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Richmond, Va.

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Record No. 5053

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

ALBERTIS S. HARRISON, JR.,
ATTORNEY GENERAL OF VIRGINIA

v.

SIDNEY C. DAY, JR.,
COMPTROLLER OF VIRGINIA

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5053

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 24th day of June, 1959.

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, Petitioner,

against

SIDNEY C. DAY, JR., COMPTROLLER OF VIRGINIA, Respondent.

Upon a Petition for a Writ of Mandamus

This day came the Attorney General of Virginia and presented to the court a petition praying that a writ of mandamus do forthwith issue requiring and compelling Sidney C. Day, Jr., Comptroller of Virginia, to issue proper warrants upon the State Treasurer for payment of such amounts as the Board of Trustees of the Virginia Supplemental Retirement System may authorize pursuant to the provisions of section 51-111.24 and sections 15-666.69 through 15-666.76, of the Code of 1950, as amended in 1959, as more fully set out in said petition, and for other relief. And the petitioner further prays that Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to the said petition and be required to answer the same.

And it appearing to the court that a copy of the notice of this application and of said petition have been duly served on the respondent, it is ordered that the case be docketed, that the record be printed, that Collins Denny, Jr., Esquire, be, and he is hereby, appointed to represent the said respondent in this proceeding and this case is continued.

RECORD

* * * * *

Rec'd. 6/23/59.

H. G. T.

A. S. Harrison, Jr. Attorney General of Virginia, Petitioner,

v.

Sidney C. Day, Jr., Comptroller of Virginia, Respondent.

PETITION FOR A WRIT OF MANDAMUS.

To: The Honorable Chief Justice and the Justices of the Supreme Court of Appeals of Virginia:

Your petitioner, A. S. Harrison, Jr., Attorney General of Virginia, by this petition for a writ of mandamus respectfully represents and shows unto the Court the following:

1. Under the provisions of §51-111.24(d), as amended, of the Code of Virginia the Board of Trustees of the Virginia Supplemental Retirement System is specifically authorized, subject to and in conformity with the provisions of Chapter 19.2 of Title 15 of the Code, as amended, to contract with the school boards of the several counties to lend them money, belonging to the several funds administered by the Board of Trustees and in hand for investment, for the purpose of school construction in such counties.

2. Chapter 19.2 of Title 15 of the Code is subdivided into §§15-666.69 through 15-666.76 and provides in §15-666.70 that when the school board of any county desires to contract with the Board of Trustees of the Retirement System to borrow money for the purpose of school construction, after having first obtained the approval of its county board of supervisors, it may then negotiate with the said Board of Trustees for an agreement as to the terms and conditions under which the necessary monies will be lent. Once this agreement is reached, its terms must be submitted to and approved by the particular board of supervisors and the school board may then, by resolution, provide for the issuance of negotiable bonds evidencing the indebtedness to the Virginia Supplemental Retirement System.

3. Section 15-666.76 of the Code further provides that

bonds issued under the provisions of Chapter 19.2 and accepted by the Board of Trustees shall be deemed negotiable instruments under the laws of the Commonwealth of Virginia and are made securities in which all public officers and bodies, insurance companies and associates, savings banks and savings institutions and all other persons acting in a fiduciary capacity in the Commonwealth may properly and legally invest funds under their control. The Board of Trustees is authorized to sell, in its discretion, any such bonds so accepted and held by it at such time or times as to it may seem desirable in the management of funds under its control.

4. At a meeting of the said Board of Trustees held on June 22, 1959, it adopted a resolution, a certified copy of which is attached hereto to be read as a part hereof and designated "Exhibit No. 1," whereby it authorized and directed the making of a loan in the amount of $730,000 to the County School Board of Rockbridge County pursuant to the provisions of Chapter 19.2 of Title 15 of the Code of Virginia and further directed that the Comptroller of Virginia be requested to issue warrants upon the State Treasurer on account of such loan.

5. On June 22, 1959, the Comptroller of Virginia notified your Petitioner in writing that he entertains some doubt as to the validity of such loan and the validity of the acceptance by the Virginia Supplemental Retirement System of such negotiable bonds as evidence of such indebtedness, and stated that he will not issue a warrant on account of such loan until there has been a final adjudication by the Supreme Court of Appeals of Virginia of its validity and the validity of such negotiable bonds. A copy of his letter of notification is attached hereto to be read as a part hereof and designated "Exhibit No. 2."

6. Your Petitioner represents that, although the statement by the Comptroller of Virginia of his intention to decline to issue warrants on account of the loan authorized to be made by the Board of Trustees, and to be evidenced by the negotiable school bonds hereinabove mentioned, has been made prior to the time of any actual submission or presentment to him of any voucher drawn at the request of the said Board on account of any such loan to be made out of Retirement Trust Funds, nevertheless such refusal constitutes sufficient ground for this Honorable Court to take and exercise jurisdiction of this action and to dispose of the question presented by this petition. Such jurisdiction is expressly provided in §8-714 of the Code of Virginia.

7. Your Petitioner avers that the statutes mentioned herein, to-wit, Chapter 19.2 of Title 15 of the Code of Virginia, in-

cluding §§15-666.69 through 15-666.76 of said Code, as well as §51-111.24, as amended, of said Code, pursuant to which the said Board of Trustees is authorized to contract with the school boards of the counties to lend them monies for school construction out of the several funds created by Chapter 3.2 of Title 51 of the Code of Virginia, and which prescribe that the county school boards shall issue their negotiable bonds as security for such loans, which bonds may be held as investments or resold by the Board of Trustees in its discretion, are valid enactments of the General Assembly of Virginia and are not in violation of Section 115-a, as amended, of the Constitution of Virginia.

WHEREFORE, for the reasons herein stated, your Petitioner asks leave to file this petition and prays that this Honorable Court will adjudge that the provisions of Chapter 19.2 of Title 15 and the provisions of §51-111.24, as amended, of the Code of Virginia, 1950, authorizing county school boards to issue negotiable bonds as evidence of indebtedness for school construction without a vote of the people of the county and the Board of Trustees of the Virginia Supplemental Retirement System to accept such bonds in the manner prescribed in such statutes are valid enactments of the General Assembly of Virginia and are not in violation of Section 115-a of the Constitution of Virginia. Your Petitioner further prays that Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to this petition and be required to answer the same and that a writ of mandamus be issued by this Honorable Court directed to the said defendant, Sidney C. Day, Jr., Comptroller of Virginia, requiring him to issue warrants upon the State Treasurer for the payment of such amounts as the said Board of Trustees may authorize on account of such loan evidenced by negotiable school construction bonds.

And your Petitioner will ever pray, etc.

A. S. HARRISON, JR.
Attorney General of Virginia.

KENNETH C. PATTY
First Assistant Attorney General.

JOHN W. KNOWLES
Assistant Attorney General.

State of Virginia,
City of Richmond, to-wit:

This day personally appeared before me, M. L. Waddill, a Notary Public in and for the City of Richmond, State of Virginia, John W. Knowles, who stated, upon oath, that he is an Assistant Attorney General of Virginia, and that the matters and things stated in the foregoing petition of A. S. Harrison, Jr., Attorney General of Virginia, are true to the best of his knowledge, information and belief.

Given under my hand this 22nd day of June, 1959.
My Commission expires on the 6th day of January, 1961.

M. L. WADDILL
Notary Public.

EXHIBIT NO. 1.

EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF TRUSTEES OF THE VIRGINIA SUPPLEMENTAL RETIREMENT SYSTEM HELD AT RICHMOND, VIRGINIA, ON JUNE 22, 1959.

BE IT RESOLVED by the Board of Trustees of the Virginia Supplemental Retirement System that, whereas, the School Board of the County of Rockbridge desires to contract to borrow money from the Virginia Supplemental Retirement System for the purpose of school construction, with the approval of the governing body of the County, and the Board of Trustees of the Virginia Supplemental Retirement System desires to lend the money in the aggregate amount of $730,000, the said borrowing to be evidenced by negotiable bonds as provided by Chapter 19.2 of Title 15 of the Code of Virginia, as amended, the Treasury Board is authorized to act under this resolution, provided that the maximum maturity date of any of such bonds shall not be longer than twenty (20) years from the date thereof.

BE IT FURTHER RESOLVED that the Comptroller be requested to issue warrants upon the State Treasurer from time to time on account of such loan when so authorized by the Treasury Board.

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted at a meeting of the Board of Trustees of the Virginia Supplemental Retirement System, the governing body of the Virginia Supplemental Retirement System, duly organized and existing under and by virtue of the laws of the Commonwealth of Virginia, held at Richmond, Vir-

ginia, on the twenty-second of June, Nineteen Hundred Fifty-nine. I further certify that due notice was given to each member of said Board and that a quorum was present throughout the meeting.

Given under my hand this twenty-second day of June, 1959.

.....
Director and Secretary to the Board.

• • • • •

EXHIBIT NO. 2.

June 22, 1959.

Honorable A. S. Harrison, Jr.
Attorney General of Virginia
Supreme Court—State Library Building
Richmond 19, Virginia

Dear Senator Harrison:

At a meeting of the Board of Trustees of the Virginia Supplemental Retirement System held on June 22, 1959, the Board authorized the lending of retirement trust funds to the Rockbridge County School Board pursuant to Chapter 19.2 of Title 15 of the Code of Virginia §§15-666.69 through 15-666.76 of the Code of Virginia, 1950, as amended, such indebtedness to be evidenced by negotiable bonds of such School Board. This legislation does not provide for submission to a vote of the people of Rockbridge County of the question of whether the indebtedness shall be contracted by the School Board, consequently I entertain some doubt as to the validity of such loan and the validity of acceptance by the Board of Trustees of the Virginia Supplemental Retirement System of such bonds as evidence of the debt.

Since I will be requested to issue warrants on account of such loan when the same is made, and acting under the provisions of §8-714 of the Code of Virginia, 1950, I hereby notify you that I will not issue any warrants on account of such loan until there has been a final adjudication by the Supreme Court of Appeals of Virginia of its validity and propriety.

Very cordially yours,

SIDNEY C. DAY, JR.
Comptroller.

cc: Mr. Charles H. Smith,
Director, Virginia Supplemental
Retirement System
Richmond, Virginia

* * * * *

NOTICE.

To: Honorable Sidney C. Day, Jr.
Comptroller of Virginia
Richmond, Virginia.

TAKE NOTICE that on the 23rd day of June, 1959, at 9:30 a. m., or as soon thereafter as he may be heard, the undersigned will make application to the Supreme Court of Appeals of Virginia at Richmond for a writ of mandamus directing you to issue warrants upon the State Treasurer for the payment of such amounts as are authorized by vouchers approved by the Board of Trustees of the Virginia Supplemental Retirement System, pursuant to the provisions of Chapter 19.2 of Title 15 [§§15-666.69 through 15-666.76] and §51-111.24, as amended, of the Code of Virginia.

A. S. HARRISON, JR.
Attorney General of Virginia.

Service of the above Notice with a true copy of the Petition for a Writ of Mandamus attached thereto is hereby acknowledged this 22nd day of June, 1959.

SIDNEY C. DAY, JR.
Comptroller of Virginia.

* * * * *

Rec'd. 7-15-59.

A. L. L.

ANSWER TO PETITION FOR WRIT OF MANDAMUS.

Sidney C. Day, Jr., Comptroller of Virginia, respondent, for answer to the petition for a mandamus exhibited against him by Albertis S. Harrison, Jr., Attorney General of Virginia, requiring him to issue warrants upon the State Treasurer for payments of such amounts as the Board of Trustees

of the Virginia Supplemental Retirement System may authorize on account of a proposed loan of $730,000 proposed to be made by said Board of Trustees to the County School Board of Rockbridge County for school construction purposes and to be evidenced by negotiable bonds, or for answer to so much as he is advised it is material that he answer, says:

1. Respondent admits the correctness of the allegations of fact contained in the petition and the exhibits filed therewith.

2. Respondent doubts that Section 115-a of the Constitution of Virginia permits the General Assembly by general law to authorize the school board of a county, with the approval of the governing body of the county, to contract to borrow money from the Virginia Supplemental Retirement System for the purpose of school construction, or the Board of Trustees of said System so to lend money to the school board of a county for school construction, the indebtedness to be evidenced by negotiable bonds of the county, unless in the general law authorizing the same provision be made for the submission to the qualified voters of the county, for approval or rejection, by a majority vote of the qualified voters, on the question of contracting such debt. He, therefore, doubts that Section 51-111.24(d) of the Code of Virginia, as amended, and that Chapter 19.2 of Title 15 of the Code of Virginia, as amended, being Sections 15-666.69 to 15-666.76, both inclusive, are constitutional, and he does not feel that it would be proper for him to issue warrants in connection with such loans until there has been an adjudication of this constitutional question by this Honorable Court.

3. Section 15-666.70 of said Code provides for certain specific acts which must be done as conditions precedent to the making of any such loan. In the particular instance involved in this litigation, to-wit, a proposed loan of $730,000 to the School Board of Rockbridge County, it is not alleged in the petition that the acts required as conditions precedent have been complied with. Your respondent does not know whether such compliance has been had. He accordingly calls for proof thereof.

4. The General Assembly of 1956, by a majority of the members elected to each of the two Houses, proposed an amendment to Section 115-a of the Constitution of Virginia. Such proposed amendment was entered on the Journal of each House with the ayes and noes taken thereon, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates. Publication of said proposed amendment was

had as required by Section 196 of the Constitution. At the regular session in the year 1958 said proposed amendment was agreed to by a majority of all the members elected to each House of the General Assembly. Pursuant to the duty laid upon the General Assembly by said Section 196 of the Constitution, it provided for the submission of the proposed amendment to the people by Chapter 304 of the Acts of Assembly 1958 (Acts 1958, page 353). Among other provisions of said Act, it was provided that there should be delivered to the sheriffs or sergeants of the respective counties and cities of the State at least thirty days before the election copies of said Chapter 304 and that each such sheriff or sergeant should forthwith post a copy of said Act at some public place in each election district at or near the usual voting place in said district. Your respondent doubts whether the election at which the people of Virginia purportedly approved said constitutional amendment was a valid or an effective election unless the posting required by said Act was had in accordance with the terms thereof. Your respondent has no knowledge whether such posting was had. He accordingly has no knowledge whether Section 115-a of the Constitution was validly amended so as to add as a last paragraph thereto the following language, to-wit:

"This section shall not be construed as prohibiting the General Assembly from authorizing, by general law, the school board of any county to contract to borrow money from the Virginia Supplemental Retirement System, or any successor thereto, for the purpose of school construction, with the approval of the governing body of the county."

He accordingly calls for proof of the fact of such posting.

And now having fully answered, respondent prays to be hence dismissed.

SIDNEY C. DAY, JR.
Comptroller of Virginia.

COLLINS DENNY, JR.
Attorney for Respondent
1300 Travelers Building
Richmond 19, Virginia.

State of Virginia,
City of Richmond, to-wit:

This day personally appeared before the undersigned, a notary public for the City of Richmond in the State of Vir-

ginia, Sidney C. Day, Jr., who stated upon oath that he is Comptroller of Virginia and that the matters and things stated in the foregoing answer are true to the best of his knowledge, information and belief.

My commission expires Feb. 5, 1961.
Given under my hand this the 15th day of July, 1959.

.....
Notary Public.

I hereby certify that I have this 15th day of July, 1959, served the foregoing answer by delivering a true copy thereof to Albertis S. Harrison, Jr., Attorney General of Virginia.

COLLINS DENNY, JR.
Counsel for Respondent.

* * * * *

Rec'd. 7/29/59.

H. G. T.

STIPULATION OF FACTS.

In addition to those facts stated in the Petition specifically admitted by the Respondent in his Answer to be true, Petitioner and Respondent stipulate and agree as follows:

1. The total assets of the Virginia Supplementary Retirement System as of June 30th of each year enumerated below were as follows:

1954	$ 61,616,803.32
1955	69,674,204.60
1956	78,050.004.06
1957	88,197,844.09
1958	99,845,387.84
1959	113,773,814.90 (approximate)

2. The amount of uninvested cash on hand in the Virginia Supplemental Retirement System on June 30, 1959, was $82,-995.67, and the estimated amount of cash on hand for investment (free cash balance) during the month of July, 1959, is $9,936,558.61.

3. The certificate of Levin Nock Davis, Secretary of the

State Board of Elections, together with the certificates of the individual sheriffs of the counties and sergeants of the cities with reference to the posting of copies of Chapter 304, Acts of Assembly, 1958, attached are to be filed as part of the record in this case, but only the certificate of Levin Nock Davis is to be printed.

4. The certified copy of the Proclamation of November 24, 1958, by the Governor of Virginia of the results of the general election held on November 4, 1958, attached hereto, is to be filed as part of the record in this case and printed.

5. The certificates of Shirley G. Smith, Clerk, Rockbridge County School Board, and of Harry B. Wright, Clerk of the Board of Supervisors of Rockbridge County, dated July 23, 1959, and July 16, 1959, respectively, and attached hereto are to be filed as part of the record herein and printed.

COLLINS DENNY, JR.
Attorney for Respondent.

JOHN W. KNOWLES
Assistant Attorney General.

* * * * *

STATE BOARD OF ELECTIONS
Room 30, State Capitol
Richmond 19

I, Levin Nock Davis, Secretary of the State Board of Elections, do certify that the attached 116 certificates, evidencing the posting of a copy of Chapter 304, Acts of Assembly, 1958, at a public place in each election district at or near the usual voting place in the said district within each officer's bailiwick, were received by the State Board of Elections from the sheriffs of the counties and sergeants of the cities of the Commonwealth of Virginia.

Given under my hand this twenty-ninth day of July, 1959.

LEVIN NOCK DAVIS
Secretary, State Board of Elections.

COMMONWEALTH OF VIRGINIA
Governor's Office
Richmond

PROCLAMATION.

Pursuant to the requirements of Chapter 304 of the Acts of the General Assembly of Virginia of 1958, I. J. Lindsay Almond, Jr., Governor of Virginia, do hereby proclaim that the votes cast at the general election on November 4, 1958, as ascertained and determined by the State Board of Elections at its meeting held on November 24, 1958, numbered 292,281 for the proposed amendment to Section 115-A of the Constitution of Virginia and 130,348 against the proposed amendment.

Given under my hand and under the lesser seal of the Commonwealth, this 24th day of November, in the year of our Lord nineteen hundred fifty-eight and in the one hundred eighty-third year of the Commonwealth.

/s/ J. LINDSAY ALMOND, JR.
Governor.

By the Governor:

Lesser Seal of
the Commonwealth

/s/ MARTHA BELL CONWAY
Secretary of the Commonwealth.

I, Martha Bell Conway, do certify that I am Secretary of the Commonwealth of Virginia and that the foregoing is a true and correct copy of the proclamation executed by J. Lindsay Almond, Jr., Governor of the Commonwealth of Virginia, on November 24, 1958, and that the lesser seal of the Commonwealth was affixed thereto by me.

MARTHA BELL CONWAY
Secretary of the Commonwealth.

June 22, 1959.

• • • • •

July 23, 1959.

I hereby certify that the following resolution was passed by majority vote of the Rockbridge County School Board at their special meeting held on Wednesday, May 13, 1959, and recorded on Page 65 of the Minute Book of the Rockbridge County School Board:

"Be it resolved by the County School Board of Rockbridge County, Virginia, as follows:

a. It is hereby determined that it is necessary and expedient to contract a loan with the Virginia Supplemental Retirement System on the credit of Rockbridge County, Lexington, Virginia, in the amount of $730,000.00 in order to construct and equip a high school to serve the Brownsburg and Fairfield high school attendance areas. The bonds issued on behalf of this loan shall bear an interest rate not to exceed 6% per annum; however, it is understood that the interest rate finally agreed upon will be determined by the open market on bonds of similar status at the time they are sold. The payment of this loan will be made over a 30-year period. A tax sufficient to pay the principal and interest of said bonds shall be levied upon all the property from which the Rockbridge County School Board derives its money for the construction of school buildings.

b. A certified copy of this resolution shall be presented by the Clerk of this Board to the Board of Supervisors of Rockbridge County, Virginia, for approval; after which, the Clerk of this Board shall present a certified copy of this resolution together with evidence of approval thereof by the Board of Supervisors of Rockbridge County, Virginia, to the Board of Trustees of the Virginia Supplemental Retirement System for their consideration.

c. This resolution was passed by majority vote of the Rockbridge County School Board in special session on May 13, 1959, and shall take effect immediately."

Also, I hereby certify that the following resolution was passed by unanimous vote of the Rockbridge County School Board at their special meeting held on Monday evening, June 22, 1959, and recorded on Page 70 of the Minute Book of the Rockbridge County School Board:

"Upon motion duly made, seconded and passed by unanimous vote, the Board authorized the revision of the resolution passed by the Board (on Wednesday, May 13, 1959, Page 65 of the Minute Book) concerning the borrowing of $730,000.00 from the Virginia Supplemental Retirement System to the extent of deleting the words 'and equip' therefrom."

Respectfully submitted,

(MRS.) SHIRLEY G. SMITH,
Clerk Rockbridge County School Board.

Seal

Subscribed and sworn to before me this the 23rd day of July, 1959.

Seal HARRY B. WRIGHT
Clerk Rockbridge Circuit Court,
Rockbridge County, Virginia.

/sgs

Virginia:

In Rockbridge County Circuit Court Clerk's Office. July 16, 1959.

I, Harry B. Wright, Clerk of the Circuit Court, in and for the County aforesaid, State of Virginia, do hereby certify that the following, designated as Items 1 and 2, are true abstracts taken from the Minutes of the Board of Supervisors of Rockbridge County, Virginia, meetings, held May 14, 1959, and June 30, 1959, respectively:

Item 1

BE IT RESOLVED BY the Rockbridge County Board of Supervisors, it is hereby determined that it is necessary and expedient to contract a loan with the Virginia Supplemental Retirement System on the credit of Rockbridge County, Lexington, Virginia, in the amount of $730,000.00 in order to construct and equip a high school to serve the Brownsburg-Fairfield high school attendance areas. The bonds issued on behalf of this Loan shall bear an interest rate not to exceed 6% per annum. However, it is understood that the interest rate finally agreed upon will be determined by the open market on bonds of similar status at the time they are sold. The payment of this loan will be made over a thirty year period. A tax sufficient to pay the principal and interest of said bonds shall be levied upon all the property from which the Rockbridge County School Board derives its money for the construction of school buildings.

IT IS, THEREFORE, RESOLVED by the Board of Supervisors of Rockbridge County that the request of the Rockbridge County School Board be and the same is hereby approved and a copy of this resolution be sent to the School Board of Rockbridge County.

A recorded vote on the above resolution is as follows: Chittum-nay; Chapman-yea; Mackey-yea; Wilson-yea; Hull-yea; Campbell-yea.

Item 2

Superintendent of Schools, Floyd S. Kay appeared before the Board and stated that in the approval of borrowing funds from the Va. Supplemental Retirement System, for the building of Brownsburg-Fairfield High School, the words "and equip" were included and that they should not have been. Mr. Kay stated that the School Board requested that the Board of Supervisors take action to delete the words "and equip" from its original motion for borrowing of funds as aforesaid.

Upon motion, duly seconded, it was unanimously ordered by the Board that the words "and equip" be deleted from the Board's original Resolution approving the borrowing of $730,000.00 from the Va. Supplemental Retirement System for the construction of the Brownsburg-Fairfield High School.

In testimony whereof I hereunto set my hand as Clerk and affix the seal of the said Court this the 16th day of July, 1959.

Seal

HARRY B. WRIGHT
Clerk as aforesaid and Clerk of the Board of Supervisors of Rockbridge County, Virginia.

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Thursday the 3rd day of September, 1959.

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, Petitioner,

against

SIDNEY C. DAY, JR., COMPTROLLER OF VIRGINIA, Respondent.

This day came the attorney for the petitioner and the attorney for the respondent and presented to the court a supplemental stipulation whereby it was agreed that certain certificates be made a part of the record in this case, and prayed that the same be filed herein.

And it appearing to the court proper so to do, it is ordered that the supplemental stipulation be filed and made a part of the record in this proceeding and this case is continued.

• • • • •

Rec'd. 8-12-59.

A. L. L.

SUPPLEMENTAL STIPULATION.

In addition to the Stipulation of Facts filed in this case on July 29, 1959, Petitioner and Respondent stipulate and agree as follows:

That the attached certificate of Levin Nock Davis, Secretary of the State Board of Elections, together with the eight (8) certificates attached thereto, namely, certificates of the Sheriffs of Floyd, Henry, Mathews, Norfolk, Northumberland, Wythe and York Counties, and of the City Sergeant of the City of Hampton, with reference to the posting of copies of Chapter 304, Acts of Assembly, 1958, are to be filed as part of the record in this case, but only the certificate of Levin Nock Davis is to be printed.

JOHN W. KNOWLES
Assistant Attorney General.

COLLINS DENNY, JR.
Attorney for Respondent.

• • • • •

STATE BOARD OF ELECTIONS
Room 30, State Capitol
Richmond 19

I, Levin Nock Davis, Secretary of the State Board of Elections, do certify that the attached eight (8) certificates, evidencing the posting of a copy of Chapter 304, Acts of Assembly, 1958, at a public place in each election district at or near the usual voting places in said district within each officer's bailiwick, were received by the State Board of Elections from the Sheriffs of the Counties of Floyd, Henry, Mathews, Norfolk, Northumberland, Wythe and York and from the Sergeant of the City of Hampton.

I further certify that I have now received a certificate from each of the sheriffs of the counties and sergeants of the cities of the Commonwealth of Virginia evidencing the posting hereinabove referred to.

Given under my hand this 7th day of August 1959.

LEVIN NOCK DAVIS
Secretary, State Board of Elections.

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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