305 of Acts 1914, known as the "Primary Act." The conclusions here set out are taken from the numerous letters written by me in response to inquiries which have come to this office requesting the construction of the Attorney General on various provisions of the act. Many other questions will doubtless arise thereunder. This letter, therefore, is not intended to cover all questions which may arise, but only such as have come to me up to this date.

1. Date of Primary.

The primary for the year 1915 is to be held on Tuesday, August 3rd, and candidates must file their declarations of candidacy and their petitions therefor, together with their receipt for entrance fee, with the chairman or chairmen of the several committees of their respective parties, at least 60 days prior to the primary, that is to say, on or before June 4, 1915. (See sections 3, 9, 10 and 24-a).

But local party committees may call a primary at a date other than August 3rd. (Section 24). But such special primary is governed by the provisions of the primary act, in as much as section 2 provides that "all nominations made by a direct primary shall be in accordance with the provisions of this act."

The term "direct primary" as used in the act, means a primary at which the candidates are voted for directly, as distinguished from a primary at which delegates are elected to a convention to nominate candidates.

2. Candidates May be Nominated by Other Methods.

Party committees may provide for the nomination of their candidates in any way they see fit, and may provide for the nomination of some of the officers by direct primary and some of them by convention, or they may decline to provide for any party nominations. (Section 2).

3. Form of Declaration of Candidacy and Petition Therefor.

The following forms are in compliance with the law (section 9):

"*Declaration of Candidacy.*

"I, John Doe, of the County of Henrico, Virginia, a member of the Democratic party, declare myself to be a candidate for nomination to the office of member of the House of Delegates of the General Assembly of Virginia from the County of Henrico, to be made at the primary to be held on the 3rd day of August, 1915.

"Given under my hand this 1st day of May, 1915.

"JOHN DOE.

Attested by

"RICHARD ROE,

"EDWARD COE,

"*Witnesses.*"

"State of Virginia,

"County of Henrico, to-wit:

"I, John Smith, a notary public in and for the county aforesaid, in the State of Virginia, do certify that John Doe, whose name is signed to the foregoing writing, bearing date on the 1st day of May, 1915, has acknowledged the same before me in my county aforesaid.

"My commission expires on the 1st day of January, 1917.

"Given under my hand this 1st day of May, 1915.

"JOHN SMITH,

"*Notary Public.*"

"Petition of Qualified Voters.

(To be Filed With Declaration of Candidacy.)

"This is to certify that we, the undersigned qualified voters of the county of Henrico, Virginia, hereby petition John Doe, a member of the Democratic party, to become a candidate for nomination to the office of member of the House of Delegates of the General Assembly of Virginia from the county of Henrico, to be made at the primary to be held on the 3rd day of August, 1915; and we further petition that his name as a candidate for said nomination be printed upon the official ballot to be used at said primary.

"Given under our hands."

(Here must follow the signatures of fifty qualified voters of the candidate's county or city.)

"State of Virginia,

"County of Henrico, to-wit:

"I, John Smith, a notary public in and for the county aforesaid in the State of Virginia, do certify that Robert Brown this day appeared before me in my said county and made oath before me that he witnessed the signature of each and every person whose name is signed to the foregoing writing.

"My commission expires on the 1st day of January, 1917.

"Given under my hand this 1st day of May, 1915.

"JOHN SMITH,
"Notary Public."

4. Declaration of Candidacy Must be Acknowledged or Witnessed.

The declaration of candidacy must either be acknowledged before some officer who has authority to take acknowledgments to deeds (that is to say, clerks, deputy clerks, commissioners in chancery, notaries public or justices of the peace), Code, section (2501), or must be attested by two persons who can write, signing as witnesses. (Section 9).

5. Witnesses to Signatures to Petition Must Make Affidavit.

Each signature to the petition must be witnessed by a person whose affidavit to that effect must be attached to the petition. If one person witnesses the signatures of all fifty of the petitioners, only one affidavit is necessary, but if some of the signatures of the petitioners are witnessed by one person and some by another, affidavits must be made by each of the witnesses. As many copies of the petition may be used as convenient, but the aggregate number of qualified voters on the copies taken together must be fifty or more in case of city and county officers. (Section 9).

Affidavits of witnesses may be taken before a justice of the peace, notary public, commissioner in chancery, clerks of courts, clerks of city councils, boards of aldermen or common councils. (Va. Code, 1904, section 173, as amended). Candidates are advised not to witness signatures to their petitions.

6. To What Officers Provisions as to Declaration of Candidacy and Petitions Therefor Apply.

All candidates for public office in the primary must file their declarations under section 9 and pay their entrance fee under section 24-a, but it is doubtful whether *district* officers in counties, such as supervisors, justices of the peace, etc., have to file any petition for their candidacy signed by qualified voters. But, as there is some difference of opinion upon this question, the Attorney General has in all cases advised candidates for district offices, where possible, to file with their declarations of candidacy a petition therefor signed by fifty qualified voters of their *own* districts.

7. Commissioners of Revenue are County Officers.

Commissioners of the revenue in some counties have their jurisdiction confined to a particular district, or districts, but they are, in fact, county officers and at the general election in November must be voted for by the voters of the entire county. (See Constitution section 110; Virginia Code 1904, section 92). The names of the candidates for commissioners of revenue must be printed on the primary ballots for the entire county unless the county committee should pass a rule confining the vote to the districts in which the candidate is to serve. Such a party rule would be valid under sections 7 and 8 of the primary act.

8. Candidates for Senate and House Representing Districts.

In case of candidates for the Senate or House of Delegates representing districts containing more than one county or city, the 50 qualified voters required on the petition cannot be taken from the several counties or cities, but at least 50 of the petitioners must be qualified voters of the candidate's city or county. The petition may, of course, contain signatures of qualified voters of other counties and cities in the district in addition to the required fifty.

9. Party Committees May be Elected at Primaries.

The primary act plainly reserves to party authorities all powers over primary elections not specifically taken away from the party authorities by the act itself. (Section 7). Hence it is competent for the party committees to order printed on the primary ballots the names of candidates for party committees, but the act (which refers only to nominations for *public office*) does not require such candidates to file any declaration or petition or to pay any fee, though party committees may make such or similar requirements.

10. Can a Qualified Voter Sign the Petitions of More Than One Candidate for the Same Office?

The validity of a signature on a petition is not affected by the fact that the same signature appears on the petition of another candidate for the same office. Whether a voter may sign two such petitions is a question of propriety and not of law.

11. Who May Vote at August Primary, 1915.

All persons qualified to vote at the election for which the primary is held may vote at the primary;

(*a*). Except no person shall vote for candidates of more than one party; and

(*b*). Except no person shall vote in the primary of August, 1915, for the candidates of any party unless at the congressional election held in November, 1914, he voted for the nominee of that party, but if he did not vote at the November election, 1914, then he shall be allowed to vote upon his declaration that he will support, at the next November election, the nominees of the party in whose primary he wishes to vote; and

(*c*). Except those persons who are disqualified by reason of other requirements in the law of the party to which he belongs. Thus the primary law recognizes the right of a party to prescribe any qualifications for voting at primaries, provided such qualifications are not in conflict with the statute, but under section 35 of the Constitution no party regulation nor statute can permit a person to vote at a primary who is not *at the time* registered and qualified to vote at the next succeeding election; and

(*d*). Except under the plan issued by the State Democratic Committee, February 13, 1913, only white persons are permitted to vote in Democratic primaries.

The test of a man's right under sub-section b of section 8 (exception b above) to vote in the primary of a party, is whether he voted for the party's nominee at the *last preceding general election.* It is, therefore, immaterial at the August primary, 1915, whether the person offering to vote, voted the party ticket in the presidential election of 1912, or in the gubernatorial election of 1913. The only question is how he voted in the congressional election of 1914, *but* if he did not vote at that election, he may vote in the August 1915, primary, upon his declaration as above set out.

To illustrate: If a man voted against the Democratic nominee for Congress in November, 1914, he can under no circumstances, vote in the Democratic primary August, 1915, but if he voted against the Democratic nominee in the presidential election, 1912, or against the Democratic nominee in the gubernatorial election, 1913, but voted for the Democratic nominee in the congressional election of November, 1914, the party law *may* permit him to vote in the Democratic primary of August 3rd, but if he failed to vote in said congressional election, "he *shall* be allowed to vote" at the said primary upon his declaration that he will support the party nominee, etc.

12. As to Young Men Just Becoming of Age.

A young man becoming of age after February 1, 1914, and on or before February 1, 1915, must pay his first year's poll tax six months prior to the general election, to-wit: On or before the 1st day of May, 1915. A young man becoming of age at any time after February 1st, this year, and on or before the general election on November 2, 1915, may vote at the primary August 3rd, provided that at any time before, or on the day of the primary election, he pays his first year's poll tax and registers. (See Constitution, sections 18, 20 and 26, Virginia Code, 1904, sections 73 and 491.)

13. Expenditures of Candidates.

It is not lawful under the provisions of the primary act for a candidate to pay persons for obtaining signatures to his petition for candidacy, and it is also unlawful for any candidate to hire vehicles to convey voters to the polls on election day. Under section 11 dealing with expenses of candidates, all expenditures are prohibited except those which are expressly permitted.

14. Entrance Fees of Candidates.

The entrance fees for the August, 1915, primary required by section 24-a, must be paid to the treasurer of the candidate's county or city, but where the candidate's district is made up of more than one county or city, the fee must be equally divided among the counties or cities in the district and paid to the respective treasurers by the candidate.

It is true that section 24-a requires State officers to pay their entrance fees to the Auditor of Public Accounts, but the term "State officers" as here used was not intended to include Commonwealth's attorneys or members of the House of Delegates or the Sentate of Virginia.

15. Primary Judges.

The judges to conduct primary elections must be appointed by the electoral

boards of the several counties and cities. Section 4 does not require said boards to appoint judges named by party committees.

16. Crime for Judges and Clerks to Influence Voters.

Any judge or clerk of election who attempts during the progress of the election to influence voters to vote for or against any candidate is guilty of a misdemeanor (section 4) and is subject to punishment by fine or imprisonment, or both. (Va. Code, 1904, section 3902).

Yours truly,

JNO. GARLAND POLLARD,
Attorney General of Virginia.

ELECTIONS—*Vacancy in General Assembly—How filled. Constitution 1902, Sec. 47; Va. Code 1904, Sec. 61.*

In cases of vacancies in the membership of the General Assembly occurring during recess, the duty of the Governor to issue writs of election to fill such vacancies is mandatory and not discretionary.

RICHMOND, VA., *December 24, 1914.*

His Excellency, H. C. STUART,
Governor of Virginia,
Richmond, Va.

DEAR SIR:

Referring to your inquiry as to whether the Governor is vested with any discretion which would enable him to withhold the issuance of writs of election to fill vacancies in the General Assembly occurring during recess, I beg leave to reply as follows:

Section 61 of the Code provides, among other things, that

> "When a vacancy occurs during the recess of the General Assembly by the death or resignation of a member thereof * * * a writ of election to fill such vacancy *shall* be issued by the Governor."

I am of the opinion that, under this provision, the Governor is *required* to issue a writ of election, and that he has no discretion in the premises. The evident purpose of the section is to insure each legislative or senatorial district representation in the deliberations of the General Assembly. So careful has the General Assembly been not to deprive any constituency of a representative that, in the same section, it has provided, even where a member dies *during the recess* of the General Assembly, the Speaker of the House of Delegates or the President of the Senate, as the case may be, *shall* issue writ of election to fill the vacancy.

I am aware of the provisions of section 47 of the Constitution which, in the absence of legislation on the subject, might be construed by some to vest in the Governor a discretion as to whether he will in such cases issue a writ of election. That section provides, among other things, that if vacancies occur during the recess of the General Assembly writs of election "may be issued by the Governor under such regulations as may be prescribed by law," but I am of the opinion that the purpose and effect of this section is not to vest in the Governor such a discretion as would justify him in refusing to obey the mandate of the legislature requiring him to issue the writ, but rather to permit the General Assembly to pass such regulations as it may see fit governing the time and manner of the issuance of writs of election by the Governor.

It will be observed that the statutes above quoted do not prescribe what patients may be treated at the sanatorium and there are no other statutes touching this subject. It is safe to assume, however, that it was not the intention of the General Assembly to provide for the maintenance of a sanatorium for the treatment of patients from other States, and I think it is the plain duty of the board having charge of the institution to admit only those patients who are *bona fide* residents of the State of Virginia.

I understand from you that the following are the facts concerning the young man the legality of whose admission is questioned:

On the 20th of September last he moved from Bristol, Tennessee, to Bristol, Virginia, intending to make Virginia his permanent home. Shortly after moving into the State he was advised for the first time that he had tuberculosis. He has never registered or voted in Virginia.

Under these circumstances I think he may be properly admitted to the institution. It is not necessary for one to be a voter in Virginia to be entitled to the benefits of the sanatorium which, it may be fairly assumed, was established for the benefit of all *bona fide* residents of the State no matter how short their residence may have been. Of course the board having charge of your institution will be careful to see that the State is not imposed upon by people moving into the State simply for the purpose of availing themselves of the advantages offered by our State institutions.

Yours very truly,

JNO. GARLAND POLLARD,
Attorney General.

HEALTH, PUBLIC—*Catawba Sanatorium—Who may be treated—Section 1713-d (4), Code of Virginia, 1904, as amended.*—The authorities of the Catawba Sanatorium may properly admit into the sanatorium any white person living in this State, regardless of age or sex and whether married or single. Colored persons must be excluded from the sanatorium just as white persons are excluded from the colored sanatorium.

Same—Only *bona fide* residents of the State of Virginia should be admitted for treatment to the Catawba Sanatorium. It is not necessary for one to be a citizen of Virginia, however, to be admitted to such institution for treatment if he be a *bona fide* resident of the State.

Same.—Persons moving into Virginia simply for the purpose of availing themselves of the advantages of Catawba Sanatorium, are not entitled to treatment at such institution.

Same—Where the form of application prepared for admission to the tubercular sanatorium at Catawba is not prescribed by law, the same may be changed at any time by the authorities of the institution provided such change does not conflict with the existing law.

RICHMOND, VA., *December 19, 1917.*

B. L. TALIAFERRO, M. D.,
Resident Physician,
Catawba Sanatorium, Va.

DEAR DOCTOR:

Yours of December 11th received.

You inform me that the form of application for admission to your institution begins with the following words: "....., being a white citizen of Virginia."

This form is not prescribed by law and may be changed at any time by the authorities of your institution, who may properly admit into the sanatorium any white person living in the State regardless of age or sex and whether married or single. Colored persons must be excluded from this sanatorium just as white persons are excluded from the colored sanatorium.

You need not concern yourself with the definition of the term "citizen." That term is used in many different senses which need not be discussed for the reason that the law does not use the term "citizen."

The statute under which your sanatorium was established provides:

> for the treatment by the most advanced methods, of the tuberculosis patients in the State at a minimum expense to the patients. Acts 1908, p. 636, Vol. 3 of Code, p. 252.

As stated in my letter of December 6th, it is safe to assume that it was not the intention of the General Assembly to provide for the maintenance of a sanatorium for the treatment of patients from other States, and I think it is the plain duty of the board having charge of the institution to admit only those who are *bona fide* residents of the State of Virginia. In that letter I also stated: "Of course the board having charge of your institution will be careful to see that the State is not imposed upon by people moving into the State simply for the purpose of availing themselves of the advantages offered by our State institutions."

From the above you will see that your board does not have to concern itself with the question of citizenship, but it may admit any *bona fide* residents of the State, excluding no persons living in Virginia except those who may have moved in simply for the purpose of availing themselves of the advantages of our institutions.

Yours very truly,

JNO. GARLAND POLLARD,
Attorney General.

HEALTH, PUBLIC—*General appropriation bill 1916-17, 1917-18—Trachoma hospital—Statutes—Construction of.*—Where it appears that a hospital cannot do its proper work by remaining in one place but that in order to perform its work to the best advantage it must move from place to place and that the treatment of the disease for which it is provided does not necessitate the patient remaining at the hospital nor confinement in bed, it is to be presumed that the legislature was familiar with these facts and in providing for an appropriation for such hospital its object was to make an appropriation for the purpose of treating the disease and not for the purpose of establishing the hospital at any one given point, and, therefore, that the words "At Coeburn" used in the statute were merely descriptive and used because of the fact that the hospital was at that time located at Coeburn and not for the purpose of limiting the usefulness of the appropriation or confining the hospital to Coeburn.

RICHMOND, VA., *September 5, 1917.*

DR. ENNION G. WILLIAMS,
State Health Commissioner,
City.

DEAR SIR:

Acknowledgment is made of your letter of August 23, 1917, in which you say:

> At the last session of the General Assembly an appropriation was made "for trachoma hospital in *Wise county*, twelve hundred dollars," page

form of the government of your city. You ask what payment of poll taxes is necessary in order to qualify one to vote in this election.

Section 62 of the Code of Virginia (3 Pollard's Code, p. 19) provides that qualification of voters at any special election shall be such as prescribed for voters at general elections; provided that, at any such special election held on or before the second Tuesday in June in any year, any person shall be qualified to vote who is otherwise qualified, and has personally paid at least six months prior to the second Tuesday in June of that year, all State poll taxes assessed or assessable against him during the three years next preceding that in which such special election is held; and, provided, that at any such special election held after the second Tuesday in June in any year any person shall be qualified to vote who is or was qualified to vote at the regular election held on the Tuesday after the first Monday in November of that year.

As this election comes subsequent to the second Tuesday in June, persons are qualified to vote who are qualified to vote in the general election to be held on the 4th of November of this year. In other words, so far as the payment of poll taxes as a prerequisite to voting in the special election is concerned, all persons are qualified to vote therein who paid on or before the 3rd day of May, 1919, all poll taxes assessed or assessable against them for the years 1916, 1917 and 1918.

Of course, under the law, a young man becoming of age after February 1, 1918, and before February 1, 1919, can, by paying his poll taxes for 1919 and registering, qualify himself to vote in your special election, because there were no poll taxes assessable against him until the year 1919. If he has become of age since February 1, 1919, then he must pay his poll tax for 1920, as the Constitution, section 20, provides that if a person becomes of age at such time that no poll taxes shall have been assessable against him for the year preceding the year in which he offers to register, he can register by paying $1.50 in satisfaction of the first year's poll tax assessable against him. The right to register manifestly carries with it the right to vote, and it is evident that the first year's poll tax assessable against him would be for the year 1920.

Such young man can pay this poll tax and register any time before the election. The payment by him of this tax six months prior to the election is not required.

Any further information I can give you on this matter will be gladly furnished upon your request.

Yours truly,

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

ELECTIONS—VOTERS IN PRIMARY.

RICHMOND, VA., *August* 1, 1919.

MR. JAMES W. BAILEY, *Judge of Election,*
Dundas, Va.

DEAR SIR:

Acknowledgment is made of your letter of July 31, 1919, asking that you be advised what voters are eligible to vote in a strictly Democratic primary.

The primary law provides that all persons qualified to vote at the election for which the primary is held, and not disqualified by reason of the requirements of the party to which they belong, may vote in the primary.

To vote in the election for which this primary is held, the voter (unless a young man just becoming of age) must have paid, on or before May 4, 1919, all capitation taxes assessed or assessable against him for the years 1916, 1917 and 1918; he must have lived in the State two years, in the city or county one year, and in the precinct in which he offers to vote thirty days next preceding the election for which the primary is held; and he must also be registered.

The law of the Democratic party requires that all voters shall be white, and provides that no person will be permitted to vote in the August primary unless in the last next preceding general election he voted for the Democratic nominee for the House of Representatives, or its nominee for Governor, or its nominee for the House of Delegates; but if he did not vote at such general election, then, upon his declaration that he will support, at the ensuing election, the nominee of the Democratic party, he shall be entitled to vote.

The above contains the information you desire. It is, of course, too late to give any information with reference to the primary law in more detail than is set out above.

Yours truly,

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

ELECTIONS—VOTERS.

RICHMOND, VA., *July* 31, 1919.

W. F. MYERS, ESQ., *Registrar*,
Lincoln Precinct, Va.

DEAR SIR:

Acknowledgment is made of your letter of July 29, 1919, received this morning. You request my opinion on the following questions:

> "1. Can a Republican who voted in the 'special election' in this district last May for Republican candidates for Congress, vote in the coming Democratic primary, although he agrees to support the nominee at the fall election?
>
> "2. Can a resident of Washington who spends two or three months in this State during the summer, vote in the State election? Although he owns real estate and pays taxes in the county in which he spends his vacations, he has been living and attending to business in Washington for twelve or fifteen years. He registered prior to January 1, 1904.
>
> "3. Can a qualified voter at a certain precinct in one district where he owns a farm and keeps a furnished room for his especial use, but who also owns a farm in an adjoining district, where he also has a room (these different farms being run by tenants), vote where first qualified, or should he get a transfer to the other district?"

The legislature of 1918 answered this question by amending the section above cited (24-a) and providing that "In the event the candidate who has paid the fee is not opposed, the treasurer shall pay back the fee." Acts of Assembly, 1918, page 97.

Therefore, the treasurer should return to those candidates in the primary having no opposition the entrance fees paid by them.

If I can serve you further in this matter, do not hesitate to call on me.

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

ELECTIONS—WHEN PRIMARY FOR COUNTY OFFICERS NOT HELD, EFFECT.

RICHMOND, VA., *August* 4, 1919.

MR. R. O. GARRETT,
Cumberland, Va.

MY DEAR MR. GARRETT:

Your special delivery letter of July 29 did not reach me until this morning, due to the fact that I was in Middlesex last week attending the Rappahannock Association, and did not return to my office until today.

You state in your letter that a number of your friends had urged you to place your name for county clerk on the ticket in tomorrow's primary. You further state that sometime ago the county committee decided not to have a primary, but that you regarded such action as illegal, due to the fact that a majority of the committee was not present, and the absent members voted by proxy.

I cannot see any good to be accomplished by having your name on the ticket at tomorrow's election. Certainly it would not prevent your having opposition in the general election. Mr. Sanderson was in my office last Friday and discussed this matter with me. I expressed the same opinion to him.

Very truly yours,
JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION BOOKS.

RICHMOND, VA., *October* 27, 1919.

MR. C. W. DICKINSON, JR.,
Cartersville, Va.

MY DEAR MR. DICKINSON:

Acknowledgment is made of your letter of the 16th, in which you request my opinion on three separate questions, first, as to the right of a candidate for a county office to demand to see and make copies of the registration books, or of a list of the registered voters as shown on the books of the several registrars.

It was decided by the Supreme Court of Appeals in *Gleaves* v. *Terry*,

93 Va. 491 (1896), that so much of the record of the proceedings of electoral boards as relates to the appointment and removal of judges and commissioners of election and registrars, or the ordering of any registration, is a public record, open to inspection by any citizen and voter of the county in which the record is kept, and he may take therefrom at and within a reasonable time, in the presence of the secretary of the board, memoranda or notes of the proceedings of the board as to which no secrecy is enjoined, but that this right did not extend to that part of the records as relates to the preparation, printing, certifying and distribution of the official ballots, as the law contemplated secrecy in this latter matter.

In *Walker* v. *Stone*, 96 Va. 667, the Court of Appeals held that a party interested had the right to inspect the poll books and to take therefrom, at and within a reasonable time, in the presence of the clerk, memoranda and notes such as are proper to be made as declared in *Gleaves* v. *Terry*, *supra*.

Your second question is as follows:

> "Is it possible for the treasurer of a county to make a voting list of all persons paying capitation taxes for 1916, 1917 and 1918 before May 1, 1919, correctly if he only uses *old voting lists* to prepare this 1919 list? To state it differently, is it not very likely that quite a number of persons may pay 1916 and 1917 taxes after May 1, 1917, and after May 1, 1918, but in plenty of time to be put on the *voting list for* 1919?

It is prescribed by section 86-b of the Code (Virginia Election Laws), page 32, so far as is applicable to this question, as follows:

> "The treasurer of each county and city shall, at least five months before the second Tuesday in June, and each regular election in November, file with the clerk of the circuit court of his county, or the corporation court of his city, a list of all persons in his county or city who have paid not later than six months prior to each of said dates the State poll taxes required by the Constitution of this State during the three years next preceding that in which such election is held, which list shall be arranged alphabetically by magisterial districts or wards, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer."

You will see from this that it is the duty of the treasurer in making up his list, to place thereon the names of all persons who have paid, not later than six months prior to the election, the State poll taxes required by the Constitution of the State during the three years next preceding that in which such election is held. Therefore, all persons who have paid their State capitation taxes for the three years preceding the election, six months prior thereto, should be placed on the list by the treasurer, regardless of whether or not these taxes were paid at the time when they ought to have been paid or were later paid, as the list for prior years had been made.

The list, however, made and posted as required by section 86-b of the Code, is by the third sub-section thereof, made conclusive evidence of the facts therein stated for the purpose of voting, and those qualified voters whose names are left off of the list are not entitled to vote unless in the manner prescribed therein unless they have applied to the court and had their names placed on the tax list.

Your third question is as follows:

> "Will a person paying 1918 taxes in Cumberland before May 1, 1919, who has lived more than a year in Cumberland be allowed to vote by showing 1916 and 1917 tax receipts from another county in Virginia where he was living at that time. His name is shown on Cumberland voting list as having paid 1918 tax before May 1, 1919, and he has had his transfer registered before October 4 in Cumberland."

This question is answered by the provisions of 86-d of the Code (Virginia Election Laws, page 35), which reads as follows:

> "In any case where a voter has been transferred from one city or county to another city or county, and has paid his State poll taxes for the three years next preceding that in which he offers to vote, or for any of said years, in any county or city in this State, 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. The treasurer of any county or city upon the application of any such voters, shall furnish the certificates herein required. Any treasurer who shall give a false certificate under this act so as to show that the taxes have been paid six months before an election, when, in fact, they have not been so paid, shall be guilty of a misdemeanor, and upon conviction thereof, be subject to a fine of not less than twenty-five nor more than five hundred dollars, and by imprisonment in the county jail not less than one month nor more than twelve months. The granting of each false certificate shall constitute a separate offense."

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION OF VOTERS.

RICHMOND, VA., *September* 18, 1919.

MR. T. Z. BENTON, *Registrar,*
Gate City, Va.

DEAR SIR:

Acknowledgment is made of your letter of September 13, in which you request my opinion on the following statement of facts:

> "I am registrar for Gate City precinct, Estillville district, Scott county, Virginia, and am writing you for some information which I trust you will give me by return mail, as the matter is of considerable importance. We have a good many negroes in this district and some of them have tried once to register and failed. They are now demanding another trial, and I suppose if they fail they will still want other trials. I feel that this is not right and this is why I am asking you for this information."

This question is governed by section 20 of the Constitution of Virginia, 1904, which provides as follows:

> "After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age

and residence required in section eighteen, shall be entitled to register, provided:

"First. That he personally paid to the proper officer all State poll taxes assessed or assessable against him, under this or the former Constitution, for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

"Second. That, unless physically unable, he make application to register in his own handwriting, without aid, suggestion or memorandum, in the presence of the registration officers, stating therein his name, age, date and place of birth, residence and occupation at the time and for the two years next preceding, and whether he has previously voted, and, if so, the State, county and precinct in which he voted last; and,

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

Under this section of the Constitution, any person who possesses the qualifications provided in the Constitution, is entitled to register. The fact that a man has been rejected for registration because he could not meet the conditions prescribed by the Constitution, does not prevent him from subsequently registering, provided at the time he possesses the qualifications prescribed by the Constitution.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REMOVAL OF DISABILITIES OF VOTERS.

RICHMOND, VA., *October* 24, 1919.

I. M. CLINGENPEEL, ESQ.,
Attorney at Law,
Martinsville, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 22, in which you request my opinion on the following statement of facts:

"Some time last year a citizen of this county (Henry) was convicted in the United States Court at Danville, Va., charged with illicit distilling, and sentenced to the penitentiary for one year and one day, and after serving about five months was paroled. Is this man disqualified from voting on account of said conviction?"

It is provided by section 23 of the Virginia Constitution that "persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petty larceny, obtaining money under false pretences, embezzlement, forgery or perjury," etc., shall be excluded from registering and voting in this State.

It is manifest, therefore, that a registrar has no authority to register any person who does not fill out the registration application without assistance, suggestion or memorandum to guide him.

Yours truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September* 28, 1920.

MR. D. S. GAULDING,
Keysville, Va.

DEAR SIR:

Acknowledgment is made of your letter in which you ask me to advise you the list of questions to be asked those who apply to vote in the next election. I presume you have in mind subsection 3 of section 20 of the Constitution of Virginia, which provides as follows:

> "* * * That he answer on oath any and all questions affecting his qualification as an elector, submitted to him by the officers of registration."

There is no specific list of questions to ask an applicant for registration, but I am of the opinion that the provision was placed in section 20 in order that, if doubt arose in the mind of the registrar, as to the right of the applicant to qualify, he could ask him such questions affecting his qualification as would satisfy his mind upon the subject.

Such questions the applicant is compelled to answer, and if these answers convince the registrar that the applicant is not entitled to be registered, he, of course, would refuse so to do, but as provided in section 20, all questions and answers must be reduced to writing and certified and preserved as a part of the registrar's official record.

Yours truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *August* 19, 1920.

HON. J. F. WYSOR,
County Treasurer,
Pulaski, Va.

MY DEAR MR. WYSOR:

Acknowledgment is made of your letter of August 14th, in which you say:

> "We are making plans to register the women:
> "Please advise if in your opinion the registrars will have the right to use separate registration books for the women. In my opinion this is highly desirable. It will simplify matters very much, not only in the registration but in the casting of the vote."

I know of no reason why women could not be registered in separate registration books from those used for the registration of men. As you say, I think it would simplify matters a good deal, not only in the registration, but in the casting of the vote.

The only restrictions as to the books in which a person may be registered, so far as I have been able to find, is that persons registered by the boards of registration appointed by the constitutional convention (section 108) must be registered in a separate book from that provided for persons registered after 1904, and that separate books must be provided for white and negro voters (section 94 of the Code of Virginia, 1919).

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION OF MARRIED WOMEN, PLACE OF.

RICHMOND, VA., *October* 28, 1920.

WM. F. KEYSER,
Attorney at Law,
Luray, Va.

DEAR SIR:

Acknowledgment is made of your letter of October 23rd, in which you say:

> "Our sheriff, E. L. Lucas, is a registered voter at Printz Mill precinct in which territory he lived before he was elected sheriff last fall, and where he owns a dwelling and real estate, but his dwelling is now closed, he having temporarily, of course, moved to Luray and now, with his wife and family, occupies the jail house residence. During the late registration his wife registered at Luray precinct as a voter. It so happens that Mr. Lucas failed to get his transfer from Prinz Mill precinct to Luray precinct, and the question now arises whether he can go back to Printz Mill precinct to vote, and if he does whether his wife can vote at Luray precinct. In other words, can the husband and wife under these circumstances vote at separate precincts. I am clearly of the opinion they cannot. If the wife votes at Luray the husband cannot vote at Prinz Mill, or if the husband votes at Prinz Mill, then the wife has no right to vote at Luray. Certainly, where the husband and wife live together the wife's residence and domicile follows that of the husband and they must necessarily be eligible to vote at the same place. Will you kindly give me your unofficial views as to the situation?"

Mrs. Lucas' legal residence is at the precinct where her husband has his legal residence and it is necessary for her to register and vote at that precinct. If Mr. Lucas claims Printz Mill as his place of legal residence, his wife must register and vote there and not elsewhere.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

requires that the registrar shall post three copies of the lists of the names of all persons admitted to registration since his last sitting. The question on which your opinion is desired is whether the lists of persons registered constitutes a notice for posting which the registrar is entitled to a fee of $1. I understand, of course, that the registrar is entitled to a fee of $1 for posting the notice of the time and place of registration.

The lists referred to by you are the written or printed lists of the names of all persons admitted to registration which you are required by section 98 of the Code of Virginia, 1919, to have posted at three or more public places in your election district after each sitting.

These lists, in my opinion, are notices within the meaning of section 96 of the Code of Virginia, 1919, for which you should receive $1 for posting. In addition to this, for making and certifying such lists, you are entitled to 3 cents for each ten words, counting initials as words, as is provided for by section 98 of the Code of Virginia, 1919.

Yours very truly,

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

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September* 24, 1920.

SAMUEL L. ADAMS, ESQ.,
South Boston, Va.

DEAR SIR:

I am just in receipt of your letter of the 23rd, in which you ask to be advised as to whether colored soldiers, although illiterate, are entitled to register and vote, due to the fact that they served in the late world war.

In reply, I will state that soldiers who served in the late war are not entitled to register and vote by virtue of their service, but must comply with the provisions contained in section 20 of the Constitution, which provides as to who may register after 1904.

The only soldiers exempted from these requirements are those who served in the War Between the States.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REGISTRATION.

RICHMOND, VA., *September* 9, 1920.

MR. JAMES P. REARDON,
Attorney at Law,
Winchester, Va.

DEAR SIR:

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

SCHOOLS—MIXED SCHOOLS

MR. WM. C. RITTER, *Newport News, Va.*

RICHMOND, VA., *March 19, 1921.*

DEAR SIR:

Acknowledgment is made of your letter in which you state that it is proposed that the State of Virginia provide a new school for the blind children of the State and also a separate school for the deaf children of the State, and that the "two races are to be in every way separate, but for purposes of economy to be under the same administrative management—one superintendent, one steward, one central heating plant, etc." You ask whether or not this will be repugnant to any of the provisions of the State Constitution.

Section 140 of the Constitution provides that "white and colored children shall not be taught in the same school."

I am of the opinion that, though the two races were kept separate, the fact that they were taught within the confines of the same enclosure and under one administrative management, would be a manifest violation of the intention of the Constitutional section above referred to.

Yours truly,

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

SCHOOLS—NORMAL SCHOOLS

DR. A. B. CHANDLER, JR., *President, State Normal School for Women, Fredericksburg, Va.*

RICHMOND, VA., *March 30, 1921.*

MY DEAR MR. CHANDLER:

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

> "I have been informed of your recent ruling in regard to the legality of the Normal schools accepting high school students for next session. I am writing to say that it is absolutely necessary in the prosecution of our professional work for us to maintain a small training school at the Normal for the group of seniors preparing to teach high school work. They necessarily have to have practice teaching in high school subjects. It is both advisable and economical for us to maintain a practice school of some twenty-five or thirty students in the first and second year high school work. We could take these students without using any of the State appropriation for their board, tuition or care, since the two teachers we would have for this work would be critic teachers and the type of work they would be doing would be of a professional character.
>
> "I cannot conceive that either the legislature or anyone having at heart the best interests of teacher training in Virginia, would by any possibility seek to prevent the Normal schools from the exercise of the very function for which they were created. I am writing, therefore, to ask, if under these circumstances, this institution would not be permitted to maintain the training school such as I have mentioned above."

By the general appropriation bill, Acts of 1920, page 185, there is appropriated to the State Normal School at Fredericksburg for the year ending February 28, 1922, for maintenance and operation of the school, the sum of $68,520.00. This limitation is placed upon the appropriation, however:

> "It is further provided, however, that no part of this appropriation of $68,520.00 shall be used *for boarding, lodging, tuition or care of students taking high school courses at this school.*"

the person referred to by you was not living in Warwick county on the first of February, 1922, he was not assessable in that county, but the county from whence he came. Therefore, he would have a right to vote upon the production of his tax receipts or a certificate from the treasurer of the city or county from which he transferred, that he paid his poll taxes for 1920, 1921 and 1922 six months prior to the November election, 1923. This, of course, is upon the presumption that he is now registered in Warwick county.

You also ask the authority of the electoral board to fill a vacancy among judges and clerks of a precinct when the vacancy occurs prior to the election. Section 84 authorizes the electoral board to appoint judges and clerks of election, and section 88 authorizes this board to remove from office any judge or clerk of election for cause. These two sections naturally carry with them the power of the electoral board to fill a vacancy prior to an election, especially if it is caused by removal from office of one of the judges by the electoral board.

You further ask whether a person who has paid one year's poll taxes in Warwick county and the other two years in some other city or county from which he moved to Warwick county, can vote on his three tax receipts.

This question must be answered in the negative. So far as the evidence of the payment of poll taxes outside of the county is concerned, undoubtedly, under section 155 of the Code, he may use them as evidence before the judges of election, but with reference to the poll taxes which he paid in Warwick county, section 111 of the Code makes the certified list conclusive evidence of the facts stated therein for the purpose of voting.

Under section 109, the treasurer must certify that this list is a list of all persons in his county or city who have paid not later than six months prior to the date thereof, the State poll taxes required by the Constitution of the State during the three years next preceding that in which such election is to be held.

Therefore, if his name does not appear on the list of Warwick county, he cannot use his tax receipts for the purpose of proving to the judges of the election that he has paid the three years' taxes necessary to qualify him to vote. This works no hardship on the voter because section 110 allows every person whose name is omitted from the certified list to apply to the court to have it entered thereon. If his name is left off the list, and he fails to take this proceeding, he is precluded from voting.

Yours truly,

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

ELECTIONS—LAST PRECEDING GENERAL ELECTION CONTROLS WHO MAY VOTE IN PRIMARY—NEGROES BARRED

RICHMOND, VA., *July* 27, 1923.

HON. GEORGE A. BOWLES,
Tabscott, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of July 24, 1923, in which you ask me to advise you whether a person, white or colored, can vote in the August

primary, provided such person did not vote against the last Democratic nominee for Congress, and will pledge himself to support the Democratic nominee in the general election.

Under section 228 of the Virginia election laws, if the voter supported the Democratic nominee or nominees in the general election held in November, 1922. such person is entitled to vote in the primary to be held in August of this year.

In my opinion, every person who votes in a Democratic primary, pledges himself to support all of the nominees in the succeeding general election.

As to colored persons voting in the Democratic primary, I call your attention to the primary plan of the Democratic party, adopted February 13, 1913, found on page 70 of the Virginia election laws, which limits the right to participate in a Democratic primary to white persons.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—REQUIREMENTS OF RESIDENTS OF TOWN, QUALIFIED TO VOTE IN COUNTY—CLOSING REGISTRATION BOOKS—REGISTRATION REQUIREMENTS

RICHMOND, VA., *May* 3, 1922.

J. S. WRENN, ESQ., *Clerk,*
Emporia, Va.

Acknowledgment is made of your letter of May 2, 1922, in which you request me to advise you as to several matters.

The first question you ask is thus stated by you:

> "The question arises here as to what the registrar of the incorporated town of Emporia should require of residents of said town, who have registered and are qualified to vote in the county. Section 2995 seems to make this fact the only prerequisite to being registered in the town, while, our registrar takes the view that applicants to register should be put to the same test, as when registering originally with the county registrar."

In an opinion given by this office to Hon. A. B. Carney, attorney at law. Norfolk, Va., with reference to this matter, it was said (Report of the Attorney General, 1920, pages 104, 105):

> "I am of the opinion that it was never intended, by this section, to force the voters to do anything that is unnecessary, and, therefore, the town registrar should take from the county registration books the names of the voters who are residents of the town, provided that from these books he can secure the information necessary to determine whether the person listed on the county registration book lives in that portion of the county which is now a part of the town; that is to say, most of the registration books show the streets, etc., where the person registered lives, and if, therefore, the county registration books make the place where the person registered lives sufficiently definite for the registrar to determine whether such person is now in the town, he can and should transfer the names to the town registration books.
>
> "If, however, the town registrar cannot, from the county registration book or otherwise, determine whether a person whose name appears

ELECTIONS—CONDUCT AND MANAGEMENT OF DEMOCRATIC COMMITTEE RE PRIMARY

RICHMOND, VA., *May* 25, 1923.

SENATOR S. L. FERGUSON,
Appomattox, Va.

MY DEAR SENATOR:

Mr. C. W. Smith, clerk of your county, was in my office this morning, and handed me two letters—one from your brother, Mr. L. F. Ferguson, chairman of the Democratic county committee, and your letter, both dated the 24th of May. I have carefully considered the contents of both of these letters, and as they both pertain to practically the same questions, I shall reply to yours and send a copy of my opinion to your brother.

A portion of section 224 of the primary law reads as follows:

> "* * * 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 returns and all other kindred subjects shall apply to all primaries insofar as they are consistent with this chapter. * * *"

The legislature of Virginia, in enacting the primary law, prescribed certain rules and regulations which are to be followed in the conduct and management of the primary by the party authorities conducting the said primary.

It is my opinion that the Democratic committee has no right to prescribe who shall vote in a primary, since the passage of the primary law by the legislature of Virginia, except that the party authorities have the right to prescribe that only white persons shall participate in the primary, which has also been held by my predecessor in office. But section 228 (p. 51 of the Election Laws), clearly and definitely states who shall have the right to vote in a primary. It is needless for me to quote you this section, as you are thoroughly familiar with it. It clearly and expressly provides that the test of the right of an elector to participate in the coming August primary, is how he voted (if he voted at all), in the last preceding election. In other words, an elector who voted the Democratic ticket in the last preceding general election, unquestionably has a right to vote in the coming August primary.

This section further provides that if he did not vote at such general election, then upon his declaration that he will support at the ensuing election, the nominee of the party in whose primary he wishes to vote, he shall be allowed to vote. Of course, you understand that the elector, in addition to these requirements, must be a duly registered voter and must have paid all capitation taxes assessed or assessable against him.

Mr. L. F. Ferguson, in his letter, submits this question: He states that the wives and daughters of well-known Republicans, who have not registered and voted before, desire to come in the August primary and participate in the nomination of candidates for office, and desires to know whether they have a right to so do. Unquestionably, they have a right to vote, because they did not vote in the last preceding general election, provided they are qualified to vote in the general election for which the primary is held.

Of course, the judges of election, or anyone else, has the right to challenge the vote of a person desiring to vote, and the judges have a right, in my

judgment, to question any elector as to how he voted in the last general election, and if not, require of him a declaration that he will support the nominee of the party in whose primary he is participating.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—POWER OF COUNTY DEMOCRATIC COMMITTEE TO MODIFY PRIMARY LAW

RICHMOND, VA., *June* 23, 1923.

MR. J. B. WASHINGTON, *Chairman,*
Democratic Committee,
Route 4, Woodford, Va.

MY DEAR MR. WASHINGTON:

Acknowledgment is made of your letter addressed to the Attorney General and referred to me for attention, in which you ask the following:

> "Has the Democratic county committee the power or authority to change or modify the primary law or plan as to who is eligible to enter the Democratic primary, and to what extent and in what particular."

Your letter is too general in its nature for me to give you a specific answer.

Section 227 of the primary law provides that "nothing in this chapter shall be construed to limit or circumscribe the power of any political party to prescribe the rules and regulations for its own government." But it further provides that a primary when held shall be conducted in all respects under the provisions of the chapter.

Section 228 provides that all persons qualified to vote at the election for which the primary is held, and *not disqualified by reasons of other requirements in the law of the party to which he belongs*, may vote at the primary, except no person shall vote for the candidates of more than one party, and no person shall be permitted to vote for the candidates of any party unless in the last preceding general election he voted for the nominees of that party, if he voted in such election.

It is thus seen that power is not given to a party to change or modify the primary law, but authority is given to provide such requirements as are not in conflict with the provisions of the primary law.

Yours truly,

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

ELECTIONS--ERROR IN PLACING VOTER'S NAME ON WRONG WARD TAX LIST—EFFECT—VOTERS JUST COMING OF AGE

RICHMOND, VA., *February* 20, 1923.

HON. LAWRENCE S. DAVIS,
Treasurer,
Roanoke, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of the 18th, which has just been received, and which I take pleasure in replying to at once. Your first question is as follows:

> "1. A young man just becoming of age, pays his taxes, and the trasurer enters him on the printed voting list in a ward in which he does not register. Should this debar him from a vote in the ward in which he lives and in which he is registered, notwithstanding the fact that his name appears on the printed list in some other ward?"

I am of the opinion that the young man should be permitted to vote. The name of a young man becoming of age, does not have to be placed on the voting list as a prerequisite to his right to vote. If he has paid his capitation tax and registered, he is entitled to vote regardless of whether his name is placed on the capitation tax list or not.

Moreover, I am of the opinion that the fact that a voter's name has been placed on the tax list in the wrong ward of a city, will not prevent him from being entitled to vote, as, in fact, he has paid his capitation tax in the city for the required time, and the fact that the treasurer places his name upon the city list, is sufficient, even though it is placed on that part of the list which is devoted to the wrong ward.

Section 38 of the Virginia Constitution requires the treasurer in making up his list, to include in that list, all persons in his county or city who have paid, not less than six months prior to such election, all State poll taxes required by the Constitution during the three years next preceding that in which such election is held; which list shall be arranged alphabetically by magisterial districts or wards and shall state the white and colored persons separately. While the Constitution contemplates the arrangement of these names by magisterial districts or wards, if the voter has, in fact, paid his tax and is included on the list, he is entitled to vote even though the treasurer, through mistake, has placed his name among the voters of the wrong ward.

As a matter of fact, it often happens that a person who is entitled to vote in one ward on the date of election, was a resident of another ward in the same city at the time, the tax was assessed, and the Constitution never contemplated that a voter whose name was regularly on the tax list for the city or county, should be excluded from voting simply because his name was included on that list in a ward other than the ward in which he offers to, and is entitled to vote.

Your second question is as follows:

> "2. A young man just becoming of age, paying his taxes in advance after the voting list has been prepared and printed—is he eligible to vote, if registered, upon presentation of his tax ticket to the judges of the election. That is to say—a young man becoming of age March 1,

1922, pays his 1923 capitation tax. He desires to vote in the June election, but the printed list for the June election has already been prepared on a basis of those persons who paid their taxes six months prior to an election, in December 1921. Is it necessary that this young man should have paid his tax six months before the election and appear on the printed list?"

As I said in answering your preceding question, the name of the young man just coming of age, does not have to be placed upon a tax list in order to entitle him to vote. It is only those persons who are required to have paid their capitation taxes during the three years next preceding that in which the election is held, whose names must be included on the tax list. The young man in question, not being required to pay his capitation tax six months in advance of the election in which he offers to vote as required by section 21 of the Constitution, does not have to have his name on the tax list if he pays his capitation tax and registers. If otherwise qualified, he is entitled to vote.

In this connection, I note you say that the young man would not register until he becomes of age. You are mistaken in this. If he will be of age at the time of the general election, he is entitled to pay his capitation tax at any time before the closing of the registration books, and register, as section 26 of the Constitution provides that any person who, in respect to age or residence would be qualified to vote in the next election, shall be admitted to registration, notwithstanding that at the time thereof, he is not so qualified, and shall be entitled to vote at said election if then qualified under the provisions of the Constitution.

Your third question is as follows:

"3. Can a woman pay her capitation tax for 1921 now and vote in the June election, or does she not now become on the same basis as any other voter, and would have to pay her 1921 tax six months prior to an election—1922 taxes not being due until November of this year?"

Section 21 of the Virginia Constitution provides that, unless exempted by section 22 of the Constitution, one, as a prerequisite to the right to vote, shall personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him under the Constitution during the three years next preceding that in which he offers to vote. Chapter 400 of the Acts of 1920 is to the same effect.

If a woman has not paid her capitation tax for the year 1921, this tax must be paid at least six months prior to an election to be held in 1922, as it is a capitation tax assessed or assessable against her for one of the three years next preceding that in which she offers to vote.

Yours truly,

JNO. R. SAUNDERS.
Attorney General.

JAILS AND PRISONERS—OFFICER TRANSPORTING NEGRO PRISONER MAY OCCUPY WHITE COACH

RICHMOND, VA., *April* 26, 1923.

MR. L. R. KELLAM,
Sergeant of Detectives,
Richmond Police Department,
Richmond, Va.

MY DEAR SERGEANT KELLAM:

You will recall that some time ago you told me that you were constantly annoyed when transporting negro prisoners by being required by the conductor to keep your prisoners in the negro car. You asked me to advise you if you could be required to occupy a coach assigned to negro passengers when you were in charge of a negro prisoner.

Section 3963 of the Code of Virginia, 1919, provides that railroad companies shall make no discrimination in their accommodations for white and colored people. Section 3964 of the Code of 1919 prescribes penalties for railroad companies failing to comply with this section and the preceding section. Section 3965 of the Code of 1919 requires conductors to assign white and colored passengers to their respective compartments, and section 3966 of the Code prescribes a penalty for the failure to carry out the provisions of the preceding section. Section 3968 of the Code of 1919 reads as follows:

> "The provisions of sections thirty-nine hundred and sixty-three, thirty-nine hundred and sixty-four, thirty-nine hundred and sixty-five, and thirty-nine hundred and sixty-six shall not apply to employees on railroads, or to persons employed as nurses, or to officers in charge of prisoners, or lunatics, whether the said prisoners or lunatics are white or colored, or both white and colored, or to prisoners or lunatics in his custody, nor shall the same apply to the transportation of passengers in any caboose car attached to a freight train, nor to Pullman cars, nor to through or express trains that do no local business."

You will see from a reading of section 3968 that the Virginia statutes relating to the operation and the transportation on railroad cars has no application to officers in charge of prisoners, whether said prisoners are white or colored, or both white and colored, or to prisoners in his custody. Therefore, under the law a conductor has no authority to compel you, when traveling in charge of a colored prisoner to occupy the coach or compartment set aside for colored passengers, but you have a right to ride with your prisoner in the coach or compartment designated for the white people.

Yours very truly,

LEON M. BAZILE,
Second Assistant Attorney General.

SCHOOLS—COMPULSORY EDUCATION LAW CONSTRUED—CHILDREN TAUGHT AT HOME

RICHMOND, VA., *November 2*, 1922.

HON. S. P. POWELL,
Commonwealth's Attorney,
Spotsylvania, Va.

MY DEAR SIR:

Acknowledgment is made of your letter of October 30, in which you state that you enclose a letter from the superintendent of schools of Spotsylvania county, and also a copy of your reply thereto. You failed to enclose the letter from the division superintendent, but after reading your reply, I could easily judge as to what were the contents of his letter.

I have carefuly noted your construction of section 2 of the compulsory education law. While the construction you place upon the law would tend greatly to promote education throughout the country, at the same time I am inclined to think that you are rather rigid in your views.

As you know, this is the first compulsory education law we have had in Virginia, which really amounts to anything, and its enforcement, in my judgment, will necessarily have to be gradual. My view of the matter is this: That where a pupil is taught at home there must be definite and fixed hours for instruction and the time devoted to study should be at least the same as is given at school; and the qualification of the teacher should be equal at least to the minimum requirements of teachers in public schools. Of course, you and I know that in some instances a mother is equally as competent and well qualified to teach her children as teachers in the public schools, and should this mother have fixed hours for teaching and they are as long as the time consumed in the public school, I would say in that instance, that the requirements are met.

I would add that I am under the impression that the State Board of Education has made a ruling on this question, which Mr. Hart will no doubt be glad to give you.

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

SCHOOLS—SHOULD INDIANS ATTEND WHITE SCHOOLS

RICHMOND, VA., *November* 22, 1922.

A. B. CARNEY, ESQ.,
Citizens Bank Building,
Norfolk, Va.

MY DEAR SIR:

Acknowledgment is made of your letter stating that, at Bowers Hill, there is a small colony of persons who call themselves Indians, and you state that they refuse to attend the colored schools and insist upon being received into the white schools, but that the patrons of the white schools insist that they have no place in the white schools with their children.

You ask "whether Indians should be taught in the white schools or in

RACIAL INTEGRITY ACT—Registrations under

RICHMOND, VA., *April* 28, 1924.

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

DEAR DR. PLECKER:

Acknowledgment is made of yours of the 22nd, in which you ask:

> "Does this recent law (act to preserve racial integrity) justify the State Registrar in retaining for the expenses of his office not only fees for registration and transcripts under the new law of all persons born before July 14, 1912, and not previously registered under the old 1853-1896 law, or does it also permit him to retain for the expenses of his office all fees for transcripts of marriage records, and the old 1853-1896 birth and death records?"

After careful consideration of the recent act to preserve racial integrity, I am constrained to hold that this law affects only registrations made pursuant to the law. Fees for registrations made pursuant to other laws are governed by the terms of those other laws.

This answer, of course, disposes of your second question: whether the new act authorizes the State Registrar to retain for the expenses of his office fees collected under the 1912 act.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

RACIAL INTEGRITY LAW

RICHMOND, VA., *June* 18, 1924.

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

DEAR DR. PLECKER:

Acknowledgment is made of your letter of June 14, 1924, in which you say in part:

> "The new racial integrity law will become effective June 16.
>
> "We received yesterday a certificate for the birth of a child whose parents are married, the father being a white man, his wife a mulatto.
>
> "We have in many other places, families the result of mixed marriages of that sort, some of which may have been married legally under the old law which permitted persons with one-sixteenth colored blood to pass as white. Some of these have been married in other States and have removed into Virginia.
>
> "Will you please advise us as to the status of these marriages under the new law? What does it become the duty of the Commonwealth attorney to do in such cases when advised by us? Should these families be permitted to live-together in marriage relations?
>
> "Are those who were legally married as white before this law was passed, still legally married?"

I have examined with care chapter 371 of the Acts of 1924, being entitled "an act to preserve racial integrity." This act, so far as it attempts to prohibit marriages between certain classes of people, applies only to marriages contracted after the act goes into effect. It does not affect the validity of marriages legally contracted in this State prior to the enactment of this statute.

However, prior to the enactment of this statute, marriages between white persons and negroes were prohibited by law, and if solemnized in Virginia, or, if prior to the marriage the parties were domiciled in this State and went out of the State for the purpose of evading our statutes, and then after contracting the marriage returned into Virginia, they have violated the law, and should be prosecuted. See sections 4540, 4546, 5087 and 5089 of the Code of 1919.

Where a marriage has been contracted between persons in a State where it may be lawfully contracted between persons who are residents of that State, and who afterwards become residents of Virginia, there is some doubt as to whether they can be prosecuted under our law, even though they may belong to classes prohibited from contracting the marriage relationship by the laws of this State, since our statute only prohibits the marriage of persons who are domiciled in this State belonging to prohibited races, either within the State or without the State, if contracted with the intention of returning to Virginia after the marriage has been solemnized where it may be lawfully performed, and does not attempt to prohibit the cohabitation of parties in this State who were legal residents of some other State at the time the marriage was lawfully contracted. See *State* v. *Ross*, 76 N. C., 242, 22 Amer. Rep. 678.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

RACIAL INTEGRITY LAW—Duties of clerks

RICHMOND, VA., *July* 2, 1924.

A. T. SHIELDS, ESQ., *Clerk,*
Lexington, Va.

DEAR SIR:

Acknowledgment is made of your letter of June 28, in which you say:

> "I am writing you for your opinion in regard to the law passed by the General Assembly of Virginia session 1924, approved March 20, 1924, chap. 371, p. 534, entitled an 'act to preserve racial integrity.' Section 4 of said act reads as follows: 'No marriage license shall be granted until the clerk or deputy clerk has reasonable assurance that the statements as to color of both man and woman are correct.' What is meant by reasonable assurance that the statements as to color of both man and woman are correct? Do you understand the clerk or deputy clerk should under this law require from the applicant himself for a marriage license an affidavit that he himself and the woman he intends marrying are both white, or an affidavit of some other reputable person that both the contracting parties are white?
>
> "Section 4 further states: 'If there is reasonable cause to disbelieve that applicants are of pure white race, when that fact is stated, the clerk or deputy clerk shall withhold the granting of the license until satisfactory proof is produced that both applicants are 'white persons' as provided for in this act.' What proof is necessary for the satisfaction of the clerk to com-

SCHOOLS—Who may attend—Negroes

RICHMOND, VA., *February* 16, 1925.

HON. ROBT. M. NEWTON,
Division Superintendent of Schools,
Hampton, Va.

DEAR MR. NEWTON:

Acknowledgment is made of your letter of February 12, 1925, in which you sent me copy of letter written you by the Registrar of Vital Statistics, with reference to the new racial integrity law. You say in your letter to me:

> "After reading this letter, please advise me just what I shall do about this matter."

Section 719 of the Code of Virginia, 1919, as amended by Acts of 1920, page 58, provides:

> "White and colored persons shall not be taught in the same school, but shall be taught in separate schools under the same general regulations as to management, usefulness and efficiency."

You will find a similar provision in section 9, page 8, of the Virginia school law. I know of no other law which would seem to bear on the question.

It is well settled that a colored person, within the meaning of statutes using this phrase in the Southern States, is a negro or one classified as such. Examination of the racial integrity law, chapter 371 of the Acts of 1924, fails to show that an Indian or an Indian mixed with negro blood has been declared to be a negro by this act. Therefore, while neither an Indian, a Chinese, nor people belonging to races other than the white race, are white, within the meaning of chapter 371, they are, nevertheless, not negroes or colored within the meaning of our school laws.

In th case of a Chinaman who applied for admission as a pupil in the schools of Newport News, I expressed the opinion that, as a Chinaman was neither a white nor a colored person, the matter should be settled by the local school board.

As an Indian is neither white nor colored unless he has one-sixteenth or more of negro blood, I would likewise suggest that the matter is one within the discretion of the local school authorities, and should be settled as such.

If you will examine section 67 of the Code of Virginia, you will see that it is there provided:

> "Every person having one-sixteenth or more of negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more of Indian blood shall be deemed an Indian."

There is nothing in the racial integrity law which repeals this section of the Code, and certainly no justification for classifying an Indian, as defined by the Code, as a negro.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

"While this primary is practically over, for information, I would thank you for your opinion on the following:

"If a person voted in the last general election for all of the Democratic nominees except for the presidential nominee, and did not vote for either presidential nominee, would he be eligible to vote in this primary, provided he was in every other way qualified?"

In my opinion section 228 of the Code, as amended, means that one must not have voted against any of the Democratic nominees in a general election in the sense that he must not have voted for an opponent of any Democratic nominee. I do not think that the statute means that a Democrat is to be deprived from participating in the Democratic primary because, in the preceding general election, he failed to vote for one of the Democratic nominees, provided he did not vote for that nominee's opponent. Therefore, in my opinion, the voter referred to in your letter would be entitled to vote in the primary.

Trusting that this gives you the desired information, I am

Yours very truly,

JOHN R. SAUNDERS,
Attorney General.

ELECTIONS—Eligibility of voters.

RICHMOND, VA., *August* 5, 1925.

REV. J. C. CARROLL,
Farmville, Va.

DEAR SIR:

Yesterday while my two assistants and I were absent from the city a telegram to which my name was signed was sent to you as follows:

"Colored person as well as white can vote if qualified."

This message was sent by an employee of this office upon information that was thought to be correct. However, it was erroneous and, seeing it today for the first time, I thought it proper to write and correct the error.

The qualifications of voters in the Democratic primary, in addition to those provided by statute, are further set forth in the primary plan of the Democratic party adopted June 11, 1924, as follows:

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

You will note that under this plan only white persons may vote in the Democratic primary.

I regret that this mistake should have occurred, and will ask you to be kind enough to show this letter to the judges of the election at your precinct.

Very truly yours,

JOHN R. SAUNDERS,
Attorney General.

BOARD OF HEALTH—Authority to quarantine.

RICHMOND, VA., *August* 10, 1925.

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

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your request of recent date, in which you call my attention to sections 1554-b—1554-m of the Code of Virginia, 1924, relating to venereal diseases, and request me to advise you as to the authority possessed by health officers to quarantine persons who have, or are reasonably suspected of having, the venereal diseases enumerated in section 1554-f of the Code of Virginia, 1924.

Venereal diseases are defined by section 1554-b of the Code of Virginia, 1924, and physicians and others treating persons infected with such diseases are required to report the same to the State Board of Health. Section 1554-e of the Code of Virginia, 1924, imposes a mandatory duty upon all State and local health officers to use every available means to ascertain the existence of, and to investigate all venereal diseases within their several territorial jurisdictions and to ascertain the sources of such infections. The last sentence of subsection (a) of this section provides:

> "* * * All health officers are hereby empowered and directed to make such examinations of persons reasonably suspected of having syphilis, gonorrhea, or chancroid, as may be necessary for the carrying out of this act."

Subsection (b) of this section provides that certain enumerated persons

> "* * * are to be considered and are hereby declared to be reasonably suspected of having syphilis, gonorrhea, or chancroid, and no person convicted of any of said charges shall be released until examined for such venereal diseases by the proper health officer, his deputy or assistants, or agents."

Section 1554-f of the Code of Virginia, 1924, reads as follows:

> "Upon receipt of a report of a case of venereal disease in a person conducting himself or herself in such a manner as to be a menace to the public health, it shall be the duty of the health officer to institute measures for the protection of other persons from infection by such diseased person.
>
> "(a) Local health officers are authorized and directed to quarantine persons who have, or are reasonably suspected of having, syphilis, gonorrhea,

"Court to appoint board of pension commissioners; their duty. That there shall be appointed by the circuit court of each county in term time, or vacation, and by the corporation or hustings court of each city, or by the judge thereof in vacation, immediately after the approval of this act, and in the month of January in each year thereafter, a board of three commissioners, residents of such county or city, none of whom shall be either State, city or county officers, and any two of whom may act, and two of whom shall be ex-Confederate soldiers, or sons of ex-Confederate soldiers, and all of whom shall be freeholders and persons of good reputation, who are to serve without compensation, and to constitute a board, whose duty it shall be to examine into the merits of the applications, a list of which shall have been furnished them by the clerk, of the said court, as hereinbefore provided. * *"

You will observe that the two members of the board must be ex-Confederate soldiers, or sons of ex-Confederate soldiers, but it is not required that they should be members of the organization known as "Sons of Confederate Veterans." You will also notice that the law makes no provision for the appointment of the daughter of a Confederate soldier. The constitutional provision you mention, and a number of statutes, provide that men and women alike may be appointed, or elected, to the various offices, boards, etc., and it is rather remarkable that when this pension law was reenacted in 1924, it was not amended to permit the appointment of women to pension boards.

Respectfully yours,

JOHN R. SAUNDERS,
Attorney General.

FRATERNAL ASSOCIATIONS—License prohibited.

RICHMOND, VA., *January* 20, 1927.

MR. S. I. COTTRELL, *General Vice-President,*
National Brotherhood of Blacksmiths, Drop Forgers and Helpers,
Richmond, Virginia.

MY DEAR SIR:

Acknowledgment is made of your communication of recent date, in which you call attention to chapter 502 of the Acts of 1926 prohibiting the licensing or operation in this State of fraternal beneficiary associations, companies, orders and societies, which have both white and colored membership, etc., and request me to advise you whether this act has any application to your association which is a labor union.

It appears that the only death benefits of any kind paid by your union is a death benefit for the burial of deceased members. In my opinion your association is a labor union and not a fraternal beneficiary association, company, order or society, and, therefore, chapter 502 of the Acts of 1926 has no application to your association.

The Commissioner of Insurance has already given a similar ruling, I am advised by his assistant, Mr. Coulbourn.

I am returning your file.

Yours very truly,

LEON M. BAZILE,
Assistant Attorney General.

I have examined sections 202–218 of the Code, as amended, (Virginia Election Laws, pages 60–63) with care and in my opinion, in view of section 218, which declares "the provisions of this chapter shall be liberally construed in favor of the absent voter," such ballots, even though they are acknowledged before a Postmaster, should be accepted as valid ballots by the election officials, inasmuch as the applicants for such ballots were misled by the forms furnished them by the election officials of the county for the purpose of voting by mail.

Trusting that this gives you the desired information, I am

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Negroes, not qualified to vote in primary.

RICHMOND, VA., *July* 29, 1927

CHARLES G. STONE, ESQ.,
Attorney at Law,
Warrenton, Virginia.

MY DEAR MR. STONE:

Acknowledgment is made of yours of yesterday, in which you say:

> "Will you kindly advise me whether a negro who is duly registered and has paid his poll taxes is qualified to vote in the coming primary; assuming, of course, that he represents himself as a member of the Democratic party and pledges himself to support the nominees thereof.

In reply I beg to say that the primary plan of the Democratic party adopted in 1924, so far as it relates to the qualification of voters in the primary, is as follows:

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

This regulation was adopted by authority of statute and will hold good until the statute has been declared unconstitutional by some court of last resort.

I do not think that the decision in the Ohio case necessarily determines the validity of our Virginia statute, as the Ohio law is radically different in many respects from that of Virginia. I see no course to pursue except to follow the Virginia law as it is.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Woman marrying alien loses right to vote.

RICHMOND, VA., *July* 29, 1927.

D. B. ELLIS, ESQ., *Registrar,*
Drewry's Bluff, Virginia.

DEAR SIR:

Acknowledgment is made of yours of the 21st, in which you say:

The Court of Appeals decided in *Williams* v. *Commonwealth*, 116 Va. 272, that, where a man had once acquired a legal residence in one place, that legal residence could be lost only by a combination of two acts: first, a removal from the place of legal residence to another place; second, with the intention of abandoning the legal residence acquired at the first place and acquiring it at the second place.

It will, therefore, be seen that the question as to where a man's legal residence is is largely a question of fact. On the facts submitted to me by you, I would say that your place of legal residence is Lakeside precinct, Brookland District, Henrico county, Virginia, as you unquestionably had the right to retain that as your place of legal residence when you moved to Goochland county.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Negroes not eligible to vote in democratic primary.

RICHMOND, VA., *July* 6, 1927.

HON. THOMAS H. HOWERTON,
Commonwealth's Attorney,
Waverly, Virginia.

MY DEAR MR. HOWERTON:

Acknowledgment is made of your letter of July 5, 1927, in which you say:

> "Can negroes vote in the primary in Virginia? I would like to have this information, because several people have asked me to obtain this for the guidance of the election officers in our county in the primary to be held in August, 1927."

In response to your inquiry I call your attention to section 228 of the Code, as amended (Virginia Election Laws, pages 66-67), and to the second paragraph of the primary plan of the Democratic party adopted June 11, 1924 (Virginia Election Laws, page 90).

You will see that the party plan provides only for white persons, and section 228 of the Code appears to authorize this.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Filing declarations, vacancies occasioned by death.

RICHMOND, VA., *July* 5, 1927.

MR. W. R. PITTMAN,
Sebrell, Virginia.

MY DEAR SIR:

Acknowledgment is made of your letter of July 2, 1927, in which you call attention to my letter of June 24 to Mr. G. O. Sledge, chairman of the electoral board of Southampton county. You then say that the county chairman has called a meeting of the electoral board for the purpose of considering the question as to whether the committee shall permit the filing of declarations of candidacy for nomination in the approaching primary for the office of constable in your district occasioned by the death of Mr. L. H. Brantley, who was the other candidate for this office and who occupied the office at the time of his death.

I am further advised that the American Railway Express Company have recently purchased some new trucks from The White Company of the same character, same dimension, and same capacity, which said trucks have been classified as one and one-half tons capacity in rating, and license issued therefore at $20.00 per truck.

With these facts before me, I am of the opinion that if the new trucks and the old trucks are of the same capacity, namely, one and one-half tons, that the license fee for both the new and old trucks should be $20.00 for each truck. To be frank with you, I do not see how your office can make any distinction, or difference, as to the amount of license required for each truck. Of course, you have a perfect right to require the old trucks to be re-registered as one and one-half ton capacity.

Mr. Meredith states in his letter to me that the reason assigned by you for requiring the $30.00 license fee on the old trucks, though you had issued a license for the new ones for $20.00, is due to the fact that you did not wish to change your records. I can appreciate the trouble which this may necessitate, at the same time it does not justify, in my judgment, the charging of a different license fee on trucks which have been rated as of the same capacity, namely, one and one-half tons.

I would further add that I have discussed this matter with both of my assistants, and we all concur in this view.

Yours very sincerely,

JNO. R. SAUNDERS,
Attorney General.

MARRIAGE—Status between white and Chinese persons.

RICHMOND, VA., *November* 16, 1927.

MISS HELEN P. STORY, *Director*,
Norfolk United Charities, Inc.,
415 *E. Freemason St.*,
Norfolk, Virginia.

DEAR MADAM:

In your letter of November 9 you write:

> "I am very anxious to have authoritative legal opinion concerning the status of marriage between white and Chinese persons in the State of Virginia. Does the Virginia Code prohibit such marriages anywhere in the State of Virginia, and should such a marriage have taken place in another state, is the union considered illegal in Virginia? What is the status of children born in the State of Virginia of such a union?"

Until the passage of the Racial Integrity Act at the 1924 session of the Legislature, there was no law prohibiting the marriage of white persons with any race except that of the negro. By that Act, which is carried into section 5099-a of the Code of 1924, the marriage of white persons with non-white persons was enlarged to include all persons not of Caucasian blood, except with persons having one-sixteenth or less of American Indian blood, and providing that laws relating to the marriage of white and colored persons should apply to marriages of white and non-white persons.

Under this law, the marriage of a white person with a Chinese, since June 18, 1924, anywhere in the State of Virginia, is absolutely void. The marriage of a white person and a Chinese, citizens of other states who married in such other state and came to Virginia to live, is valid. However, if they are residents of Virginia, go out of the State for the purpose of being married, with the intention of returning, are married outside of the State and return to reside in the State, that marriage is void, and each is subject to a penalty of confinement in the penitentiary for not less than two years nor more than five

years. Penalties are also provided for clerks for issuing licenses, and upon persons performing ceremonies of marriage of white and non-white persons.

It would seem from the decision by a divided court in *Greenhow* v. *James*, 80 Va. 636, that, notwithstanding section 5270 of the Code, providing that the issue of marriages deemed null in law or dissolved by a court shall, nevertheless, be legitimate, the children of an unlawful marriage between a white and a Chinese would be illegitimate.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MALICIOUS PROSECUTION—Heard before full magistrate's court.

RICHMOND, VA., *January* 23, 1928.

HON. H. L. HARTLEY,
Justice of the Peace,
Jonesville, Virginia.

DEAR MR. HARTLEY:

Acknowledgment is made of your letter of January 17th, in which you ask for certain information with reference to pending suit for malicious wounding to be tried by full court by demand of the defendant.

I beg to advise that section 6022 of the Code provides as follows:

> "In the trial of all warrants, both civil and criminal, upon application of the defendant, at any time before trial, to the justice of the peace, who issued said warrant and before whom it is returnable, such justice shall associate with himself two other justices of the peace of the county, who shall try said warrant, and in case of disagreement in opinion, the opinion of the majority shall prevail, * * *."

I think this statute states clearly the law on this subject.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MEDICAL COLLEGE OF VIRGINIA—Resident and non-resident students.

RICHMOND, VA., *March* 3, 1928.

DR. W. T. SANGER, *President,*
Medical College of Virginia,
Richmond, Virginia.

DEAR DR. SANGER:

I am in receipt of your letter of the 28th ultimo, in which you state:

> "In the application of this rule we are a bit puzzled with regard to students who reside in Washington but who hold their residence in Virginia, because, more than anything else, it is impossible to vote in Washington. For example, we have a student this year whose father is a preacher and who lived in Arlington county before moving to Washington six years ago. The father retained his residence in Virginia and the son, when becoming of age, also registered in Virginia. The boy was educated in Washington and there prepared for the study of medicine at our college. He has come here for the specific purpose of securing a medical education and would be counted as a non-Virginian except perhaps for the fact that he votes or can vote in this State. I am inclined to think that he ought to be regarded as a non-Virginian, but I would rather have you pass on it."

"Can a bona fide resident of your State, which has a reciprocal agreement with Florida, operate his automobile in the State of which he is a resident, under a Florida license tag?"

Most assuredly no resident of Virginia can operate his automobile in the Commonwealth of Virginia without his procuring a license and the necessary plates from the Commonwealth of Virginia so to do. Section 7, chapter 149 of the Acts of 1926.

If a resident of Virginia were to attempt to operate his automobile in this State under a Florida license, he would be subject to criminal prosecution. Section 37, chapter 149, Acts 1926.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

MARRIAGE—Status between white and colored persons.

RICHMOND, VA., *December* 4, 1928.

MRS. J. S. PERKINS,
644 *32nd Street,*
Newport News, Virginia.

MY DEAR MRS. PERKINS:

Acknowledgment is made of your letter of November 28, 1928. I am indeed sorry to hear of the trouble referred to in your letter.

Section 5087 of the Code provides that all marriages between a white person and a colored person shall be absolutely void without any decree of divorce, or other legal process. Section 5089 of the Code makes a marriage contract by such parties, residents of this State, outside of the State, with the intention of returning to Virginia for the purpose of residing therein, subject to the provisions of section 5086 of the Code. Sections 4540 and 4546 make the contracting of such marriages felonious in this State.

While it is true that such marriages are declared to be void *ab initio* by the statute, the safest procedure would be to apply for a decree of annulment since, from the facts stated in your letter, it is possible that the girl might contest the charge that she is a negro within the meaning of the statute. Of course, if she prevailed in such contention, the marriage would be valid. If the matter was not adjudicated by a competent court, there would always be the risk of a prosecution for bigamy, in the event the boy contracted a subsequent marriage. There might also be prosecutions for non-support.

It seems to me that the attorney, who offered to obtain the decree of annulment for $75.00, fixed a very reasonable fee for his services; indeed, a fee much below that usually charged in a case of this kind. It would unquestionably cost much more than that to defend a criminal prosecution for bigamy.

Trusting this gives you the desired information, I am

Very truly yours,

JNO. R. SAUNDERS,
Attorney General.

observe the language of section 2769 of the Code, as amended by the Acts of 1928:

> " * * provided, that the provisions of this section shall not prevent supervisors in the counties which have such road laws from receiving additional compensation for such services in connection with road work done under said special road laws now existing, or as hereinafter amended, if such compensation be allowed in such special road law. * * "

I do not think that this language can be construed as keeping alive a provision as to compensation in a special road law repealed by section 46 of chapter 159 of the Acts of 1928. Manifestly, where the special road law has been repealed, work cannot be "done under said special road" law.

It is, therefore, my opinion that no compensation can be paid to the board of supervisors of Cumberland county under authority of chapter 17 of the Acts of 1916.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

SANATORIUMS—Philippino should be admitted as patient same as white person.

RICHMOND, VA., *January 22*, 1929.

DR. ENNION G. WILLIAMS,
State Health Commissioner,
Department of Health,
Richmond, Virginia.

MY DEAR DR. WILLIAMS:

Acknowledgment is made of your letter of recent date, in which you request me to advise you whether a Philippino can be admitted as a patient to Catawba Sanatorium, one of the sanatoriums provided for white people. You state in your letter that you also have Piedmont Sanatorium which is provided for negro patients.

In an opinion given Dr. B. L. Taliaferro on November 17, 1920 (Report of the Attorney General, 1920, page 189), I advised him that a Chinaman could be admitted to Catawba Sanatorium. Chapter 371 of the Acts of 1924, entitled an act to preserve racial integrity, merely relates to the intermarriage of persons.

A Philippino, in my opinion, is not a negro and, therefore, I see no reason why, like a Chinaman, he is not entitled to admission to Catawba Sanatorium for treatment.

Sincerely yours,

JNO. R. SAUNDERS,
Attorney General.

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

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

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

Respectfully yours,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Judges may not stamp ballots.

RICHMOND, VA., *May 26*, 1930.

MR. HOWARD WILLIAMS,
Pamplin, Virginia.

DEAR MR. WILLIAMS:

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

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

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

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

ELECTIONS—Legal qualification of voters in November election.

RICHMOND, VA., *August 22*, 1929.

MR. A. J. BANKS,
Low Moor, Virginia.

MY DEAR SIR:

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

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

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

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

Yours very truly,

JNO. R. SAUNDERS,

Attorney General.

ELECTIONS—Notice of candidacy—Question of signature.

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

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

DEAR MR. TALIAFERRO:

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

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

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

While this man was confined in the State convict road force, he was, nevertheless, a penitentiary prisoner and not a jail prisoner.

I have examined my opinion to you of December 5, 1924, with reference to this subject, and I am of the same opinion at this time, viz: that you are not authorized to hold a man sentenced to the penitentiary for any additional time on account of the non-payment of the costs of his prosecution, and that section 8 of the State prohibition law, as amended in 1928, has no application to this case, that act relating to jail prisoners sentenced to the State convict road force.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

JIM CROW LAW—Enforcement on street cars and buses—Duty of officials, etc.

RICHMOND, VA., *March* 18, 1930.

MR. RICHARD T. YATES:
Krise Building,
Lynchburg, Virginia.

DEAR SIR:

Your letter of February 14, to which you refer in your letter of the 14th instant, has been received.

Section 3962 of the Code provides for separate cars for white and colored passengers in railroad and transportation companies, and section 3964 provides a fine of not less than $300 nor more than $1,000 for violations of that section.

Section 3965 provides that conductors shall assign white and colored passengers to their respective compartments and section 3966 provides punishment of not less than $25 nor more than $50 fine upon conductors for failure to carry this law into effect.

By section 4097c of the Code, the sections which I have quoted of chapter 155 of the Code are made applicable to all common carriers. The street railways of Lynchburg are common carriers and, as such, are required to separate whites and blacks.

The enforcement of the law is in the hands of local police authorities. If upon complaint the police of your city or the sheriffs of adjoining counties refuse to make arrests, I suggest that you lay complaint before the attorney for the Commonwealth of Lynchburg or the adjoining counties.

Yours very truly,

JNO. R. SAUNDERS,
Attorney General.

"It would appear to me that under the opinion of our court in the case of Anderson v. Commonwealth of Virginia, 182 Va. 560, wherein the court said:

> "' . . . Courts are not permitted to rewrite statutes. This is a legislative function. The manifest intention of the legislature, clearly disclosed by its language, must be applied. *There can be no departure from the words used where the intention is clear. A penal statute cannot be extended by implication, or be made to embrace cases which are not within its letter and spirit. Such statutes are always construed strictly against the State and in favor of the liberty of the citizen.*' (Italics mine)

that since Willoughby Spit has been a part of the City of Norfolk since January 1, 1923, and that the above statute has been re-enacted several times since the annexation of this part of Norfolk County, the law would be inoperative and that the only recourse would be to the Legislature rather than to the courts."

As stated in the case you cite, "the manifest intention of the legislature, clearly disclosed by its language, must be applied". Such intention in the provision you quote from section 28-86 of the Code is to prohibit the operation of any device for taking clams within three-quarters of a mile of the shore lying between Lynnhaven Inlet and Willoughby Spit pier. The words "in Norfolk County" were added obviously for the purpose of aiding in identifying the pier which was, at the time of the enactment of the original act, located in Norfolk County. I take it that there is no question now as to the location of Willoughby Spit pier. If my assumption is correct I am of the opinion that the manifest intention of the legislature must be applied and that the words "in Norfolk County" may be treated as surplusage.

You also say:

> "I should also like your opinion as to whether or not the title under the old Code known as Section 3175 'Restriction on the Right to Set Nets: Certain Obstructions in Chesapeake Bay Forbidden' would be constitutional since it does not set forth anything of a nature which would pertain to the taking of clams or other shell fish. In other words, the title is not indicative of the body of the section and has never been since its enactment in 1916."

Section 28-86 of the Code, as was section 3173 of the Code of 1919 from which it was taken, is a part of a general codification of the statute laws. These laws were collated and digested under appropriate titles and chapters, and divided into sections and then passed as one act under a proper title. It is well settled that the heading of a section of the Code is purely a matter of informative convenience and in no sense a part of the provisions of the section, Ritholz v. Commonwealth, 184 Va. 339, and thus is not to be considered as if it were the title to an original act not amendatory of the Code. In my opinion there is no constitutional infirmity in section 3173 of the Code of 1919 or section 21-86 of the Code of 1950.

COLLEGES AND UNIVERSITIES—State supported—Segregation of races.
F-354

July 10, 1950.

HONORABLE COLGATE W. DARDEN,
President, University of Virginia.

I am in receipt of your letter of June 29.

You state that a Negro student has made application to the Law School of the University of Virginia for admission as a graduate student.

You propound the following inquiry, which I quote from your letter:

> "The committee on graduate studies has found his application to be in order and believes him qualified to do the work offered here. In the light of the recent decisions of the Supreme Court of the United States, the Board has asked me to inquire of you as to whether, by virtue of the Constitution and the statutes of the Commonwealth of Virginia, there is a legal duty imposed upon it to deny him admission to the University of Virginia."

Section 140 of our Constitution provides:

> "White and colored *children* shall not be taught in the same school."

Section 22-221 of the Code of 1950 provides:

> "White and colored *persons* shall not be taught in the same school, but shall be taught in separate schools, under the same general regulations as to management, usefulness and efficiency."

Section 140 is found in Article IX of the Constitution. This Article relates to education and public instruction. All sections of this Article preceding Section 140 relate to our system of public free schools and not to institutions of professional and graduate education. It is significant in this connection that the word "children" is used.

Section 22-221 of the Code drops the word "children" and inserts in lieu thereof the broader term "persons". This section is found in Chapter 12 of the Code. This entire chapter relates to our system of public free schools and not to State supported institutions of higher learning.

Aside from the force of Federal decisions construing and applying the Equal Protection Clause of the Fourteenth Amendment, grave doubt arises as to whether the provisions referred to are applicable to graduate schools at State institutions of higher learning and, therefore, whether there "is a legal duty imposed upon" your Board to deny admission under the facts stated by you.

In view of the decision of the Supreme Court of the United States in *Sweatt* v. *Painter,* 70 Sup. Ct. 848, that question is no longer material. Sweatt filed application for admission to the University of Texas Law School. Texas law restricted the University to white students. Sweatt's application was rejected solely because he was a Negro. Respondents defended mandamus proceedings under the "equal facilities rule" laid down in *Plessy* v. *Ferguson,* 163 U. S. 537 (1896). It appeared that Texas had established a separate law school for Negroes and contended that the facilities there provided were substantially equal to those afforded at the law school of the University of Texas.

The Court stated that the question presented in the Sweatt Case was "To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a State to distinguish between students of different races in professional and graduate education in a State University?"

In an unanimous opinion delivered by Mr. Chief Justice Vinson the Court reviewed the facilities offered at the two schools and found, as a fact, that the facilities were not equal and reversed the decision of the lower court so holding. The Court said:

> "It is fundamental that these cases concern rights which are personal and present. This Court has stated unanimously that 'The State must provide [legal education] for [petitioner] in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group.' Sipuel v. Board of Regents, 332 U. S. 631, 633 (1948). That case 'did not present the issue whether a state might not satisfy the equal protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes.' Fisher v. Hurst, 333 U. S. 147, 150 (1948).

In Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 351 (1938), the Court, speaking through Chief Justice Hughes, declared that ' * * * petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those the State there afforded for persons of the white race, whether or not other Negroes sought the same opportunity * * *.'

"In accordance with these cases, petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State."

Thereupon the decision of the Court was announced in the following language:

"We hold that the Equal Protection Clause of the Fourteenth Amendment requires that petitioner be admitted to the University of Texas Law School."

While the doctrine of *Plessy* v. *Ferguson* (supra) was not reviewed and, in theory at least, still obtains, it has no application to the facts presented by you, for the reason that Virginia has not established a separate law school for Negro citizens.

By virtue of the decisions of the Supreme Court of the United States, it is manifest that a denial of admission to the applicant under the facts stated by you could not be successfully defended if an appropriate action is instituted in the Federal Courts to compel the University of Virginia to admit him to its law school as a graduate student.

COMMISSIONER OF REVENUE — Authority to change assessments. F-261

September 8, 1950.

HONORABLE SARAH P. BRIGGS,
Commissioner of Revenue for Greensville County.

This is in reply to your letter of August 30th from which I quote as follows:

"The general reassessment of land, required by law, was made in Greensville County during the calendar year 1949 under the direct supervision of the State Department.

"In making up the 1950 Land Book, we have uncovered numerous instances wherein property was assessed incorrectly in the name of a former owner. Please advise me what authority, if any, the Commissioner of Revenue has in changing assessments made under this general reassessment, as regards name of ownership and valuation of property."

Section 58-759 of the Code provides that taxes for each year on real estate subject to reassessment shall be extended on the basis of the last general reassessment made prior to such year, subject to such changes as may have been lawfully made. In my opinion this section would prohibit the Commissioner of Revenue from making any changes in the assessments in so far as the valuation of the property is concerned except under the provisions of Sections 58-810 through 58-813, which authorize the Commissioner to make adjustments in value in the case of buildings not previously assessed or when the value of the property is increased by repairs and additions or the erection of new buildings and when the value of the property is reduced by the destruction or injury of existing buildings.

In the case of property incorrectly assessed in the name of a former owner, it is my opinion that Sections 58-808 and 58-809 authorize the Commissioner of the Revenue to make corrections so as to assess the property against the present owner

Applying the principles to which I have referred, it is my opinion that, where a right of action accrues under the death by wrongful act statutes prior to the effective date of the 1952 amendment (June 28, 1952), the amount of the recovery is limited to $15,000.

Of course, you will understand that in expressing this opinion I am not attempting to pass upon any question now pending before a court, as it is my invariable rule not to express an opinion in such a case.

EDUCATIONAL INSTITUTIONS—Segregation, equal facilities in another state school. (F 354) 212

June 6, 1952.

MR. ALVIN D. CHANDLER,
President, College of William and Mary.

This will acknowledge receipt of your letter of June 4, from which I quote in part as follows:

> "Clyde Harper Jones, a Negro, a graduate of Virginia State College in 1941, has applied for admission to a program of graduate study in Education in Elementary and Secondary School Administration. This graduate program is offered at Virginia State College in Petersburg. Mr. Jones has been advised that since the program is available to him at Virginia State College we are unable to accept his application for admittance to the College of William and Mary Summer Session."

Assuming as you do that the applicant is academically qualified to pursue the course of graduate study which he desires, and that facilities for such course are provided at the Virginia State College in Petersburg, and also that the facilities at the two institutions are substantially equal, your advice to the applicant as set forth above is in keeping with the law and the policy of this Commonwealth. Under these circumstances, the College of William and Mary would have no right to accept the applicant for admittance to that College.

EDUCATIONAL INSTITUTIONS — Student Loan Fund — Virginia State College. (F 264) 196

May 6, 1952.

HONORABLE J. H. BRADFORD,
Director of the Budget.

This is in reply to your letter of May 2, from which I quote as follows:

> "Dr. R. P. Daniel, President of Virginia State College, has asked me whether the student loan fund of Virginia State College, at Petersburg, can be used for the establishment of scholarships at the Norfolk Branch of this institution. No appropriation for student loan fund has been made to the Norfolk Branch.
>
> "I quote the following paragraphs from Dr. Daniel's letter of April 30th:
>
> " 'In view of the enactment of the recent General Assembly by which unobligated loan funds under certain conditions are made available for scholarships, we have naturally received several inquiries about scholarship aid. However, the demands for loans are so great on the

SCHOOLS AND SCHOOL BOARDS—Segregation—Requiring students to leave county. (F 203) 220

June 17, 1952.

HONORABLE CURTIS A. SUMPTER,
Commonwealth's Attorney for Floyd County.

This is to acknowledge receipt of your letter of June 9 in which you requested my opinion as to whether the School Board of Floyd County may legally require certain Negro students of Floyd County to attend high school at the Christiansburg Industrial Institute which is located in Montgomery County.

I call your attention to the case of *Corbin* v. *County School Board of Pulaski County,* 177 Fed. (2d) 924, wherein the United States Court of Appeals (Fourth Circuit) held that the Negro high school students of Pulaski County, who were transported to the Christiansburg Industrial Institute in Montgomery County, where discriminated against, not by virtue of the fact that there were no Negro high schools in Pulaski County but because (1) more than ten courses open to the white high school students of Pulaski County were denied to the Negro high school students; (2) the physical facilities at the white high schools of Pulaski County were superior to the physical facilities at the Christiansburg Industrial Institute; (3) the extracurricular activities furnished the Negro students at the Christiansburg Industrial Institute were inferior to those furnished the white high school students of Pulaski County; and (4) the Negro high school children had to travel approximately sixty miles per day and thus had to leave home earlier, endure a longer ride and arrive home later than white high school students.

Therefore, I am of the opinion that the fact that the high school is located outside the county is not of itself controlling in determining whether or not the local school board may legally enforce attendance. The answer to your question must necessarily depend upon a comparison of all the facilities offered at the best white high school in Floyd County with the facilities offered at the Christiansburg Industrial Institute.

I have read with interest the correspondence between the State Superintendent of Public Instruction and the Division Superintendent of Schools of Floyd County, which you enclosed with your letter, and, under the circumstances of this case, I fully concur in the views expressed by the State Superintendent to the effect that compulsory attendance at the Christiansburg Industrial Institute should be required of the Negro high school students of Floyd County.

SCHOOLS AND SCHOOL BOARDS—Special school levies must be used for school purposes. (F 197) 133

February 28, 1952.

HONORABLE ROBERT C. GOAD,
Commonwealth's Attorney for Nelson County,

This is in reply to your letter of February 22, from which I quote as follows:

> "First, the Nelson County School Board has accumulated a sum of about $90,000 to its credit by means of a District School Levy for the past several years. I assume that this levy could only be made under Section 22-128 of the Code authorizing a *special* district levy for payment of rent, capital expenses, or indebtedness. However, this levy has never been recorded as a special district levy, but only as a district school levy for district school purposes.

I suppose it would not be improper for a treasurer to authorize a clerk in his office to issue a tax receipt in the treasurer's name by the clerk but, as I have indicated above, I do not think that a clerk in the office of the treasurer should be permitted to act as a deputy treasurer in fact when he is not permitted to hold the office by law.

TREASURER—Deputy must be resident of county.

TREASURER—Clerk may not sign warrants. (FO 130) 25

August 14, 1951.

HONORABLE HUGH D. MCCORMICK,
Commonwealth's Attorney for Warren County.

I am in receipt of your letter of August 9, in which you ask for my opinion on the following questions:

> "The Treasurer of Warren County has asked for an opinion whether or not his Clerk, who actually lives in an adjoining County, can fulfill the requirements of law for a Deputy Treasurer. It is my opinion that such person should not qualify in view of Section 15-487 of the 1950 Code of Virginia. If I am in error, I would appreciate your advising me to the contrary.
>
> "The Clerk for the County Treasurer has been in the Treasurer's office for the past five years and is well qualified to perform the duties of the County Treasurer, but has moved to an adjoining County since the beginning of employment.
>
> "I would appreciate your opinion as to whether or not the County Treasurer could legally permit his Clerk to sign checks during his absence by Power of Attorney."

A Deputy Treasurer is undoubtedly a county officer and, therefore, in view of Section 15-487 of the Code, I am of opinion that a person who resides in another county is not eligible to the office of Deputy Treasurer of Warren County. Indeed, this office has heretofore expressed an opinion to this effect.

As to your second question, I do not think that the County Treasurer has the authority to authorize a clerk in his office to sign warrants. This is a function of the Treasurer or one of his Deputies, provided the Treasurer has designated a Deputy to sign warrants, with the approval of the Board of Supervisors, pursuant to Section 58-951 of the Code. See also Section 58-485 of the Code as to the powers of deputies generally. The Legislature having expressly dealt with the question of signing warrants and stipulated who may do so, I am of opinion that the Treasurer may not authorize any person to sign such warrants other than one of his Deputies.

TREASURER—Poll tax list, separation of races, Indians. (F 100 c) 137

March 7, 1952.

HONORABLE LYON G. TYLER,
Commonwealth's Attorney for Charles City County.

This will reply to your letter of March 3, from which I quote in part as follows:

> "Section 38 of the Constitution and Section 24-120 of the Code of Virginia require the Treasurer of each County to list alphabetically by

districts all persons who have paid their poll taxes and states that white and colored persons shall be listed separately.

"In Charles City County there are a considerable number of Indians who are members of the Chickahominy Tribe, but who do not live on a reservation. These Indians attend a separate Indian School, are sent to college in Oklahoma and are recognized as Indians for these purposes.

"First: Under the provisions listed above should persons having Indian blood but no Negro blood be listed as white or separately as Indians, or is either permissible?

"Second: Should persons having an ascertainable degree of Negro blood but having one-fourth or more of American Indian blood be listed as colored persons or may they be listed as Indians, or under some other appellation such as 'others' or 'mixed'?

"Third: Should persons having some but less than one-fourth Indian blood and more than one-sixteenth Negro blood be listed as colored persons or may they be listed separately as Indians or under some other category?

"Fourth: What is legally the best method for determining what the racial composition of a person is for the purpose of the Treasurer's list?"

Section 38 of the Constitution, dealing with the list of persons who have paid their poll taxes which County and City Treasurers are required to prepare, provides that such list " * * * shall state the white and colored persons separately * * *." Section 24-120 of the Code implements the constitutional mandate in the same language.. Colored persons and Indians are defined by Section 1-14 of the Code as follows:

> "Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one-fourth or more of American Indian blood shall be deemed an American Indian; * * *."

Taking up your first question, I direct your attention to the fact that the above constitutional and statutory requirements as to the Treasurer's list have been in effect for fifty years. While I do not feel that I can say that these requirements forbid the separate classification on the list of any other than white and colored persons, my information is that it has been the uniform practice during this long period for the list to be prepared with these two classifications only. This administrative construction is entitled to great weight, and so I suggest that it be followed. This means that those who have Indian blood, but no Negro blood, should, for the purpose of the Treasurer's list, be classified as white.

As to your second and third questions, I must advise that the persons described therein are plainly colored persons according to the definition contained in Section 1-14 of the Code and should be so carried on the Treasurer's list.

The question of "the racial composition of a person" within the definitions to which I have referred is one of fact which, of course, can best be determined by tracing the ancestry of each individual involved. As a practical solution in cases of doubt I suggest that the records of the Bureau of Vital Statistics be examined.

TRIAL JUSTICE—Appeal from conviction, refund of fine and costs. (F 173) 161

April 3, 1952.

HONORABLE THOMAS R. MILLER,
Clerk, Hustings Court, City of Richmond.

This will acknowledge receipt of your letter of March 31, from which I quote as follows:

COLLEGES AND UNIVERSITIES—Extension courses; when open to negroes. F-354 (79)

September 18, 1952.

DR. GEORGE J. OLIVER,
Head, Department of Education and Director of Extension,
College of William and Mary.

This is to acknowledge receipt of your letter of September 16 in connection with the possibility of offering extension courses on Army posts in which negro students may be enrolled.

Your specific question is whether or not the College of William and Mary may legally award academic credit to negro students for work done in extension courses offered off campus and on Army posts.

Assuming that the extension courses to which you refer are not offered as such by the Virginia State College, it is my opinion that it is proper and legal to enroll negro students in classes conducted on Army posts and to award academic credit to them.

COLLEGES AND UNIVERSITIES—Group insurance plan; may subscribe to for benefit of employees. F-162 (258)

May 5, 1953.

MR. ROBERT P. DANIEL, *President,*
Virginia State College.

This is with reference to your letter of April 28, 1953, from which I quote as follows:

> "The faculty of Virginia State College has been giving consideration to a group insurance plan such as administered by the Teachers Insurance and Annuity Association or one of the private insurance companies such as the Prudential, Metropolitan or similar company.
>
> "We prefer the type of group insurance written on the contributory basis which means that employer and employees share the cost, and that a specified percentage (such as 75%) of the eligible members be enrolled.
>
> "The College understands that no funds appropriated by the Legislature would be used for such a purpose; therefore, we propose to meet the employer's contribution from a special fund which employees have maintained for many years on the basis of payment by them annually as a pool to cover such special purposes as contributions to persons on the staff upon occasions of illness, death, anniversaries, and the like. This fund may also be supplemented, if necessary, by income from other special projects. This fund is handled in a separate bank account and would not be a part of the budget or financial operations of the College.
>
> "The purpose of this letter is to ascertain if there are any legal prohibitions to prevent the execution of such a proposed group plan by the faculty and staff of this institution. We understand that we should clear such an opinion through your office prior to securing authority to do so by the State Board of Education, our governing board."

Section 38.1-475 of the Code of Virginia of 1950, as amended, provides as follows:

> "A policy of group life insurance may be issued, with or without medical examination, covering not less than twenty-five employees of the federal, state or any county or municipal government, or of any federal,

ELECTIONS—Capitation taxes; treasurer can not refuse to accept. F-100c (242)

April 7, 1953.

HONORABLE A. C. FULLER, JR.,
Treasurer of Russell County.

I have your letter of April 2, from which I quote as follows:

> "I enclose herewith a blank form which is being distributed in Russell County by a political party to accompany the remittance of poll tax.
>
> "I would like for you to advise me whether I have the authority to refuse to qualify a voter whose poll tax is remitted by the use of one of these forms in cases where I have reason to believe, that the tax being remitted is not being paid by the individual voter but from the funds of a political party."

The form which you enclose is nothing more than a letter of transmittal enclosing the amount of the capitation tax and signed by the tax payer.

I assume that your inquiry is made in view of the provisions of § 24-129 of the Code, making it unlawful for any person to pay or to offer to pay the State poll tax of another under such circumstances as to show or indicate a purpose of intent to have the name of such other person placed upon the treasurer's list. The section goes on to make it the duty of the treasurer, to whom such payment is made, to report the fact of such payment and the circumstances relating thereto to the Commonwealth's Attorney. The section does not make it the duty, or even authorize the treasurer to refuse, to accept the payment, even though he may believe it to be made contrary to the provisions of the section. My advice is, therefore, that you should accept the payment and report the matter to the Commonwealth's Attorney if you believe the circumstances under which the payment is made are such as to justify such a report under the provisions of § 24-129.

ELECTIONS—Changing election districts; thirty days notice to be given. F-100 (279)

May 29, 1953.

HONORABLE EDMUND W. HENING, JR.,
Commonwealth's Attorney for Henrico County.

This is in reply to your letter of May 18, 1953, from which I quote, in part, as follows:

> "Your opinion is respectfully requested therefore, on the question of whether or not Section 24-51 of the Code of Virginia of 1950 requires the Court's order creating the changes under this Title to be posted for any length of time other than a reasonable time where such changes are made in advance of a *primary* election instead of a *general* election."

Section 24-51 of the Code provides:

> "No change shall be made in the name of any election district, or in any of the boundaries or voting places, within thirty days next preceding any general election, nor until notice has been posted for thirty days at the front door of the courthouse and at each voting place in each election district to be affected by the change."

It is my opinion that the last portion of this section, that specifying that notice is to be posted for thirty days before a change is to be effective, applies in all

TAXATION—Treasurers; poll tax list to be alphabetically by magisterial districts. F-100c (88)

October 8, 1952.

HONORABLE CHARLES A. REID,
Treasurer for Greensville County.

This is in reply to your letter of October 6, in which you ask if the Treasurer's list of persons who have paid their State poll taxes, prepared pursuant to Section 24-120 et seq. of the Code, shall be arranged alphabetically by magisterial districts.

Section 24-120 does not require that the list be arranged by magisterial districts. The section simply provides that the list "shall state the white and colored persons separately." However, Section 38 of the Constitution, dealing with Treasurers' lists, stipulates that the "list shall be arranged alphabetically, by magisterial districts in the counties, and in such manner as the General Assembly may direct in the cities, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer." It will immediately be seen that the requirements of Section 24-120 do not comply with the constitutional mandate. It is my opinion that the constitutional mandate is self-executing and that the Treasurer of a County in preparing the list should, therefore, arrange it alphabetically by magisterial districts. There is nothing in Section 24-120 to prohibit this method of preparation and, in view of the plain language of the constitutional provision, it is my view that in the counties the list should be prepared as the Constitution directs.

TOLL FACILITIES—Free passage for school children; when entitled to. F-201 (10)

July 9, 1952.

HONORABLE LLOYD C. BIRD, *State Senator,*
Richmond 5, Virginia.

I have your letter dated July 8, 1952, requesting an opinion on the following:

> "Children, living in Charles City County, cross the Charles City-Hopewell Ferry, on their way to Red Water Lake in Chesterfield County, where they are taught swimming under the auspices of the Red Cross. They travel in a School bus. The question is: Will Section 22-277 or any other Section give these people exemption from paying the Ferry fee?"

Section 22-277 of the Code, as amended, to which you refer, reads in part, as follows:

> "Any such pupil, student, or the parent or guardian of any such pupil or student may apply for and receive from the principal of any school, college, or other educational institution in this State, a card certifying that any child or person is a pupil or student using such facilities daily for regularly attending such school, college or other educational institution, * * *."

Upon reference to this section, it seems that two conditions must exist before free passage can be granted over toll facilities of the State. The statute requires, first, that the pupil or student must be in daily attendance at some educational institution, and, second, that a card must be obtained from the principal of such institution certifying that the pupil is in daily attendance at such institution.

In view of the foregoing requirements of the statute, I am of the opinion that the statute is not broad enough to include children attending a course in swimming

Section 24-56 has nothing to do with the registration of new voters. It merely deals with the preparation of the special list of voters for the purpose of town elections and includes only those persons previously registered as voters in the county. Such voters, of course, must have registered in the county before the books were closed for that purpose. However, if they have been so registered they may be transferred to the town registration book at any time before the town election. Such persons must present themselves to the registrar with the necessary proof of prior registration in the county.

Your next inquiry pertains to the provisions of section 24-127 of the Code of Virginia. This section requires the county treasurer to furnish a list of residents of any incorporated town to the clerk of the circuit court who have paid the State poll tax as provided by law. The requirement for the payment of such poll tax at least six months prior to the general election is found in section 21 of the Virginia Constitution which provides, in part, as follows:

> "A person registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, or under the last section, shall have the right to vote for all officers elective by the people, subject to the following conditions:
>
> "That unless exempted by section twenty-two, he shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote."

You also inquire if a voter is required to pay his town capitation tax in order to vote in a town election. Section 24-23 of the Code provides that the electors of a town shall be actual residents thereof and qualified to vote for members of the General Assembly. Section 18 of the Virginia Constitution provides, in part, as follows:

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

It is to be noted that in both sections 18 and 21 of the Constitution the requirement for the payment of poll taxes relates to *State poll tax* only. I am, therefore, of the opinion that payment of municipal capitation taxes cannot be required as a condition to voting in town elections.

ELECTIONS—Registration; procedure for loose leaf system; segregation of poll tax list. F-100d (285)

May 24, 1954.

HONORABLE J. ROBERT SWITZER, *Clerk,*
Circuit Court of Rockingam County.

This is in reply to your letter of May 12, 1954 in which you request my opinion on the following questions:

> "We are considering adopting the loose leaf system for registration in Rockingham County and desire to know if we can put the white voters

together, regardless of sex, using a different color for the colored voters, but all (white and colored) in one book. Is this permissible?

"If this be done is there any reason why the treasurers' capitation list cannot show the same alphabetical arrangement without regard to color and sex?"

Section 24-118 of the Code of Virginia, in my opinion, answers your first question. That section provides in part as follows:

> "In the discretion of the electoral board of any city or any county, in lieu of registering voters in permanent books, the electoral board may provide for the registration of voters (1) on serially numbered cards, or (2) in loose leaf binders locked with an approved key locking device with white sheets for recording the names of white voters and buff sheets for recording the names of colored voters, * * * ."

This section permits and contemplates the placing of the white and buff sheets in the same book.

Section 24-120 of the Code provides, in part, as follows:

> "The treasurer of each county and city shall, * * * file with the clerk of the circuit court * * * a list of all persons in his county or city who have paid * * * the State poll taxes * * * which list shall state the white and colored persons separately, and shall be verified by the oath of the treasurer."

In the light of this section, I feel that the treasurer must continue to file separate lists after a county adopts the loose leaf system of registration.

ELECTIONS—Special; closing registration books; voters eligible. F-100 (96)

November 19, 1953.

MR. SAMUEL T. BINNS, JR., *Secretary,*
Henrico County Electoral Board.

I have your letter of November 16, in which you ask several questions in connection with the special election to be held in Henrico on December 8 next.

First, you ask when the registration books should be closed for the purpose of registering and transferring voters for this election.

Section 24-83.1 of the Code provides in part that: "For the purpose of registering and transferring voters all registration books shall be closed for a period of six days next preceding and including the day of any special election or of any election upon a referendum." Construing the language of the quoted provision, I am of the opinion that the registration books should be closed on and after December 2 and including the day of election.

You also ask as to the persons qualified to vote in this special election.

Section 24-22 of the Code, dealing with the qualifications of voters at special elections, provides in part as follows:

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

You are advised that the person who moved into Carroll County after the first day of January, 1955, under the state of facts presented by you, would not be required to pay the 1956 poll taxes in advance in order to register and vote in the election to be held in November, 1956. You are further advised that the person who became twenty-one years of age after the first day of January, 1955, but prior to the second day of January, 1956, would be required to pay poll taxes for 1956 in advance in order to register and vote in the election in November, 1956. This is due to the provisions of § 20 of the Constitution which reads, in part, as follows:

> "Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided:
>
> "First. That he has personally paid to the proper officer all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register; or, if he comes of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and, "

Any person who will become of age or has become of age subsequent to January 1, 1956, and not later than election day in November, 1956, may register and vote in the November election of 1956 without the payment of the 1956 poll taxes.

ELECTIONS—Poll Tax List—Status when Prior Year Not Personally Paid. F-100c (146)

January 31, 1956.

HONORABLE HARRY P. ROWLETT
Commonwealth's Attorney for Lee County

I acknowledge receipt of your letter of January 27, 1956, which reads as follows:

> "During the poll tax paying period for the November, 1955 general election, that is from approximately November 1, 1954 through May 8, 1955, certain persons, in conformity with local practice, paid poll taxes by list. That is to say, money was tendered to the Treasurer of Lee County by persons not authorized to pay the citizens taxes. A receipt was issued by the Treasurer for this money and the citizens poll taxes were marked paid on the Treasurer's capitation books, and the funds were remitted to the Treasurer of Virginia as required by law.
>
> "In a certain chancery suit filed against the Treasurer of Lee County, under the style of Rhea Rasnic, et al vs C. T. Combs, Treasurer, an order was entered by the Circuit Court directing the said Treasurer to certify only the names of those persons whose taxes were personally paid on the list of voters required to be certified by the Treasurer to the Clerk by Section 24-120, Code of Virginia, 1950. The Treasurer, Combs, in compliance with the order of the court did not certify as paid, many persons, whose names appear on the capitation books as paid. Several hundred of these persons, who were not certified, were later placed on the corrected list by order of the Circuit Court of Lee County.
>
> "Would you please advise me as to whether or not these names, which were ordered removed from the list certified for the election held November 8, 1955 and were not later placed on the corrected list, should be certified for that year on the list required to be certified by the Treasurer for the election to be held November 6, 1956."

Under § 24-120 of the Code of Virginia the treasurer of each county is required to file with the clerk of the circuit court of his county at least 158 days before each regular election in November a list of all persons in his county who have paid, not later than six months prior to the November election date, the State poll taxes required by the Constitution of Virginia during the three years next preceding that in which such election is to be held.

Section 21 of the Constitution prescribes that, as a condition for voting, a person shall personally pay said poll taxes. This office in various prior opinions has held that a treasurer would violate the law should he certify on the list required by § 24-120 of the Code the names of those persons whose poll taxes have not been paid personally or by duly authorized agent. If the books in the treasurer's office show that the poll taxes of a person have been paid there would be a presumption that such person's name should be placed on the certified list. However, this presumption may be overcome by conclusive evidence that the tax was paid by someother person without being authorized by the taxpayer to make such payment.

ELECTIONS—Poll Taxes—Requirements as to Person Moving Into the State. F-100c (241)

April 27, 1956.

HONORABLE ROBERT S. WAHAB
Commonwealth's Attorney
Princess Anne County

This is in reply to your letter of April 25, 1956, in which you present the following question:

> "In March, 1956, the party completed the residence requirements, having first come to the State of Virginia to make his home in the City of Virginia Beach in March of 1955. The problem involves the poll tax. Can the party register, pay his poll tax now, and be eligible to vote in City's General Election on June 12, 1956?"

The person in question will be entitled to vote in the June election provided he registers prior to the time the registration books are closed for such election. Under § 24-74 of the Code the registration books will close after the regular registration day provided for in said section.

No poll tax was assessable against this person for the year 1955 and, hence, he will not be required to pay any such tax for that year, and therefore, the six months' requirement does not apply. This person may, if he desires, pay his 1956 poll tax in advance before registering. However, in accordance with our prior rulings, he may register without the payment of a poll tax and, under § 21 of the Constitution, may vote during all elections held this year, because there were no taxes assessed or assessable against him for either of the three years next preceding.

This is not to be confused with a person who became twenty-one years of age after January 1, 1955, and prior to January 2, 1956. Such person, under § 20 of the Constitution, would be required to pay the poll tax assessable against him for 1956 in advance in order to register.

ELECTIONS—Qualification of Voters—Referendum Held in January. F-100 (109)

December 6, 1955.

HONORABLE LEVIN NOCK DAVIS, *Secretary*
State Board of Elections

In reply to your letter of December 5, 1955 I set forth below the pattern for

to public inspection in the Clerk's Office satisfies Section 24-113 to the extent that the public can be refused inspection of the registration books in the Registrar's Office."

Section 24-113 of the Code of Virginia reads as follows:

"Registration books shall be kept and preserved by the registrar and shall at all times be open to public inspection."

In my opinion this section of the Code contemplates and requires the official registration books kept by the registrar to be open to public inspection. I do not feel that this requirement is met by having a duplicate registration book kept by some other officer open to public inspection.

ELECTIONS—Registration—Registrar May Require Person to State His Race. F-100d (284)

May 31, 1956.

HONORABLE ROBERT C. FITZGERALD
Commonwealth's Attorney
Fairfax County

This is in reply to your letter of May 29, 1956, which reads as follows:

"The Registrar's office of this County has had a person make application for registration to vote who refuses to fill out the item on the application form concerning his race. His contention is that his race has no bearing whatsoever on his qualifications as an elector.

"I realize the statutes call for the poll tax lists to be separated as to race but I have been unable to find a statutory requirement requiring the registration books to be kept separate as to race and Section 24-68 of the Code does not require the race to be stated on the application for registration. In using the registration books with the poll tax lists it is convenient and expeditious to have the race of a person stated in his registration.

"Therefore, I would like your opinion as to whether there is statutory authority that I have overlooked whereby an applicant for registration can be required to state his race before such person is registered."

Section 24-28 of the Code, you will note, provides that:

"The list of voters, white and colored, men and women, shall be kept and arranged in separate books or records, and shall indicate by appropriate designation the voters who are on the permanent rolls."

Even though § 24-68 of the Code does not require a voter to state his race in the application for registration, the registrar would, in my opinion, have the right to require the applicant to state his race so that his name may be recorded in the proper book.

Section 24-118 contains a similar requirement where serial numbered cards or loose leaf binders are used in lieu of registration books.

ELECTIONS—Registration—Section 20 of Constitution Governs Qualifications. F-100d (39)

September 2, 1955.

HONORABLE WILLIAM F. WATKINS, *Secretary*
Electoral Board for Prince Edward County

I have your letter of August 30, in which you refer to an opinion of this office under date of March 21, 1952, relative to the qualifications for registrations

in cooperation with other civic groups on school property for the benefit of a school constitute school activities within the meaning of Section 4-78.1.

In this connection, I am of the opinion that enterprises of the type you mention would not constitute school activities merely because they are promoted for the benefit of a school. I think there must be some element of participation or approbation on the part of the school authorities in such ventures before they may be regarded as school activities. In this respect, I understand that the Parent-Teachers Association is a voluntary assistance organization formed to cooperate with and aid teachers and school officials in furthering programs and projects beneficial to the various schools. While the question is not entirely free from doubt, I am constrained to believe that an enterprise sponsored by such an organization, conducted on school property with the consent of school officials and promoted solely for the benefit of a school would constitute a school activity within the meaning of Section 4-78.1.

SEGREGATION—At Public Athletic Contests. F-354 (159)

February 9, 1956.

HONORABLE SAMUEL E. POPE
House of Delegates

This will acknowledge receipt of your letter of February 7, from which I quote as follows:

> "Please advise what effect the ruling on May 17, 1954, of the Supreme Court of the United States in the school cases, on the State laws requiring segregation of spectators at public athletic contest."

The May 17, 1954, decision of the Supreme Court of the United States rendered in the school segregation cases does not embrace the matter of the segregation of spectators at public athletic contests, or the segregation of participants in such contests. The decision applied to provisions of the Fourteenth Amendment to the United States Constitution, which amendment is operative on State action in appropriate cases. In so far as it has been construed and applied by the Supreme Court, the amendment does not embrace individual or private action as distinguished from the action of a governmental agency.

By refusing to review and, in effect affirming the decisions of lower federal courts, the Supreme Court has applied the Fourteenth Amendment to the separation of the races in publicly owned and operated facilities, such as golf courses, swimming pools, and parks. Here again it is the publicly owned and operated phases of the matter which have brought these cases within the ambit of the Fourteenth Amendment.

I find no statute in Virginia dealing with the segregation of spectators at public athletic contests, or relating to segregation of participants in such contests.

Sections 18-27 and 18-28 of the Code of Virginia would, in my opinion, apply to an assemblage of the public as spectators at athletic contests when such contests are promoted, staged, or held under private operation and direction. These statutes require that the races be separated, and that seats or space be designated separately for the members of each race. A violation of these statutes is made a misdemeanor. The failure of a member of the assemblage to obey the requests of a manager or usher to occupy seats so designated would constitute a misdemeanor. As far as I am advised, such statutes have not been impaired or negated by federal decision. Of course, it must be anticipated that they will be subject to attack.

The statutes herein pointed out would not, in my opinion, embrace the matter of the segregation of participants in an athletic contest, such as racially mixed members of a ball club, or other contest involving matches between teams or even two or more participants. Since these participants would perform in most instances under private contract or arrangements of employment, it is questionable in my

mind as to whether or not the State could prevent or penalize such participants, or their managers or sponsors.

You are, of course, aware of the fact that intercollegiate athletic contests have recently been held in Virginia under the auspices of State supported institutions, with athletes participating on a racially mixed basis. I am informed also that professional football and baseball games have been conducted under similar circumstances. These contests were not, in my judgment, violative of any statutory provision of Virginia law.

SEGREGATION—Effect of Resolution as to High School Athletics. F-259 (209)

March 26, 1956.

HONORABLE WADE S. COATES
Commonwealth's Attorney of Tazewell County

This is in reply to your letter of March 22, 1956, which reads as follows:

> "Mr. Eugene Ross, Principal of Tazewell High School informs me that in 1955 Tazewell High School entered into contracts with two McDowell County, West Virginia High Schools for football games on a home and home basis. One of these contests is scheduled to be played in Tazewell County and the other in McDowell County. It is probable that integration will be forced on McDowell County teams. The same situation exists as to the other schools in this County. Please advise as to the proper course for the school authorities to follow in this matter."

The General Assembly of Virginia considered this matter at its recent session with the result that the enclosed House Joint Resolution No. 97 was adopted.

The resolution is not a legislative enactment having the force and effect of law. The General Assembly, however, has exercised its traditional right to declare the policy of the State with respect to the separation of white and colored children in public free school athletic contests. The elected representatives of the people having so resolved, I feel that it is the duty of our public school officials to observe the policy established by the Resolution.

In view of the fact that Virginia and a number of her sister states are endeavoring to protect and defend their rights against the unwarranted encroachments of the Federal Government it would, in my judgment, ill behoove local administrative officials to pursue a course of action in violation of the declared public policy of the State.

SEGREGATION—Interposition—Legal Effect of Resolution. F-1a (163)

February 14, 1956.

HONORABLE ROBERT WHITEHEAD
House of Delegates

This is in response to your letter of February 6 requesting my opinion on the scope, effect, and legal efficacy of Senate Resolution No. 3, adopted February 1 by both Houses of the General Assembly of Virginia.

You also request my opinion on the status of Section 140 of the Virginia Constitution, which provides that "White and colored children shall not be taught in the same school."

The seven questions propounded by you will be treated in the order stated. They are as follows:

"1. Until there is settled the 'issue of contested power' referred to in the resolution, is the decision of the Supreme Court of the United States in the Prince Edward County School case the law in Virginia?"

Under our constitutionally ordained system of government, forming as it does an "indissoluble union of indestructible states," I draw and adhere to a basic and fundamental distinction between that which issues from and under the authority of the Constitution and that which is created through usurped power under the pretended color of but ultra vires of the Constitution. That authorized by the Constitution is de jure law and binding. That not authorized is de facto law and binding only through the sheer force of power. As to the latter, this is true solely because there is no method or procedure known to our system of government whereby an appeal can be taken by the parties aggrieved which would stay the binding effect or hold the decision in abeyance pending determination of the issues raised.

Law, whether statutory or decisional, as conceived and instituted under our federal system of conferred and limited powers must emanate from, find lodgment in, and be supported by a basic constitutional source. The Federal Government is a creature of the creating states, endowed with no powers beyond those voluntarily conferred by compact mutual between its creators. It cannot create additional powers save through violation of the organic law.

The decision to which you refer is devoid of constitutional derivation or support. As hereinabove pointed out, it is presently binding by virtue of superior force shackled upon a sovereign state through usurpation of authority and arrogation of power transcending the Constitution of the United States, and in abnegation of every apposite legal precedent known to American Jurisprudence. It violates the amendatory processes of the Constitution prescribed by Article V thereof in that it, in effect, amends the XIV Amendment and, pro tanto, repeals the Xth.

The elective legislative representatives of a sovereign people have raised an "issue of contested power" arising as the result of "a deliberate, palpable and dangerous" usurpation of the amendatory power explicitly embodied in the Constitution. Pending determination of the issue in the manner prescribed by the Constitution the sovereignty of the State is interposed to the extent of a pledge of "firm intention to take all appropriate measures honorably, legally, and constitutionally available" to resist an encroachment violative of the Constitution and therefore illegal.

The resolution is not one of nullification. Its plain terms negate the concept of nullification. The Court embraced that doctrine in its most far-reaching implications when it nullified basic provisions of the Constitution of the United States. The resolution is one of interposition with resort to constitutional processes for relief.

"2. Does this resolution operate to legally suspend, in whole or in part, within Virginia the enforcement of the said decision, and can it be used in the Federal District Court of Virginia in which the Prince Edward case is now pending as a defense?"

The resolution does not purport to operate as a suspension of or supersedeas to the decision as it relates to the defendants in the Federal District Court.

The resolution cannot be asserted as a defense in the pending case. The District Court is bound by the mandate which issued on May 31, 1955. The decision of the Supreme Court and its mandate is the law of the case as far as the District Court is concerned. However, the resolution is an unequivocal epitome of Virginia's unyielding devotion and loyalty to the perpetuation of that constitutional system of government which, more than any other State, she molded and launched in the formation of the Union and the building of an enduring foundation to support the superstructure of the Nation. It is predicated on principles woven ineradicably into the very fabric of the nation's life. It represents the overwhelming solidarity of a great people in their attachment of heart, mind, and conscience to deep rooted convictions which they cannot compromise. It is indisputable evidence of the supreme gravity of the manifold problems created by the Supreme Court far transceding considerations of race.

While this resolution cannot be asserted as a defense, its solemnity, gravity, and

patriotism of purpose should give pause and invoke deliberate consideration at the hands of every branch of the Federal Government dedicated to a Union indissoluble composed of indestructible states.

> "3. What duty, if any, does this resolution impose upon the officials of Virginia and the local officials, especially the local school boards and the division superintendents of schools?"

The maintenance of the public school system is a joint State and local responsibility, both under the Constitution and by statutes. It is the primary responsibility and well within the province of the General Assembly to establish policy, consistent with the Constitution, relating to same, and to change that policy when it deems the public interest so requires.

The resolution is not a legislative enactment having the force and effect of law. It is a solemn and deliberate declaration of rights impelled by the sacred obligation of duty, asserting and interposing the sovereignty of the State to arrest illegal encroachments and to preserve "the authorities, rights and liberties" which Virginia has never surrendered, and which she cannot in honor and duty surrender save only in the manner prescribed by the Federal Constitution. Deprivation or loss of these rights can be brought about in no other manner except through usurpation of authority and arrogation of power by the Federal Government, or by abject surrender or acquiescence by this State or its cohesive governmental units. The resolution manifests a firm determination to resort to constitutional means, thereby rejecting surrender or acquiescence. Representing the all but unanimous resolve of the elected representatives of the people, it imposes upon all officials, State and local, the duty to observe "all appropriate measures honorably, legally and constitutionally available to resist this illegal encroachment upon the sovereign powers of this State."

> "4. Is Section 140 of the Virginia Constitution (prohibiting the teaching together of white and colored children in the public schools of Virginia) still law in Virginia?"

On May 31, 1955, the Supreme Court rendered its so-called implementation decision and remanded the cause to the District Court.

The opinion of May 17, 1954, declared "that racial discrimination in public education is unconstitutional." The Court further declared that separation of the races as alleged was per se discrimination.

The opinion of May 31 incorporated by reference the opinion of May 17 and declared: "All provisions of Federal, state or local law requiring or permitting such discrimination must yield to this principle."

The order entered by the District Court, in response to the mandate, on July 18, 1955, adjudged, ordered, declared and decreed:

"That insofar as they direct that white and colored persons, solely on account of their race or color, shall not be taught in the same schools, neither said section 140, Constitution of Virginia of 1902, as amended, nor said section 22-221, Code of Virginia of 1950, as amended, shall be enforced by the defendants, because the provisions of said sections are in violation of the clauses of the Fourteenth Amendment to the Constitution of the United States forbidding any State to deny to any person within its jurisdiction the equal protection of the laws."

While by force of power section 140 of the Constitution is declared by the Federal Courts to be unenforceable, yet, without any constitutional provision relating to the subject of mixed schools, there is, of course, no requirement that integrated schools be operated by any political subdivision of the State.

> "5. Aside from being a stern protest and a memorial for the adoption of an amendment to the Federal Constitution, what effect in law, if any, does the said resolution have on the legal situation in Virginia presented by said decision?"

The substance of this question is answered under 1 and 2 above.

The implications of this question tend to minimize the purport and gravity of the resolution. I do not subscribe to these implications.

The resolution is far more than a "stern protest and a memorial." It does not seek to accomplish that which is merely desirable. It does not inveigh against an erroneous action. It calls for no redress for any imposition laid under express or implied constitutional sanction. These and kindred situations would comport with the office and function of a resolution of protest (stern or not) and a memorial to the legislative or executive branch of the Federal Government to take corrective action by establishing or changing a policy or by enacting, repealing or amending substantive laws.

The resolution under consideration is a declaration of right invoking and interposing the sovereignty of the State against the exercise of powers seized in defiance of the creating compact; powers never surrendered by the remotest implication but expressly reserved and vitally essential to the separate and independent autonomy of the States. It is an appeal of last resort against a deliberate and palpable encroachment transgressing the Constitution.

> "6. Is it within the powers of (a) the General Assembly of Virginia by resolution, or (b) the people of Virginia in convention assembled by ordinance, to legally nullify, in whole or in part, the said decision, or to thereby suspend for any period of time its enforcement in Virginia?"

(a) No. (b) No.

> "7. In the report of the Gray Commission there is no reference to 'state interposition' or 'nullification'. Was this doctrine presented to the Commission by your office, or by any other source to your knowledge, as a possible defense to the enforcement of said decision in Virginia or as a possible solution of the problem created by said decision?"

No. As far as my knowledge goes this doctrine was not considered by the commission.

SEGREGATION—School Cases—Effect of Various Resolutions. F-2a (172)

February 27, 1956.

HONORABLE TED DALTON
HONORABLE ARMISTEAD L. BOOTHE
Senate Chamber

I am in receipt of your letter of February 21, which I quote as follows:

> "As you probably know, there have been introduced in the Senate two bills, Senate Bills Nos. 323 and 324, which deal with the assignment of pupils in public schools, a system of administrative appeals, payment of expenses of litigation and placement of teachers.
>
> "House Joint Resolution No. 74, introduced in the House of Delegates, contains a declaration of policy that Virginia schools will be kept segregated during the session of 1956-57.
>
> "In connection with pending and prospective litigation involving the public schools and to which the State of Virginia and its localities are, or may be, parties, we do respectfully ask you the following questions:
>
> "1. Can House Joint Resolution No. 74 be used as a defense?
>
> "2. Will the enactment of legislation of the general nature of Senate Bill No. 323 and No. 324 be of aid or assistance to the defense?
>
> "3. If such legislation would be helpful, should it be enacted before the parties next appear in court?
>
> "4. According to your best estimate, when will this next appearance occur?"

1. As to prospective litigation, no responsible lawyer should hazard a guess as to what may or may not be used as a defense in any case prior to the issues therein being framed and joined. This would, in the very nature of things, be determined in the light of the relevant factual and legal aspects presented. The present Attorney General may not conduct or be associated in the conduct of the defense of litigation which is not now pending. The danger of rendering a disservice to the embarrassment of the defense in future cases convinces me that I should not give any other answer to this phase of your question.

As to the litigation now pending in the United States District Court for the Eastern District of Virginia (Richmond Division), I cannot conceive how this Resolution of itself, unaccompanied by appropriate and prior substantive legislative enactments, can be used as a defense or bear any proper relation to such defense. I am convinced that the Resolution standing alone would prove to be a ready and dangerous weapon in the hands of the opposition.

2. As you well know, the decision on the pseudo merits has been rendered adversely to the defendants and is final.

"Aid or assistance to the defense" must be considered and treated by counsel for the State under the guidance of Virginia's avowed purpose to evolve a solution within the framework of law designed to save, as far as possible, the public school system from that serious impairment or destruction which mixing of the races would surely bring.

While these bills are not as broad in scope and do not envision various facets of correlative legislation as those proposed by the Commission on Public Education (Senate Document No. 1, Extra Session, 1955), they do, as far as they go, embrace vital and salient features of the recommendations made by the Commission.

As you know, I worked in an advisory capacity with the Commission and its able counsel. Neither counsel for the Commission nor I would have advised enactment of legislation as limited in vision and scope as that which you propose.

The defense to be conducted hereafter must be one against the crippling and disastrous effects of the decision of the Federal Supreme Court. Any legislation falling short of affording a reasonable hope of attaining that imperative end cannot, in my judgment, be said to be "of aid or assistance to the defense." It is my opinion that your proposal as embodied within the scope of these bills does not measure up to this requirement.

Assignment of pupils, administrative hearings with appeal resort to state courts, and placement of teachers are vitally essential in the effort to evolve a solution, but without the complement of a grant-in-aid program, as well as assimilation with and the conformation of existing statutes, the legislation which you sponsor falls far short of providing what I conceive to be "aid or assistance to the defense," assuming, as I do, that such defense is to be directed at minimizing the disastrous impact of the Court's decision on the public school system of Virginia.

3. Since I cannot say that the limited legislation which you propose would be "of aid or assistance to the defense," as that term applies to the necessities of the situation which confronts this State, this question is moot.

4. I have no way of forming any estimate as to when the N. A. A. C. P. will move in the pending case. This will be dictated from headquarters in New York City. I prefer not to hazard a guess as some might take it as a suggestion.

SHERIFFS—Contracts with County—May Not Contract for Janitor Service, Etc. F-136 (125)

December 19, 1955.

HONORABLE SAM L. HARDY
Commonwealth's Attorney for Bland County

I acknowledge receipt of your letter of December 15, 1955, which reads as follows:

"Some question has arisen as to the legality of the Sheriff or his deputy

This section must be considered along with § 22-278 which relates to the qualifications of bus drivers, and is as follows:

> "No person shall drive any school bus upon a highway in this State unless such person has had a reasonable amount of experience in driving motor vehicles, and shall have satisfactorily passed a rigid examination pertaining to the ability of such person to operate a school bus with safety to the school children thereon and to other persons using the highways. The Division of Motor Vehicles of this State shall adopt such rules and regulations as may be necessary and proper to provide for the examination of persons desiring to drive such buses in this State, and for the granting of permits to qualified applicants."

In view of this latter section, I am of the opinion that the State Board of Education does not have the authority to judge or pass upon the driving qualifications of persons employed by local school authorities to drive school buses. By statute this power is vested exclusively in the Division of Motor Vehicles, which is authorized and is under the duty to pass upon the qualifications of all persons applying for permits to drive motor vehicles.

In so far as the regulation adopted by the State Board of Education attempts to assume the responsibility placed upon the Division of Motor Vehicles for the examination of applicants and the granting of permits to persons desiring to drive school buses, such regulation is void.

SCHOOLS—Cherokee Indians—Classified as White. F. 254 (78)

September 11, 1956.

HONORABLE A. DUNSTON JOHNSON
Commonwealth's Attorney
Isle of Wight County

This is in reply to your letter of September 6, 1956, in which you request my opinion as to whether or not Cherokee Indian children residing in your county should be enrolled in the white schools or the colored schools of the county. You state that the birth certificates of these children show that they are Cherokee Indians.

If these children have a traceable amount of Negro blood they are to be clasified as colored children. However, if they have no traceable amount of Negro blood they are not colored children and, therefore, would be entitled to attend the white schools.

SCHOOLS—Contracts with Teachers—Not Required to Have 30 Day Termination Clause—Funds Cut Off—Effect of—Funds May Be Paid to Unemployed Teachers. F-203 (216)

January 30, 1957.

HONORABLE A. ERWIN HACKLEY
Commonwealth's Attorney for Page County

This is in reply to your letter of January 24, 1957, in which you request my opinion as to whether or not a local school board is required by State law to include a thirty-day termination clause in their contracts with teachers. You ask also as to whether or not State funds would be paid to the locality for at least a period of one year if schools were closed because of integration.

There is no provision in the laws of the State of Virginia which make it mandatory that a local school board include a thirty-day termination clause in their contract with teachers. Should schools in a county be closed because of integration, then State funds which would have gone to that county for the

SCHOOLS—Workmen's Compensation Act—Board Is Employer Under. (346)

June 4, 1957.

HONORABLE CURTIS A. SUMPTER
Commonwealth's Attorney for Floyd County

This is in reply to your letter of May 29, 1957, in which you request my opinion as to whether or not the County School Board would be liable for injuries that are sustained by an employee of the Board engaged in the construction of a school building.

I am of the opinion that the County School Board comes within the definition of an employer as found in Title 65 of the Code of Virginia, the Virginia Workmen's Compensation Act. If such employee is injured while engaged in this construction, the School Board would be liable for workmen's compensation as provided for in the Act.

SEGREGATION—Political Forum Held at Public School Open to Public Is Public Assemblage. F-354 (120)

October 16, 1956.

HONORABLE WILLIAM J. HASSAN
Commonwealth's Attorney
Arlington County

This is in reply to your letter of October 9, 1956, which reads, in part, as follows:

> "Several citizens of Arlington County have inquired as to the legality of certain activities connected with the current political campaign. They have requested that I seek an opinion from the Attorney General in connection with this problem, which opinion I am happy to request.
>
> "In Arlington County, the League of Women Voters for the past several years, has sponsored a program which has been known as 'Neighborhood Candidates Meetings.' The objective of the League of Women Voters was to consolidate the number of appearances a candidate would have to make at all of our citizens' associations into six or seven area meetings. The League of Women Voters invited citizens' associations and other organizations to participate in this program by making donations to finance advertising, printing, and the mailing of questionnaires to candidates and material to the participating organization, and for the hire of halls in which the meetings are held.
>
> "At the present time, all meetings are held in public school buildings. It is anticipated that at some of these meetings, as in the past, there will be some colored attendance, and the question involved is whether Title 18, Sections 327 and 328 require the segregation of the races at such a meeting. I have given them my opinion based upon a series of segregation cases concerned with sechools in Arlington in recent years, and upon the opinion of the Three-Judge Court of the Eastern District of Virginia, in the case of *NAACP* vs. *The City of Richmond*, decided September 24, 1951.
>
> "As I see the question, it is whether the phrase 'public assemblage' applies to this type of meeting. The meeting is a presentation by each of two candidates of a main speech of 15 minutes and a rebuttal of 5 minutes, and a question period. The meetings are for the purpose of making voters of an area familiar with the candidates, their qualifications and their platforms and are, of course, open to all who seek to attend.
>
> "It is my opinion that such a meeting does not require segregation of the races as provided in Title 18, Section 327. However, it is your

opinion that is desired, and I would appreciate it if you gave such an opinion without regard to anything I may have said in connection with my opinion."

Section 18-327 of the Code of Virginia is as follows:

"Every person, firm, institution or corporation operating, maintaining, keeping, conducting, sponsoring or permitting any public hall, theatre, opera house, motion picture show or any place of public entertainment or public assemblage which is attended by both white and colored persons shall separate the white race and the colored race and shall set apart and designate in each such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage certain seats therein to be occupied by white persons and a portion thereof, or certain seats therein, to be occupied by colored persons and any such person, firm, institution or corporation that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense."

Based upon the facts presented by you, I am of the opinion that the type of meeting described is a public assemblage. It is, therefore, the duty of the local school board as a condition precedent to granting a permit for such meetings, to require that, when such meetings are attended by both white and colored persons, they shall be seated in spaces or seats designated for members of the respective races. The responsibility for the designation of such spaces or seats is upon the school board that has the control of the building in which the meeting is to take place. In the event any such public assemblage is held in a building by permission of a private owner, the same responsibility rests upon such owner.

Persons who attend such meetings and refuse to take the space assigned for members of their race would be subject to the enforcement provisions of § 18-328 of the Code.

SHERIFFS—Fees, Forthcoming, and in Indemnifying Bonds—For Making Executions, Levies, and Attachments. F-136 (264)

March 14, 1957.

HONORABLE J. GORDON BENNETT
Auditor of Public Accounts

This is in reply to your letter of February 25, 1957, in which you request my opinion as to the amount of sheriff's fees and commissions which the sheriff should collect in several specified types of transactions. Your first question concerns the amount of the sheriff's fee for an attachment.

Section 14-116(18) of the Code provides that the sheriff's fee shall be $1.50 for levying an attachment. If, after the attachment is levied, the defendant and plaintiff settle the claim between themselves, I am of the opinion that § 14-106 of the Code is applicable. That section provides that where, after distraining or levying on tangible property, the officer neither sells nor receives payment and either takes no forthcoming bond or takes one which is not forfeited, he shall, in addition to the $1.50 levy fee, have a fee of $3.00, unless this is more than one-half of what his commission would have amounted to if he had received payment, in which case he shall have a fee of at least $1.00 and so much more as is necessary to make such half. If a sale is made under attachment, I am of the opinion that the sheriff is entitled to the commission provided for in § 14-120 of the Code—that is 10% of the first $100.00, 5% on the next $400.00 and 2% on the residue.

In answer to your next question concerning the time of payment of the sheriff's fees for execution of fieri facias, this office rendered an opinion on June 22, 1944, to the Sheriff of Culpeper County (Opinions of the Attorney General 1943-

organized and existing by virtue of order of the Circuit Court of Russell County, Virginia, intends to hold its municipal election on June 14, 1966.

"Two persons have filed their Notice of Candidacy for Mayor with the Clerk of the Circuit Court of Russell County, Virginia, and there has arisen a question as to the qualification of one of the said candidates.

"There is only one precinct embraced within the corporate limits of the Town of Honaker.

"Assuming that the candidate in question has been a resident of Honaker, Virginia, for a period of thirty days next preceding the election but has not been a resident of said town for a period of six months next preceding the said election, would he be eligible to run for the said office of Mayor and be entitled to have his name placed upon the official ballot?"

Under Section 18 of the Constitution and § 24-17 of the Code of Virginia, a person must be a resident of a town for at least six months in order to be qualified to vote in an election for town officers. Under § 24-132 of the Code, 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 ballot provided for the election, unless he is a party primary nominee.

If the person referred to in your letter will have been a resident of the town for six months on the day of the election in which he is a candidate, it will be proper for the electoral board to place his name on the ballot.

ELECTIONS—Capitation Tax—Must be paid in order to vote in State and local elections.

October 11, 1965

HONORABLE GEORGE W. TITUS
Treasurer of Loudoun County

This is in reply to your letter of October 8, 1965, which reads as follows:

"Please furnish a decision on the following:

"Since the deadline for the payment of capitation taxes has passed, we are having requests to pay capitation taxes for next year's elections. According to the code these taxpayers are required to pay all taxes assessable against them. If this is true please advise what action should be taken against the taxpayers who paid this current year's capitation taxes and expect to vote this year and next year on this one payment. Some of these taxpayers have been residents of the county for more than ten years. If some people are required to pay three years then this rule should apply to every one. I realize that next year's election is for Federal officers but there is a possibility of a county election."

Section 10(d) of the Voting Rights Act of 1965 provides as follows:

"During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to

vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant."

In our opinion, the provisions requiring the payment of the current year's poll tax 45 days before the election applies only to the year in which a person first registers to vote. Those persons who took advantage of this provision during the year 1965 will not be entitled to pay the tax for the current year only in 1966 or any subsequent year and thereby qualify to vote. In my opinion, the provisions of the State Constitution and the statutes will apply in subsequent years to these persons unaffected by the provisions of the Voting Rights Act of 1965. In other words, if a person qualified to vote during the year 1965 by the payment of 1965 tax only but was assessable under State law for the years 1963 and 1964, such person, in order to vote in 1966, will be required to pay the 1963 and 1964 poll taxes six months prior to the election in order to vote in State and local elections.

ELECTIONS—Capitation Tax—Registration and payment of tax requirements to vote in councilmanic election of Norfolk.

November 29, 1965

HONORABLE HENRY E. HOWELL, JR.
Member, House of Delegates

This is in reply to your letter of November 23, 1965, in which you present the following questions, which I shall answer in the order stated:

"(1) What is the latest date a citizen of Norfolk, who registered to vote in a state election prior to the General Election of 1965, may pay his or her poll tax in order to be eligible to vote in the Councilmanic election to be held June 14, 1966, at which time the citizens of Norfolk will elect a majority of the City Council?

"(2) How many years poll tax does such an individual have to pay in order to vote in said election?

"(3) Does a citizen who registered for the first time to vote in the November 1965 General Election for Governor and paid his or her poll tax for the year 1965 within the forty-five (45) days provision of the Voting Rights Act of 1965 have to pay any further poll tax in order to vote in the June Councilmanic election? If so, how many years tax does he or she have to pay and when is the payment deadline?

"(4) What is the deadline for one who will be voting for the first time in the 1966 local elections?"

(1) Section 21 of the Constitution and § 24-17 of the Code are applicable. Under these provisions the poll tax must be paid at least six months prior to the election which, in this instance, will be December 14, 1965.

(2) The above constitutional and statutory provisions require the payment of

all State poll taxes assessed or assessable against the voters for the three years next preceding the year in which the election is held. In this instance, the three years next preceding are 1963, 1964 and 1965.

Chapter 2.1 of Title 24 of the Code and Article XVII of the Virginia Constitution relate to voting qualifications of persons in active service as members of the armed forces of the United States. These persons are exempt from the payment of poll tax while in such service. This exemption also applies to a person discharged from active service in the armed forces of the United States on or after the first day of the calendar year preceding the year in which the election occurs, provided such discharge is not dishonorable and, provided further, that such person is registered and otherwise qualified to vote.

A person who became 21 years of age after January 1, 1965, is not assessable for any poll tax and, therefore, may register and vote in said election without the payment of such tax.

(3) In my opinion, if a citizen who registered for the first time to vote in the November 1965 general election took advantage of the provisions of Section 10(d) of the Voting Rights Act of 1965 by paying the 1965 poll tax forty-five days prior to the election, such person, in order to qualify to vote, under Virginia law, in the election to be held on June 14, 1966, must pay the poll tax assessed or assessable against him for the years 1963 and 1964 and such payment must be made not later than December 14, 1965.

(4) Persons who have never previously registered and who desire to take advantage of the provisions of Section 10(d) of the Voting Rights Act of 1965 may pay the 1966 poll tax at least forty-five days prior to June 14, 1966, and may register thirty days prior to the election. The deadline for the payment of 1966 poll tax will be April 30, 1966.

ELECTIONS—Capitation Tax—Treasurers required to furnish list of persons who have paid.

August 20, 1965

HONORABLE J. H. JOHNSON
Treasurer of the City of Roanoke

This is in reply to your letter of August 19, 1965, which reads as follows:

> "Please be kind enough to advise me at your earliest convenience about the new Federal Law recently passed with respect to changes in the voting laws, what effect it will have on the operation of my office and what changes will be required, if any?
>
> "Under the old law, we have prepared a 1965 Capitation Tax Voters List, listing the names of all persons who paid three years poll taxes, 1962-1963-1964, prior to May 1, 1965.
>
> "What more shall be expected of me to comply with the changes made in the voting laws passed by the United States Congress. A great many citizens are asking a lot of questions which I cannot answer."

There is no requirement in Virginia election laws that the treasurers of the various localities prepare a supplemental list of persons who have paid poll taxes for the year 1965. The only list that the treasurers are required to furnish is the list required under § 24-120 of the Code and Section 38 of the Constitution.

Persons who pay their poll taxes for 1965 and register will have to exhibit the tax receipt to the judges of election when they offer to vote.

ELECTIONS—Capitation Tax—When payment required.

August 25, 1965

HONORABLE J. H. JOHNSON
Treasurer of the City of Roanoke

This will acknowledge your letter of August 22, 1965, in which you present the following question:

> "Will any Virginia Citizen who was 21 years of age or older on January 1, 1965 and has not yet paid the required number of years capitation taxes under section 24-120 of the Code of Virginia, be able to pay *only* his 1964 State Capitation Tax on or before September 17, 1965, and register on or before October 1, 1965 and qualify to vote on November 2nd in both state and local elections?"

Your question, I assume, relates to a person who became twenty-one years of age after January 1, 1964. This person was not assessable for any poll tax for either of the three preceding years and, therefore, he may pay the 1965 State Capitation tax of $1.50 at any time before the registration books close for the 1965 election and register and vote in that election. If this person became twenty-one years of age prior to January 2, 1964, and has never registered, under the Federal Voting Rights Act of 1965 he may pay to the treasurer not later than September 18, 1965, the $1.50 poll tax for 1965 and be qualified to offer to register not later than the date the registration books close this year. The last day for registration is October 2nd and not October 1st, as stated in your letter.

If a person became twenty-one on January 2, 1965, or at any time thereafter and not later than November 2, 1965, he can register and vote in the November election without the payment of any poll tax.

You will note from the above that the federal voting law only affects the person who became twenty-one years of age prior to January 2, 1964. Persons who became twenty-one years of age on January 2, 1964, or since that time, may qualify to vote under State law without regard to the federal statute.

ELECTIONS—Capitation Tax Lists—No longer required.

May 4, 1966

HONORABLE WALTER B. GENTRY, Treasurer
City of Richmond

This is in reply to your letter of May 3, 1966, in which you refer to a bulletin issued by Honorable Levin Nock Davis, Secretary of the State Board of Elections, in which he states:

> "(3) All of the provisions of the Virginia Law requiring local officials to prepare, post and furnish a certified list of poll tax payments are no longer of any practical use, and the officials *need not comply* with these provisions."

You are advised that this office is in accord with the above statement.

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for or against any candidate for office. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty nor more than five hundred dollars and conviction shall disqualify such person from voting in this State for five years thereafter."

This section is for the purpose of preventing the buying and selling of votes, or the offer to buy or sell the same. This section, in my opinion, does not prohibit a candidate in a primary election from employing paid workers at the polls on election day. The workers, of course, are prevented by this section from offering any money, liquor, or anything of value to a voter for the purpose of influencing his vote.

ELECTIONS—Registration and Payment of Capitation Taxes, as affected by Voting Rights Act

December 3, 1965

MRS. NELL C. IRVIN
Central Registrar for the City of Roanoke

This is in reply to your letter of December 2, 1965, which is, in part, as follows, and which I have numbered for the purpose of reference:

"(1) In Section 3 of this letter (referring to letter to Hon. H. H. Howell, Jr., dated November 29, 1965, copy of which was sent to Mrs. Irvin by Levin Nock Davis), people who registered for the November, 1965 election were allowed to register with 1965 poll tax paid in advance as authorized in a letter from Mr. Levin Nock Davis to all Registrars on August 5, 1965.

"(2) In Section 4 of this letter, persons who have never previously registered may register by paying 1966 poll tax in advance by April 30, 1966.

"(3) It seems the problem is what to do with people registering between the November election and January 1, 1966 since this tax is not assessable until this date according to our City Treasurer, and according to our City Treasurer, he will not accept a 1966 poll tax until after January 1.

"(4) Since we were authorized August 5 to register people with one year's poll tax of 1965 and have been registering them since the November election to January 1 with the same 1965 tax, what disposition should we make of these people since the 1966 poll tax will not be assessed until the first of the year and we have had no instruction from the State Board of Elections to do otherwise.

"(5) The letter received from the State Board of Elections stated they could register with one year of tax and vote in the November election, which we understand. They did not have to pay back taxes for 1963 and 1964 to vote in the Gubernatorial election, and we do not understand why they would have to do this for a Council election.

"(6) We have registered people for the Federal election without paying any tax and were instructed by the State Board of Elections that these people could re-register for all elections by paying their 1965 poll tax and vote in the November election. Our letter from the State Board of Elections read:

"'Persons who registered last year for Federal Elections Only may re-register and pay the $1.50 tax by September 18,

as they are now registering for the first time for State elections.'

"We presume this is still in effect till the first of the year, at which time they will pay their 1966 poll tax in advance.

"(7) Will you kindly advise us of the procedure until the first of the year at which time we will register with the 1966 poll tax paid in advance."

(1) The persons who first registered for the November 1965 election were required to pay the 1965 tax forty-five days prior to the election. This payment of 1965 tax did not qualify these persons to vote in future elections. This class of persons may qualify to vote in the June 1966 city election by paying poll taxes assessed or assessible against them for 1963 and 1964—payment to be made not later than December 14, 1965.

(2) You have stated the matter correctly.

(3) and (4) There is no provision in the "Voting Rights Act of 1965" requiring the State to register persons who have never previously registered during the period between the November 1965 election and the end of the year 1965. We are not aware of any instructions from the office of Mr. Levin Nock Davis or from this office permitting such procedure.

After December 31, 1965, persons who have never registered at any time, under the Federal Act, may pay the 1966 poll tax forty-five days prior to the date of the general election in June and register to vote in that election. They cannot pay the 1966 poll tax prior to January 1, 1966, because none is assessable prior to that date.

By reference to my reply to question (1), you will note that those people who were registered by you after November 2, 1965, upon the payment of the 1965 taxes only (if they were assessed or assessable for the previous years of 1964 and 1963) must pay these taxes not later than December 14, 1965, in order to be qualified to vote in the election on June 14, 1966. These persons were not entitled to be registered by the payment of the 1965 tax only if they were assessed or assessable for the two prior years, or either of such years.

(5) I believe I have sufficiently covered this question.

(6) Your conclusion is not correct. Those people who registered for Federal elections only could register for "All Elections" during the period from November 3, 1965 to December 31, 1965, by paying the poll taxes assessed or assessable against them for the years 1963, 1964 and 1965. After December 31, 1965, they can register for "All Elections" by paying the 1966 tax not later than forty-five days prior to June 14, 1966 (April 30th), or by paying the poll taxes assessed or assessable for the years 1963, 1964 and 1965, whichever they may select.

(7) I believe I have answered this question in the comments above.

ELECTIONS—Registration and Payment of Capitation Taxes—Local voting eligibility for June 1966.

December 1, 1965

MR. L. RANDOLPH POARCH
General Registrar of Greensville County

This will acknowledge receipt of your letter of November 27, 1965. I enclose herewith copy of an opinion we furnished Mr. Henry E. Howell, Jr., member of the House of Delegates, Norfolk, Virginia, on November 29th, which relates to payment of tax for city and town elections to be held in June, 1966.

You will note from the enclosed opinion that under the Voting Rights Act

of 1965, a person, if not previously registered, may pay the tax for 1966 (which is assessable as of January 1, 1966) not later than April 30, 1966, and register thirty days before the June 14 election. Those who paid the 1965 tax only and have been registered by you prior to and since the November 1965 election will be required to pay the tax for 1963 and 1964—if such tax were assessed or assessable against them—in order to vote in the town elections in June 1966, and such tax will have to be paid not later than December 14, 1965.

ELECTIONS—Registration—Establishment of domicile.

June 8, 1966

MISS MARGARET F. RICE
Registrar, City of Fairfax

This will acknowledge receipt of your letter of June 6, 1966, which reads as follows:

> "The State Board of Elections has suggested that I get a ruling from you on two registrations:
> "Mr. and Mrs. Fant registered with my assistant on Saturday, June 4. On the registration form they have stated that they moved into Virginia in November, 1962. They have actually lived at this address since they returned from Germany, but have only claimed legal residence for tax purposes since August 1, 1965, the time of his retirement from service. They have also been voting absentee in Georgia. My problem concerns their eligibility to vote in the School Bond Referendum to be held on July 12. I know they are eligible to vote in the Democratic Primary, but would appreciate an answer regarding the referendum. I am enclosing copies of their registration forms."

Under Sections 26 and 35 of the Constitution of Virginia these persons, if they will have been actual residents of the State for a period of one year at the time of the general election in November, 1966, with the intention of abandoning their prior residence in the State of Georgia, are entitled to register and vote in the primary election to be held on July 12.

Whether or not these persons will be entitled to vote in the school bond referendum to be held on July 12 depends upon whether or not they abandoned their voting residence in Georgia at least one year prior to July 12. It is noted on the application of Col. Fant that he has been voting by absentee ballot in the State of Georgia, and I suppose this applies to his wife also. If they have voted by absentee ballot during the twelve months preceding July 12, 1966, I do not think they would be qualified to vote in the bond issue election.

ELECTIONS—Registration—Persons in line—Practice set forth.

May 17, 1966

MRS. LESLIE C. CURDTS
General Registrar, City of Norfolk

This will acknowledge receipt of your letter of May 16, 1966, which reads as follows:

> "We would appreciate a ruling on whether or not the Registrar is required to register every person who is standing in line at the closing hour, as posted in accordance with § 24-75 of the Code of Virginia, on

In my opinion the electoral board may unlock the machines whenever they conclude that such action is necessary in order to prepare them for the July primary.

With respect to your second question, there is no statute which prevents a person who is in the employment of the State of Virginia from running for an elective office.

ELECTIONS—Voting—Registration and payment of capitation tax—When required under Voting Rights Act.

August 20, 1965

MRS. INEZ J. ASHE, General Registrar
Electoral Board, City of Hampton

This will acknowledge receipt of your letter of August 19, 1965, in which you present the following question:

> "There is still one question on which I am confused. I am getting numerous calls from persons, already registered to vote in All Elections, who are delinquent one or more years in their Capitation Tax, most of these are the 1964 Tax, but some are for years even earlier than 1962. What is the status of these persons? Can they pay the current year, (1965) and vote this November or are they penalized and not permitted to vote for the nonpayment of the Capitation Tax on or before May 1, 1965?"

The Voting Rights Act of 1965 does not apply to persons who have heretofore registered to vote *in all elections*. These people will not be able to vote in the November election unless they have complied with the State law and the State constitutional provisions with respect to the payment of poll tax. The Federal Voting Rights Act applies only to people who are registering for the first time so as to vote in State and other local elections. Under the provisions of the Federal Act these people may pay their poll tax for the current year 1965 not later than September 18 and register not later than thirty days prior to the November 2nd election and, upon the presentation to the judges of election of their poll tax receipt showing the payment of the current year's tax by the above date, they will be entitled to vote.

Those persons who registered under the provisions of § 24-67.1 of the Code—that is, under the 24th Amendment to the Federal Constitution, those who are entitled to vote only in Federal elections—may only vote in the election this year if they pay the 1965 poll tax not later than September 18 and register under the provisions of § 24-67 of the Code. The registration under § 24-67.1 of the Code is not considered as a registration entitling a person to vote in any State or local election.

ELECTIONS—Voting Rights Act—Registration requirements under Section 10 of the Act.

August 20, 1965

HONORABLE R. S. BURRESS, JR.
Member, Senate of Virginia

This will acknowledge receipt of your letter of August 18, 1965, in which you present the following questions:

"(1) Do new registrants have to pay only one year's poll tax 45 days before the next General Election, on Nov. 2, 1965, and not the three-years requirement?

"(2) Is a person who is registered only for federal elections, and not registered for state elections, considered a new registrant under the state law?

"(3) If a registrant for federal elections only is considered a new registrant for state elections, does he have to pay one year or three years tax 45 days prior to the next General Election, which is on Nov. 2nd?"

Section 10 of the Voting Rights Act of 1965 directed the Attorney General of the United States to institute a suit attacking the constitutionality of the poll tax requirements of this and other States. Such a suit was filed. Subsection (d) of this section provides:

"(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political subdivision with respect to which determinations have been made under subsection 4(b) and a declaratory judgment has not been entered under subsection 4(a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant."

In my opinion, under this Federal Act, your question (1) must be answered in the affirmative, subject to the qualification that the one year's poll tax must be the tax for the year 1965 and must be paid not later than September 18 of this year.

Your question (2) is answered in the affirmative.

With respect to question (3), a person who has registered under the provisions of the 24th Amendment to the Federal Constitution and thus entitled to vote only in Federal elections, would be treated as a new registrant and come under the provisions of the answer to your question (1).

ELECTIONS—Voting Rights Act—When poll tax to be paid.

February 18, 1966

MR. PAUL C. KINCHLOE, Secretary
Electoral Board of Fairfax County

This is in reply to your letter of February 17, 1966, enclosing a memorandum from the State Board of Elections, in which you present the following questions, which I shall answer in the order presented:

"A. Is payment of the current year's poll tax at least forty-five days before the July 12, 1966 primary a prerequisite to *eligibility to register*

for all elections under the provisions of the Voting Rights Act prior to the closing of the registration books on June 11, 1966?

"If answer to "A" is "Yes"–

"B. Is May 28, 1966 the deadline date for payment of the 1966 poll tax *in order to register* before the primary?

"C. Will applicants whose 1966 poll tax is paid after May 28, 1966 be ineligible to register until after July 12, 1966?

"If answer to "A" is "No"–

"D. Should persons be registered through June 11, 1966, provided the 1966 poll tax has been paid when they apply for registration, regardless of the date of payment?

"D-1. If so, should the names of persons whose 1966 poll tax was paid after May 28, 1966, be placed in the registration books to be sent to the polls for the primary election of July 12, 1966?"

A. Under the Federal Voting Rights Act, a person who has never previously registered may pay his poll tax for the year 1966 not later than 45 days prior to the date of the November election and register thirty days before that election and then be entitled to vote in the general election. However, if he wishes to register to vote in all elections by the payment of the 1966 poll tax only and within sufficient time to qualify for voting in the primary election on July 12, he will, of course, have to pay the tax in time to be able to register thirty days before the primary election–that is, such payment must be made not later than June 11.

B. The deadline for the payment of 1966 taxes only for those persons who have never registered and who are taking advantage of the Federal Voting Rights Act by payment of the current year's tax if they wish to qualify and vote in the primary election, as pointed out in the answer to "A", would be the last day on which he could register in order to vote in the primary, that is, June 11, 1966. Those persons who have previously registered and wish to continue to be qualified to vote in all elections will have to pay their poll taxes for the three preceding years six months (not later than May 7, 1966) prior to the election, since the election this year will fall on November 8.

C. As stated in answer to the previous questions, a person may pay the 1966 poll tax on the day the registration books close for the July 12 primary and register on that day. Such tax does not have to be paid on May 28 or before that time. The forty-five day provision in the Federal Voting Rights Act is construed to relate to general elections and any person can vote in a primary who is qualified to vote in the general election for which the primary is being held.

D. The answer to this question is in the affirmative.

D-1. The answer to this question is as indicated in the answers to the previous questions that the person will have to pay the tax not later than June 11 and register not later than June 11.

It should be borne in mind with respect to the primary that only those persons who are qualified on that date to vote in the general election for which the primary is being held are entitled to vote in the primary.

MARRIAGE—Licenses—Serological test—Signature of physician required.

HEALTH—Marriage Licenses—Serological test statement—Signature of physician required.

January 31, 1968

HONORABLE RUDOLPH L. SHAVER
Clerk of the Circuit Court of Augusta County

I refer to your letter of January 19, 1968, in which you brought to my attention § 20-1 of the Code of Virginia which requires that a serological test statement, "signed by a physician," be furnished precedent to the issuance of a marriage license. You wish to know whether a rubber stamp facsimile signature on the form is a proper signature within the meaning of the statute.

A signature is defined by the Uniform Commercial Code, § 8.1-20(39), as being "any symbol adopted by a party with present intention to authenticate a writing," and several decisions on the validity of wills have recognized that the word "signature" is not restricted by definition to a hand-written name. See, *Ferguson* v. *Ferguson,* 187 Va. 581, 590, 47 S.E. 2d 257 (1948); *Pilcher* v. *Pilcher,* 117 Va. 256, 84 S.E. 667 (1915).

However, since there is apparently no Virginia decision on the question as it arises in the context presented by you, I am of the opinion that the most prudent policy would be for you to request a handwritten signature on the serological test forms.

MARRIAGE—Miscegenation Statutes—Certain Virginia statutes declared invalid by U.S. Supreme Court.

STATUTES—Miscegenation—Invalidation of certain such statutes by U.S. Supreme Court.

August 2, 1967

HONORABLE WILLIAM R. DURLAND
Member, House of Delegates

I am in receipt of your letter of July 21, 1967, in which you call my attention to the recent decision of the Supreme Court of the United States in *Loving* v. *Virginia,* No. 395—October Term, 1966, (decided June 12, 1967), in which that Court invalidated certain of Virginia's anti-miscegenation statutes set out in §§ 20-50, *et seq.,* of the Virginia Code. In this connection, you present certain inquiries which will be stated and answered *seriatim.*

> "1. May Clerks of Court refuse to issue marriage licenses to persons desiring to enter into miscegenetic marriages?"

Answer: No.

> "2. May any person performing the ceremony of marriage between a white and colored person be punished under § 20-60 of the Code of Virginia?"

Answer: No.