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Record No. 5099

In the Supreme Court of Appeals of Virginia at Richmond

CITY OF RICHMOND

v.

RICHMOND MEMORIAL HOSPITAL, ET AL.

FROM THE HUSTINGS COURT OF THE CITY OF RICHMOND

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. 5099

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 12th day of October, 1959.

CITY OF RICHMOND, Appellant,

against

RICHMOND MEMORIAL HOSPITAL, ET AL., Appellees.

From the Hustings Court of the City of Richmond

Upon the petition of City of Richmond an appeal is awarded it from an order entered by the Hustings Court of the City of Richmond on the 13th day of May, 1959, in certain proceedings then therein depending under the style of, In the Matter of the application of Richmond Memorial Hospital for Relief from Taxes Assessed on Real Estate, and In the Matter of the Application of Richmond Eye Hospital for Relief from Taxes Assessed on Real Estate, no bond being required.

RECORD

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

The defendant City of Richmond, by counsel, hereby gives notice, pursuant to the provisions of §4 of Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of its intention to appeal from a certain final order and judgment entered in these consolidated proceedings, being certain applications for the correction of tax assessments made by the City of Richmond and alleged to be erroneous, and for exoneration from payment of the taxes assessed, on May 14, 1959; and the defendant assigns the following errors in the action of the court in regard to the applications of Richmond Memorial Hospital and Richmond Eye Hospital, respectively, such assignments of error as to each of the applicants being separately listed, and each assignment with regard to each applicant being the same in substance as the similar and corresponding assignment with regard to the other applicant, but not necessarily identical in detail:

ASSIGNMENTS OF ERROR WITH REGARD TO RICHMOND MEMORIAL HOSPITAL.

1. The court erred in finding that Richmond Memorial Hospital is a corporation duly organized and existing
page 2 } under the laws of the State of Virginia for the purpose of operating hospitals not for profit but exclusively for charity, and in finding that Richmond Memorial Hospital did operate a hospital not for profit but exclusively for charity in the City of Richmond on the first days of January 1956, 1957 and 1958, and that the real estate upon which Richmond Memorial Hospital was assessed for taxation for those years was owned by it and was actually and exclusively occupied and used in the operation of such hospital on the first days of January in each of said years and at all times relevant to these proceedings; and the court erred in holding that the said real estate so assessed for taxation was exempt from taxation during those years and that the said assessments were erroneous.

2. The court erred in resting its decision above recited in the first assignment of error upon a 1954 amendment to §58-12(5) of the Code of Virginia, which amendment was beyond the powers of the General Assembly under §183 of the

Constitution of Virginia, and was therefore null and void and of no effect.

3. The court erred in sustaining, by an order entered October 7, 1958, the amended motion filed by Richmond Memorial Hospital on March 3, 1958 to quash certain interrogatories, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 and filed against it by the City of Richmond on December 17, 1957, which said interrogatories were properly filed and a proper summons was issued thereon, in accordance with the provisions of §8-320 to 8-323 of the Code of Virginia, and were relevant to these proceedings and such as Richmond Memorial Hospital would have been bound to answer upon a bill for discovery, and had not been unreasonably delayed, and were such interrogatories as the court under §8-321 should have compelled Richmond Memorial Hospital to answer.

page 3 } 4. The court erred in entering on October 7, 1958 the said order, carrying into effect the court's decision to sustain the amended motion to quash the interrogatories, in the form in which it was entered, which form of order as entered went beyond the intention of the statute and committed the court, in advance of the trial and without any evidence before it, to a decision adverse to the City of Richmond upon the merits; and the court erred in refusing to enter a proper order, carrying into effect the court's decision to sustain the amended motion to quash and correctly following the statute, which was tendered by counsel for the City of Richmond on that same day, October 7, 1958.

5. The court erred in refusing to admit in evidence, at the hearing upon the amended motion to quash the interrogatories, certain documents which the City of Richmond by counsel tendered and asked the court to receive and consider in evidence in support of the interrogatories, described in the said order of October 7, 1958, as follows:

(1) Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

(2) Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

(3) Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk* and *Hospital of St. Vincent* v. *Norfolk* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

(4) The special section of the Richmond Times Dispatch of January 13, 1957 concerning Richmond Memorial Hospital, a News Leader article of March 19, 1958 concerning the increase of hospital rates in the City; and an arti-
page 4 } cle in the Richmond News Leader of December 18, 1954 concerning the application of Halifax Community Hospital Association, Inc., for correction of erroneous assessment of taxes against it by Halifax County.

6. The court erred in refusing to admit in evidence, when they were again offered by counsel for the City of Richmond at the trial on the merits, the following documents, also described in the fifth assignment of error:

(1) Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

(2) Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

ASSIGNMENTS OF ERROR WITH REGARD TO RICHMOND EYE HOSPITAL.

1. The court erred in finding that Richmond Eye Hospital is a corporation duly organized and existing under the laws of the State of Virginia for the purpose of operating hospitals not for profit but exclusively for charity, and in finding that Richmond Eye Hospital did operate a hospital not for profit but exclusively for charity in the City of Richmond on the first days of January 1954, 1955, 1956, 1957 and 1958, and that the real estate upon which Richmond Eye Hospital was assessed for taxation for those years was owned by it and was actually and exclusively occupied and used in the operation of such hospital on the first days of January in each of said years and at all times relevant to these proceedings; and the court erred in holding that the said real estate so assessed for taxation was exempt from taxation dur-
page 5 } ing those years and that the said assessments were erroneous.

2. The court erred in resting its decision above recited in the first assignment of error upon a 1954 amendment to §58-12(5) of the Code of Virginia, which amendment was beyond the powers of the General Assembly under §183 of the Con-

stitution of Virginia, and was therefore null and void and of no effect.

3. The court erred in sustaining, by an order entered October 7, 1958, the amended motion filed by Richmond Eye Hospital on March 3, 1958 to quash certain interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19 and filed against it by the City of Richmond on December 17, 1957, which said interrogatories were properly filed and a proper summons was issued thereon, in accordance with the provisions of §8-320 to 8-323 of the Code of Virginia, and were relevant to these proceedings and such as Richmond Eye Hospital would have been bound to answer upon a bill for discovery, and had not been unreasonably delayed, and were such interrogatories as the court under §8-321 should have compelled Richmond Eye Hospital to answer.

4. The court erred in entering on October 7, 1958 the said order, carrying into effect the court's decision to sustain the amended motion to quash the interrogatories, in the form in which it was entered, which form of order as entered went beyond the intention of the statute and committed the court, in advance of the trial and without any evidence before it, to a decision adverse to the City of Richmond upon the merits; and the court erred in refusing to enter a proper order, carrying into effect the court's decision to sustain the amended motion to quash and correctly following the statute, which was tendered by counsel for the City of Rich-
page 6 } mond on that same day, October 7, 1958.

5. The court erred in refusing to admit in evidence, at the hearing upon the amended motion to quash the interrogatories, certain documents which the City of Richmond by counsel tendered and asked the court to receive and consider in evidence in support of the interrogatories, described in the said order of October 7, 1958 as follows:

(1) Certified copies of the interrogatories propounded by the City of Richmond and the answers thereto filed (in the Chancery Court of the City of Richmond) by the Richmond Eye Hospital in the case therein pending by Richmond Eye Hospital for correction of erroneous assessment of real estate taxes.

(2) Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

(3) Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici

Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

(4) Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk* and *Hospital of St. Vincent* v. *Norfolk* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

(5) An article in the Richmond News Leader of December 18, 1954 concerning the application of Halifax Community Hospital Association, Inc. for correction of erroneous assessment of taxes against it by Halifax County.

6. The court erred in refusing to admit in evidence when they were again offered by counsel for the City of Richmond at the trial on the merits the following documents, also described in the fifth assignment of error:

(1) Typewritten copies of the Attorney General's
page 7 } opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

(2) Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

Filed in Clerk's Office June 10, 1959.

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ORDER.

This day came Richmond Memorial Hospital and presented its application for correction of erroneous assessment of taxes assessed on real estate for the year 1958, service of a copy of which had been accepted by the City of Richmond, which said application is hereby ordered to be docketed and filed.

Enter 1/15/59.

W. MOSCOE HUNTLEY, Judge

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Application of RICHMOND MEMORIAL HOSPITAL for Relief from Taxes Assessed on Real Estate for the year 1958.

The applicant, Richmond Memorial Hospital, represents to the Court that:

1. The applicant was incorporated on November 7, 1947, under the laws of the State of Virginia as an association not organized for profit in which no capital stock may be issued. A copy of its amended articles of incorporation was filed as "Exhibit A" with an application heretofore filed for relief from taxes erroneously assessed for the years 1956 and 1957, reference to which is hereby made.

2. The applicant is the owner of the property (the "hospital property") known as 1300 Westwood Avenue in the City of Richmond, Virginia, upon which is located the Richmond Memorial Hospital (the "Hospital").

3. By Ordinance No. 49-164-139, adopted December 27, 1949, and which amended and re-ordained an ordinance approved July 21, 1947, the City of Richmond designated the Hospital as the permanent memorial of the City to her citizens who lost *lost* their lives in World War II. Copies of page 31 } the 1949 Ordinance and the 1947 Ordinance were filed as "Exhibit B" and "Exhibit C" respectively, with an application for relief from taxes erroneously assessed for the years 1956 and 1957, reference to which is hereby made.

4. The creation of this Hospital became a major civic and charitable project for the Richmond area, and some 33,000 individuals and corporations made charitable subscriptions to the Hospital aggregating approximately $3,900,000.00, of which approximately 95% have been paid. In addition, applicant has received $1,650,408 from the United States and $1,011,540 from the State of Virginia.

5. The hospital property consists of approximately 14 acres of real estate, with the hospital building, nurses home and other appurtenant facilities located thereon. Construction of the hospital building and conversion of existing improvements to hospital purposes were commenced in 1954 and completed in 1956. No use of any part of this property has

been made for any purpose other than hospital purposes since prior to 1954.

6. The City of Richmond levied real estate taxes on the hospital property for the year 1958 in the amount of $81,789.78 (on an assessed valuation of $4,350,520.00). A copy of the bill imposing such tax, Marked "Exhibit A," is attached hereto and made a part hereof.

7. Section 183 of the Constitution of Virginia (1902), as amended, provides in part:

"Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

* * * * *

page 32 } (e) Real estate belonging to, actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to * * * hospitals * * * conducted not for profit, but exclusively as charities * * *

8. Section 58-12 of the Code of Virginia (1950), as amended, provides in part:

"The following property shall be exempt from taxation, State and local, including inheritance taxes:

* * * * *

"(5) Real estate belonging to and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to * * * hospitals * * * conducted not for profit but exclusively as charities, (which shall be deemed to include hospitals operated by nonstock corporations not organized or conducted for pecuniary profit but which may charge persons able to pay in whole or in part for their care and treatment) * * *"

9. Section 183 of the Constitution of Virginia (1902) and Section 58-12 of the Code of Virginia (1950), as amended and as quoted above, were in effect on January 1, 1956, and at all times since that date.

10. Applicant has obtained a ruling dated March 7, 1955, from the District Director of Internal Revenue, Richmond, Virginia, holding that if it operates in accordance with the purposes stated in its articles of incorporation it is exempt

from federal income taxation under Section 501(c) (3) of the Internal Revenue Code of 1954, as a corporation organized and operated exclusively for charitable purposes. Accordingly, contributions made to the applicant are deductible by the donors in computing their federal taxable net income in the manner and to the extent provided by Section 170(a) and (b) of the Internal Revenue Code of 1954. A copy page 33 } of such ruling was filed as "Exhibit E," with an application heretofore filed for relief from taxes erroneously assessed for the years 1956 and 1957, reference to which is hereby made.

11. Applicant avers that at all times relevant to this proceeding (including the year 1958) it has operated in accordance with the purposes stated in its articles of incorporation, its hospital property has been actually and exclusively occupied and used as a hospital, and the Hospital operated on such property has been operated and conducted not for profit but exclusively as a charity, all within the intact and meaning of the Constitution and laws of Virginia.

12. Applicant further avers that the hospital property is exempt from real estate and other property taxes and that the City of Richmond has no authority in law to levy the above-mentioned real estate taxes upon such property.

WHEREFORE the applicant prays that it be relieved from the payment of such taxes; that such property be declared exempt from taxation as long as it is owned by the applicant and is maintained and operated as presently provided in the applicant's articles of incorporation: that the City Attorney of the City of Richmond be directed to defend this application: and that all orders be entered as shall seem proper to the Court.

Rec. Nov. 28, 1958.

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IN THE MATTER OF RICHMOND EYE HOSPITAL.

PETITION FOR CORRECTION OF ERRONEOUS ASSESSMENT OF TAXES FOR YEAR 1958.

The Richmond Eye Hospital respectfully shows that it is

aggrieved by the assessment of unlawful and erroneous real estate taxes by the City of Richmond against it upon the lot of land and the hospital building and other improvements thereon known as No. 408 North 12th Street, in the City of Richmond, in the amount of $10,396.40 for the year 1958 on a valuation of $553,000.00, as shown by the tax bill therefor herewith filed, marked Exhibit A, and is entitled to have said assessment corrected and expunged from the records.

In support of this petition, your petitioner shows unto the Court the following facts:

1. Your petitioner is a corporation, duly organized and existing under the laws of the Commonwealth of Virginia as a non-stock corporation, under the corporate name of Richmond Eye Hospital, the certificate of incorporation of which was issued by the State Corporation Commission of Virginia on March 12, 1946. A copy of said charter and the only amendment thereto are filed as exhibits with a petition heretofore filed with reference to correction of an erroneous tax assessment for years 1954 and 1955, to which reference page 47 } is made.

2. Thereafter this corporation entered into an agreement with the Medical College of Virginia to lease from it at $1.00 per year, or to purchase at its cost price of $14,000 the property known as 408 North 12th Street, Richmond, Virginia, and the Medical College of Virginia agreed to extend to the Hospital to be erected on said property by your petitioner the system of heating facilities maintained and operated by said College and to furnish heat at cost to said Hospital when built.

3. The General Assembly of Virginia by an Act approved and effective February 28, 1950 (Acts 1950, p. 84) authorized the sale by the Medical College of Virginia of the property known as 408 North 12th Street to your petitioner, and said property was thereafter acquired pursuant to the authority of said Act.

4. The charter of your petitioner, as amended, contains the following provisions:

"The purpose for which the Corporation is formed is to accept and receive the benefits of the trust fund created under Article Five of the will of Virginia Fox Beveridge, deceased, also known as Virginia F. Beveridge and as Virginia Beveridge, duly probated in the Clerk's Office of the Chancery Court of the City of Richmond, Virginia, on the 22nd day of June, 1945, and of record in said office, and to establish and operate a hospital, subject to the limitations

hereinafter set forth, in the City of Richmond, Virginia, for the care and treatment of residents of the City of Richmond and of the Counties of Henrico, Hanover and Chesterfield, in said State of Virginia, and of such other places as the directors shall from time to time determine, who suffer from ailments of the eye, and, in furtherance of such primary purpose and as a means to provide additional funds to advance and promote the same, to provide, from funds derived from other sources, additional facilities for the treatment of cases involving the ear, nose and throat;"

"The Corporation shall have no capital stock and its net earnings and funds shall at all times be devoted to the purpose of affording a suitable and increasing charitable service to the indigent and needy, according to the conditions, if any, prescribed by donors of its funds. The Corporation shall have power to admit, under rules and regulations to be prescribed and amended from time to time by the directors, as patients in the hospital, those deemed also able to pay therefor, in whole or in part, and to make such charges to such patients for the use of its facilities and equipment
page 47a } as may from time to time be determined by the directors, but no funds derived therefrom by the corporation over and above its necessary operating expenses shall inure to or be paid to or for the benefit of its directors, members or any private individual."

5. Construction of a hospital upon the property known as 408 North 12th Street was completed on or about May 15, 1952. At all times subsequent thereto said hospital has belonged to and been operated in conformity with the provisions of the charter of your petitioner quoted in Section 4 above, and said property has been actually and exclusively occupied and used by said hospital, which has been conducted not for profit but exclusively as a charity.

6. Section 183 of the Constitution of Virginia provides in part as follows:

"§183. *Property exempt from taxation.*—Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

• • • • •

"(e) Real estate belonging to, actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian As-

sociations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit, but exclusively as charities, also parks or playgrounds held by trustees for the perpetual use of the general public."

7. Section 5 of §58-12 of the Code of Virginia as it existed on January 1, 1954, contained identically the same language as is contained in paragraph (3) of Section 183 of the Constitution. Section 5 of §58-12 was amended by an Act of 1954, effective June 30, 1954.

"(5) Real estate belonging to and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to, Young Men's Christian Associations and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities,
page 48 } (*which shall be deemed to include hospitals operated by non-stock corporations not organized or conducted for pecuniary profit but which may charge persons able to pay in whole or in part for their care and treatment*), and parks or playgrounds held by trustees for the perpetual use of the general public."

the language underscored having been added by said amendment.

8. Under the aforesaid provisions of the Constitution and Statutes of Virginia your petitioner alleges its property is exempt from taxation by the City of Richmond and said assessments of real estate taxes against the lot of land and hospital building and other improvements thereon known as No. 408 North 12th Street in the City of Richmond are unconstitutional, illegal and void, and constitute a cloud upon the title of your petitioner thereto which should be removed.

WHEREFORE, your petitioner prays that the aforesaid assessments of real estate taxes against it may be corrected and expunged from the records of the City of Richmond and that your petitioner may have such other and further relief as may be proper in the premises.

Rec'd. Nov. 28, 1958.

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In the matter of the Application of RICHMOND MEMORIAL HOSPITAL for Relief from Taxes Assessed on Real Estate for the years 1956 and 1957:

INTERROGATORIES BY CITY OF RICHMOND.

The defendant the City of Richmond, by counsel, now comes and, pursuant to the provisions of §§8-320 to 8-323 of the Code of Virginia, files against the applicant Richmond Memorial Hospital, a non-stock corporation organized under the laws of the Commonwealth of Virginia, the following interrogatories, and prays that the said Richmond Memorial Hospital be required to answer the same upon oath, and make return thereof before this court on the 20th day of January, 1958 at 10 o'clock, A. M.:

1. Please give the number of beds in your hospital, or other measure of the capacity of the hospital to accommodate patients.

2. Please give your schedule of rates for rooms and beds, meals, nursing, use of operating room, etc.

3. Are we correct in assuming that charges for surgical and medical attention are made, not by the hospital, but by the operating surgeon or attending physician?

4. For as extensive a portion of the period in which you have been in operation, since November 1956 as you have figures available for, please state:

page 51 } (a) The number of patients admitted.
(b) The daily average census of patients.
(c) The number of pay patients admitted.
(d) The number of charity patients admitted (i. e. patients admitted without any expectation of payment).
(e) The number of out patients examined or treated.
(f) The number of out patients who were pay patients.
(g) The number of out patients who were charity patients.
(h) The number of operations performed.
(i) The number of operations performed free upon charity patients.
(j) The number of operations for which charges were made.

5. Since you have not yet filed with the Securities Division of the State Corporation Commission any annual report as required by law, please give:

(a) A statement of operating income and operating expenses for such period as you have figures available.

(b) A statement of the amount you carry on your books as accounts receivable.

(c) A statement of the amount you carry as losses from contractual patients, including losses from subscribers to the Virginia Hospital Service Association.

(d) A separate statement of any losses you may carry as being attributable to treatment of charity patients.

6. If you have prepared the statement you propose to file with the State Corporation Commission as of December 31, 1957, please furnish a copy of it with your answers.

page 52 } 7. Please give the names, addresses and salaries of any full time salaried resident staff you may have.

8. Please give the names and addresses of your non-resident medical and surgical staff as of the present time.

9. Do any of the members of your non-resident medical and surgical staff receive salaries? If so, please give names and amounts.

10. Please give the number of patients operated upon or treated or attended by each of the members of your resident staff and non-resident staff, showing (a) the number of patients operated upon or treated or attended free of charge, and (b) the number of patients operated upon or treated or attended, who were charged for such operation or treatment or attendance.

11. Do any physicians or surgeons other than the members of your resident staff and non-resident staff operate or treat or attend patients at the hospital?

12. How many such other physicians or surgeons have operated upon or treated or attended patients at the hospital during the period for which you have figures available?

13. How many of the patients operated upon, treated or attended by such other physicians or surgeons were charity patients, and how many were patients to whom such physicians or surgeons made charges for their services?

14. Is the Richmond Memorial Hospital generally available to any reputable physician or surgeon who wishes to operate or treat or attend patients there?

15. Approximately how many physicians and surgeons are there, practicing generally in the City of Richmond?

16. Who were the members of the committee or group which prior to incorporation of Richmond Memo-

page 53 } rial Hospital or Community Memorial Hospital managed and promoted the hospital project?

Filed Dec. 17, 1957.

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page 54 }

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IN the matter of the Application of RICHMOND EYE HOSPITAL for Relief from Taxes Assessed on Real Estate for the year 1957.

INTERROGATORIES BY CITY OF RICHMOND.

The defendant the City of Richmond, by counsel, now comes and, pursuant to the provisions of §§8-320 to 8-323 of the Code of Virginia, files against the applicant Richmond Eye Hospital, a non-stock corporation organized under the laws of the Commonwealth of Virginia, the following interrogatories, and prays that the said Richmond Eye Hospital be required to answer the same upon oath, and make return thereof before this court on the 20th day of January, 1958 at 10 o'clock, A. M.:

1. Please give the number of beds in your hospital, or other measure of the capacity of the hospital to accommodate patients.
2. Please give your schedule of rates for rooms and beds, meals, nursing, use of operating room, etc.
3. Are we correct in assuming that charges for surgical and medical attention are made, not by the hospital, but by the operating surgeon or attending physician?
4. For as extensive a portion of the period in which you have been in operation, since November, 1953 (the period May, 1952 to November, 1953 having been covered by the answers to interrogatories heretofore filed by you page 55 } in the Chancery Court of the City of Richmond in a proceeding there pending for the correction of the 1953 assessment) as you have figures available for, please state:

(a) The number of patients admitted.
(b) The daily average census of patients.
(c) The number of pay patients admitted.
(d) The number of charity patients admitted (i. e. patients admitted without any expectation of payment).
(e) The number of out patients examined or treated.
(f) The number of out patients who were pay patients.
(g) The number of out patients who were charity patients.

(h) The number of operations performed.

(i) The number of operations performed free upon charity patients.

(j) The number of operations for which charges were made.

5. If you have figures later than the report on examination for the year ending December 31, 1956, filed with the Securities Division of the State Corporation Commission, please give:

(a) A statement of operating income and operating expenses.

(b) A statement of the amount you carry on your books as accounts receivable.

(c) A statement of the amount you carry as losses from contractual patients, including losses from subscribers to the Virginia Hospital Service Association.

(d) A separate statement of any losses you may carry as being attributable to treatment of charity patients.

page 56 } 6. Please give the names, addresses and salaries of any full time salaried resident staff you may have.

7. Please give the names and addresses of your "medical staff," by which we mean the staff of eye, ear, nose and throat specialists mentioned in your circular letter of May 12, 1953, as of the present time.

8. Do any of the members of your medical staff receive salaries? If so, please give names and amounts.

9. Please give the number of patients operated upon or treated or attended by each of the members of your resident staff and medical staff, showing (a) the number of patients operated upon or treated or attended free of charge, and (b) the number of patients operated upon or treated or attended, who were charged for such operation or treatment or attendance.

10. Do any physicians or surgeons other than the members of your resident staff and medical staff operate or treat or attend patients at the hospital?

11. How many such other physicians or surgeons have operated upon or treated or attended patients at the hospital during the period for which you have figures available?

12. How many of the patients operated upon, treated or attended by such other physicians or surgeons were charity patients, and how many were patients to whom such physicians or surgeons made charges for their services?

13. Is the Richmond Eye Hospital generally available to any reputable eye, ear, nose or throat specialist who wishes to operate or treat or attend patients there?

14. Approximately how many eye, ear, nose or throat specialists are there, practicing generally in the City of Richmond?

15. Do you admit patients suffering from diseases, illnesses or ailments which are not diseases, illnesses

page 57 } or ailments of the eye, ear, nose or throat?

16. How many such other patients were admitted for treatment during the period for which you have figures available?

17. How many of such other patients were charity patients, and how many were patients to whom charges were made for hospital care, or for medical or surgical treatment, or for both?

18. On the financial reports for the years ending December 31, 1954, December 31, 1955 and December 31, 1956, filed with the State Corporation Commission appear items "Accounts receivable—patients." Are we correct in assuming that these figures represent unpaid bills rendered pay patients, and that no part of the figure represents the care of charity patients?

19. On the same statements as deductions from operating income, appear items "free service and adjustments—contractual." Was any other free service afforded by the hospital during the period between November, 1953 and December 31, 1957?

Filed Dec. 17, 1957.

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In the Matter of the Application of RICHMOND MEMORIAL HOSPITAL For Relief from Taxes Assessed on Real Estate.

AMENDED MOTION TO QUASH INTERROGATORIES.

Comes now the applicant, Richmond Memorial Hospital, by counsel and in lieu of its Motion To Quash Interrogatories of the City of Richmond heretofore filed, the applicant now moves the Court to quash interrogatories numbered 1, 2, 3, 4,

5, 6, 7, 8, 9, 10, 11, 12 and 13 on the ground that said interrogatories are irrelevant and immaterial to the issues before the Court and that the answers thereto would be inadmissible in evidence in this proceeding.

Filed Mch. 3, 1958.

L. A. S.

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IN the Matter of the Application of RICHMOND EYE HOSPITAL For Relief from Taxes Assessed on Real Estate.

AMENDED MOTION TO QUASH INTERROGATORIES.

Comes now the applicant, Richmond Eye Hospital, by counsel and in lieu of its Motion to Quash Interrogatories of the City of Richmond heretofore filed, the applicant now moves the Court to quash interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19 on the ground that said interrogatories are irrelevant and immaterial to the issues before the Court and that the answers thereto would be inadmissible in evidence in this proceeding.

Filed Mch. 3, 1958.

L. A. S.

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page 72 }

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IN THE MATTER OF THE APPLICATION OF RICHMOND EYE HOSPITAL FOR RELIEF FROM TAXES ASSESSED ON REAL ESTATE.

ORDER.

This matter came on this day to be heard on the amended motion of the applicant, Richmond Eye Hospital, to quash

the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19 propounded to it by the City of Richmond. Thereupon the City of Richmond, by its attorney, tendered to the court and asked the court to receive and consider in evidence in support of said interrogatories the following documents:

1. Certified copies of the interrogatories propounded by the City of Richmond and the answers thereto filed by the Richmond Eye Hospital in the case therein pending by Richmond Eye Hospital for correction of erroneous assessment of real estate taxes.

2. Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

3. Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

4. Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk* and *Hospital of St. Vincent* v. *Norfolk* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

page 73 } 5. The special section of the Richmond Times Dispatch of January 13, 1957 concerning Richmond Memorial Hospital; a News Leader article of March 19, 1958 concerning the increase of hospital rates in the city; and an article in the Richmond News Leader of December 18, 1954 concerning the application of Halifax Community Hospital Association, Inc. for correction of erroneous assessment of taxes against it by Halifax County.

And the court, having maturely considered the same and being of the opinion that the evidence tendered by the City of Richmond should not be received upon the motion to quash the interrogatories, doth refuse to admit the same, to which action of the court the City of Richmond, by counsel, excepted.

Thereupon, the parties by their respective counsel fully argued the amended motion to quash the interrogatories filed by the applicant, Richmond Eye Hospital, and the court, having maturely considered the briefs previously filed and the argument of counsel, and it appearing to the court that the court is not now satisfied that the interrogatories which the applicant has moved to quash are relevant, and such as the applicant would be bound to answer upon a bill for discovery,

and such as the applicant ought to be required to answer, it is

ORDERED, that the motion of the petitioner, Richmond Eye Hospital, to quash interrogatories Nos. 1 through 12 and 15 through 19 propounded to it by the City of Richmond be, and the same hereby is, sustained, to which action of the court the City of Richmond, by counsel, duly excepted.

Refused.

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page 74 }

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IN THE MATTER OF THE APPLICATION OF RICHMOND EYE HOSPITAL FOR RELIEF FROM TAXES ASSESSED ON REAL ESTATE.

ORDER.

This matter came on this day to be heard on the amended motion of the applicant, Richmond Eye Hospital, to quash the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19 propounded to it by the City of Richmond. Thereupon, the City of Richmond, by its Attorney, tendered to the Court and asked the Court to receive and consider in evidence in support of said interrogatories the following documents:

1. Certified copies of the interrogatories propounded by the City of Richmond and the answers thereto filed by the Richmond Eye Hospital in the case therein pending by Richmond Eye Hospital for correction of erroneous assessment of real estate taxes.
2. Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.
3. Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.
4. Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk* and *Hospital of St.*

Vincent v. *Norfolk* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

5. The special section of the Richmond Times Dispatch of January 13, 1957 concerning Richmond Memorial Hospital; a News Leader article of March 19, 1958 concerning the increase of hospital rates in the City; and an
page 75 } article in the Richmond News Leader of December 18, 1954 concerning the application of Halifax Community Hospital Association, Inc. for correction of erroneous assessment of taxes against it by Halifax County.

And the Court, having maturely considered the same and being of the opinion that no evidence should be received in support of either the interrogatories or the motion to quash the same, doth refuse to admit the same, to which action of the Court the City of Richmond, by counsel, excepted.

Thereupon, the parties by their respective counsel fully argued the amended motion to quash the interrogatories filed by the applicant, Richmond Eye Hospital, and the Court, having maturely considered the briefs previously filed and the argument of counsel, and it appearing to the Court that:

1. The question presented to the Court by the application herein is whether the real estate tax assessed by the City of Richmond against the Hospital is a tax on property which is "actually and exclusively occupied and used by * * * hospitals * * * conducted not for profit but exclusively as charities";

2. The City's interrogatories Nos. 6, 7, 8, 10 and 11 relate to the identity of the eye, ear, nose and throat specialists who are permitted to practice at the Hospital, their status (as members of the resident staff, members of the non-resident staff, or members of neither resident or non-resident staff) and their compensation;

3. As shown by the petition of the Hospital and its answer to the City's interrogatories Nos. 13 and 14, the Hospital is an "open hospital" generally available to any qualified eye, ear, nose or throat specialist;

4. Interrogatories Nos. 15, 16 and 17 relate to patients suffering from disease or ailments other than
page 76 } those of the eye, ear, nose or throat;

5. Interrogatories Nos. 1, 2. 3, 4, 5, 9, 12, 17, 18 and 19 relate to the amount of "free service" (that is, service for which no charge or a partial charge only is made directly to the patient) rendered by the Hospital and to whether and in what amount charges are made to patients by the Hospital

or attending physicians and surgeons; and the Court being of the opinion that:

1. The identity, status and compensation of the physicians and surgeons who practice at the Hospital of the petitioner are irrelevant and immaterial in this proceeding;
2. The nature of the diseases or ailments of the patients cared for in the Hospital is irrelevant and immaterial in this proceeding; and
3. The exemption from taxation provided in Section 183(e) of the Constitution and Section 58-12(5) of the Code of Virginia does not depend upon whether a hospital otherwise qualified for the exemption renders any "free service" or makes or permits charges to be made for service rendered to its patients in whole or in part, and that interrogatories with respect thereto are irrelevant and immaterial in this proceeding;

it is

ORDERED, that the motion of the petitioner, Richmond Eye Hospital, to quash interrogatories Nos. 1 through 12 and 15 through 19 propounded to it by the City of Richmond be, and the same hereby is, sustained, to which action of the Court the City of Richmond, by counsel, duly excepted.

Enter 10/7/58.

W. M. H.

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IN THE MATTER OF THE APPLICATION OF RICHMOND MEMORIAL HOSPITAL FOR RELIEF FROM TAXES ASSESSED ON REAL ESTATE.

ORDER.

This matter came on this day to be heard on the amended motion of the applicant, Richmond Memorial Hospital, to quash the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 propounded to it by the City of Richmond. Thereupon the City of Richmond, by its attorney, tendered

to the court and asked the court to receive and consider in evidence in support of said interrogatories the following documents:

1. Certified copies of the interrogatories propounded by the City of Richmond and the answers thereto filed by the Richmond Eye Hospital in the case therein pending by Richmond Eye Hospital for correction of erroneous assessment of real estate taxes.

2. Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

3. Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

4. Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk* and *Hospital of St. Vincent* v. *Norfolk* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

page 78 } 5. The special section of the Richmond Times Dispatch of January 13, 1957 concerning Richmond Memorial Hospital; a News Leader article of March 19, 1958 concerning the increase of hospital rates in the City; and an article in the Richmond News Leader of December 18, 1954 concerning the application of Halifax Community Hospital Association, Inc. for correction of erroneous assessment of taxes against it by Halifax County.

And the court, having maturely considered the same and being of the opinion that the evidence tendered by the City of Richmond should not be received upon the motion to quash the interrogatories doth refuse to admit the same, to which action of the court the City of Richmond, by counsel, excepted.

Thereupon, the parties by their respective counsel fully argued the amended motion to quash the interrogatories filed by the applicant, Richmond Memorial Hospital, and the court, having maturely considered the briefs previously filed and the argument of counsel, and it appearing to the court that the court is not now satisfied that the interrogatories which the applicant has moved to quash are relevant, and such as the applicant would be bound to answer upon a bill for discovery, and such as the applicant ought to be required to answer, it is

ORDERED, that the motion of the petitioner, Richmond Memorial Hospital, to quash interrogatories Nos. 1 through 13, inclusive, propounded to it by the City of Richmond be, and the same hereby is, sustained, to which action of the court the City of Richmond by counsel, duly excepted.

Refused.

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IN THE MATTER OF THE APPLICATION OF RICHMOND MEMORIAL HOSPITAL FOR RELIEF FROM TAXES ASSESSED ON REAL ESTATE.

ORDER.

This matter came on this day to be heard on the amended motion of the applicant, Richmond Memorial Hospital, to quash the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 propounded to it by the City of Richmond, thereupon, the City of Richmond by its Attorney, tendered to the Court and asked the Court to receive and consider in evidence in support of said interrogatories the following documents:

1. Certified copies of the interrogatories propounded by the City of Richmond and the answers thereto filed by the Richmond Eye Hospital in the case therein pending by Richmond Eye Hospital for correction of erroneous assessment of real estate taxes.

2. Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

3. Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq. of October 28, 1953.

4. Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk* and *Hospital of St. Vincent* v. *Norfolk* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

5. The special section of the Richmond Times Dispatch of

January 13, 1957 concerning Richmond Memorial
page 80 } Hospital; a News Leader article of March 19, 1958
concerning the increase of hospital rates in the City; and an article in the Richmond News Leader of December 18, 1954 concerning the application of Halifax Community Hospital Association, Inc. for correction of erroneous assessment of taxes against it by Halifax County.

And the Court, having maturely considered the same and being of the opinion that no evidence should be received in support of either the interrogatories or the motion to quash the same, doth refuse to admit the same, to which action of the Court the City of Richmond, by counsel, excepted.

Thereupon, the parties by their respective counsel fully argued the amended motion to quash the interrogatories filed by the applicant, Richmond Memorial Hospital, and the Court, having maturely considered the briefs previously filed and the argument of counsel, and it appearing to the Court that:

1. The question presented to the Court by the application herein is whether the real estate tax assessed by the City of Richmond against the Hospital is a tax on property which is "actually and exclusively occupied and used by * * * hospitals * * * conducted not for profit but exclusively as charities";

2. The City's interrogatories Nos. 7, 8, 9, 11 and 12 relate to the identity of the physicians and surgeons who are permitted to practice at the Hospital, their status (as members of the resident staff, members of the non-resident staff, or members of neither resident or non-resident staff) and their compensation;

3. As shown by the petition of the Hospital and its answer to the City's interrogatory No. 14, the Hospital is an "open hospital" generally available to any qualified physician or surgeon;

4. Interrogatories Nos. 1, 2, 3, 4, 5, 6, 10 and 13
page 81 } relate to the amount of "free service" (that is,
service for which no charge or a partial charge only is made directly to the patient) rendered by the Hospital and to whether and in what amount charges are made to patients by the Hospital or attending physicians and surgeons;

and the Court being of the opinion that:

1. The identity, status and compensation of the physicians and surgeons who practice at the Hospital of the petitioner are irrelevant and immaterial in this proceeding, and

2. The exemption from taxation provided in Section 183(e) of the Constitution and Section 58-12(5) of the Code of Virginia does not depend upon whether a hospital otherwise qualified for the exemption renders any "free service" or makes or permits charges to be made for service rendered to its patients in whole or in part, and that interrogatories with respect thereto are irrelevant and immaterial in this proceeding,

it is

ORDERED, that the motion of the petitioner, Richmond Memorial Hospital, to quash interrogatories Nos. 1 through 13, inclusive, propounded to it by the City of Richmond be, and the same hereby is, sustained, to which action of the Court the City of Richmond, by counsel, duly excepted.

Enter 10/7/58.

W. M. H.

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HUSTINGS COURT
of the
CITY OF RICHMOND

April 10, 1959.

Mr. John P. McGuire, Jr.
Assistant City Attorney
City Hall
Richmond, Virginia

Mr. George E. Haw
Attorney at Law
Travelers Building
Richmond, Virginia

Mr. Eppa Hunton, IV
Attorney at Law
Electric Building
Richmond, Virginia

Re: Richmond Eye Hospital.

Gentlemen:

The late Virginia Fox Beveridge (Mrs. Stephen T. Beveridge) in her last will and testament devised and bequeathed to State-Planters Bank and Trust Company, as Trustee, the residue of her estate, of which residue forty per cent (40%) was directed to be used by said Trustee in the establishment of a hospital in Richmond, Virginia, for eye work with its principal work to be along charitable lines and mainly for the residents of Richmond City and the Counties of Henrico, Hanover and Chesterfield. Said forty per cent (40%) amounted to approximately Two hundred thousand dollars ($200,000.00). The late Mr. and Mrs. A. D. Williams became interested in the proposed hospital and contributed to it One hundred and eighty thousand dollars ($180,000.00). Contributions from other private sources amounted to approximately Fifty thousand ($50,000.00) dollars. The Federal Government under the Hill-Burton Act contributed forty eight per cent (48%) of the construction cost and the State of Virginia seven per cent (7%) of the cost thereof. The total contributions amounted to Seven hundred and seventy five thousand dollars ($775,000.00). Subsequently Mr. and Mrs. A. D. Williams established a trust fund in the amount of Three hundred thousand ($300,000.00) dollars for the benefit of the hospital, the income from which is payable
page 119 } to the hospital for its maintenance and support.
There have been other substantial gifts made to the hospital by individuals and corporations. The hospital was organized under the name of Richmond Eye Hospital and is a *Non Stock Corporation.* It is a small forty (40) bed hospital of the type usually referred to as a "Specialty hospital." The rates charged by it are comparable to those charged by other hospitals in the area. There are approximately thirty-three doctors on its active staff, and approximately thirty doctors and nine dentists on its courtesy staff. It is an open staff hospital, and its facilities are open to any eligible doctor or dentist in the Richmond area. Heat is furnished the hospital by the Medical College of Virginia at cost.

The Virginia Supreme Court of Appeals has never decided a case similar to the case now pending before this Court that is to say what is a charity or a hospital conducted exclusively as a charity. There have been hospital cases, but these involved the question of negligence and not the question of taxation.

Section 183 of the Constitution of Virginia provides in part as follows:

§Property exempt for taxation—Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

* * * * *

(c) Real estate belonging to, actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nurseries, conducted not for profit, but exclusively as charities, also parks or playgrounds held by trustees for the perpetual use of the general public.

In 1954 the General Assembly of Virginia amended Section 58.12 (5) of the Code of Virginia, which until that time contained identically the same language as is contained in paragraph (3) of Section 183 of the Constitution.

Section 58.12 (5) of the Code of Virginia was amended in 1954 as follows:

"(5) Real estate belonging to and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to, Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nurseries, conducted not for profit but exclusively as charities, (*which shall be deemed to include hospitals operated by Non Stock Corporations not organized or conducted for pecuniary profit but which may charge persons able to pay in whole or in part for their care and treatment*) and parks or playgrounds held by trustees for the perpetual use of the general page 120 } public."

After reviewing the record in this case the Court is of the opinion that Richmond Eye Hospital is a charitable institution, and is therefore exempt from the payment of real estate taxes assessed against it by the City of Richmond.

In closing the Court desires to express its appreciation to

counsel for the excellent briefs they have filed in these proceedings. They have been most helpful to the Court.

Very truly yours,

W. MOSCOE HUNTLEY, Judge.

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HUSTINGS COURT
of the
CITY OF RICHMOND

April 10, 1959.

Mr. John P. McGuire, Jr.
Assistant City Attorney
City Hall
Richmond, Virginia

Mr. Lewis F. Powell
Attorney at Law
Electric Building
Richmond, Virginia

Re: Richmond Memorial Hospital.

Gentlemen:

The Richmond Memorial Hospital, *a Non Stock Corporation,* organized and existing under the laws of the Commonwealth of Virginia, came into existence by *virture* of the concerted efforts of a number of public spirited citizens. Some seven hundred and fifty (750) citizens solicited funds from the public at large, and were instrumental in securing contributions from over Thirty-Three thousand (33,000) persons and corporations amounting in the aggregate to approximately Three million nine hundred thousand dollars $3,900,000.00). Hill-Burton funds and an appropriation by the General Assembly of Virginia amounted to Three million one hundred thousand dollars ($3,100,000.00). The total amount thus raised amounted to some Seven million dollars ($7,000,000.00). The Council of the City of Richmond by appropriate ordinance designated the hospital as Richmond's Official World War II Memorial. The hospital is operated

as an open staff hospital and over four hundred and fifty (450) doctors and surgeons in this area have access to its facilities. There are approximately three hundred and seventy four (374) beds available for patients. The hospital rates are comparable to those charged by other hospitals in the area. There can be no question, but that it serves a necessary and important community need.

The Virginia Supreme Court of Appeals has never decided a case similar to the case now pending before this Court that is to say what is a charity or a hospital conducted exclusively as a charity. There have been hospital cases, but these involved the question of negligence and not the question of taxation.

page 122 } Section 183 of the Constitution of Virginia provides in part as follows:

§Property exempt for taxation—Unless otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

• • • • •

(c) Real estate belonging to, actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nurseries, conducted not for profit, but exclusively as charities, also parks or playgrounds held by trustees for the perpetual use of the general public.

In 1954 the General Assembly of Virginia amended Section 58.12 (5) of the Code of Virginia, which until that time contained identically the same language as is contained in paragraph (3) of Section 183 of the Constitution.

Section 58.12 (5) of the Code of Virginia was amended in 1954 as follows:

"(5) Real estate belonging to and actually and exclusively occupied and used by, and personal property, including endowment funds, belonging to, Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nurseries, conducted not for profit but exclusively as charities, (*which shall be deemed to include hospitals operated by Non-Stock Corporations not organized or conducted for pecuniary profit but*

which may charge persons able to pay in whole or in part for their care and treatment) and parks or playgrounds held by trustees for the perpetual use of the general public."

The Richmond Memorial Hospital is a Non-Stock Corporation. It is not conducted for profit, has no stockholders. The revenue it receives is devoted exclusively to the operation of the hospital. Every brick and trowel of mortar represents the generosity of a public-spirited community.

After reviewing the record in this case the Court is of the opinion that Richmond Memorial Hospital is a charitable institution, and is therefore exempt from the payment of real estate taxes assessed against it by the City of Richmond.

In closing the Court desires to express its appreciation to counsel for the excellent briefs they have filed in these proceedings. They have been most helpful to the Court.

Very truly yours,

W. MOSCOE HUNTLEY, Judge

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ORDER.

These causes, which were consolidated by order entered herein March 26, 1959, came on to be further heard upon the petitions of Richmond Memorial Hospital and Richmond Eye Hospital and on the evidence introduced in open court and were argued by counsel, and it appearing to the Court:

1.

That Richmond Memorial Hospital and Richmond Eye Hospital are corporations duly organized and existing under the laws of the State of Virginia for the purpose of operating hospitals not for profit but exclusively for charity;

2.

(a) That the said Richmond Memorial Hospital did operate a hospital not for profit but exclusively for charity in the City of Richmond, Virginia, on the first days fo January,

page 125 } 1956, 1957 and 1958, and that the real estate hereinafter mentioned is situated in the City of Richmond, Virginia, and was owned by it and was actually and exclusively occupied and used in the operation thereof on the first days of January in each of said years and at all times relevant hereto;

(b) That the said real estate was assessed by the City of Richmond with real estate taxes for the year 1956 in the amount of $54,125.58, for the year 1957 in the amount of $73,696.38, and the year 1958 in the amount of $81,789.78, and that said assessments were erroneously made thereon;

3.

(a) That the said Richmond Eye Hospital did operate a hospital not for profit but exclusively for charity in the City of Richmond, Virginia, on the first days of January, 1954, 1955, 1956, 1957 and 1958, and that the real estate hereinafter mentioned is situated in the City of Richmond, Virginia, and was owned by it and was actually and exclusively occupied and used in the operation thereof on the first day of January in each of said years and at all times relevant hereto;

(b) That the said real estate was assessed by the City of Richmond with real estate taxes for the year 1954 in the amount of $12,053.80, for the year 1955 in the amount of $10,410.10, for the year 1956 in the amount of $10,396.40, for the year 1957 in the amount of $10,396.40, and for the year 1958 in the amount of $10,396.40, and that said assessments were erroneously made thereon.

It is ADJUDGED, ORDERED and DECREED that the assessments made by the City of Richmond against Richmond Memorial Hospital for the year 1956 in the amount of $54,125.58, for the year 1957 in the amount of page 126 } $73,696.38, and for the year 1958 in the amount of $81,789.78 on property described on the Land Books of the City of Richmond as follows:

"1300		901X693	40	
NW	WESTWOOD & LAMONT		N	1330"

be, and the same are, hereby eliminated and are to be struck from sand Land Books as erroneous assessments, and said assessments are hereby declared void and of no effect: and

It is further ADJUDGED, ORDERED and DECREED that the assessments made by the City of Richmond against Richmond Eye Hospital for the year 1954 in the amount of

$12,053.80, for the year 1955 in the amount of $10,410.10, for the year 1956 in the amount of $10,396.40, for the year 1957 in the amount of $10,396.40, and for the year 1958 in the amount of $10,396.40 on property described on the Land Books of the City of Richmond as follows:

"408 64X106
W 12TH CLAY & MARSHALL E 207"

be, and the same are, hereby eliminated and are to be struck from said Land Books as erroneous assessments, and said assessments are hereby declared void and of no effect, to which action of the Court, the City of Richmond by counsel duly objected and excepted.

The Assistant City Attorney for the City of Richmond was present and defended the said applications and the Commissioner of Revenue and the Assessor of Real Estate who made the said assessments were present and were examined as witnesses touching the said obligation.

The Clerk of this Court is directed to cause certified copies of this order to be delivered to the Commissioner of Revenue, Assessor of Real Estate and Collector of City Taxes of the City of Richmond.

And to all of the foregoing action of the Court the City of Richmond, by counsel, excepted.

Enter 5/13/59.

W. M. H.

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page 9 } Mr. McGuire: If the Court please, there are two or three things I think ought to be taken up before counsel for the two hospitals start calling their witnesses.

First, I think the record ought to be plain just what cases we are trying. The Richmond Eye Hospital, as our file shows, finished construction and commenced operation in 1952, and the Richmond Memorial Hospital completed construction and started operation sometime during the year 1956. The original application for correction of assessment was filed by Richmond Eye Hospital in the Chancery Court of the City of Richmond in 1953, which was for the correction of assessment for 1952 and 1953, but since that time every year, I think, Rich-

mond Eye Hospital has filed an additional application in order to keep the statutory time limit from running on successive annual assessments. The Richmond Memorial Hospital has done the same thing. Their original application was filed in 1957, to ask for correction of the assessment from page 10 } 1956 and 1957.

About a year ago, when I filed the interrogatories in this case, it seemed logical to me to actually file them in the current cases, so I filed interrogatories as to Richmond Eye Hospital and so stated in the caption—"In the matter of the application of Richmond Eye Hospital for relief from taxes assessed on real estate for the year 1957." That is the way I wrote it, so as to identify the application.

Similarly, for interrogatories filed in the case involving Richmond Memorial Hospital, I captioned it "In the matter of the application of Richmond Memorial Hospital for relief from taxes assessed on real estate for the years 1956 and 1957."

A decision in these cases, of course, would govern the other applications, but if it is agreeable to other counsel I think it ought to be understood these are the cases we are trying and the records we are making up. Is that agreeable?

Mr. Hunton: Entirely agreeable.

Mr. Powell: I thought, so far as Richmond Me- page 11 } morial Hospital is concerned, it might be appropriate to consolidate the pending applications for trial. I think the results would be the same in either case.

Mr. McGuire: That is entirely agreeable to me but there has been no such order of consolidation and that is why I thought we should have the record show what I have just stated. It is agreeable to me, whatever Mr. Hunton and Mr. Powell think should be done.

Mr. Powell: I assume, if it is agreeable with counsel for the city, we may agree here in open court that the cases may be consolidated for trial and the evidence introduced will be deemed to be introduced in support of all pending petitions.

Mr. McGuire: I agree to that.

Mr. Powell: If an order seems necessary or desirable, we will prepare and submit it.

Mr. Hunton: Your Honor, there is one case with respect to Richmond Eye Hospital which was instituted in the Chancery Court and there is a question of whether that can be removed to this Court, since there is some question of page 12 } whether the statute of limitations has run, so that is not a part of the matters being consolidated here, I take it.

Mr. McGuire: You are quite right. I stated to the Court

that the original Richmond Eye Hospital application was filed in the Chancery Court but I failed to state that subsequent applications, for jurisdictional reasons, have been filed in this Court.

Another matter, Your Honor, I took the liberty of telling the witnesses I summonsed for the city they need not appear here this morning. I summonsed a number of witnesses and they include both physicians and surgeons. I undertook to advise them by telephone that it would not be necessary to appear this morning. The surgeons have their schedules set a day or two in advance and I was going to ask opposing counsel if they could now estimate how long they thought it would take them to put on their evidence, if such an estimate can be made, and I will have my people notified during the course of the day. Before they undertake to make such an estimate, however, perhaps I ought to inquire into the nature of the response that will be made to the summonses to
page 13 } produce books and papers. It might have some effect on the length of time that will be consumed.

Mr. Powell: If Your Honor please, a summons was directed to Mr. Prather, Administrator of the Richmond Memorial Hospital, to produce certain records to enable him to respond to certain questions outlined in the summons. Mr. Prather is here, as is Mr. Bartley. Mr. Prather is Administrator of the hospital and Mr. Bartley is Assistant Administrator. One or both of those gentlemen is prepared to answer the questions in Mr. McGuire's interrogatories, and as set forth in his subpoena, to the extent that they can. We did not bring the records to court this morning. The records that would be necessary to answer accurately the last two questions in the subpoena are quite voluminous and we estimate it might take one man two to three weeks to review those records to ascertain precisely the answer Mr. McGuire wishes.

The suggestion I make is that at the proper time Mr. McGuire propound such questions as he may deem appropriate and as the court considers admissible, to Mr. Pra-
page 14 } ther or Mr. Bartley, and if he then feels he wishes to have the records produced and if the court thinks they are necessary, we will have a truck bring them down.

Mr. McGuire: I don't know what I would do with a truckful of records. It is not the records themselves but the information which I seek. The reason I said what I did was because of the position taken by counsel for the Richmond Memorial Hospital and the Richmond Eye Hospital on the interrogatories. I didn't know what position they might take with reference to the subpoena. Is it possible for counsel to estimate how long it will take them to put on their two cases?

Mr. Powell: I might say Mr. Hunton and Mr. Haw have suggested that Richmond Memorial Hospital put on its evidence first, since the evidence introduced by Richmond Memorial Hospital will probably take longer than that contemplated in behalf of the Eye Hospital. In terms of how long it will take to put on our affirmative evidence, I would assume we can conclude that by mid-afternoon, providing the City Attorney does not cross examine.

page 15 } Note: There followed an off the record discussion.

Mr. Powell: May it please the court, before calling the first witness, I assume in view of the full preliminary arguments we have had in this case and the filing of briefs, it will not be necessary to make an opening statement in the conventional sense.

The Court: Not unless you desire to do so.

Mr. Powell: I would like to make a very brief statement for the record as follows:

In the order entered by the court on October 7, 1958, with respect to the issues raised by the City's interrogatories this Court held, among other things, as follows:

"The exemption from taxation provided in Section 183(e) of the Constitution and Section 58-12(5) of the Code of Virginia does not depend upon whether a hospital otherwise qualified for the exemption renders any "free service" or makes or permits charges to be made for service rendered to its patients in whole or in part, and that interrogatories with respect thereto are irrelevant and immaterial in this proceeding."

page 16 } We are here today to present evidence on behalf of the two hospitals to show, to use the words of the Court, that they are "otherwise qualified for the exemption" specified by Section 183(e). In introducing evidence to prove that Richmond Memorial Hospital is otherwise qualified for this exemption, we wish to present a full and complete picture of the origin and nature of this hospital, and of the manner in which it serves all of the citizens of this community.

At the time of the argument on the interrogatories, we said to the Court that while we were convinced as a matter of law that whether or not any free service was rendered is completely immaterial, we nevertheless intended at the trial on the

merits to present to the Court all possible information as to the manner in which this community institution actually functions.

It therefore may be anticipated, in connection with proving that Richmond Memorial Hospital is, in the words of the Court's Order, "otherwise qualified for the exemption", and also as a part of making the fullest possible disclosure to the Court, there will be reference to all types of serv-
page 17 } ice rendered by the Hospital—including the free service which has been rendered even during its first two years. By making these references to free service, we of course do not waive, or recede to any extent, from our legal position and from the Court's Order of October 7, 1958, that the extent of free service rendered by a hospital otherwise qualified is immaterial and irrelevant to the issue in this case. In short, we assume that this ruling is the law in this case, as we believe it to be the law of Virginia, but in proving the allegations of our Petition and in making a full disclosure to the Court witnesses for the Hospital will naturally cover all types of service of every kind rendered by this institution which serves the hospital needs of all who are sick, regardless of their financial ability.

page 18 } D. TENNANT BRYAN,
a witness called by the Richmond Memorial Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Bryan, please state your name and residence.

A. My name is Tennant Bryan, and I live at 211 Ampthill Road.

Q. What is your occupation, sir?

A. I am a newspaper man.

Q. Will you state briefly what official connection, if any, you have had with Richmond Memorial Hospital, going back and answering that question as to the first official connection you had with it?

A. Starting at the very beginning, starting from now and going back?

Q. Starting at the beginning and coming forward to now.

A. My first connection with it was in 1945 when the President of the Richmond War and Community Chest appointed a committee very late in 1945 to seek follow-up on reports that

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had been made on the need for new hospital beds in
page 19 } Richmond, to determine the accuracy of that report
and to determine whether such a hospital could, in fact, be built and operated.

Q. Mr. Bryan, at that particular point if you would state merely your various official connections with the hospital, then we will come back to the story of the origin and development of the hospital.

A. First I was a member of the steering committee of five, consisting of Harry Augustine, Theodore Adams, Jim Galleher, Buford Scott and myself, appointed by the President of the War and Community Chest. That developed into a group of incorporators and a Board of Trustees about a year later, and I was one of the incorporators and Trustees and an officer in the original incorporated hospital.

I continued in that capacity until 1949, when we did determine to put on a campaign and I was at that time appointed general chairman of the campaign to raise the money for the building of the hospital. I continued in that until the campaign was over and, as I recall it, I have been re-elected Trustee and Vice President of the hospital corporation from that time up until now.

Q. You are still a Vice President?

A. Still Vice President and still Trustee, and
page 20 } on the executive committee.

Q. You have served in those capacities at all times?

A. Yes, sir.

Q. Now, Mr. Bryan, would you please go back to the steering committee which you first mentioned and state briefly what its function was and what it did?

A. Well, there had been a report made under the sponsorship of the Richmond Community Council, to determine whether there was in fact a need for general hospital beds in Richmond. This citizens committeee or steering committee which I mentioned was appointed by the parent body, the Richmond War and Community Fund, simply to reaffirm or to deny the validity of the study which had been made.

Q. As to the need for the hospital?

A. As to the need for additional general hospital beds.

Q. Did the committee make a study?

A. The committee made a study covering a period of several months. I don't remember exactly how many months, but we came to the conclusion the report was accurate, that the need existed, and that it could best be met by the establish-

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ment of a new hospital rather than by the augmentation of existing facilities.

page 21 } We reported that back to the parent body, which had become again the Richmond Area Community Fund, reported our recommendations that a Board of Trustees be established and that a hospital be incorporated. That report was approved and we proceeded to incorporate the hospital in 1946, as I recollect—maybe 1947.

Q. Were you one of the incorporators who signed the certificate of incorporation of the hospital?

A. Yes, sir.

Q. After its incorporation, Mr. Bryan, what happened with respect to financing the construction of the hospital?

A. That is a very long story. Nothing happened for quite a while. Walter Robertson was the first President of the new corporation, and he appointed several committees to determine whether the money could be raised to build a hospital and at that particular time—which was 1947 and 1948—it appeared that we could not raise enough money to build a hospital of the magnitude that had been envisioned in the report.

I think the principal trouble was that nobody—it wasn't sufficiently specific as to where the hospital was going to be and what it was going to do, although everybody knew generally what it was supposed to be and do, and frankly it wasn't until 1949 when the idea had gained suffi-

page 22 } cient popular support in the community to make us feel we could proceed with a campaign for funds, and as a consequence in 1949 we undertook to organize a campaign and we found our assumption had been correct and there was a considerable amount of popular support for such a movement.

We were able to raise through public subscription approximately three million nine hundred thousand dollars—a little less than that, and through Hill-Burton funds and subsequent contributions from the State of Virginia, we raised almost seven million dollars, with which—I don't belabor the obvious, Your Honor,—there has now been built and is operating what is called the Richmond Memorial Hospital.

Q. Do you recall the approximate number of individuals and corporations that made gifts to the Richmond Memorial Hospital during this campaign?

A. We had to estimate that, Mr. Powell, I am sorry to say. We have no exactly accurate figure because there were so many contributions made by clubs which had an uncertain membership as to members. The best we could figure was

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about 33,000. There were Sunday School groups and departments of business organizations that made contributions as groups. We never did figure out exactly how many people contributed, but I think it is safe to say at least

page 23 } 33,000.

Q. Is the Richmond Memorial Hospital involved in this controversy the hospital which was built with this fund you mentioned?

A. Yes, sir.

Q. You referred to community sentiment. What, if any, connection did and does this hospital have with the War Memorial of the City of Richmond?

A. Well, by action of the City Council, I don't remember the date, but I know it is a matter of record, the new hospital which was then called, at the time was called Richmond Community Hospital, was designated the official War Memorial for the City of Richmond. At a subsequent time when the name of the hospital corporation was changed, the City Council amended its original ordinance to conform to the new name.

Q. Do you happen to recall why the name was changed?

A. Yes, sir. I recall it very unpleasantly. Nobody had thought there was already a community hospital, and there might be considerable confusion as between the two institutions. That was the principal reason. That was what brought about the change.

Q. The conflict in the original name?

A. The conflict in the original name which, frankly, we did not consider.

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Q. Mr. Bryan, I am handing you attested copies of the two ordinances by City Council to which you have referred. I would like to ask you if you would please file these as exhibits with your testimony.

A. I will, sir, gladly.

Note: Attested copies of the two ordinances referred to were filed and marked Bryan Exhibit No. 1 and Bryan Exhibit No. 2.

By Mr. Powell:

Q. Do you recall whether or not there was a poll made of the veterans in the City of Richmond in connection with the designation of this institution as the World War II Memorial?

A. I am not clear as to whether or not a poll was made of the veterans in the City of Richmond. I know there was a poll made of the survivors of the veterans who had been killed

in the war—I should say survivors of men who had been killed in the war. I think there was an unofficial poll made of veterans as well, but I am not quite clear on that.

Q. Do you recall whether the result of this poll was in favor of the Memorial Hospital or not?

A. By a sizeable majority it was in favor. There were a few who did not like the idea at all.

page 25 } Q. Mr. Bryan, I hand you a certified copy of a letter dated March 7, 1955, from the United States Treasury Department, Internal Revenue Service, District Director, Richmond, Virginia, addressed to Richmond Memorial Hospital, with respect to the tax status under Federal Law of the hospital, and ask you whether that letter was received by the hospital on or about the date it states?

A. Yes, sir, I remember it very well. Mr. Henley called me up and told me he had it.

Note: The attested copy of letter referred to was filed in evidence and marked Bryan Exhibit No. 3.

Q. Mr. Bryan, you spoke of the campaign that resulted in the raising of approximately three million nine hundred thousand dollars and your having been the campaign general who was in charge of that effort. Do you happen to recall approximately how many citizens of this community took part in the raising of that money?

A. The campaign was in two phases. There was one in which a comparatively few people took part, in which the larger corporate gifts and memorial gifts were solicited. Not over 150 citizens took part in the initial phases.

When that had been substantially completed, we page 26 } then undertook the public campaign. Lewis Chewning was the chairman and I cannot say with certainty whether there were five or six hundred people participating as solicitors, but there were at least five hundred and probably six hundred.

Q. You referred to the fact you have been an officer of the hospital from its inception, both before and after its incorporation. What compensation, if any, have you received for your services in those capacities?

A. The customary compensation, Mr. Powell.

Q. Which is zero?

A. Yes, sir.

Q. Mr. Bryan, I hand you a certified copy, or rather a copy which has been attested by the Assistant Secretary of the

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hospital, of the charter and by-laws of the Richmond Memorial Hospital. In view of your testimony you were an incorporator of the hospital, I would like to ask you if you can identify those documents and if so will you please file them with your testimony? I think you will see the charter indicates you were an incorporator.

A. Yes, sir. It is dated October 30, 1947. Here is the signature right here. Do you want me to read the whole thing?

Q. Oh no—just identify it.

page 27 } A. It looks exactly like what I remember having signed.

Mr. Powell: We have Mr. Bartley present, who is the person who made the certification. If Mr. Bryan will identify it generally, we will put Mr. Bartley on later and have him identify it also.

Mr. McGuire: I will be glad to stipulate it.

Note: The certified copy of charter and by-laws of Richmond Memorial Hospital was filed in evidence and marked Bryan Exhibit No. 4.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Bryan, during these campaigns to raise money for the construction of the hospital, was the public given any information or was any general statement made about whether or not this hospital would take indigent patients and treat them free or to what extent such charity work would be done?

Mr. Powell: Just a moment. For the record I would like to state that we consider testimony to this effect to be irrelevant to the legal question, but as I stated to the

page 28 } court in opening remarks. I think it is inevitable in the presentation of the full story of the origin and operation of the hospital that we go into it. I will not object any further but I do think the record ought to show that the legal point is as expressed in the opening statement and as stated, we think correctly, in Your Honor's ruling.

Mr. McGuire: If the court please, I do not wish to belabor this thing or to reargue matters that the court may consider that it has ruled upon. If the court desires I will say only that irregardless of the ultimate position of the court on the question of whether or not these hospitals are exempt, there is

hardly a case on the books—and there must be hundreds of them involving a question of whether or not a hospital is exempt from taxation under some constitutional or statutory provision relating to charitable institutions—there is hardly such a case to be found in which the court has not considered as a factor the question of to what extent charity patients, that is, patients unable to pay for medical attention page 29 } required, are taken and treated without charge. There is no Virginia tax case in the Court of Appeals. The Court of Appeals has not decided any tax case involving that question, but there are five tort cases and in at least three of those opinions the Court mentioned that question, and the question has been mentioned in the circuit court cases with which the court is familiar.

That is all I desire to say about it. I think these matters are certainly relevant to the picture, whether they are controlling or not. That is another thing.

The Court: I think the question is perfectly proper.

A. Please state your question again.

By Mr. McGuire:

Q. All right. I would like to know what, if anything, the public was told about the intent with regard to the treatment of indigent patients, at the time this money was being solicited.

A. There was a good deal of confusion on that subject during the early days of the formation of this hospital, I mean, prior to the actual construction and prior to the time the money was raised, even. There were a great many people in town who thought it was going to be entirely a free page 30 } hospital, as a war memorial, it should be free and nobody should be charged, so our trustees had to grapple with that problem.

At the time the campaign began in late 1949 or early 1950, we had evolved a policy on the matter and that policy, by an odd coincidence, was put in a printed booklet called "Questions and Answers, Richmond Memorial Hospital Building Fund." We had to cover that because it was a question everybody was asking.

Under question No. 9 we said:

"Will the new hospital care for charity patients?

"Answer: Yes, to the extent the resources of the hospital will permit. It is intended to establish reserves and from time to time to seek donations and grants for this purpose."

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So we, I think, made it as clear as we could at that time that we had no funds at the inception of operations specifically set aside for the care of indigent patients, but we knew and we explained to those who asked the question that we knew we were going to take care of indigent patients because every hospital does. Whether it be a charity hospital or not, every hospital has some indigent patients who get in and don't pay.

Q. You can't get them out?

page 31 } A. You can get them out but sometimes it is a little more difficult. On the other hand, we had in our minds all along and still have in our minds that as funds become available for the care of indigents they will be set aside specifically for that purpose, other than the so-called involuntary charity work that every hospital does.

Q. I see. I ought not to have said what I did. It is not a matter to jest about.

Mr. McGuire: Mr. Powell, may I ask that that pamphlet be introduced in evidence?

Mr. Powell: Certainly.

The Witness: This is the only one I have but I will be delighted to introduce it. May I make a photographic copy for my own file, because I know you never get anything back that is introduced in evidence.

The Court: It will be all right if you desire to make a photographic copy. You may introduce the copy and keep the original.

Mr. McGuire: That is entirely agreeable with me.

Note: The pamphlet referred to was filed in evidence and marked Bryan Exhibit No. 5.

By Mr. McGuire:

page 32 } Q. Mr. Bryan, it seems to me then—and you must tell me if I am mistaken in the way I state it—that the purpose of the organization and establishment of this hospital was not primarily to provide a free hospital but to provide a place where the citizens of the community and other persons could obtain needed hospital treatment, irrespective of the question of ability to pay. Is that right?

A. Well, as I said, we started on the whole idea of this hospital without any generally clear conception. All we knew was, according to reports, there was need for approximately 500 additional general hospital beds in the Richmond area.

Q. Without reference to ability to pay?

A. That was no part of the original consideration. We be-

gan to grapple with that later on as questions were asked about whether it was going to be an all free hospital, and we concluded after a great deal of soul-searching it could not be made an all free hospital and furthermore that was not what was needed.

Q. Your purpose, I take it, was to provide needed hospital facilities for which people would, in the main, pay. Is that right?

A. That is substantially correct. I think it would be improper to leave out entirely the idea we did intend
page 33 } originally and still intend, as has been demonstrated in our operations, to take care of some indigent patients.

Q. I don't doubt the good faith of that intention at all, Mr. Bryan. What I am trying to drive at is this. I do not gather that is the prime purpose of this enterprise.

A. No, sir, it was not the prime purpose of the enterprise.

A. Mr. Bryan, I have here the by-laws. Maybe you are not the person to ask, but I am interested in the organization of the medical staff of your hospital which I am told, in general, is an open staff and qualified physicians and surgeons, any of them, are permitted to practice there, but it seems to me there must also be a regular staff or staffs of various kinds and I observe Section IV of your by-laws relates to the "Medical Staff." Are you familiar with that organization, or who should I ask concerning it?

A. I would like to try, if I may and if I feel I am getting too deep for your good or my own, I will step aside.

Mr. McGuire: Will the court permit me to read this in the record?

The Court: Yes, sir.

page 34 } Mr. McGuire: I am reading from Bryan Exhibit No. 4, which is the charter and by-laws of the Richmond Memorial Hospital. I find I was in error when I said it was Section IV. I am reading from Article V which is headed "Miscellaneous Provisions" and Section 4 under that heading entitled "Medical Staff":

"In addition to these by-laws the Board of Trustees may adopt or approve, and from time to time amend, by-laws, rules and regulations with respect to the Medical Staff of the hospital. Such by-laws, rules and regulations shall prescribe the professional qualifications of the members of the Medical Staff, but there shall be no restriction in this respect except those designed to assure high standards of medical attention

and service. When the Board of Trustees is not in session, the Executive Committee may adopt or approve initially the by-laws, rules and regulations with respect to the page 35 } Medical Staff of the hospital, and from time to time amend such by-laws, rules and regulations, provided that the action of the Executive Committee in this respect shall always be subject to the final authority of the Board of Trustees. The Executive Committee shall appoint the Medical Staff of the hospital, or may prescribe in such by-laws, rules and regulations the manner in which the Medical Staff shall be appointed."

By Mr. McGuire:

Q. I am interested in knowing how the medical staff or medical staffs are appointed and who appoints them, what rules and regulations have been adopted pursuant to that by-law, and I presume there are lists of who composes the staff.

A. Yes, sir.

Q. I don't know whether to ask you about those things *are* somebody else. I observed in a recent newspaper that the medical staff had grown to 458 physicians. I don't know at all what that means. Can you explain, to the extent you feel capable?

A. If I may, sir, I will say this. Obviously a hospital has to have a medical staff. Otherwise you would have page 36 } chaotic conditions, doctors running in and out and having no one to supervise their activities.

Q. I would suppose so.

A. Therefore, working from that premise, which is based originally on the concept of a completely open staff hospital, as devised that means that any physician qualified under the rules of the American Medical Association may have the privileges of practicing in the hospital or may apply for those privileges. His competency must be judged by the existing staff. In our case, when we started out that was a group appointed by the Richmond Academy of Medicine who had shown an interest in the organization of the hospital and who were willing to take the responsibility of screening applicants for permission to practice in the hospital.

So far as I know, no medical doctor or surgeon who has applied for staff membership in the hospital has been denied that, except on the grounds of his inability to meet the standards set forth by the American Medical Association.

That is as far as I feel I am competent to go in it, and I may have overstepped by competence at that.

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Q. No, sir, I don't think so. Can you tell me if you have, for instance, a resident staff and a non-resident staff and that sort of thing?

page 37 } A. It isn't broken down just that way, but it might be better, really, to have the administrator, who is 100 per cent more competent than I am, to answer those questions.

Q. Can you or the administrator give me such written rules and regulations as have been adopted under this by-law?

Mr. Powell: Mr. McGuire, we have those here and expect to file them as an exhibit by another witness.

Mr. McGuire: All right. No further questions.

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. One or two questions, Mr. Bryan. Is the Richmond Memorial Hospital a non-stock, non-profit hospital?

A. Yes, sir.

Q. And has it been operated as such?

A. Yes, sir.

Q. You referred to question No. 9 in the booklet, which is your exhibit five, which stated in part that the new hospital will afford hospital care for charity patients to the extent of the reserves of the hospital. I would like to ask you whether it has been done, in fact, the policy of the hospital

page 38 } to furnish free service or charity, as some people call it, as needed to the extent of its ability?

A. That has been the policy of the Board of Trustees and the lay administrator of the hospital. I cannot give you the extent to which that has been carried out by the administrator.

Q. Is it the policy of the Board?

A. It has been the policy of the Board of Trustees and the Executive Committee.

Q. And is it also the policy of the Board and of the Officers to serve all who may need medical attention without regard to whether they can pay?

A. Will you please state that again?

Q. I will reframe the question. I am sure it was rather poorly stated in the beginning. Is it the policy of the Board to serve all of the people of this community within the limits of the facilities of the hospital, without regard to whether or not they are rich or poor or their ability to pay?

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A. That is and has been the policy of the Board. I may have to go one step further.

Q. Say anything you think appropriate.

A. To the best of my knowledge—and this can be proved by other witnesses better than by me—no applicant page 39 } for admission to the hospital has ever been turned down for lack of funds, because of indigence.

Mr. Powell: Thank you, sir.

RE-CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Bryan, Mr. Powell's question was framed in such a way—he asked you if it was not the policy of the Board of Trustees to care for indigent patients within the limitation of the facilities of the hospital. I take that to mean the physical facilities. Now what about the resources of the hospital? That is a limiting factor I have heard about in the previous questions and answers.

A. Can you make the question a little more specific?

Q. I gather that the primary purpose of this hospital is simply to provide hospital beds for people who need hospitalization and I further gather that, in the main, they are expected to pay. I also gather that you intend, as your ability to care for them increases, to increasingly take charity patients. Isn't that what I understood you to say?

A. We intend, as I think I stated by reading from Exhibit 5, to provide funds from the operation of the hospital to take care of such indigent patients. But as I said before, page 40 } Mr. McGuire, the demand for such services has not been sufficiently great as yet to "strap" the hospital, in its history, so that we hope funds will be provided over a course of time, but the need for any more funds than we now have has not yet become apparent.

Q. You have not had any substantial number of applications from indigent patients?

A. I just don't know the answer. I will have to let the administrator answer that question.

Q. I have certainly understood from you that, in the main, this hospital was supposed to be a hospital for patients who paid their bills; that when funds became available you intended to develop—if and when funds became available, you intended to develop a charity service. Is that a correct understanding?

D. Tennant Bryan.

A. That is correct.

Mr. Powell: I don't think you paraphrased the witness' testimony correctly.

Mr. McGuire: I certainly do not mean to misquote him. He said that what I said was correct.

A. It is correct as far as it goes, Mr. McGuire. It is a very difficult area to define.

By Mr. McGuire:

Q. Do you think it likely that many people unable to pay for hospital services will apply for admission to
page 41 } the Richmond Memorial Hospital when they know that, in the main, patients received there are expected to pay the bill?

A. You are giving me something to speculate on, Mr. McGuire.

Q. I understood you to say you had met all the demand there has been for free treatment.

A. To the best of my knowledge.

Q. But you don't know how much that demand has been?

A. No, sir.

Q. But it is generally known, is it not, that the Richmond Memorial Hospital is not a free hospital?

A. I would say it is generally known that people who can afford to pay, as patients at Richmond Memorial Hospital are expected to pay.

Q. Isn't it also generally known that you do not accept, in general, applications and admissions and treatment of indigent patients?

A. Mr. McGuire, we have four hundred-odd beds at the Richmond Memorial Hospital. I don't believe there are enough indigent patients in town to fill those beds.

Q. They fill the beds at Sheltering Arms, don't they?

A. No, sir.

page 42 } Q. They do not?

A. No, sir.

Q. Does your hospital take any patients under contract with the City of Richmond or County of Henrico or County of Chesterfield who are unable to pay their own bills?

A. I am not competent to answer that question.

Mr. McGuire: That's all.

Mr. Powell: Thank you very much, Mr. Bryan.

Witness stood aside.

HENRY G. CHESLEY, JR.,
a witness called by the Richmond Memorial Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and residence.

A. My name is Henry G. Chesley, Jr. I live at 205 Oxford Circle, East, in the city.

page 43 } Q. Mr. Chesley, what is your business occupation?

A. I am President of the Wilson Paper Box company.

Q. Of this city?

A. Yes, sir.

Q. What is your connection with the Richmond Memorial Hospital?

A. I am President of its Board of Trustees and Chairman of its Executive Committee.

Q. How long have you served in these capacities?

A. Since the incorporation of the hospital I have been a member of the Board of Trustees and Executive Committee. I have been President of the Board of Trustees and Chairman of the Building Committee since mid January 1957.

Q. Will you please describe briefly the location of this hospital?

A. The hospital is located in the 1300 block of Westwood Avenue on the site of approximately 14 acres. It is the property familiarly known in Richmond as Laburnum. Do you want me to describe the buildings?

Q. Do you have a picture of the hospital, Mr. Chesley?

A. Yes, I have it here. I also have a miniature floor plan.

page 44 } Q. Mr. Chesley, will you please file as an exhibit with your testimony this picture of the Richmond Memorial Hospital?

A. Yes, sir.

Note: The picture referred to was marked Chesley Exhibit No. 1 and filed.

Q. Do you have a floor plan showing generally the layout of the floors of the hospital?

A. I have a miniature floor plan that shows that.

Q. Will you please file those sheets as your exhibit No. 2?

A. Yes, sir. That is a floor plan of the hospital.

Henry G. Chesley, Jr.

Q. This floor plan contains a plan for each of the seven floors?

A. Yes, sir, and the basement.

Q. And it indicates generally the nature of the facilities located on each floor?

A. Yes, sir.

Note: The floor plan referred to was marked Chesley Exhibit No. 2 and filed.

Q. Mr. Chesley, approximately when was the actual construction of the hospital commenced?

A. The construction was begun in June 1954. The construction started in June 1954.

page 45 } Q. When was it completed for all practical purposes?

A. For all practical purposes it was completed early in the month of November 1956. That is not to say that for several months thereafter there were not adjustments of one kind and another but for all intents and purposes it was completed by the first of November 1956.

Q. Mr. Chesley, this case before the court today involves an application by the hospital, of which you are President, for relief from certain tax assessments made by the City of Richmond. The assessments involve the years 1956, 1957 and 1958. I have here the original bill of the City of Richmond. I also have copies of each of these bills and with the permission of the City Attorney I would like to file photostat copies of the bills in the record.

Mr. McGuire: That is entirely agreeable.

Note: The tax bills were marked Chesley Exhibit No. 3 and filed.

Q. I think it might be appropriate to state in the record the amounts of money that are due for each of the years.

A. For the year 1956 the amount is $54,125.58. For the year 1957, $73,696.38. For the year 1958, $81,789.78.

page 46 } Q. The hospital has not yet received the tax bill for the year 1959?

A. It has not.

Q. Did you receive a notice of the amount of the assessed valuation?

A. Yes, sir.

Q. Do you happen to have that, Mr. Chesley?

Henry G. Chesley, Jr.

A. I have it here.

Q. Will you state the amount of that assessment?

A. The assessment for the year 1959 is $4,376,520.00.

Q. And that is included on the last page of the exhibit you have filed, your Exhibit No. 3?

A. Yes, sir.

Q. Have any of these taxes which you have mentioned been paid by the hospital?

A. No, sir. The Board of Trustees through its Executive Committee, on advice of counsel, has declined to pay any of these taxes.

Q. And they are the taxes involved in this litigation?

A. Yes, sir.

Q. Mr. Chesley, I now want to ask you about the employees and personnel of the hospital. You may refer to any notes that may be necessary in order to answer this ques-
page 47 } tion accurately. First of all, we would like to have you state the number of full time employees and the number of part time employees?

A. The hospital, as of November 30, 1958, had 585 full time employees. We had 144 part time employees, and we estimate that those part time employees are the equivalent of 69 full time employees, which would make 654 full time employees.

Q. Do you have an exhibit that lists the various categories of employees that make up this total?

A. Yes, sir. I have it broken down into categories, including the nursing personnel of the hospital. This is included in here.

Q. The nurses are included in the total you have given?

A. Yes, sir.

Q. You might state the total number of nurses, if you will.

A. The total number of full time nurses is 301. We have 84 part time nurses, or the equivalent of 342 full time nurses.

Q. Mr. Chesley, will you file this tabulation as your Exhibit No. 4, please, sir?

A. Yes, sir.

Note: The tabulation referred to was marked
page 48 } Chesley Exhibit No. 4 and filed.

Q. Mr. Chesley, I now want to ask you about the medical staff of the hospital. First of all, will you define the way in which you use the term "Medical Staff" with respect to this hospital?

A The medical staff of the hospital are those physicians

who practice, who have rights to practice and who do practice in the hospital.

Q. Do you recall approximately how many doctors and surgeons in this community have been admitted to the staff of the hospital for the purpose of practicing there?

A. I think it is 458 at the present time. I have the exact figure somewhere in these papers.

Q. If you will find it later I am sure the City Attorney will permit you to correct it, if your recollection is in error.

Mr. McGuire: Yes, sir.

A. I have misplaced it at the moment.

Q. State how many physicians and surgeons are admitted, describing the procedure and who prescribes and controls that.

A. The Board of Trustees of the hospital, through its Executive Committee, appoints all members of the medical staff and each year, after evaluation and review, this page 49 } staff is reappointed. The by-laws and rules and regulations of the medical staff are originally submitted to the Executive Committee of the Board of Trustees for approval and it is required that any amendments must be approved by the Executive Committee.

The procedure is that a doctor applies to the medical staff for the particular service in the hospital in which he wishes to participate. His application is reviewed, it is passed upon by the Executive Committee of the medical staff, which in turn makes its recommendation to the Executive Committee of the Board of Trustees and the physician is so appointed.

Q. Is this hospital conducted as an open hospital?

A. Yes, sir. Any doctor may apply for admission to the hospital and must be admitted to the staff for the specialty for which he applies, provided he is accredited under the rules of the American Medical Association for that particular specialty.

In the event a man should apply for a particular specialty and it is found that he is not accredited under the rules of the American Medical Association for that particular specialty, he is then offered an opportunity, if he is a practicing physician, to become a member of such service as he might be equipped to serve, and if he is not equipped to serve page 50 } or qualified to serve in any particular specialty, he then is given an opportunity to qualify as a mem-

ber of the staff under the general practice of the staff of the hospital.

Q. You referred to the medical staff by-laws and medical staff rules and regulations. I hand you a copy of the medical staff by-laws and rules and regulations which has been certified by the Assistant Secretary of the hospital and would like to have you file this as your Exhibit No. 5.

A. I have not checked that verbatim but to the best of my knowledge it is a copy.

Q. We have Mr. Bartley here.

A. That is Mr. Bartley's signature and I will take it.

Mr. McGuire: I have no objection.

Note: The copy of medical staff by-laws and rules and regulations was marked Chesley Exhibit No. 5 and filed.

Q. I believe you stated that those by-laws and rules and regulations were passed by the staff, subject to the approval of the Board?

A. Yes, sir, they are passed by the medical staff and are then submitted to the Executive Committee of the Board for approval. They have been so approved.

page 51 } Q. May changes be made in those by-laws or rules and regulations without the approval of the Board or Executive Committee of the hospital?

A. No, sir. The lay board has complete control.

Q. Are any practicing physicians on the Board of Trustees or Executive Committee of the hospital?

A. No, sir, they never have been. I might volunteer, Mr. Powell, so far as it has been possible for us to do so we have seen that this is a completely open staff hospital.

Q. In that connection, did you or did you not testify that the staff membership is reviewed each year by the Board of Trustees or the Executive Committee?

A. Yes, sir. It is reviewed each year by the Executive Committee and the medical staff, and they recommend to the Executive Committee the reappointment of these doctors to the staff. I believe at the next meeting of the Executive Committee we will review the entire medical staff for reappointment.

Q. You testified that the number of physicians and surgeons on the staff was approximately 458, I think you said. Do you know whether or not any other hospital in the City of Richmond has as large or a larger staff?

A. It is my understanding that we have, by a consider-

able margin, the largest medical staff in the City of Richmond.

Q. Mr. Chesley, I want to ask you some ques-
page 52 } tions about the financial operations and conditions of the hospital and as a basis for those questions I would like to hand you, and with the permission of the City Attorney, file this report, subject to such further clarification or identification as he may desire, a report by Andrews, Burket & Company of examination of accounts and financial records for the period from January 1, 1957 to September 30, 1958, of the Richmond Memorial Hospital. I hand you this report and ask whether you have seen it before and whether it was received from Andrews, Burket and Company by you, as President of the hospital?

A. Yes, sir, this is the report that was filed and is a true copy.

Q. Will you file that as your Exhibit No. 6?

A. Yes, sir.

Note: The report of Andrews, Burket and Company was marked Chesley Exhibit No. 6 and filed.

Q. Are Andrews, Burket & Company the auditors for the hospital?

A. Yes, sir, they have been since the first phases of its campaign.

Q. Does the hospital operate on a fiscal or calendar year basis?

A. It operates on a fiscal year ending Septem-
page 53 } ber 30th.

Q. Does that account for the dates on this auditing report?

A. Yes, sir. This report that I hold in my hand, which is a copy of the one you have, was gathered to show to the Board the operation of the hospital from its opening date or approximately its opening date through the end of the last fiscal year. The hospital took its first patient on January 19, 1957.

Q. Mr. Chesley, will you please look at the balance sheet of September 30, 1958, as contained in this report?

A. Yes, sir.

Q. I would like to ask you a few questions about it. I direct your attention to the item called "Reserve Fund" and ask if you will explain what that is?

A. Well, at the time the campaign for funds was made for the hospital, a determination was made as to the cost

that we would be confronted with in bringing the hospital into operation. Those amounts included the cost of the campaign, they included the preparation of the site and the building of the building, and the retention of certain funds to bring the hospital into operation, for working capital and also for a reasonable reserve to protect the operation of the hospital once it got underway.

page 54 } It so happened that at the time the hospital started it was estimated that we would consume a considerable amount of money before the hospital actually began to operate on a break-even basis. Unless I am mistaken it was presumed that this period of time would be a minimum of two to three years. Experience had been in most hospitals of this nature it took three years to bring them to a break-even point where they could maintain themselves for working capital and operating fund.

Q. And this was a general reserve for this purpose?

A. That was a general reserve for this purpose.

Q. I note an item under that caption called "Due From General Fund" and note the offsetting item in the same amount on the liability side. Will you explain that, please sir?

A. Yes, sir. That fund of $137,241.44 was an advance that was made to the hospital for working capital originally. Previously a great amount of money had been advanced, but it was felt that as of the inception of beginning of operations of this hospital, we should set up as a liability any amount of money that was advanced from the reserve fund to the hospital for operation, and that amount of $137,241.44 is carried as an asset under the re-

page 55 } serve fund and is carried as a liability on the other side of the statement, as an accounts payable to the reserve fund of the hospital.

It is our intention, if and when the funds are available to repay that debt to the reserve fund, in order that we might reestablish it at this figure in the neighborhood of $600,000.00.

Q. It will be an asset only to the extent the hospital is able to earn enough money to restore it to the reserve fund?

A. That is correct. It is extremely necessary that we restore it because prudent business judgment indicates a hospital of this size would be in a rather precarious position with a reserve any smaller than that.

Q. I note the next item is entitled "Endowment Fund."

A. That is income that has been received from a fund

created by the late Arthur Glasgow. He left a sum of money in trust which is in the hands of the Hanover Bank in New York. We were one of the beneficiaries. The Medical College of Virginia was a beneficiary and the Virginia Museum of Fine Arts, I believe. Those three were the Virginia institutions which were beneficiaries under that will, and I believe there are one or two others. Under the terms of Mr. Glasgow's will this trust is to be held intact by the Hanover Bank during the lifetime of certain heirs. Income from it is to be distributed to these various institutions.

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Mr. Glasgow in his will made it rather clear the purposes for which he wished this income from this trust to be used. He stated, in effect, that he wished it to be used to give better care to all patients.

The Board of Trustees of the hospital considered that matter rather fully, as to what we should use those funds for, and it has been contemplated since the date the hospital was built that as soon as possible it is going to be necessary for us and desirable for us to build a school of nursing, and the Board of Trustees has set aside the income from the Glasgow trust to be used for the training of nurses in the proposed nursing school. That is the action of the Board of Trustees of the hospital, based on their interpretation of the wishes of Mr. Glasgow.

Q. You do not consider this income available for use in the general operations of the hospital?

A. It is not, by his specific instructions.

Q. Do you have any endowment funds which are unlimited in purpose?

A. No, sir.

Q. Do you have any other endowment fund?

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A. No, sir, not one cent.

Q. In due course do you hope or expect to have gifts or other funds given to the hospital?

A. We do. It is earnestly hoped that the hospital will attract bequests and that such bequests can be set up in an endowment fund for the care of indigent patients. Experience has taught it takes a great number of years for an institution of this kind, operating in a community, before it begins to attract this type of benefactor. It is certainly earnestly hoped by the Board that an endowment fund will be set up at the earliest possible date.

Q. Mr. Chesley, will you now turn to Exhibit C, State-

ment of Income and Expenses. When I say "Exhibit C," I am referring to Exhibit C within your Exhibit No. 6.

A. Yes, sir.

Q. I don't want you to go into any detail, Mr. Chesley, unless the City Attorney or the court would wish you to, but I think it would be appropriate for the record to state, first, with respect to the fiscal year ended September 30, 1957, the results of the operations of the hospital.

A. I would like to say, Mr. Powell, before we go into this testimony on this that my services at this hospital are purely voluntary. I am no accountant and I might not

page 58 } give the technical answers that might be required, but I would like to say there is present in this courtroom the general accountant of the hospital.

Q. We expect to put him on the stand.

A. I don't want to pose as an expert accountant. My strong forte is management.

Q. I want to put into the record certain information in the report at this point. I asked you about the results of the year ending September 30, 1957, as shown by this report.

A. We had an excess of expenses over income for that year of $241,774.15.

Q. That is, after provision for depreciation?

A. Yes, sir.

Q. In what amount?

A. $101,931.11.

Q. What were the results of the next year?

A. The next fiscal year ending September 30, 1958, we had cut that operating loss down to $5,092.52, including a provision for depreciation of $156,579.72.

Q. Mr. Chesley, in view of the interest of the City Attorney in the question of free services, I would like to ask you to look at the items on this income statement under the word "less".

A. Yes, sir.

page 59 } Q. These items appear to be taken from or are deductions from gross income?

A. Yes, sir.

Q. Having in mind the limitation you just stated as to your accounting background, are you able to give any information as to what those categories include?

A. Yes, sir, I can tell you what that is. The first item, free service adjustments—contractural, is the difference between the hospital's cost for care of certain patients and the payment made to the hospital under Blue Cross contracts.

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The second item is free service—general patients. That amounts, as you will see, to $20,638.32 since the hospital went into operation. That includes patients admitted on a free basis. It includes patients that were determined to be medically indigent after admittance to the hospital. It includes patients who entered the hospital and gave full assurance of their ability to pay their bill for an expected illness, but when it developed that their illness was of a much more extended nature than they had contemplated, they suddenly found themselves bereft of funds. I don't know whether you want me to report on that or not.

Q. Give us just a general characterization.

A. I would like to say I went into this hospital
page 60 } operation many years ago and I have learned a
great deal since I have been in it. One of the things I have learned is there are a remarkably few people who admit their inability to pay and who ask for free services. It has been my experience—and I follow it very closely—there are a great number of people who are medically indigent, who are fully employed, who support their families, who pay their rent, who give their families the necessities, and when illness strikes they suddenly become medically indigent. The vast majority of those people will not confess that situation upon admission to the hospital. It is a matter that is determined after the patient is admitted, sometimes after the patient is discharged from the hospital.

Our hospital, unless an application is made on the part of an admitting physician or some social agency, does not admit a patient in the hospital as a charity patient without an application. So far as I know, there has never been an experience where charity was asked for that it was not given on the part of a patient or physician. I have no knowledge of any instance where it has not happened, but immediately upon the admission of that patient in the hospital an investigation is begun as to that person's situation and in many instances
before that patient is discharged from the hospital
page 61 } it is determined that he is, in fact, a charity patient
and needs help with his hospital bills.

There are other cases where a person is discharged from the hospital and it is found, when a demand is made to collect the bill, that the collection of that bill will work a hardship on that family. It might be that the person who was ill was the breadwinner of the family and would be disabled for several months after his illness and under those circumstances, where

it is found necessary to do so, we undertake to give free service, to the best of our ability.

The third item of free services is headed "other free service." That consists of a discount given to the employees of the hospital upon admission to the hospital, and about 25 per cent of it amounts to that. The balance of that represents the difference between the per diem cost of the hospital and reimbursement to the hospital under certain state and county contractual arrangements whereby the hospital takes indigent patients from the city and from the counties under SLH contracts, with the Crippled Children's Bureau, the vocational rehabilitation people, and similar contracts with the hospital which are in effect.

Q. What about the fourth item of this deduction?

A. The fourth item under this group is a provi-
page 62 } sion that is set up by the Board of Trustees of the hospital for a reserve to be set up for uncollectable bills, and into that reserve are charged a great many so-called charity cases or free care cases, cases that it is determined that the patient does not have the ability to pay and we charge that against that reserve.

By the same token, I might add, to get the record completely true, we also charge to that reserve any uncollectable bills where it is determined that they are uncollectable in any event.

Q. Mr. Chesley, you referred to contracts that the hospital may have with public authorities. I would like to ask you if you can state what contracts, if any, Richmond Memorial Hospital does have of that nature.

A. I have made a note of those. It has an agreement for hospitalization under the Virginia Vocational Rehabilitation Service, State Department of Education, where medically indigent persons enter under the Virginia Vocational Rehabilitation Program and are hospitalized at a per diem rate of $18.50 a day.

We have an agreement with the Virginia State Department of Health and Hospitals, Crippled Children's Programs, at the same per diem rate.

We have a contract under the local hospitalization plan to provide hospitalization and treatment of indigent
page 63 } persons of Henrico County at a per diem rate of $18.50.

We have an agreement with the Maternity-Child Health Program of Henrico County whereby indigent obstetrical cases are accepted for 24 to 54 hours for delivery at a total cost of $50.00.

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Q. Mr. Chesley, I don't believe you gave in each instance the date of these contracts. Do you have those date in your notes?

A. I do have them. The date of the rehabilitation program contract is May 10, 1958; the agreement with the Virginia State Department of Health and Hospitals, Crippled Children's Program, May 1, 1958; agreement with Henrico County for treatment of medically indigent persons is effective August 15, 1958; and we also have a contract with the Maternity-Child Health Program of Henrico County dated August 14, 1958.

We also have another agreement to the admission of 24 patients a year from the Virginia Home for Incurables who need general hospital care and require acute surgical and medical attention. These patients are to be accepted on a 100 per cent free basis and in the event any of these patients should have hospital insurance, the proceeds of such insurance shall be made payable to the hospital.

page 64 } I may add, however, there has never been such a case on record.

Q. What is the date of that contract?

A. That arrangement was effective December 9th.

Q. 1958?

A. 1958, and is covered by a letter that I wrote to the President of the Virginia Home for Incurables.

Q. With respect to the four contracts you have mentioned with public authorities, namely, the State Department of Education, the State Department of Health, and two with the County of Henrico, you testified I believe that the arrangement is that a per diem of $18.50 will be paid the hospital for all medically indigent patients sent in by those public authorities.

A. Yes, sir.

Q. Has that been sufficient to cover the cost of services rendered those patients?

A. No, sir, it has not.

Q And that was the item you referred to in your testimony earlier as being included in the category of "other free service"?

A. Yes, sir. Those programs are just coming into being and are growing rather rapidly. Most of them were made in 1958, as the hospital began to come into full operation.

page 65 } Mr. Powell: I might say, Mr. McGuire, we have copies of those contracts and if the city wishes

to look at them I shall be happy for you to do so. My present thought is there is nothing in them that requires them to be put in the record, but I would be happy to do it if you like.

Mr. McGuire: I do not anticipate that it will be necessary to put them in the record, but I might look at them at lunch time.

Mr. Powell: I would be very glad for you to do that, sir.

By Mr. Powell:

Q. Mr. Chesley, what educational activities, if any, are conducted by the hospital?

A. The medical staff of the hospital holds quarterly meetings of the entire staff and monthly meetings are held in each of the divisions and services. At each of these meetings it is required to thoroughly review all clinical material covered in the hospital and interesting cases are discussed. Through this program any doctor who practices at the hospital is given an opportunity to discuss with older and more specialized men various cases that arise there in the hospital and to discuss the clinical data that is covered.

page 66 Q. May I ask you a question right there? Is there any other fully open staff hospital in the City of Richmond?

A. It is my information that the Retreat for the Sick is an open staff hospital.

Q. Do you recall any other?

A. There is no other that I know of.

Q. You do not know of any other?

A. No, sir, there is not.

Q. Does this educational activity which you described, consisting of these staff meetings, provide an educational opportunity to young doctors?

A. Yes, sir.

Q. Which would otherwise not exist if they were not on the staff of your hospital?

A. Yes, sir, it would not otherwise exist. If they were not on the staff of our hospital they simply could not get into those discussions and hear those papers read and cases discussed.

Q. What other educational activities are there?

A. The hospital is approved for a one-year program for twelve rotating internships and a one-year program for an assistant resident in general surgery; an approved school of medical technology; an approved school of x-ray technology;

an approved program in hospital administration.
page 67 } In addition to that, the hospital runs continuously an in-service training program for its employees and staff.

The proposed opening of a school of nursing, which it is contemplated will be begun at the earliest possible date it is feasible to finance it, will provide a nursing education for a minimum of 100 students. From any information I have been able to gather since I have been in this hospital, one of the greatest needs this city has today is that of providing nursing personnel.

Q. Is that a public need generally?

A. There is a very definite and very severe shortage of nurses.

Q. Is that a public need generally?

A. It is a general public need.

Mr. McGuire: It seems to me this line of examination is resulting in right much argument of the case. I don't believe this is quite proper examination.

Mr. Powell: I am not entirely clear as to what the City Attorney has in mine. Our purpose in asking Mr. Chesley about the educational activities of the hospital is to show the hospital is being operated in accordance with that provision of its charter which states as one of its purposes
page 68 } to contribute to the education, medically speaking, of our comunity, and that is an attribute of a charitable institution.

Mr. McGuire: Your Honor, it seems to me Mr. Powell's questions are leading and Mr. Chesley's answers are argumentative.

The Court: I agree with that observation.

Mr. Powell: I will try not to lead the witness.

By Mr. Powell:

Q. Mr. Chesley, you referred to the proposed school of nursing and your desire to proceed with it as soon as you are able to finance it. What are the financial problems?

A. Of the nursing school?

Q. Yes.

A. The primary one at the moment is some six hundred thousand dollars to provide a building for it, the funds for which are not available at the moment. The Board of Trustees, through its Executive Committee, has decided as long as we have this tax liability hanging over our heads we definitely should not—

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The Court: I don't think that is responsive to the question.

A. What was the question?

page 69 } By Mr. Powell:

Q. The question was what are the financial aspects to going ahead with the nursing school. I think you have answered it. The answer is you need the money?

A. Yes, sir.

By the Court:

Q. I understood from your previous testimony the nursing school was being taken care of with the fund from Mr. Arthur Glasgow?

A. No, sir. That is for the teaching of nursing. He specifically stated no part could be used for physical assets.

Mr. McGuire: I think the record should show our position certainly is that the hospital's need for a nursing school or need for funds is entirely irrelevant to the question of whether or not it is exempt from taxation.

The Court: I think that is entirely true.

By Mr. Powell:

Q. Mr. Chesley, does this hospital have an emergency room?

A. Yes, sir. It is open 24 hours a day, seven days a week. I have a note here.

Q. Describe briefly what its service is.

A. It is handling at the moment approximately 800 patients a month. It is operating under a policy laid down

page 70 } by the management of the hospital that any and all patients presented at the emergency room must be taken care of, that they must be taken in and that care must be given to the patient first, and no discussion as to their ability to pay or anything of the kind is to take place until such time as the patient is taken care of.

Q. I may have been inattentive. Did you state the number of patients being handled?

A. Yes, sir, I did. Approximately 800 a month. Yes, sir, it is approximately 800 patients per month.

Q. Mr. Chesley, there was reference made a few moments ago to the purpose of the hospital. Have you read the purpose of the hospital in the charter of the hospital recently?

A. I have read it within the last week.

Q. I will ask you whether or not the hospital has been op-

erated to the best of your ability, as President, in accordance with the purpose stated in the charter?

A. Yes, sir.

Q. Will you please state whether or not your executive committee has adopted any resolution with respect to the rendering of free service?

A. Yes, sir, it has. I should have a copy of it

page 71 } here. I have an excerpt from it here.

Q. Will you please state when it was adopted and by whom?

A. This is an excerpt from the minutes of the regular monthly meeting of the Executive Committee of the Board of Trustees, Richmond Memorial Hospital, November 4, 1957, 4:00 p.m., pursuant to notice.

Q. I will ask you to read the resolution.

A. (Reading)

"Resolved, that the policy of the hospital with respect to so-called 'charity' or 'free' service, as outlined by the President and Administrator, is hereby reaffirmed, namely, that as a non-profit community hospital serving the needs of the entire community, Richmond Memorial Hospital will continue to provide, within the limits of its financial and operational ability, such free or partly free service to those who cannot pay as it may be called upon to render."

Q. Mr. Chesley, I will ask you to file a copy of that resolution with your testimony.

A. Yes, sir.

Note: The copy of resolution was marked Chesley Exhibit No. 7 and filed.

page 72 } Q. Has the hospital been operated in accordance with the resolution you just read, Mr. Chesley?

A. To the best of my knowledge.

Q. It has or has not?

A. It has been.

Q. Will you state whether or not the hospital provides the same service and care to all patients without discrimination of any kind?

A. It does, sir. No one in the hospital taking care of the patients knows whether the patient is a charity patient or is paying.

Henry G. Chesley, Jr.

Q. You referred to discounts a little earlier in your testimony. To whom are they made available?

A. To employees of the hospital. If an employee of the hospital is admitted to the hospital as a patient, they are given a discount on their bill.

Q. Do the trustees or members of the executive committee receive any discount?

A. No, sir.

Q. They pay the full charges?

A. Yes, sir.

Q. You, as President, if you were a patient in the hospital, would you pay the full charge?

A. I have done so. I paid the full fee. That is only the payroll employees of the hospital I referred to.

page 73 } Q. Are you on the payroll of the hospital?

A. No, sir.

Q. Do you or any of the other volunteer officers receive any perquisites of any kind for your work for the hospital?

A. No, sir, not even free meals.

Q. Mr. Chesley, a question I had intended asking you earlier was to describe the volunteer services, if any, rendered by citizens of Richmond on an organized basis with respect to this hospital?

A. I am afraid, Mr. Powell, I will have to answer that question in a general sort of way. I cannot give you figures, but we have a large number of volunteers who work in the hospital on a voluntary, unpaid basis. Most of these are ladies who can contribute a few hours of their time a day, sometimes two or three days a week. Others are members of women's clubs.

One of the great volunteer efforts is that done by the Ginter Park Junior Woman's Club, which operates a circulating lending library in the hospital in honor of Mrs. Blanche Satterfield. That volunteer service at the moment, I believe, is amounting to approximately 1800 hours of service a month being given to the hospital by voluntary citizens.

Q. Do you recall approximately how many of

page 74 } these volunteers work on an organized basis?

A. I couldn't tell you to save my life. I know the approximate number of hours they donate. The Administrator can give you the figure.

Q. Mr. Chesley. there are no stockholders in this hospital?

A. No, sir.

Q. Does anyone profit from the operation of the hospital?

A. No, sir, it is a non-profit corporation.

I believe, Mr. Powell, I gave you an incorrect answer at one

point. You asked me if any of the officers received any compensation.

Q. I asked you about any of the volunteer officers.

A. The Secretary of the Board is the Administrator of the hospital.

Q. And the Assistant Secretary of the Board?

A. Is the Assistant Administrator.

Q. And all the other officers are volunteer?

A. All volunteer.

Q. You say there are no profits to anyone from the operation of the hospital. What will you do if there should be an excess of income over operating expenses in the future? What would you do with the excess?

page 75 } A. One of the biggest things we have to do is keep the hospital modern. In the modern practice of medicine there is constant development of new equipment and apparatus that the hospital must buy. I think in the last year we have spent $55,000.00 of the hospital funds for new equipment and apparatus and instruments.

There is a constant effort on the part of the hospital to develop the free care and free service program of the hospital. It is my earnest hope and certainly of the other members of the executive committee that as soon as possible we should enlarge this free service program many times.

Any other funds we can generate must, of necessity, be used to develop the hospital. It has been pretty conclusively proven at the moment we are operating at capacity. We want to build the school of nursing, also.

We have under construction at the present time a small addition to the hospital to give more administrative space. That building program is under construction right now, money having been borrowed for the construction and we have to pay that back. We also hope to be able to pay back the item of $137,000.00 in the balance sheet, pay that back to the reserve fund.

page 76 } If and when we start our nursing school it must be borne in mind it cost approximately two thousand dollars to educate a nurse, over and above any income the school might produce. It is easy to see if you are running a school of nursing of one hundred students you will build up a liability of $150,000.00 a year, and the only place we have to get it is by operation of the hospital.

Q. When did all the beds in the hospital go into operation?

A. September of this year.

Q. Do you have a schedule showing approximately when the beds were brought into service?

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A. Yes, sir. I seem to have more papers than a traveling salesman, but I have it.

Q. I think we might file this as an exhibit, so you will not have to read it all in.

A. It went into full operation in September.

Q. Could you just summarize, as to whether or not all beds were put into operation on a gradual basis?

A. The beds were opened on a gradual basis. The first patient was admitted to the hospital on January 19, 1957, at which time we opened 145 beds. Opening a completely new hospital, it was necessary to train our personnel as we went along. We could not get sufficient trained page 77 } personnel nor sufficient nurses to operate any more than 145 beds when we originally opened. They then opened in ten steps, adding from 23 to 84 beds at one time, and finally in September of this year we opened the final 84 beds of the hospital and brought it into full operation.

Q. Mr. Chesley, I will ask that you please file that schedule with your testimony as Exhibit No. 8.

A. Yes, sir.

Note: The schedule referred to was marked Chesley Exhibit No. 8 and filed.

Q. Mr. Chesley, I am handing you a letter addressed to the hospital on stationery of the United States Treasury Department dated April 22, 1958 with respect to the tax status under the Federal Laws, of this hospital. Will you state whether or not that letter was received in due course by the hospital?

A. Yes, sir, this is the original of it.

Q. I would like for you to file a copy with your testimony.

A. This is a copy.

Mr. McGuire: If the court please, I don't care to dispute the status which has been accorded this hospital by the federal authorities. I think the record should show the city feels that is entirely irrelevant to the question page 78 } before the court at this time.

Mr. Powell: Your Honor, the copy does not show the date of the letter. I would like to ask that the copy be marked April 22, 1958.

Henry G. Chesley, Jr.

Note: The copy of letter referred to was marked with the date April 22, 1958, and filed as Chesley Exhibit No. 9.

Note: There followed a brief recess.

By Mr. Powell:

Q. Mr. Chesley, in view of all the talk about free service, is there in fact any such thing as free service in the normal acceptation of those terms?

A. As far as I am personally concerned, my observation as President of the hospital and as a businessman is that there is no such thing as free service. Somebody has got to pay for it.

Mr. McGuire: Your Honor, that is entirely irrelevant. Of course there is such a thing as free service.

By Mr. Powell:

Q. Does or does not the hospital have to have funds to provide free service to medically indigent persons?

A. It certainly does.

Q. How are those funds arrived at?

page 79 } A. There are two ways. One is contributions from benevolent people, and the other is from the generation of the funds of the hospital that can be used for that purpose.

Q. I believe you testified that under these contracts you receive funds from public authorities?

A. Yes, sir.

Q. In connection with the financial data you presented, as to the loss sustained by the hospital in the first two years of its operation, were there any charges for interest on capital?

A. No, sir, there were not.

Q. Why was that?

A. The funds were advanced from the reserve fund of the hospital.

Q. How about the six million dollars? Do you have to pay any interest on that?

A. No, sir. It was from contributions. I think Mr. Bryan testified 33,000 citizens and corporations contributed to that, and the balance came from the Commonwealth of Virginia and the Federal Government.

Q. If this had been a private, profit hospital in the normal course of events would you have had to pay interest or not?

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page 80 } A. We would have had to pay interest on borrowed funds. If we undertook to sell stock, I am sure we would have had to generate sufficient income to pay dividends on the stock or we could not have sold it.

Q. How much money are you talking about, if you had tried to finance this as a private, profit organization?

A. The other night I jotted down some figures, as to what it would cost if I were to set this hospital up the way my business is set up. I undertook to find out just what it would cost and I figured it would take $722,000.00 additional income a year to pay interest, to amortize the bonds, with 60 per cent of it covered by bonds which would be the normal way of financing it, to pay dividends after taxes and to pay real estate taxes, which we most assuredly would have to pay if it was a stock corporation. My estimate was it would take $722,000.00 additional income.

Q. To the extent that this six million odd dollars has been provided by these contributions of the public, is it accurate or not to state that every person who receives services at this hospital is the recipient of charity through this institution?

Mr. McGuire: I don't think that is a proper question or the answer could have any relevancy. It is bound to be purely argumentative.

page 81 } The Court: Yes, sir, I think so.
Mr. Powell: I think the answer is obvious.
The Court: I sustain the objection.

Mr. Powell: I would like for him to answer for the record.

A. Ask the question again.

By Mr. Powell:

Q. I think the question was very poorly asked. I will reframe it for the record. In view of the contributions made by the public to which you have referred, which made possible the construction of this hospital facility, would you please state whether or not everyone who receives medical care at that hospital is a beneficiary of a charitable institution?

Mr. McGuire: Of course I renew my objection.

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A. Yes, sir, they are the beneficiaries of a charitable institution.

By Mr. Powell:

Q. And but for these contributions these additional charges, approximating seven hundred odd thousand dollars, would have to be provided?

A. It would have to be added to the per diem cost of the hospital.

Q. I hand you an exhibit called "Statistical Report" which I had intended filing earlier. It contains certain fairly standard statistics used by hospitals. Will you please

page 82 } identify that and file it with your testimony?

A. Yes, sir, I have seen this and it was presented to the executive committee.

Q. For the record state what percentage of the patients served by the hospital come from the Metropolitan Area of Richmond.

A. Eighty-six per cent.

Q. Also state for the record what percentage of patients in the hospital in the fiscal year ended September 30, 1958 had some form of hospital insurance, either Blue Cross or other insurance.

A. Seventy-five per cent, if we include Workmen's Compensation.

Q. And Workmen's Compensation was what?

A. One per cent.

Note: The statistical report referred to was marked Chesley Exhibit No. 10 and filed.

Q. I have one other exhibit. Will you please identify the booklet which I hand you, sir?

A. This is a booklet that lists the names of the veterans or the soldiers who were killed in World War II and who are honored in the memorial chapel. Their names are inscribed on the marble block in the chapel and also inscribed in the book of memory contained in the altar in the chapel, and is maintained as a war memorial.

page 83 } Mr. McGuire: Your Honor, I object to the use of that as an exhibit in this case. It seems plain to me that the introduction of this exhibit, as well as the purpose of the introduction of the ordinance about this hospital being a memorial to the war dead, to which I did not object, is

plainly intended to arouse sympathy. This is too much. This seems to me a plain effort to arouse sympathy and to appeal to the sentiment of the court, and I think they are entirely irrelevant to the legal questions involved and objectionable, and I object to their admission. I object to the admission of this pamphlet and to any other reference to the memorial aspects of this hospital.

Mr. Powell: If Your Honor please, I might note this is not a jury case and I would not suppose an appeal to the sympathies of the court would have any effect one way or the other, but even if it were a jury case we would consider this appropriate and proper evidence because it is a part of this hospital. This is the official war memorial in our community and I want to ask Mr. Chesley a question or two as to what this memorial really is and what it means as a part of this hospital. This record will be incomplete if it were

page 84 } omitted, sir.

The Court: Mr. Powell, I don't think this pamphlet is particularly germane to this case. I will sustain Mr. McGuire's motion, but I will file it as a part of the record.

Note: The pamphlet referred to was marked Chesley Exhibit No. 11 and filed.

Mr. Powell: May I ask the witness one or two questions about this?

The Court: Yes.

Mr. McGuire: It is understood my objection goes to these questions?

The Court: Yes, sir, that is understood and I sustained your objection.

By Mr. Powell:

Q. Mr. Chesley, there has been no description in the record of the memorial chapel. I realize words cannot describe it very well, but state generally what it consists of.

A. Physically it is built on the front of the hospital. It extends five stories high. It has limestone facing, monumental type of construction, and contains on the inside a plaque, a marble plaque that extends from the ceiling down to the altar on which is engraved the names of the war dead in World War II in Richmond City and Chesterfield and Henrico

page 85 } County. It is a physical part of the hospital. It is put there purely as a monument It is used only as

a sanctuary, a place of meditation for those people who want to enter it, and a great number of people do enter it.

The book of memory, which is referred to, is enclosed on the altar in this chapel. There are three names on each page, inscribed on each page, and a page of that book is turned each day. The little booklet you have there, it will be noticed, tells on what day of the year these particular three individuals will be memorialized. No services are held in the chapel. It has no utilitarian value whatsoever. No decorations are allowed to be put into it, no flowers or other decorations.

Q. Are the waiting rooms on each floor of the hospital designed in such a way to afford a view of this memorial chapel?

A. The first five floors, I think. It doesn't extend to the sixth and seventh floors, but the first five floors in the hospital, the big wall that adjoins the hospital is glass and from each floor of the hospital there is a view down into the memorial chapel. Of course, the entrance is from the first floor by steps into the chapel. That is the only entrance.

page 86 } CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Chesley, do you know whose idea it was and when it was first brought forward that this projected community hospital be made a memorial hospital?

A. I would rather you would have asked Mr. Tennant Bryan that question, but it was very early in the discussion about the building of the hospital. So early, in fact, that I remember it my first connection with the hospital was attracted by the father of a boy who had been killed in the war. I don't have the exact date but it was a very early date in the conception of the hospital. As I say, my interest in the hospital began with the war memorial feature of the hospital.

Q. I didn't ask Mr. Bryan—

A. I can't tell you the exact date but it was very early.

Q. It was not the original idea, was it?

A. It was not the original idea, no, sir, because the original idea of this hospital, as Mr. Bryan testified, started while the second world war was in progress. At that time it became apparent there was a very great shortage of hospital beds in Richmond and so it was not, certainly it was not at that stage but it was pretty soon after that, to my knowledge, page 87 } when it began to be discussed as a proposed war memorial.

Dr. Henry Decker, who was one of the leading proponents

and one of the early men who advocated the building of this hospital, had lost his oldest son in the war and I can assure you that I know that it was very early I discussed this idea with him.

Q. I didn't ask Mr. Bryan these questions because I had no idea it would become necessary to ask anybody these questions.

A. I could get the answers for you, but I do not have them.

Q. The original idea was to provide hospital beds. Is that correct?

A. Yes, sir.

Q. Do you know why the memorial idea was advanced?

A. Do I know why it was advanced?

Q. Yes.

A. Well, I think one of the strongest reasons for it being advanced was there were a number of people who wanted to contribute to the hospital and wanted to memorialize members of their family. I think that is one of the primary reasons it was advanced.

Q. Was the memorial feature used as an argument in the solicitation for the raising of funds?

page 88 } A. Undoubtedly so. Many of the gifts—as a matter of fact the gift I myself gave to that hospital was given as a memorial to a person. There are plaques all over the hospital of these memorials.

Q. I understand. I am looking at your Chesley Exhibit No. 7—

The Court: I think I would like to state at this point, and I think the court would be remiss if it did not state, at the time the memorial idea was adopted it was not the unanimous feeling among the veterans that it was the type of memorial they desired, and one of the present members of the Board was one of the leading lights in opposing the idea. I think that is a matter of public knowledge.

A. Yes, sir, I do not deny that.

By Mr. McGuire:

Q. Your Exhibit No. 7 is a resolution of the executive committee about the policy with regard to charity or free services.

A. Yes, sir.

Q. The gist of the resolution is that the Richmond Memorial Hospital "will continue to provide within the limits of its

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financial and operational ability, such free or partly free service to those who cannot pay as it may be called upon
page 89 } to render." I want to ask you what you mean by "within the limits of its financial ability"?

A. That is very easily answered. The hospital can only render free service from any reserve fund that it generates, from any gifts that might be given to the hospital. Now the situation that the executive committee of the hospital has to wrestle with all the time is just that, because it is a situation we cannot readily control. The agreement, for instance, we have with the Virginia Home for Incurables. That offer was made when it became apparent we could take care of those patients. These contracts made with the various state agencies you will notice were made in 1958. It would have been entirely impossible to enter into any such contracts in 1957 when we were losing a quarter of a million dollars a year.

Q. They pay you $18.50 a day?

A. Yes, sir.

Q. That is less than your per diem a day?

A. Yes, sir, by some six dollars.

Q. That is what I wanted to ask you.

A. The usual per diem is approximately $24.00, between $24.00 and $25.00.

Q. Do you know how many patients you all have received under those contracts with the state and counties. I could get that, I understand—

Mr. Powell: We will put a witness on who will
page 90 } give you the exact figures.

A. I think I have it in my papers.

By Mr. McGuire:

Q. Mr. Powell will produce a witness. I take it that you mean by financial ability is you take care of charity patients and intend in the future to take care of charity patients if and when you have the money to enable you to do it?

A. Yes, sir.

Q. And "operational ability"—I take it—means in the limit of your physical facilities?

A. Yes, sir. This hospital has no income other than that which generates from its operations, beyond the reserve fund which we have drawn down to what we think is a bare necessity.

Q. In your financial statement or the report on the exami-

nation by Andrews, Burket & Company, which is Chesley Exhibit No. 6, Exhibit C is the statement of income and expenses, and Mr. Powell asked you to explain the items which appear under the heading "less" as deductions from your gross income?

A. Yes, sir.

Q. I would like a little more explanation—

Mr. Powell: Mr. McGuire, I do not object at all to your asking this witness anything he can answer in that respect but for your information we expect to put on the

page 91 } witness stand Mr. Bartley who is chief accountant as well as assistant administrator and he is specifically prepared to give you as much detail that he has available on those figures.

Mr. McGuire: I think that is better, but I didn't want Mr. Chesley to be excused and then find out there was something I should have asked him.

A. You must realize my service in this hospital is voluntary. I go over the broad policies of the hospital,—I am afraid I give a little more free service than I should. I can substantiate the authenticity of these figures but I cannot break them down.

Mr. McGuire: I do not doubt the authenticity. I just want them explained a little more. I take it Mr. Bartley can also explain Exhibit Chesley No. 10, the statistical report?

Mr. Powell: I am sure he can.

Mr. McGuire: I would like to have a moment to look at my notes. It may be under those circumstances I would only have one or two more questions to ask Mr. Chesley.

Note: There followed a recess.

By Mr. McGuire:

Q. Mr. Chesley, I have been looking at this exhibit which you filed.

page 92 } A. Is that the charter?

Q. No, sir, this is the exhibit which contains the medical staff by-laws and rules and regulations of Richmond Memorial Hospital.

A. Yes, sir.

Q. I gather from this that you do not have any staff called a resident staff or any staff called a non-resident staff either?

A. We do not.

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Q. You simply have the general medical staff, the organization of which is set out beginning on page 3, and it seems to be divided into honorary medical staff, attending medical staff and courtesy medical staff. Those are your divisions?

A. Yes, sir.

Q. Do you know how many men are on the honorary medical staff?

A. I cannot answer that question, sir. I do not know.

Q. You do not know, I suppose, the number of doctors on the attending staff or on the courtesy staff?

A. I do not have the breakdown. The only difference between those two are those who have to attend so many meetings a year of the staff.

page 93 } Q. I gather there are several differences. I observe one difference between the attending staff and the courtesy staff, paragraph 4 under Section C, the attending staff, "to be eligible to become a member of the attending staff, a physician is expected to use this hospital regularly for his patients."

A. Yes, sir.

Q. And under 1(a) of Section D, courtesy staff, it says. "The courtesy staff shall consist of qualified physicians who do not use the hospital regularly for their patients."

A. That's right, but who may admit all patients.

Q. Now the next article, Article V, about organization of the clinical services, has a number of divisions, such as the Division of Surgery, the Division of Obstetrics and Gynecology, and several others which in turn are divided into subdivisions?

A. Yes, sir.

Q. I presume there is somebody who is chief of the Division of Surgery and chief of the Division of Medicine and so on.

A. Yes, sir.

Q. Do you know who those people are or have you available any lists that show those things?

A. I don't believe I have those. I know who some of them are, just from general knowledge.

page 94 } Mr. McGuire: May I ask Mr. Powell, is there available any list that shows who those people are?

Mr. Powell: Dr. Rawles is here and he may know.

Mr. McGuire: I believe the record ought to show those things.

A. May I say in defense of my not answering—

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Mr. McGuire: You don't need to make any defense.

A. We keep the lay board and medical staff pretty well separated. I have no part in the election to such offices. I am sure Dr. Rawles could answer it.

By Mr. McGuire:

Q. I know you have an administrator and an assistant administrator. Is there any physician or surgeon who is general superintendent of the hospital?

A. No, sir.

Q. I will ask the other witnesses about those things.

A. I can answer your question by saying there is no physician who has anything to do with the administration of the hospital.

Q. I thought there might be some physician who has over-all charge of the medical and surgical services.

A. No, sir. There is a Chief of Staff, Dr. Benja-
page 95 } min Rawles.

Q. Of the whole hospital?

A. Of the medical staff. He has nothing to do with anything but the medical staff.

Q. He is not Chief of the Division of Medicine or Chief of the Division of Surgery?

A. No, sir. He is Chief of the medical staff.

Q. Are there any physicians or surgeons who have offices in the hospital?

A. None other than the fact the hospital has four paid employees. The head of the x-ray department is a paid employee of the hospital.

Q. Is he a physician?

A. He is a physician. He has an assistant who is a physician. The head of the laboratory is a physician. He must of necessity be a physician. He is a paid employee and he has an assistant who is a physician. They do not practice other than they are the heads of those internal departments of the hospital, the Department of Radiology and the Department of Pathology.

Q. No physician has his office there in which he examines and treats patients?

A. No, sir. We have no facilities for them.

Q. Mr. Chesley, are the doctors on your attend-
page 96 } ing staff, are they beneficiaries of this charitable hospital?

A. No, sir, not in any sense, other than they might be bene-

fited if they take the patients there. I presume they charge. We have nothing to do with their charges.

Q. But these gentlemen do have their patients in that hospital regularly and it is presumed they charge these patients a fee for their services?

A. I presume they charge them, if they live.

Q. In other words, they generally practice their profession using those hospital facilities?

A. Yes, sir.

Q. Are the records of the physicians and surgeons kept at the hospital, their fee records and so forth?

A. No, sir.

Q. They are not kept there?

A. No, sir. You mean their financial records? Their medical records are kept there concerning the treatment of the patient.

Q. The patient's history?

A. Oh yes, but it has nothing to do with charges.

Q. It has nothing to do with the financial records, fees and charges?

page 97 } A. No, sir.

Q. Mr. Chesley, you spoke of various educational features of this hospital, staff meetings and so on.

A. Yes, sir.

Q. Don't you know that the other hospitals have staff meetings, too?

A. They have them, but they are confined to their restricted staffs. They are not open staff hospitals.

Q. You have a staff of 486 doctors?

A. It is the largest one in Richmond.

Q. But they are regularly appointed members of your staff who attend these meetings?

A. Any physician in the City of Richmond could apply for membership and attend.

Q. But only people who have applied and who have been appointed to membership have the benefit of these staff meetings?

A. That is right.

Q. Don't you know the Medical College of Virginia, the McGuire Veterans Hospital and the purely private hospitals like Johnston-Willis and St. Luke's and so forth, all have interns?

A. That's right.

Q. Isn't that necessary to the performance of

page 98 } the work of the hospital?

A. I would say it is to the advantage of the hos-

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pital, but it is not completely necessary because they could employ graduate doctors.

Q. But isn't it a common practice?

A. Oh yes.

Q. And these interns are on duty and they do their share of work at the hospital?

A. Yes, sir.

Q. And that is a large part of the purpose of their appointment?

A. That's right.

Q. Don't these same hospitals in town have resident physicians and surgeons, too?

A. It is my understanding they do.

Q. Don't a good many of them have schools for nurses?

A. Some of them do, yes, sir.

Q. Aren't there several of them that do?

A. Yes, sir, there are several in Richmond.

Q. Isn't it to their advantage as well as to the advantage of the nurse who attends?

A. I think it is to the advantage of the hospital to train nurses. The type of nursing school we contemplate is a two-year nursing school, of which there is not another

page 99 } in the city of Richmond. It would not be particularly advantageous to the hospital until such time as they developed graduates of the school which would become available to work in that hospital or any hospital in the City of Richmond.

Q. Don't the undergraduates work in the hospital while in school?

A. In the type of school we contemplate they will do very little hospital work. In a three-year school they do but in a two-year school, which is the type we propose, the hospital will get no service from the nurse while she is in training.

Q. What is the arrangement between the nurse and the school? Is the nurse paid or does she pay the hospital? Where will she live?

A. She will live in a dormitory which will be the property of the hospital. It is presumed, it has not been decided but it is presumed she will pay a small tuition fee. The hospital will supplement that to a rather substantial degree.

Q. What do you mean, the hospital will supplement that?

A. The hospital will pay the cost of running the school of nursing. We estimate it will cost the hospital around fifteen

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hundred or two thousand dollars per student to
page 100 } train them.

Q. But you will not pay these nurses anything?

A. No. sir.

Q. They will pay a small tuition fee and perform some services?

A. A small amount of services, but not to the extent they perform them in a three-year school of nursing.

Q. Is that what most of the other hospitals have, three-year schools?

A. All of the other hospitals in Richmond, I believe, with the possible exception of the Medical College of Virginia. I am not sure of that. I think they are putting in a two-year school or have put one in. The others, so far as I know, are running three-year schools.

Q. You spoke of volunteer services. Don't some of the other hospitals have volunteer services?

A. I think the Medical College of Virginia has volunteers and probably McGuire does. I have no knowledge of any others.

The Court: I have great admiration for the witness but I don't know that he is qualified to testify to the work of the other hospitals in the city.

Mr. McGuire: No, sir, but he is the one that testified about these services.

page 101 } The Court: He was speaking simply of the operation at the Richmond Memorial Hospital.

A. My knowledge of the other hospitals is very meager.

By Mr. McGuire:

Q. Did I understand you to say the only endowment the hospital has so far is the bequest from Mr. Glasgow?

A. We have not yet received that. We received only a pro rata share of the income. We do not have the endowment.

Q. And I gather you are not spending that income.

A. No, sir. We are holding it intact for the school of nursing.

Q. I had the impression—just my own thought—that was an endowment you expected to use for the care of indigent patients?

A. We cannot do so. Let me answer that question this way. According to my understanding—and Mr. Powell could probably speak to this better than I can—Mr. Glasgow in his will said he did not specifically restrict the use of these funds but

he made certain suggestions and one of them is the one we follow. That was the judgment of the executive committee of the hospital, that was the use that should be made of that money.

page 102 } Q. I didn't notice any such items in this statement in the hurried examination I gave it, but have you since your original grants of state money and Hill-Burton money, have you received any other grants from foundations or anything of that sort?

A. We have not.

Q. And the development of your program for the care of indigent patients—you do hope for more endowments?

A. Yes, sir.

Q. And you are waiting on these hoped-for endowments for the general program of indigent care?

A. The hospital so far has received only one very small bequest. It is to be hoped that the hospital will be remembered in wills as it comes into being, that we will build up an endowment fund, and certainly if and when we do have such a fund it will be used for free services.

Mr. Powell: Excuse me. Will you read back the last question and answer?

Note: The last question and answer were read by the reporter.

Mr. McGuire: I have no further questions.

By Mr. Powell:

page 103 } Q. I have one question. You testified construction of the hospital on the 14 acres you have mentioned commenced in June 1954. Has any part of the hospital property, including the real estate and buildings, been used for any purpose other than hospital purposes at any time since June 1954?

A. No, sir, it has not.

Mr. McGuire: That reminds me. I think in the beginning Mr. Chesley stated when construction was begun and when construction was completed. I don't think he stated when operations commenced. That is something that should show in the record. Can you tell us when the hospital commenced operation?

Mr. Powell: We will put Mr. Prather in to fill in that period of time before Mr. Chesley became President.

Mr. McGuire: That is satisfactory.

Mr. Powell: Mr. Chesley became President in January 1957.

Mr. McGuire: That is agreeable with me and I have no further questions.

Witness stood aside.

page 104 } BILLY S. BARTLEY,

a witness called by the Richmond Memorial Hospital after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and residence.

A. Billy S. Bartley, 8711 Gayton Road, Richmond.

Q. What is your occupation?

A. I am Assistant Administrator of the Richmond Memorial Hospital.

Q. How long have you held that position, Mr. Bartley?

A. Since May 1956.

Q. Did you come to Richmond at that time or did you live here previously?

A. I came to Richmond from Knoxville, Tennessee.

Q. What had you done in Knoxville, Tennessee?

A. At that time I was Assistant Administrator and had been for approximately five years at East Tennessee Baptist Hospital in Knoxville.

Q. Where were you educated, Mr. Bartley?

page 105 } A. University of Tennessee.

Q. What degree, if any, did you receive?

A. Bachelor of Science, School of Business Administration.

Q. What was your major?

A. Accounting.

Q. Mr. Bartley, do you belong to any societies or organizations related to your professional work?

A. Yes, sir, I do. I am a member of the American College of Hospital Administrators; a member of the American Association of Hospital Accountants; I am a Director of the recently formed Richmond Nurses Professional Registry.

Q. Have you held any office in any of these or related organizations recently?

Billy S. Bartley.

A. Yes, sir. I am at present President of the Virginia Chapter of the American Association of Hospital Accountants.

Q. Are you the Mr. Bartley who has been referred to in this case today as Assistant Secretary of the hospital?

A. Yes, sir, I am.

Q. Will you state quite briefly what your duties are as Assistant Administrator of the hospital?

A. First of all, I am first chief to Mr. Prather and I have under my direct supervision and responsibility to
page 106 } him the supervision of certain departments, namely, dietary, pharmacy, laundry, housekeeping and the business office, admitting, communications, and the switchboard and receptionist area.

Q. Do you have any responsibility in regard to the books of accounts of the hospital?

A. Yes, sir, that is my responsibility to supervise and direct the record keeping of the hospital.

Q. Mr. Bartley, at my request have you prepared a special analysis of free service rendered by Richmond Memorial Hospital for introduction as evidence in this case?

A. Yes, sir, I have.

Q. Please identify this and state whether or not that is the analysis which you prepared?

A. Yes, sir, it is.

Q. Will you please file that as your Exhibit No. 1?

A. Yes, sir, I will be glad to.

Note: The tabulation referred to was marked Bartley Exhibit No. 1 and filed.

By Mr. Powell:

Q. I would like to ask you some questions about your Exhibit No. 1. First of all, will you state whether or not this reflects audited or unaudited information?
page 107 } A. This is unaudited information.

Q. What are the periods covered, Mr. Bartley?

A. It is two calendar years, beginning January 1957 through December 1958.

Q. These are on a calendar year basis?

A. Yes, sir, they are.

Q. What is the basis of the auditing reports of the hospital?

A. The auditing reports are on a fiscal year basis, fiscal year ending September 30th.

Q. At my request did you prepare this data on a calendar

year basis in order to bring it down as recently as you could?

A. Yes, sir, I did.

Q. The exhibit contains two tabulations, one designated as No. 1 and the other as No. 2. Please state briefly the difference between those two tabulations.

A. Tabulation No. 1 includes the amounts classified as accounts of medically indigent patients and who are entitled to free service upon admission. It also includes the accounts classified as entitled to free service subsequent to admission or discharge, including patients of limited means whose requirements for hospital service exhaust their insurance or available resources. and similar patients who develop

page 108 } permanent disabilities and become medically indigent after hospitalization, and also patients who present themselves as pay patients but who later prove, upon investigation, to be medically indigent. It also includes the patients who come in under the state and local hospitalization contracts.

Q. Were you in the courtroom this morning when Mr. Chesley testified about the contracts that the hospital has with these authorities?

A. Yes, sir, I was.

Q. Are they the contracts your exhibit refers to in footnote No. 1, paragraph c?

A. Yes, sir.

Mr. McGuire: Excuse me. I didn't understand the question.

Mr. Powell: I asked him whether or not the state and local authority contracts referred to in Note 1c were the same contracts about which Mr. Chesley testified this morning.

Mr. McGuire: Yes, sir. Thank you.

By Mr. Powell:

Q. Mr. Bartley, I think it will probably be desirable for you to read your footnote No. 2 so you will explain to the court the way in which you have handled on this exhibit the

page 109 } indigent patients received under these contracts.

A. Footnote No. 2 says:

(Reading) "Total amount of free service rendered in 1958 under contracts with state and local authorities was $6,662.20, rendered to a total of 42 medically indigent patients. This total amount, as well as the number of patients, is included in the above tabulations. Under these contracts the public author-

ities reimbursed the hospital for a major part of this indigent care by payment of a prescribed minimum per diem. The amount so reimbursed in 1958 was $3,684.37, leaving the hospital unreimbursed to the extent of $2,977.83. No such contracts were in effect with this hospital prior to May 1958."

Q. You included, then. the $6,662.20 in tabulation No. 1 about which you are testifying?

A. Yes, sir, I did.

Q. Now before moving to tabulation No. 2, would you summarize for the court the total free service rendered, first in terms of number of patients and second in terms of the total amount as shown in tabulation No. 1, for the years 1957 and 1958?

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A. In the year 1957 there were, according to our records, seventy patients or a total of $12,223.77.

In 1958 there were 313 patients or a total of $22,234.03.

Q. And the total for the two years stated on the exhibit is what?

A. 383 patients for a total of $34,457.80.

Q. Percentages are shown on the exhibit. I don't think you need read anything other than the totals for the two-year period. What are those percentages?

A. For the two-year period the number of free service patients was 2.0% and the amount was .8%.

Q. That is, of the dollar amount in free service?

A. Yes, sir, comparing that with the total patient service rendered.

Q. Now, Mr. Bartley, will you summarize in substantially the same fashion what you disclosed by tabulation No. 2 of this exhibit?

A. Tabulation No. 2 includes as free service the net amount of uncollectable accounts charged off during the period in question which totals $70,546.94. The gross amount of uncollectable accounts charged off during the periods in question totaled $85,395.51, against which there were recoveries totaling $14,848.57.

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Q. You are reading from your note No. 3?

A. Yes, sir.

Q. And that describes tabulation No. 2?

A. Yes, sir.

(Reading) "Many hospitals make no distinction between uncollectable accounts and other types of free service, and

classify all of these under charity or free service. This hospital, for accounting purposes, does make a distinction between patients whom it classifies as being entitled to free service (medically indigent) and patients who fail to pay their bills without a showing of being medically indigent."

Q. The difference, then, between the figures in tabulation No. 1 and those in tabulation No. 2 is that in the latter you have also included uncollectable accounts charged off. Is that correct, sir?

A. Yes, sir, that's true.

Q. Is that or is that not after deducting from the accounts charged off recoveries by the hospital?

A. The net amount is included in tabulation No. 2 of the chargeoffs.

Q. Meaning that you did deduct the amount re-
page 112 } covered?

A. Yes, sir.

Q. Referring further to tabulation No. 2, please state for the record the total for the two-year period, the totals which would compare with the totals you previously gave; that is, the total number of patients receiving free service in whole or in part and the total amount of such service in dollars and in percentage.

A. The total for the two years, number of patients 1,849; total amount of free service $105,004.74.

Q. And the percentages.

A. The number of patients is 9.9%; the amounts 2.4%.

Q. And all these totals relate to free services rendered by the hospital in the light of explanations in these footnotes?

A. Yes, sir.

Q. Were you present this morning, Mr. Bartley, when the President of the hospital introduced the audit report prepared by Andrews, Burket & Company?

A. Yes, sir, I was.

Q. These figures on your Exhibit No. 1, do they tie in with the audit report figures?

A. No, sir, they will not because the audit report covers
21 months. My analysis covers 24 months or the
page 113 } full two-year period.

Q. One is on a fiscal year and the other on a calendar year basis?

A. Yes, that's true.

Q. Do the figures in your Exhibit No. 1 include the amount

mentioned by the President this morning as being discounts allowed paid employees of the hospital?

A. No, sir, they do not.

Q. You excluded those from your tabulation?

A. Yes, sir, we did.

Q. The audit report, in the income statement, refers to provisions for uncollectables and has a figure shown there for the two years covered by the audit report which is larger than the figure you have here as accounts charged for. What is the difference, if any, or explanation for those two figures, Mr. Bartley?

A. Monthly we make a provision based upon our experiences as best we can determine them, setting aside a provision for uncollectable accounts and creating a reserve. The amounts that are included in this statement—

Q. Which statement?

A. My exhibit, analysis of free service, these figures include only those amounts that we have charged against the reserve as uncollectable receivables.

Q. So the provision for uncollectables may be

page 114 } greater than what you have actually charged off as uncollectables?

A. Yes, sir, that's true.

Q. And you Exhibit No. 1 indicates which of those categories?

A. It includes the accounts we have charged off against the reserve as uncollectable receivables.

Q. But it does not include anything for the provision for accounts that have not been charged off?

A. No, sir.

Q. And you are speaking now only about tabulation No. 2 of the exhibit?

A. Yes, sir.

Q. Does tabulation No. 1 contain any items on account of uncollectable accounts?

A. No, sir.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Bartley, on your Exhibit No. 1, your Note 1 says, "The foregoing tabulations include the following types of cases to whom free service is rendered in whole or in part." These figures of 70 for 1957 and 313 for 1958, I take it, include

some persons who did pay part of their hospital bills. Is that right?

page 115 } A. Yes, sir, that is true.

Q. They are not all wholly free service patients?

A. Well, no they would not be wholly free if any payment were made. I might add that, as I tried to point out in the footnote, some of them have insurance and once that is exhausted, the balance of the account is so classified.

Q. That is what I was coming to. Your note 1(b) includes patients of limited means whose requirements for hospital service exhaust their insurance or available resources. I notice on Exhibit C of the Andrews, Burket statement, which is Chesley Exhibit No. 6, statement of income and expenses, which Mr. Poweell has just asked you about, the first item under the heading "less" is "free service adjustment contractual" which I gather from Mr. Chesley's evidence referred to people who had Blue Cross contracts. Is that right?

A. Yes, sir.

Q. I don't understand that arrangement and never have. Does that mean that people who exhaust their Blue Cross benefits are not asked to pay the difference between the Blue Cross benefits and the hospital charges, if the hospital charges are in excess of the insurance benefits?

A. No, sir, it does not.

page 116 } Q. Well, what does it mean? What is the arrangement? What are those free service adjustments?

A. All hospitals participating in the Blue Cross plan have an arrangement whereby they are paid a per diem rate. Without the records in front of me I cannot go into all the details of that arrangement because it is rather lengthy, but the brief of it is that all bills rendered to Blue Cross during this period of time, they are paying about 95 to 97 per cent of those bills, and that balance is what we define here as free service adjustment contractual, and it includes only our contractual arrangement with Blue Cross.

Q. Why don't you charge that unpaid three or five per cent to the patient?

A. Because it is not an arrangement that involves the patient. It is an arrangement between Blue Cross and the hospital.

Q. Are these free service adjustments contractual, are they included in the free services rendered figure on your Exhibit No. 1?

A. No, sir, they are not.

Q. When Mr. Chesley was on the stand, a statistical report for the year ending September 30, 1958 was introduced as Chesley Exhibit No. 10. Are you familiar with that? Have you got that before you?

page 117 } A. I don't have a copy of it, but I am familiar with it.

Mr. Powell: Just a minute. I have a copy here I can let him have.

Q. (By Mr. McGuire) The second heading is "Patients Classified as to Finances" and under that appear the items "Blue Cross Insurance, Commercial Insurance, Workmen's Compensation, direct payment, and other." I take it the 51 per cent of your patients who are included there as Blue Cross Insurance are people who have the benefit of the arrangement you have just described which you make with Blue Cross. Is that right?

A. Yes, sir, that's right.

Q. What is the explanation of the 23 per cent covered by commercial insurance?

A. That is the different insurance policies, such as provided by Metropolitan, Prudential and all the other insurance companies, either in groups or on an individual basis.

Q. Well, when the individual insured hasn't got enough commercial insurance to cover his hospital bill, do you collect the rest of it from him, if you can?

A. If we can, yes, sir.

Q. Then those people are not included in your free service figures on Bartley Exhibit No. 1?

page 118 } A. No, sir, they are not.

Q. Is the same thing true of the Workmen's Compensation people?

A. Yes, sir.

Q. They are not included in your tabulation and are not a part of your Exhibit No. 1?

A. No, sir.

Q. Did I understand correctly from Mr. Chesley that the item on your statement of income and expenses "free service, general patients"—is that the free service which is included in your tabulation, Bartley Exhibit No. 1?

A. Yes, sir, it is partially. It is included but in addition, on my exhibit, this exhibit is on a two-year basis and his is on a 21-month basis, but it is included.

Billy S. Bartley.

Q. I think the 21-month statement includes in free service patients those contract patients with the state and county?

A. That is included in the third item, "other free service." I believe Mr. Chesley's testimony was to that effect.

Q. If you don't mind, tell me again what "free service, general patients" means and also what "other free service" means.

page 119 } A. "Free service, general patients" means the free service that we have rendered to patients because, in our opinion, they are indigent patients or medically indigent patients, either for all of their hospital bill or a part of their hospital bill.

Q. Can you tell me how many of these people on your Exhibit No. 1 are wholly free patients and how many of them paid part of their bills?

A. No, sir, I did not analyze it in that fashion and I could not answer the question.

Q. Is "other free service" on the income and expense statement, is that only the contract patients, the people you take for the state and county?

A. No, sir. I think it was pointed out this morning there are in that classification the discounts that were rendered to our employees. That has been excluded from this one.

Q. I am sure it was explained this morning but I just can't remember all these things. I am sure the record is complete. Mr. Chesley testified this morning, as I recall it, about 800 people a month are treated in your emergency room and that they are treated first and nobody says anything to them about whether or not they can pay or how much they will have to pay until they receive their treatment. Have you

page 120 } figures which will show how many of those patients treated in your emergency room are treated free and how many of them pay for the services?

A. No, sir, I do not.

Q. Are they included in your Bartley Exhibit No. 1?

A. They may be. There are some in there, I am sure. How many I do not know.

Q. Your Bartley Exhibit No. 1, is that intended to include all of the free services given at the hospital, including the emergency room?

A. Yes, sir.

Mr. McGuire: I was asking questions of Mr. Chesley about the staff and he didn't know the names of the people who were chiefs of services, and so forth. Mr. Powell, are you

going to put Dr. Rawles on the stand with that information?

Note: There followed an off the record discussion.

Mr. Powell: We will introduce a memorandum on that.

By Mr. McGuire:

Q. Am I correct in my understanding that I got this morning that you have no record about the charges made by the physicians and surgeons on the staff to their patients who receive treatment, as distinguished from charges made by the hospital?

page 121 } A. Yes, sir, that's true. We have no record of any physicians' charges to his patient. I don't have that information.

Q. Do you know anything about what proportion of patients are treated at your hospital without charge by the attending physician?

A. No, sir.

Q. You do not know?

A. No, sir.

Q. And you have no record from which you could obtain that information?

A. No, sir.

Mr. Powell: Mr. McGuire, this is the witness who attempted to comply to the extent he could with your request. He has a little memorandum that answers all your questions except the one you referred to and the question that asks about the number of operations that are free, and he went through his records before he received your subpoena, over a period of a month or more, to prepare the data incorporated in the exhibit. He has not checked the operation data so he cannot supply that information unless he re-works it but I am inquiring whether you would like to see the result

page 122 } of your questions so we can excuse him. He has it right here.

Mr. McGuire: Yes, I would like to see it.

Mr. Powell: Please get the information Mr. McGuire asked for.

Mr. Bartley: I have it here.

Mr. Powell: I have copies here. Your Honor, Mr. Hunton calls my attention to the fact I did not state on the record this is the information called for by the City Attorney in the subpoena *duces tecum* served on the hospital.

Billy S. Bartley.

Mr. McGuire: I can see it is, except for information they do not have. It wasn't a subpoena *duces tecum.* It was a summons to produce books and papers. May this be introduced as an exhibit by this witness?

Mr. Powell: It is entirely up to you. You requested it.

Mr. McGuire: I will ask the court if this may be introduced as Bartley Exhibit No. 2.

Note: A paper entitled "Memorandum in Reply to Request for Information by City of Richmond by Affidavit dated January 13, 1959" was marked Bartley Exhibit No. 2 and filed.

Mr. McGuire: Now this sheet does not actually include the schedule of rates. I think Mr. Powell says
page 123 } he has a schedule here and I should like to ask for that.

Mr. Powell: Yes, sir. It is right here.

The Court: I will mark it Bartley Exhibit No. 3.

Note: A folder entitled "Richmond Memorial Hospital, Schedule of Rates and Charges, January 1, 1959" was marked Bartley Exhibit No. 3 and filed.

Mr. McGuire: If the court please, this is a very exhaustive schedule. I should like to read only a few items into the record for convenience. I gather from this exhibit that the room rates are as follows:

"Private Rooms	$19.50 & $21.00
"Semi-private Rooms	15.00
"Four-bed Rooms	13.00
"Nursery	5.00"

The Court: What page are you reading from?

Mr. McGuire: Page 1. On page 8 I observe that the minimum emergency room charge for treatment in the emergency room, plus drugs, dressings and so forth, is $3.00.

On page 9 further emergency room prices are set out, from which the following appears:

(Reading)

page 124 } "1. Patients with superficial lacerations or other conditions taking a maximum of one hour or less of emergency room time, $3.00.

"2. Patients requiring suturing of deep lacerations, multiple, and requiring observation for a period of one to two hours, $5.00.

"3. Patients requiring concentrated nursing time and requiring observation for a period of two to four hours, $7.50."

These are the only fixed charges there. There is an item four of unusual cases, which is left blank.

I notice that on page 17 there appears operating room and delivery charges, as follows:

"Major surgery, one hour	$25.00	
Major surgery, one to two hours	35.00	
Major surgery, each additional hour up to four hours	5.00	per half hour
Major surgery, each additional after four hours	7.50	per hour
Minor surgery, one-half or less	20.00	
Minor surgery, one-half to one hour	25.00	
Minor surgery, one to two hours	35.00	
Delivery Room	25.00"	

page 125 } I don't believe I can see any good purpose that can be served by reading any more of it. It shows laboratory fees and charges for all sorts of tests and things, but those will give a sufficient idea of what the hospital charges.

By Mr. McGuire:

Q. Did I understand your hospital is now operating at full capacity?

A. Yes, sir.

Q. Does that mean that all its beds are available or are all full constantly?

A. We have, since September, a 374-bed complement, meaning we have 374 beds available for the admission of patients.

Q. Are they full most of the time?

A. Yes, sir. As to our percentage of occupancy, they have been full since September 1958, not all during that time but particularly since the first of January they have been full.

Q. Most of the time you are full up?

A. Yes, sir, I would say that.

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By Mr. Powell:

Q. Do you happen to have in your papers your actual rate of occupancy figure for the first six months of 1958 or all of 1958, or do you recall it?

page 126 } A. From my memory it is about 90%.

By Mr. Powell:

Q. Mr. Prather is nodding his head indicating that he has it. We will put that in the record. You think it is about 90%?

A. Yes, sir.

Mr. Powell: If Your Honor please, we would like to excuse this witness. We have both the Administrator and the Assistant Administrator here.

Mr. McGuire: That is agreeable with me. I think I have all the information I wanted to get from him.

Witness stood aside.

Note: There followed a recess.

page 127 } DR. BENJAMIN W. RAWLES, JR., a witness called by the Richmond Memorial Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and residence.

A. Benjamin W. Rawles, Jr., 5404 Cary Street Road, Richmond, Virginia.

Q. What is your profession, Dr. Rawles?

A. I am a physician.

Q. Where do you practice medicine?

A. In the City of Richmond.

Q. How long have you practiced here, Doctor?

A. Since 1937, except for a few years away during the war.

Q. Where did you receive your education?

A. The University of Virginia, both academic and medicine.

Q. What year did you graduate?

A. 1930, in medicine.

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Q. Did you serve as an intern or resident in any hospitals and if so please state what they were?

A. University of Virginia, Memorial Hospital
page 128 } in New York and Jersey City Medical Center.

Q. In what capacity?

A. Intern and resident training in surgery.

Q. What is your specialty, Doctor?

A. General surgery.

Q. You referred to an absence from the city during the war. What did you do during the war?

A. I served as a member of the 45th General Hospital, which was an affiliate unit of the Medical College of Virginia.

Q. In what capacity?

A. I was Chief of the Section on General Surgery in Fort General Hospital.

Q. Dr. Rawles, what connection if any do you have with the Richmond Memorial Hospital?

A. I have just two weeks ago been elected Chief of Staff of the Richmond Memorial Hospital.

Q. Have you held any previous staff positions at Richmond Memorial Hospital?

A. No, I have not, other than just a member of the attending staff.

Q. When were you qualified as a staff member of that hospital, Doctor?

A. When the hospital was opened in January 1957.

Q. And you have practiced there at all times
page 129 } since in connection with your practice?

A. I practiced there, and, of course, in other hospitals.

Q. What other hospitals do you practice in from time to time in Richmond?

A. Retreat for the Sick, Stuart Circle Hospital, Sheltering Arms Hospital and Medical College of Virginia, Hospital Division.

Q. Have you held any office in the Richmond Academy of Medicine?

A. I am Past President of the Richmond Academy of Medicine.

Q. What medical boards or societies, if any, do you belong to or are associated with?

A. I am a diplomate of the American Board of Surgeons, the American College of Surgeons, the Southern Surgeon Association, the Virginia Surgeons Association, the Rich-

mond Surgical Society, the Academy of Medicine and the American Medical Association, along with a number of other special groups.

Q. You stated that you were elected Chief of the Medical Staff at the Memorial Hospital. Will you please state how that staff is organized, not in detail but generally, for the information of the court.

page 130 } A. The staff is what is described as an open staff one, in other words, all qualified physicians in the City of Richmond are eligible for membership either as a member of the attending staff or as a member of the courtesy staff.

Those members of the staff have organized themselves in a staff. The officers of the staff are by election, of course, and there are limitations on the time that the officers may serve. The Chief of Staff, for instance, may only serve two years in that position.

Q. Who preceded you as Chief of Staff?

A. Dr. Henry Decker was the first Chief of Staff and served two years.

Q. Does this two-year limitation apply with respect to the heads of the various departments?

A. Unfortunately it was not specifically written in the by-laws of the staff but it is implied and that practice is being followed since it is specifically stated for the Chief of Staff, that he will only serve two years, and by agreement the others are only serving two-year terms in their positions. In other words, they are actually elected for one year, but they may be re-elected for a second year. They may serve a second year if re-elected. I thought I had better clarify that.

page 131 } Q. Doctor, I would like now to ask you about some of the special facilities at the Memorial Hospital. First, I would like for you to describe briefly the emergency room and the services available in it.

A. The Richmond Memorial Hospital, of course, maintains a very active emergency room, Fortunately the hospital was designed so that adequate physical facilities were provided for that purpose. A number of full time employees of the hospital staff the emergency room at night, nurses, clerks, orderlies, and a member of the house staff is assigned at all times to the emergency room.

Q. How many beds are there in the emergency room?

A. There are actually four treatment tables and two beds

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in a special word adjacent, beds in which patients may be held temporarily for observation in the emergency room.

Q. What other comparable emergency facilities are available in Richmond?

A. Of course, the Medical College of Virginia has a very extensive emergency room service. Generally, the other hospitals have smaller facilities. Some of them may have only simply a room with an examining table. Some of them actually have no employees actually assigned, but somebody is moved from some other duty if they are re-
page 132 } quired.

Q. Other than the Medical College of Virginia is there any other emergency room in the City of Richmond comparable in size and the extent of operation as Richmond Memorial Hospital?

A. To my knowledge, no.

Q. Does this hospital have any special facilities for the treatment of what I believe you call physical therapy?

A. Yes, they have a very extensive department of physical therapy. Fortunately adequate space was provided for that and at the present time the department is almost bursting at the seams, so to speak, because of the great volume of such work that has developed, not only in the Richmond Memorial Hospital but work that is referred from throughout the community.

Q. Very briefly, what types of problems are treated in these particular facilities?

A. Of course, probably the greatest number include people who are involved in accidents and who need physical therapy to restore the function of their joints and muscles. Of course, there are a lot of medical problems that can be helped by physical therapy. People who are paralyzed as a result of strokes may be helped a lot by physical therapy. Arthritics may be helped by physical therapy.
page 133 } Of course, there are others but I would say they are the two large groups that are helped.

Q. What other facilities, if any, in the City of Richmond compare with those of Richmond Memorial Hospital for physical therapy?

A. As far as the variety of equipment, I don't think actually there is anyone that can really compare. Naturally, the Medical College has a large department of physical medicine but as to the type of equipment and its modern nature, and so forth, there is actually none.

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Q. What about the size of the department?

A. I actually cannot give you any figures on the volume of work. As I have indicated there is a tremendous volume of work. I can give you the figures as far as Richmond Memorial Hospital is concerned, as to the volume of work done in that department.

Q. Please state those very briefly, Doctor.

A. Yes, sir. In the fiscal year ending September 30, 1958, there were 6,639 visits by hospital patients and 1,469 visits by out-patients.

It might be interesting in that connection to state that recently a group of out-patients, a sample group, was analyzed and in that group 26 out of 120 had been patients during the acute phase of their illness in the Richmond Memorial Hospital; 40 had been hospitalized during page 134 } the acute phase in other hospitals in the community, and 54 had not been hospitalized anywhere.

Q. That was a sampling of 120 patients?

A. That's right.

Q. And all of these used the physical therapy facilities?

A. That's right, on an out-patient basis.

Q. Does Memorial have any special facilities for psychiatric treatment?

A. They do. A special psychiatry unit was provided in the hospital. This unit is separate from the rest of the hospital. The entrances and exits are under lock and key, as is necessary in that type of facility, with special hardware on the doors which is very necessary, special windows, and so forth, All those things are provided, along with certain hydrotherapy installations that are important in psychiatric treatment. That is the only unit of its kind in the community in a large hospital, other than the unit at the Medical College of Virginia.

Q. Doctor, what other special facilities are afforded the public in this community through Richmond Memorial Hospital that you deem of special importance?

A. Well, for instance, of course every hospital does have an x-ray department, I think, though, the equip- page 135 } ment and so forth in the Richmond Memorial Hospital, the variety of it and its modern nature, in my opinion is the best in the community. That particular installation has had a very good effect actually on the x-ray work in other institutions. For instance the orthopaedic men have x-ray equipment in their offices and as a result of the

high quality of the work there they have asked the x-ray department of Richmond Memorial Hospital to help them improve their technique in their own operations. It maintains a school to train x-ray technicians which are graduated each year and of course these four graduates each year will be of value in the community in doctors' offices or wherever they may be needed. There is no tuition charge to those individuals. In fact, some of them are paid salaries.

Q. X-ray technicians are on duty 24 hours a day?

A. Coverage around the clock. Of course, that is very important in operating a large emergency room.

Q. Can you tell us something about your laboratory facilities?

A. The laboratory, of course, offers a wide coverage in the various laboratory procedures. The hospital maintains its own blood bank which is not the general practice in other institutions. There are many advantages to that, page 136 } of course, because the patient who is desperately in need of blood—a little time would elapse before that blood would be available.

It might be interesting in that connection, that blood bank provides services to our Crippled Children's Hospital in the City of Richmond beginning in July of this past year. They have assumed that function for them. That service is provided at no cost to the Crippled Children's Hospital since July 15, 1958. At that time, since the service began, 35 pints of blood have been provided to Crippled Children's Hospital. Ordinarily a patient in the Richmond Memorial Hospital would pay a laboratory fee of $10.00 for the cross matching of that blood.

Q. What other hospitals have blood banks?

A. Of course, Medical College does and I believe Johnson-Willis does maintain its own blood bank.

Q. Where do the other hospitals obtain blood?

A. Through a private blood bank, the Virginia Blood Bank maintained by a physician here in Richmond.

Q. Is the laboratory maintained on a 24-hour basis?

A. It is also, as the x-ray department, and has trained personnel around the clock. It also has a school to train technicians and there is no tuition charge. I feel page 137 } that is a service because those people are available in our community once they graduate, to be employed in other places.

Q. Is the hospital air-conditioned or not?

A. Air-conditioned throughout.

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Q. Completely air-conditioned?

A. That's right.

Q. Is any other hospital in the Richmond Area so air-conditioned?

A. Not generally air-conditioned. Practically all of the other hospitals have the operating room air-conditioned. Many of them have some or all of their rooms with individual units. Medical College has some general air-conditioning, but it is not 100% air-conditioned.

Q. Dr. Rawles, you have spoken of the educational activities conducted through some of these special facilities you have mentioned. What other educational activities, if any, are conducted at Richmond Memorial Hospital?

A. Of course, we have a very intensive educational program going on for our interns and also for our staff, because we, as doctors, have to continue to learn, so our staff organization is set up, other than for a quarterly over-all staff meeting, set up on the individual unit basis. The
page 138 } general surgeons, obstetricians, and so forth, hold monthly meetings which are primarily educational in nature.

Q. Of course, other hospitals have staff meetings?

A. They do, of similar nature, of course. The only difference is that we reach a greater group of Richmond physicians, not only people that practice primarily at the Richmond Memorial Hospital but physicians who practice in all of our other hospitals, private hospitals, the Medical College, Sheltering Arms, and so forth.

Q. That is by virtue of its being an open staff hospital?

A. That's right, We have the greatest grouping of physicians. Our general staff meeting is attended by the largest group of physicians that attend any meeting in the City of Richmond, and that includes the Richmond Academy of Medicine meeting.

Q. Is that type of activity beneficial to the community or not?

A. I think it is very beneficial to the community. It has a very beneficial effect on the over-all medical care in this community because it has allowed doctors to have a freer exchange of ideas and as a result of this grouping together they are better able to examine their own work
page 139 } in the light of the work of other physicians, which I think is a very important thing.

Q. Dr. Rawles, how does an open staff hospital, specifically

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Memorial Hospital, work with respect to the admission of patients in regard to priorities among the doctors?

A. Well, there is no priority unless a doctor declares a patient as an emergeny. A list is kept as of the date of request of admission. For instance, the other day they ended up with four more patients that booked reservations than they had beds. I know this because this Assistant Administrator happened to ask me if it was a bad thing he was doing. He took the four patients that had been booked the most recently and notified them their reservations were temporarily being held up, so it is being run with no partiality to anybody. Everybody has an equal chance to get his patient in, which is as it should be.

Q. How does that practice compare with closed staff hospitals?

A. Well, naturally, I don't blame the people involved. If a man is a stockholder in an institution and he has a patient, one of his friends, and he is on the courtesy staff, of course, I think his patient would get priority, probably. In other words, it is important there sometimes to pick
page 140 } the right doctor.

Q. The doctor who has the staff privilege?

A. Yes,

Q. Dr. Rawles, reference was made here yesterday to the fact Memorial Hospital had certain contracts with public authorities. Do you know whether or not free service is rendered by the doctors as a general rule with respect to medically indigent patients received under those contracts or any of them?

A. On many of them it is the general rule. Of course, I cannot speak for every other doctor. For instance, the hospital has a contract with the Crippled Children's Service of the State Health Department and certain services are rendered to children who are admitted to the Richmond Memorial Hospital. The physicians I know very definitely under that program do not charge for services. The same is true under a contract which the hospital has for the care of indigents of Henrico County.

On the other hand, Richmond Memorial Hospital, like other institutions, accepts patients from the Rehabilitation Service of our State Department of Education and the physician is paid a limited fee which is approximately 50% of our Blue Shield for his services. On the other hand there are many patients I admit who pay for their hospitalization and I

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page 141 } do not charge, and I know that is true of other physicians who render free service in that fashion. That is a general practice, but I cannot specifically tell you about every doctor in that connection, of course.

Q. Speaking of free services, Dr. Rawles, do the doctors who are on the staff at Memorial Hospital received any discounts on medical services rendered to them personally if they are ill or require hospital service from Richmond Memorial Hospital?

A. They do not. I have been a patient myself and I paid the full rate.

Q. One question I neglected to ask you in connection with the emergency room. What arrangement, if any, is made to provide prompt service by surgeons as distinguished from interns who are on duty?

A. The staff maintains a roster in each particular specialty in order to provide round the clock service. For instance, in general surgery, we have a list of approximately 28 surgeons in the community, many of them are stockholders in private hospitals—many of them primarily work at the Medical College and other places—but they are all interested in seeing that round the clock service is provided at Richmond Memorial Hospital, so a roster is maintained for that

page 142 } service and when a physician has a call, he responds regardless of the question of whether he is going to be paid or not. Sometimes it is a private patient but sometimes it is an accident case and they never get anything from the service involved, but that is a community service.

Q. Do any of these surgeons or physicians who are on the staff at Richmond Memorial Hospital conduct their private practice from that hospital or have their offices there?

A. They do not. Of course, there are two full time physicians and their assistants involved in the laboratory and in the x-ray department but naturally you have to have men who are primarily stationed at those places.

Q. But they are not in general practice?

A. They are not in general practice. Of course, they have an arrangement with the hospital for their remuneration for the work done there, but that is a general practice all over the country.

Q. Doctor, the City Attorney asked a question of another witness yesterday as to the rate of occupancy at Sheltering

Arms. I think you stated you practice at Sheltering Arms?
A. I do.
Q. Do you happen to know anything about that, the rate of occupancy, approximately?
page 143 } A. It is around 46%, although right at the moment it is pretty completely occupied, but for 1957 the rate was around 46%, approximately.
Q. Was that for 1957 or 1958?
A. 1958—excuse me—I meant 1958.

CROSS EXAMINATION.

By Mr. McGuire:
Q. I have a few questions, Doctor. What is meant by the honorary staff of the Richmond Memorial Hospital?
A. Well, that is a classification that was set up. Of course, these by-laws we have are drawn up on a pattern that has been set up nationally by the accreditation body that accredits a hospital and that is a status usually provided for. We don't have any honorary doctors. We have not seen fit to elect any. For example, one we might honor would be the professor of surgery at the Medical College, but we have not done so.
Q. Can you tell me the difference between the courtesy staff and the attending staff of the hospital?
A. The difference between the courtesy staff and the attending staff really is a matter of election and the willingness on the part of the physician if he elects to become a member of the attending staff of attending a
page 144 } minimum number of staff meetings during the year. He must attend the monthly meeting of the section and also a quarterly general staff meeting. The requirements originally were that he attend 75% of the meetings and they have been reduced by the accreditation committee and I believe at the present time only 50% attendance at the meetings during the year is required.
Actually, so far as his actual function in the hospital or the admission of his patients, there is no difference. It is just a question of his willingness to come and attend these meetings I described earlier, that are in large part educational.
Q. I notice from the medical staff by-laws of the Richmond Memorial Hospital on page 4 under Section C relating to the attending staff, paragraph 4 says that to be eligible to become a member of the attending staff a physician is ex-

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pected to use the hospital regularly for his patients. Is that right?

A. That is the way it was worded. What "regularly" means, I don't know. I think it is an attempt to indicate he must demonstrate some interest. You wouldn't want a man who didn't bring in patients. You would certainly want that man to be one that came to the hospital fairly regularly with his patients.

Q. Section D, paragraph 1, says this:

page 145 } "The courtesy staff shall consist of qualified physicians who do not use the hospital regularly for their patients."

Is that correct?

A. That again is not one hundred per cent correct. As I said the doctor sort of has some election as to which he wishes to apply for. The hospital, of course is quite acquiescent to his request as to which type of privilege he wants.

Q. I understood there were something like 458 doctors on the general staff of the hospital?

A. Yes.

Q. Do you know how many of them are members of the attending staff and how many are members of the courtesy staff?

A. Let's see if I have that figure. 240 are members of the attending staff and 218 are members of the courtesy staff.

Q. What is meant by the house staff? I thought I heard you mention that a while ago, although I may have misunderstood you.

A. The house staff, of course, is the term applied to residents and interns and also externs, being individuals who have not yet graduated but who are in their third and fourth years and who serve throughout the com-
page 146 } munity in various hospitals.

Q. All the hospitals?

A. That's right.

Q. What is an intern and what is a resident?

A. It is a question of the point in the man's training. The first year after graduation, of course, he is an intern and then after he has served in that capacity satisfactorily he may elect to go ahead and take training in some specialty and he would first be an assistant resident in medicine or surgery or one of the other specialties in a fully staffed

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hospital, and he would rise up to resident status in that field.

Q. How many interns and externs are connected with the Richmond Memorial Hospital?

A. Seven interns, I believe, 24 externs and I believe three assistant resident surgeons.

Q. Certainly most hospitals of any size have interns and residents and perhaps externs, do they not?

A. Of course they do, if they can get them.

Q. Isn't that a necessary part of the staffing of a hospital?

A. Absolutely, any hospital.

Q. What about the laboratory technicians? Don't they do hospital work while they are being trained?

page 147 } A. Not 100% all the time. Of course, some time has to be devoted to lectures and that sort of thing and a training program, and the only way they complete their training is to go ahead and actually do the work.

Q. They do do some of the hospital work?

A. That's right.

Q. Isn't that beneficial to the hospital and to the physicians who practice there, as well as to the trainees?

A. That's right and as I stated I think many of them are paid for doing it.

Q. You have described at some length the extent of the physical therapy department and the emergency room and the work of the psychiatry unit?

A. That's right.

Q. The Memorial Hospital normally makes charges for those services does it not?

A. That's right. All institutions attempt to collect from the patient who uses the facilities. Even the Medical College, regardless of the status, makes an attempt to collect from every patient that enters there. Of course, all of them cannot pay.

Q. You spoke of the physicians and surgeons on the staff treating some of the state or county indigent patients at the

page 148 } hospital which are taken in under contract. You spoke of some of the physicians treating some of those patients without charge and some of them for less than the normal charge.

A. Yes.

Q. And you also spoke of treatment of regular patients of the Memorial Hospital by yourself and other physicians without charge?

A. That's right.

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Q. That is what most decent doctors do, isn't it?

A. That's right. A decent doctor would certainly do that.

Q. Normally the patients which are admitted to Memorial Hospital at the request of doctors of the attending staff or courtesy staff, normally the doctors charge for their own treatment of those patients, do they not?

A. They charge. Of course, the matter comes up as to whether or not in this particular institution there would be a greater number of patients who require doctors donating their services, than might be the usual situation.

Q. I understand a few patients are taken by Richmond Memorial Hospital with no expectation of payment from the very beginning.

A. Yes.

Q. But I also gather that is a comparatively
page 149 } small number?

A. That wouldn't be possible if it wasn't for the fact that somebody was paying something that has made these facilities available. The fact you do have a large volume of private work, that makes these facilities generally available.

Q. All I am driving at is the fact, or what I take to be the fact, that most of the work done by the hospital, services provided by the hospital and also services provided by the staff physicians, are private work for which charges are made. That is the normal situation, isn't it?

A. That's right. If it is a private patient the doctor makes a charge.

Q. And most of them are private patients?

A. Most of them are private patients, that's right. That was the greatest need in the community when the hospital was built. It was the hope and expectation as the hospital developed that a larger amount of free service would be done and of course the amount of that naturally depends on the development of endowment funds, the operation of the hospital at a point where surpluses will accrue which can be used for that type of service.

Q. I understood that from the previous witness, but I am asking you is it not true that more than 90% of
page 150 } the work done is private work for which charges are made?

A. Charges are made—not always collected but charges are made. As to the 90%, I can't say.

Q. You can't guess at the percentage?

A. That is round figures.

Q. But that is the normal thing?

A. That's right.

Q. Can you say that the primary purpose of the creation of this hospital was for the treatment of indigent patients?

A. The primary purpose, of course, was to provide medical care and the majority of it at the present time, as you have indicated, is on a private basis.

Q. It was not the primary purpose to provide free facilities or medical treatment for indigent patients?

A. Not free 100%.

Q. I am asking you if that was the primary purpose?

A. Not the primary. You are thinking in terms of an institution like Sheltering Arms?

Q. I am.

A. It is not a Sheltering Arms.

Q. That's right. Do you have a list showing who are the chiefs of the various divisions or departments?

A. I do.

page 151 } Q. I think it would be well if you have a copy of such a list to file it in evidence.

A. These men are pretty representative throughout the community.

Q. I think it would be well to have the record show who they are.

A. I believe there are some typewritten copies. I have a handwritten copy. A typewritten copy might be better as an exhibit. Do you want me to read this?

Q. I don't think that is necessary. Just file it with your evidence. I will ask that it be introduced in evidence.

Note: The list of medical staff officials of Richmond Memorial Hospital was marked Rawles Exhibit No. 1 and filed.

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. Dr. Rawles, in connection with the distinction between the attending staff and the courtesy staff, are physicians and surgeons who are on the courtesy staff privileged to transfer to the attending staff if they so desire?

A. They are. They may make the request to transfer either way.

page 152 } Q. May they participate in staff meetings?

A. That's right. They have the same privileges

in every way regardless of which they are, except for holding office in the staff organization.

Q. They have all the privileges you have described in your previous testimony, except for holding an office?

A. That's right, except for holding office.

Witness stood aside.

HAROLD PRATHER,

a witness called by the Richmond Memorial Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and residence.

A. Harold Prather, 703 Devon Road, Richmond, Virginia.

page 153 } Q. What is your connection with the Memorial Hospital, Mr. Prather?

A. I am the Administrator of the Richmond Memorial Hospital.

Q. How long have you served in that capacity?

A. Since June 1, 1954.

Q. Where did you work prior to that date?

A. I started in hospital administration in 1939 in Sherman, Texas, the Wilson & Jones Hospital, and then I was at the Nixon Hospital in San Antonio, Texas, and from there I went to the East Tennessee Baptist Hospital in Knoxville and stayed there seven and a half years and came here in June, 1954.

Q. Were you the administrator of the Baptist Hospital in Knoxville?

A. Yes, sir.

Q. What professional organizations, if any, do you belong to?

A. I am a fellow in the American College of Hospital Administrators. That is a professional organization. I am personally a member of the Virginia Hospital Association and a member of the council on Governmental Relations for the American Hospital Association. Also I am on the Institute Committee for the American College of Hospital Administrators.

page 154 } Q. Mr. Prather, I believe you were in court yesterday when Mr. Chesley testified. He covered the period of his presidency, which was from

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roughly January of 1957 down to date, in the life of the Richmond Memorial Hospital. I would like to ask you a few questions about the hospital from the time you joined it in 1954 until roughly January 1957. Will you, as briefly as you can, summarize what was taking place at the hospital from June 1, 1954?

A. When I arrived June 1, 1954, my responsibilities were to immediately begin making a complete list, analyzing and setting up all the movable equipment which is known as Group 2 and 3 equipment, in the total amount dollar-wise of $629,000.00.

Also to screen and try to select all of the key department heads as well as work with the Board of Trustees in over-all organization, setting up major policies, working with the advisory committee of the Academy of Medicine in developing a set of medical staff by-laws.

The first department heads began arriving in January 1956 and by August 1st the majority of those department heads had arrived. The equipment began arriving in August 1956 and was checked in and put in its proper place, analyzed, set up and ready for operation.

Q. Mr. Prather, you referred to equipment and supplies and your activities in obtaining those for the
page 155 } hospital. When did you place the first major orders?

A. The first order for equipment was placed, I believe, in the fall of 1955. The manufacture of much of the equipment is long-range and they schedule about a year delivery on it.

Q. You referred to various staff members coming with the hospital at various times. Do you have the total number of employees of the hospital during the year 1956?

A. The approximate number of employees during the year 1956 was about 75. The total payroll for the year 1956 that can be attributed to the operation of the hospital was approximately $90,000.00.

Q. That was in 1956?

A. Yes, sir.

Q. The payroll?

A. Yes, sir.

Q. By what date approximately was the hospital fully staffed to the point where in its operations it was able actually to receive members of the public as patients?

A. The hospital was actually staffed with all key department heads, in-service training, certainly by the first of De-

cember, maybe the middle of November. I don't remember the exact date.

Q. What year?

A. 1956.

page 156 } Q. You say in-service training had been completed approximately by then?

A. Yes, sir—procedures, techniques, calibration of equipment and in-service training.

Q. Do you have a tabulation that shows the schedule of dates on which the various departments of the hospital were actually taken over by the personnel under your supervision?

A. Yes, sir, I do.

Q. I would like you to file that, if you will, with your testimony.

A. Yes, sir.

Q. Do you have any copies of this schedule?

A. Yes, sir.

Note: The schedule referred to was marked Prather Exhibit No. 1 and filed.

Q. When you refer in this exhibit you have just filed to these departments being taken over, what do you mean, Mr. Prather?

A. We set up the scheduling as the contractor had completed the contractual operation. We moved into these departments, setting up the equipment for these departments, putting it in its proper place, checking it out and getting ready to assemble all the equipment for the acceptance of the first patient.

page 157 } Q. You assumed operation and control of those departments on those dates?

A. Yes, sir, we did.

Q. Mr. Prather, referring again to testimony on yesterday, Mr. Chesley spoke of the volunteer service by groups of women in the hospital. He was not able to supply any figures with respect to that. Do you have that in your mind?

A. Yes, sir, I have the approximate numbers. I don't have it written down.

Q. State what you know about it.

A. The volunteer service is developed through our director of volunteers. These are people who donate their time to the hospital. They range from two to twenty hours a week. The total number of hours given per month is approximately 1800. The number of actual people donating this time is approxi-

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mately 150 from various women's clubs and private individuals.

Q. Were you here yesterday when Mr. Chesley read into the record the resolution adopted by the executive committee of the hospital in November 1957 with respect to free service?

A. Yes, sir, I was.

Q. And as Administrator of the hospital will you state whether or not the hospital has been run and conducted in accordance with the policy as expressed in that resolution?

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A. Yes, sir. the policy set up by the Board of Trustees certainly has been carried out to the best of my knowledge to the fullest extent. Furthermore, any request that has been made to me personally or to any of my associates regarding any indigent care, we have carried it out to the fullest extent.

Q. Reference was made yesterday to the rates of Richmond Memorial Hospital. I requested you this morning to see if you could locate a copy of the rates of the Medical College of Virginia Hospital. Have you been able to obtain that?

A. I have.

Q. I would like to have you file those with your testimony.

Mr. McGuire: May I ask the purpose of this?

Mr. Powell: If you tell me the purpose of filing the rates of this hospital, Mr. McGuire, I would be very happy to attempt to respond.

Mr. McGuire: The reason was to show that in the main the Richmond Memorial Hospital operates as a business institution and charges rates just like other hospitals.

Mr. Powell: We make no point of the fact we charge patients who can pay, Your Honor. That is perfectly self-evident. If that is the only purpose of introducing the rates there is no dispute between me and Mr. McGuire on that. I didn't know whether he was going to charge that the rates being charged at Richmond Memorial Hospital are excessively high.

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Mr. McGuire: I had not expected to do that. What I am asking now is, is it your contention that the Medical College of Virginia is a charity hospital?

Mr. Powell: I know it is tax exempt under another section of the constitution and I wasn't drawing any comparison at the moment except to show that the rates are approximately the same.

Note: There followed an off the record discussion.

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Mr. Powell: Is it agreeable with the court that this be filed?

The Court: Yes.

Note: The schedule of rates of Medical College of Virginia Hospital was marked Prather Exhibit No. 2 and filed.

CROSS EXAMINATION.

By Mr. McGuire:

page 160 } Q. I have only one or two questions. This policy with regard to free service you say the hospital has been carrying out, is it not the policy to extend and inaugurate free service as and when the financial resources and physical facilities of the hospital may permit? Isn't that true?

A. Naturally we cannot extend free services more than our resources would permit us to do so. I can truthfully say, though, that if a person were to present themselves to us through the proper channels needing medical care he would not be turned out.

Q. What do you mean by "resources"?

A. Well—

Q. You mean money?

A. Yes, sir.

Q. Mr. Prather, I don't believe you stated or I don't recall if you did state, when did the Richmond Memorial Hospital take its first patient?

A. The first patients was admitted to Richmond Memorial Hospital January 19, 1957.

Q. Mr. Prather, don't the other hospitals in this area have ladies who perform volunteer services?

A. I haven't checked to the extent they have. I am certain the Medical College of Virginia has. The Crippled Children's Hospital has and the Veterans Hospital. Whether the others do, I don't know.

page 161 } Q. You don't know?

A. No, I don't.

By Mr. Powell:

Q. Mr. Prather, you referred to the fact that the first public patient, that is, a member of the public became a patient in the hospital in January 1957. Were there any other patients who had been in earlier?

A. Yes, sir, two of our employees were in an automobile ac-

cident in the latter part of December. They were admitted to our institution and kept overnight for observation.

Witness stood aside.

DR. RUDOLPH C. THOMASON,
a witness called by the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw:

Q. Dr. Thomason, you are Dr. Rudolph Thomason, are you?

page 162 } A. That is correct.

Q. What is your profession?

A. Eye specialist.

Q. Eye specialist?

A. Yes, sir.

Q. How long have you been practicing in Richmond?

A. Since 1933.

Q. Will you tell us where you were educated?

A. Medical College of Virginia and University of Chicago.

Q. Doctor, were you one of the original Board of Trustees of the Richmond Eye Hospital?

A. In Mrs. Beveridge's original board, she had Dr. Emory Hill, Dr. Wallace Gill, Dr. Arnold Knapp and the President of the State Planters Bank, and at Dr. Hill's death, since Mrs. Beveridge was one of my patients, she asked me to serve in his place.

Q. Will you give the background of the hospital, the inception of the idea of the hospital?

A. Mrs. Beveridge was a chronic eye sufferer, with glaucoma, which is a crippling and blinding disease and she had been treated by Dr. Arnold Knapp in New York and was quite impressed with the difference between a special hospital and a general hospital, so that with her treatment

page 163 } and her reserves, she was very much interested in establishing a hospital for eye diseases. That was the main reason that they became interested in that and as I understand they left approximately 40% of the residue of their estate, which from the standpoint of the eye hospital amounted to approximately $220,000.00.

Q. Did Mrs. Beveridge discuss with you the building of the

hospital, as to the operation of such a hospital and if so for what purpose?

A. The original idea was to build a hospital along charity lines or a charity hospital and when she explained that to me at the time I was asked to serve, I told Mrs. Beveridge the hospital could be built for that purpose but it couldn't open its doors. It would have not a cent. With $220,000.00 I told her it was possible to build it but you couldn't run it.

Mr. McGuire: I believe this evidence is improper because the terms of Mrs. Beveridge's will show the terms of the bequest and I don't believe that any qualifications of its terms derived from conversations between Dr. Thomason and Mrs. Beveridge are relative or admissible. Perhaps we had better wait and see what he says but I rather think I am going to have to object to this evidence.

page 164 } Mr. Haw: I submit nothing he is going to say is contrary to the terms of her will.

Mr. McGuire: All right.

By Mr. Haw:

Q. Doctor, Mrs. Beveridge at her death left a will, and we would like to have you file Mrs. Beveridge's will as Thomason Exhibit No. 1.

A. I have it here.

Note: The copy of will was marked Thomason Exhibit No. 1 and filed.

Q. Doctor, I will ask you to read this portion of Article V of the will.

A. (Reading)

"I give and bequeath to the State Planters Bank and Trust Company of Richmond, Virginia, as Trustee, forty per cent of any residuum of my estate, in trust for the following purpose: My Trustee shall as soon as practicable after my death, organize a corporation under the laws of the State of Virginia, in which the following shall be the original Directors to have power to select their successors, to-wit: Dr. Emory Hill of Richmond. Virginia, Dr. Wallace Gill of Richmond, Virginia, Dr. Arnold Knapp of New York City,

page 165 } New York, and the President (Julian H. Hill or his successor) of the State Planters Bank and Trust Company of Richmond, Virginia, if any of the four

mentioned should predecease me or decline to serve, the survivor or survivors shall have the power to select other directors in his or their stead as original directors of this corporation, and after the corporation is once organized, the directors shall select their successors and shall have the power to increase the number of directors from time to time. If any tangle should arise, the Judge of the Hustings Court of the City of Richmond, Virginia, is empowered to act, to straighten things out.

"The corporation shall be organized for the purpose of establishing a hospital in Richmond, Virginia, for eye work. Its principal work to be along charitable lines and mainly for the residents of the City of Richmond, Counties of Henrico, Hanover and Chesterfield, in Virginia."

page 166 } Q. All right. Now, Doctor, following the probate of her will was a hospital organized and if so what was the original name of the hospital?

A. The original name of the hospital was the Richmond Eye and Ear Hospital.

Q. Well, after that hospital was incorporated under that name, was a suit instituted at a later date for the purpose of clarifying the situation and seeing whether or not that corporation was a proper one to receive the gift from Mrs. Beveridge's estate?

A. Yes, sir.

Mr. Haw: I would like to hand the court a copy of a decree in the case of *Virginia Fox Beveridge's Executor and Trustee* v. *Thompson Dill, et al.*, which was entered on July 2, 1947.

Mr. McGuire: I am familiar with it.

The Court: Do you stipulate this can be filed?

Mr. McGuire: I have no objection to its filing.

Note: The copy of decree was marked Thomason Exhibit No. 2 and filed.

By Mr. Haw:

Q. Doctor, upon the entry of this decree was the name of the hospital changed, was the charter amended
page 167 } and the name changed to Richmond Eye Hospital, as required by the decree?

A. Yes, sir.

Q. Were the provisions of this decree as to the nature of

this hospital and the provisions by which it should be operated in the amended charter?

A. Yes, sir.

Mr. Haw: We would like to file the charter of the Richmond Eye Hospital.

Note: Copy of charter of Richmond Eye Hospital was marked Thomason Exhibit No. 3 and filed.

By Mr. Haw:

Q. I will not attempt to go into the provisions of the decree or charter, as they appear from the papers themselves. Doctor, upon the final amendment of the charter and in conformity with the decree of Judge Lamb, what procedure was taken with reference to the building of the hospital?

A. Well, we went ahead with the establishment of the hospital as the Richmond Eye Hospital, also as part of the Richmond Ear, Nose and Throat Hospital.

Q. Explain where the funds came from for building the hospital.

page 168 } A. The original $220,000.00 came from the Bevbridge estate. We were able to interest Mr. and Mrs. A. D. Williams, patients in my office, in the construction of this hospital for funds for the building of it, since during the two or three year interval before the money became available the cost of building had doubled.

Mr. and Mrs. A. D. Williams gave us first a piece of property on West Franklin Street for the construction of the hospital and then a lot on Grace Street on the corner back of it, the old Ryland property, to be used as a parking lot.

Later we told them we still didn't have enough money for the construction and they gave to the hospital this fund of $150,000.00 in addition to the two pieces of property.

During that time the Medical College of Virginia became interested and offered us the privilege of either leasing a lot to us for any number of years or selling us a lot at their cost basis and we would be an independent structure but at the same time available to the Medical College or they would be available to us. We thought it would be to the advantage of each to be in close proximity and with the permission of Mr. and Mrs. A. D. Williams we were able to sell that property and add that sum, approximately $30,000.00, to the $150,000.00

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which made $180,000.00. That, added to the $220,-
page 169 } 000.00, made approximately $400,000.00. Contributions were made by friends of the hospital or the eye, ear, nose and throat men in the City of Richmond, which ran it to approximately $450,000.00.

In the meantime we were admitted under the Hill-Burton Act in which the state participated, in the sum of 48%. The Federal Government contributed 48% and the state 7%, so they contributed 55% in all.

Q. And the hospital cost what?

A. $775,000.00, roughly.

Q. I believe Mr. Add Williams, in addition to the property that he conveyed, put this money up in the First and Merchants Bank to be held until the hospital was going ahead from a building standpoint. Isn't that right?

A. Yes, sir.

Q. Now in addition to the gifts made before the hospital was built, what have you received since in the way of gifts?

A. Well, the main gift since has been that Mr. and Mrs. Williams left in trust $300,000.00.

Q. In his will?

A. Yes.

Q. In addition to that did you receive a gift from Mr. Watkins' estate?

page 170 } A. Yes, sir. I think that was approximately $10,000.00.

Q. And I believe an additional amount of $37,000.00 was given you?

A. Yes, sir.

Q. Is your hospital qualified under the Ford Foundation?

A. Yes, sir. We received from the Ford Foundation $19,-000.00.

Q. Is your hospital exempt from taxation by the state and federal government for income tax purposes?

A. Yes, sir.

Q. Now in addition to the funds you spoke of, are there any foundations that have been placed with the hospital from the standpoint of charity purposes?

A. The Helen Nolde Sheppard Fund which was established in the last several years, which is gradually growing. I think approximately $25,000.00 was added to that fund this year. The income is to be used entirely for charity purposes.

Then we have a separate fund which was given by various gifts but is mainly called the Schwarzschild fund, in which

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any money that is given to the fund is used for charitable purposes.

Q. In addition to that, has any club recently
page 171 } commenced the creation of a foundation?

A. The Lions Club has also started a foundation and I understand approximately $10,000.00 is in that fund, from which the income is to be used for charitable eye patients in the City of Richmond.

Q. Who was the first President of the hospital?

A. Dr. Wallace Gill.

Q. And who was the next President?

A. I was.

Q. Who is the present President?

A. Dr. Ben Sheppard.

Q. Doctor, we are going to go into the details of the operation of the hospital with Mrs. Waters, your very able Administrator, so I will not ask you any further questions at this time, but if there are any other remarks you wish to make as to the operation of the hospital, you are at liberty to do so.

A. No.

Q. I do want to file one thing. At the time the hospital acquired the property from the Medical College of Virginia, what was the first proposition of the Medical College as to sale or lease or what?

A. The first proposition was it would be rented to us at a nominal sum.

Q. Did they finally come to an agreement as to
page 172 } lease and sale both, in the event the legislature would permit it?

A. That's right, and I think we paid approximately $14,000.00 for that property, which was the cost to the Medical College, as well as I remember. It was okayed by the legislature.

Q. At the time this was put through and before the legislature acted on a statute providing for the acquisition of it by your hospital, was an agreement entered into between the eye hospital and the Medical College of Virginia?

A. Yes, sir.

Q. I would like to file that agreement, which is dated June 20, 1949.

A. Yes, sir.

Note: The agreement referred to was marked Thomason Exhibit No. 4 and filed.

Dr. Rudolph C. Thomason.

By Mr. Haw:

Q. In addition to the payment of the $14,000.00 and the conveyance of the property to your hospital by Medical College of Virginia, did the Medical College of Virginia do anything else toward the hospital from a financial standpoint?

A. Medical College of Virginia built a tunnel which is connected with the eye hospital, a walking tunnel, and likewise they heat the eye hospital. It is used for that page 173 } purpose, too. It is a walking tunnel connecting to the Medical College so patients can be transported back and forth.

Q. Is that part of the tunnel system of the State of Virginia under the various public buildings?

A. Yes, sir.

Q. Was that done at the cost of Medical College of Virginia at no expense to you?

A. Yes, sir.

Q. And you just had to connect up in order to heat your building?

A. Yes, sir.

Q. And you get the heat at cost plus 10 per cent?

A. Yes, sir.

Mr. McGuire: If I understand, you expect to place the hospital administrator on the stand and she is the proper person from whom I should get details about the finances or operation of the Richmond Eye Hospital?

Mr. Haw: That's right.

Mr. McGuire: Then I would only have three or four questions of Dr. Thomason.

CROSS EXAMINATION.

By Mr. McGuire:

page 174 } Q. Dr. Thomason, did I understand correctly that it is only the Helen Nolde Sheppard, the Schwarzschild and the Lions Club funds that are restricted to use for charity purposes?

A. Of the separate funds we have in the hospital, yes, sir, that is all I know of.

Q. Are the A. D. Williams gifts, for instance, just for general hospital purposes?

A. Yes, sir, no restriction on that.

Q. What are the terms of the $19,000.00-grant you received from the Ford Foundation?

Dr. Rudolph C. Thomason.

A. I expect that would have to be read. Mrs. Waters will have that written. It is with regard to new equipment and expansion and such things as that.

By Mr. Haw:

Q. It is for material building purposes and upkeep of the hospital?

A. That's right.

By Mr. McGuire:

Q. She has all that information?

A. She can give you that.

Q. And she will have information about the staff and so forth?

Mr. Haw: She can give you all the information about everything.

By Mr. McGuire:

page 175 } Q. I will ask you this, Dr. Thomason, the Richmond Eye Hospital, I understand, is a non-profit corporation. Do you yourself know to what extent free services are rendered there to patients?

A. Personally, no. You mean, so far as the doctors or the hospital?

Q. I meant the hospital that time and I then was going to ask about the doctors.

A. Only from this standpoint—we have so far never turned down a charity patient, a request for a charity patient. We have advertised in the Virginia Medical Monthly that we can take a limited number of charity patients, so far as finances are concerned.

Q. Do you have any idea what percentage of the patients received there have been charity patients?

A. No, I cannot say. You mean pure charity or part charity?

Q. To such extent as you know.

A. No, except I think there were 100 patients in the last year admitted that were either part or full time charity.

Q. Out of how many patients altogether?

A. Around 3,000 patients.

Q. The normal operation of the hospital is for private patients who pay?

Dr. Rudolph C. Thomason.

A. Yes, sir.

page 176 } Q. And does that apply to the doctors?

A. Yes, sir.

Q. Do the doctors donate their services or handle their private patients there?

A. Private patients are handled there, as well as charity.

Q. Do you take some patients who are not suffering from ailments of the eye, ear, nose or throat?

A. Oh, yes, if it is an emergency and they cannot get into other places.

Q. Do you accept them only in emergency?

A. I don't think we have had any others. We may have had one or two or something of the sort. The eye, ear, nose and throat includes everything from the neck up.

Q. Is your hospital full now?

A. The hospital runs at approximately 80 or 85% capacity, even more during the week, but in that type of hospital you have a rapid turnover. The average stay in the eye hospital is a little less than three days. Half of the operations in that hospital are tonsils, who stay approximately 24 hours, so that is a one-day case. It has a rapid turnover. You don't do tonsils to amount to anything on Saturday and Sunday so on Saturday and Sunday the census would drop considerably.

page 177 } Q. This controversy has been going on some years, as you know. I happen to have in my file a letter sent by you and circulated apparently in the city. Is this a letter that you had circulated for the Richmond Eye Hospital in 1953?

A. It has my signature on it.

Q. It is dated May 12, 1953?

A. Yes, sir.

Q. I assume that is substantially a correct statement of the situation at that time?

A. Yes, sir.

Mr. McGuire: I offer that in evidence.

Note: The letter was marked Thomason Exhibit No. 5 and filed.

By Mr. McGuire:

Q. Dr. Thomason, when did the Richmond Eye Hospital actually commence operations?

A. I believe it was May 1952—May 12, 1952.

Mrs. Julia W. Waters.

RE-DIRECT EXAMINATION.

By Mr. Haw:

Q. Then that letter was written when the hospital had been in operation one year?

A. One year since the day it was opened.

Q. What was your deficit in operating expenses for the first year?

page 177-a } A. Tremendous. I don't remember the figure but Mrs. Waters has it. It was a tremendous deficit.

Witness stood aside.

Note: There followed a recess.

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MRS. JULIA W. WATERS,

a witness called by and on behalf of the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION:

By Mr. Hunton:

Q. Please state your name, residence and occupation.

A. Julia Wagner Waters, 1510 Park Avenue. I am a graduate registered nurse.

Q. What is your present position?

A. Administrator of the Richmond Eye Hospital.

Q. How long have you been connected with the Richmond Eye Hospital, Mrs. Waters, and in what capacity?

A. Well, I helped with the staffing of the hos-
page 179 } pital in April 1952 and then I officially went on duty in the hospital in June 1952 as Director of Nursing Services and then I later, in April 1953, became Administrator of the hospital.

Q. That is the hospital, the origin and character of which has been described by Dr. Thomason in his testimony?

A. Yes, sir.

Q. Where is it located?

Mrs. Julia W. Waters.

A. It is located on a lot 64 by 106 feet, 408 North 12th Street, acquired in 1949 on a 99-year lease from the Medical College and later purchased in 1950 by Act of the General Assembly for $14,000.00

Q. Describe briefly the hospital building and structure.

A. It is a building three and a half stories high with a basement and sub-basement connected by a tunnel with the Medical College, through which we purchase at cost with a small degree of expense over and above the cost to the Medical College all of our heat and steam, some of our maintenance work, some of our laboratory work. We are not equipped to take care of some of our larger x-rays, and x-ray therapy, and we also use their blood bank.

Q. When was the eye hospital constructed?

page 180 } A. The hospital building itself was started in the latter part of 1950. It was completed in April 1952.

Q. Has any part of it ever been used for any other purpose since its construction?

A. No part has been used since it was acquired from the Medical College except for the construction of the hospital.

Q. How many employees are there on the staff?

A. We have 56 full time employees and 8 part time. This is according to our October 1st accounting for the American Hospital Association.

Q. Can you give us a breakdown on those employees?

A. We have 17 full time graduate nurses. We are short one graduate nurse. We have four part time graduate nurses; 18 full time practical nurses and one part time, and we are short one practical nurse.

We have eight in our dietary department full time; five full time housekeeping employees; one full time maintenance employee, and three part time PBX operators.

Q. Mrs. Waters, I hand you tax bills of the City of Richmond addressed to the Richmond Eye Hospital for the years 1953, 1954, 1955, 1956, 1957 and 1958. Are those the original tax bills?

A. Yes, they are, Mr. Hunton.

page 181 } Mr. Hunton: With the court's permission and concurrence of counsel for the city, I would like to file photostatic copies of those in lieu of the originals.

Mr. McGuire: That is agreeable to the city.

Mrs. Julia W. Waters.

Note: The tax bills were marked Waters Exhibit No. 1 and filed.

By Mr. Hunton:

Q. Mrs. Waters, for the purpose of the record would you state what the taxes were for those respective years, and the aggregate amount?

A. For the year 1953 assessed valuation $547,900.00, tax $12,053.80; for 1954 assessed valuation $547,900.00, tax $12,053.80; for 1955 assessed valuation $547,900.00, tax $10,410.10; for 1956 assessed valuation $553,000.00, tax $10,396.40; for 1957 assessed valuation $553,000.00, tax $10,396.40; for 1958 assessed valuation $553,000.00, tax $10,396.40. That makes a total tax assessed for the years 1954 through 1958 of $53,653.10.

Q. I hand you a paper from the City of Richmond entitled "Notice of Change of Assessed Value." Was that received by the Richmond Eye Hospital in regard to their 1959 City Tax?

A. This was received by the hospital on January 15, 1959.

Q. And what does it show about the assess-
page 182 } ment for 1958 and the proposed assessment for 1959?

A. For 1958 the assessed valuation is $553,000.00; for 1959 it is $553,040.00.

Q. Mrs. Waters, will you file that as your exhibit No. 2?

A. Yes, sir.

Note: The notice of assessment was marked Waters Exhibit No. 2 and filed.

Q. Now, Mrs. Waters, would you be good enough to describe briefly the organization of the Richmond Eye Hospital and its management, please?

A. It is controlled by a Board of Directors composed of ten laymen and nine doctors.

Q. Now what is the method of regulation of the medical staff?

A. They control the medical staff and determine the rules and regulations.

Q. I hand you a booklet entitled "By-laws and Rules and Regulations of the Medical Staff, Richmond Eye Hospital, Richmond, Virginia." Are those the by-laws and rules and regulations now in force and governing the medical staff of the eye hospital?

Mrs. Julia W. Waters.

A. Yes, it is.

Q. Would you file that with your evidence marked Waters Exhibit No. 3?

page 183 } A. Yes.

Note: The booklet referred to was marked Waters Exhibit No. 3 and filed.

Q. State the nature of the Richmond Eye Hospital and the work that is done there. Is it a general hospital of the same type as the Richmond Memorial Hospital or otherwise?

A. No. The Richmond Eye Hospital is a small 40-bed hospital that is fully accredited by the joint commission on hospitalization and it is for the treatment of eye, ear, nose and throat diseases and the allied fields.

Q. Is that what you would call a specialty hospital?

A. That is a specialty hospital.

Q. What are the divisions of the medical staff?

A. Well, there are two divisions of the active medical staff, the ophthalmologists—the eye men and the ENT men —the ear, nose and throat men.

Q. How many of them are on the active staff in those two classes

A. We have 21 ophthalmologists and 12 ENT doctors on the active staff.

Q. What are the other classes of staff membership?

page 184 } A. We have an honorary staff which is made up of eye, ear, nose and throat men, eye, ear, nose and throat specialists who do not desire to be very active. There are only four, but of that four three have retired. The other is semi-retired, but they have been outstanding men in eye, ear, nose and throat work in the City of Richmond and they are on the honorary staff.

Then we have a consulting staff made up of eye, ear, nose and throat specialists. On this group we only have six men and they are the six men who do not care to be really active in the every day work of the hospital but they do bring patients there occasionally and then there are consultants. These men are called in when the other men need them. Some of them are semi-retired, others are active. On that list we have six.

We have some other consultants also who are not specialists in the eye, ear, nose and throat field.

Our anaesthesiologist is Dr. W. E. Pembleton of the Medical College. Dr. Samuel Kay is consulting pathologist.

He is from the Medical College also. Dr. Robley Bates and Dr. Elam C. Toone, Jr., are consultants in internal medicine. Dr. Lewis H. Bosher, Jr., is our cardio-vascular surgeon and Dr. F. M. Mandeville is our radiologist. Dr. Mandeville is in charge of our x-rays. He is also of the Medical College.

Q. What is the purpose of that consultant
page 185 } staff to which you have just referred?

A. Well, it is most important in any type of operation,—you have to have an anaesthesiologist—and it is most important to have one to be a consultant. The same thing in pathology. Our pathology is done at the Medical College and any questions our technicians wish to ask, Dr. Kay is our consulting pathologist in the Medical College. The same in internal medicine. There are times when certain patients are in for an operation on the eye, ear, nose or throat and develop heart trouble, have cerebral hemorrhages, or something of the kind. It is very necessary to have an internal medicine man that can be called in.

Dr. Bosher is our cardio-vascular surgeon, the consultant, and he is in charge of that department at the Medical College. We have never had to call him in but in very long prolonged anesthesia, there is a necessity sometimes for a cardio-vascular surgeon to come in and check the patient.

Q. Now I think there is another classification, the courtesy medical staff.

A. In our by-laws we have a courtesy medical staff that shall consist of the members of the medical or dental profession who would care to affiliate with the hos-
page 186 } pital and they do not have to be recommended by our regular credentials committee. They do, however, have to put in an application to the Administrator, which has to be passed on to the medical staff and also to the Board of Directors.

They are doctors who are fully qualified in every respect in their field in medical and surgical work, and they make up our courtesy doctors.

Q. How many do you have on that staff

A. Thirty on the courtesy medical staff and nine on the courtesy dental staff, thirty-nine that have made application.

Our staff is an open staff and we accept applications from any doctors. These doctors are not given any regular operating time, and so forth. Most of them are medical men who come in and treat the patient medically while he is having some particular special operation.

Mrs. Julia W. Waters.

Q. I understood you to say it was an open staff. Explain what you mean by that.

A. We mean it is open, but it is controlled. It is open to any eligible doctor in the City of Richmond or the surrounding areas of Richmond who is qualified and licensed to practice in the State of Virginia and qualified for membership in the various organizations recognized by the Board of Directors.

page 187 } Q. That is, with respect to the fields of ophthalmology and otolaryngology?

A. Yes. Of course, qualification for our active staff is that they have to be qualified as eye, ear, nose and throat specialists in the city.

Q. How many ophthalmologists are there in the City of Richmond, do you know?

A. So far as I have been able to ascertain from the Academy of Medicine,—did you say eye or eye, ear, nose and throat?

Q. I just said "eye."

A. I don't believe there are any eye men that are not on their staff. There are several other eye, ear, nose and throat doctors who are not. I think there is only one who is not on our consultant or on the honorary staff and that is Dr. Mason Smith at Stuart Circle, who is eligible but I understand he has semi-retired.

Q. What about otolaryngologists?

A. I don't know of any otolaryngologists in the City of Richmond who is not a member of our staff, either as a consultant, honorary or active.

Q. I call your attention to Section 4(c) of the by-laws, on page 6. It says:

"The duties of the active medical staff shall be to attend free patients when such patients are admitted

page 188 } and to transact all business of the medical staff. Only members of the active medical staff shall be eligible to vote or hold office."

Is that provision of the by-laws carried out with respect to the free patients?

A. That is followed out to the n'th degree, yes.

Q. By whom is the hospital accredited?

A. It is accredited by the joint Commission on Accreditation of Hospitals, made up of the American College of

Mrs. Julia W. Waters.

Physicians and the College of Surgeons and also the Canadian organizations and also by the State of Virginia.

Q. I hand you a document entitled "Richmond Eye Hospital, Incorporated, Report on Examination for Year Ended December 31, 1958." Is that the audit report of the Richmond Eye Hospital for the year just completed?

A. Yes, it is.

Q. On page 11 is a statement of income for the year ended December 31, 1958.

A. Yes.

Q. What was the total operating income for that year?

A. Total operating income $298,347.84.

Q. Now what deductions were made from that?

page 189 } A. For free service and adjustments, contractual, $2,899.54.

Loss on Virginia Hospital Service Association members, which we speak of as Blue Cross, $16,000.08; total $18,899.62

Q. And so what was your total operating income for the year?

A. $279,448.22.

Q. And what were your operating expenses, exclusive of depreciation, for the year?

A. $258,269.51.

Q. So what was the net operating result after depreciation for the year?

A. After provision for depreciation, it was a loss of $7,343.25.

Q. Now I believe the next item is "Other income." What other income did you have during the year?

A. Under that are donations, $2,959.82.

Income from trust fund, the A. D. Williams trust fund, $15,100.00.

Income from investments, $9,446.48.

Discount on purchases, $602.42.

Total other income $28,108.72.

Q. Leaving a net result for the year of what?

A. After the loss was taken out, $20,765.47.

page 190 } Q. Now I notice an item in there of income from investments. Where did that originate and from what source were those investments obtained?

A. Some of those are from the Helen Nolde Sheppard fund. No, I believe that is put in separately. We invest our depreciation money and we also have invested part of our money from the Ford Foundation because we have not been

able to use it for the purpose for which it was approved by the Ford Foundation.

Q. Would you be good enough to file that with your testimony as Waters Exhibit No. 4?

A. Yes. I would be glad to.

Note: The report of A. M. Pullen and Company was marked Waters Exhibit No. 4 and filed.

By Mr. Hunton:

Q. Are those figures for 1958 substantially in accord with the preceding years' operations?

A. Well, yes, I would say that our operating income has been a little bit greater. Also, our operating cost has been quite a bit greater. Would you like those figures?

Mr. McGuire: Excuse me. Is that one statement for 1958 the only one you are going to put in?

page 191 } Mr. Hunton: That is the only one I was planning to introduce. We didn't have the detailed figures of the audit report for all the years.

Mr. McGuire: You have handed me one for 1957.

Mr. Hunton: I know, but that is the President's copy.

Mr. McGuire: At one time there was a statute which required hospitals to file annual statements with the securities division of the State Corporation Commission. I think that statute was amended about 1954 so that is no longer required. That is the only office I ever knew of where hospitals are required to file a statement except certain information that the tax department requires, which is privileged.

A number of years ago I got from the securities division copy of the annual statement of the Richmond Eye Hospital for 1952 and I believe I have them for 1954.

Mr. Hunton: If Mr. McGuire wants to put them in, I have no objection.

Mr. McGuire: I think I have them down through 1956. If I can find them, I should like to have them all in so as

page 192 } to provide the court with a picture of the operations for each year.

By Mr. Hunton:

Q. I hand you a chart headed "Operating Data, Statistical and Financial (Auditor's Figures)." Is that prepared by you or under your direction from the audited figures of the hospital?

Mrs. Julia W. Waters.

A. Yes, Mr. Hunton.

Q. And it shows on the first line, I believe, each of the years 1952 through 1958, inclusive?

A. Yes.

Q. That is on the first line. That is at the top of each column. Now the first line shows the number of patients; the second shows the number of patient days; the third, occupancy percent; fourth, daily average number of patients; fifth, average length of stay of patients; and the sixth line shows operations.

The seventh line shows total operating income; the eighth line, total operating cost; the ninth line, operating gain or loss; tenth line, per diem income; eleventh, per diem cost; twelfth, per diem gain or loss.

The thirteenth line shows the average income per patient stay; line fourteen, average cost per patient stay; line fifteen, Blue Cross adjustments, whether gain or loss; and line sixteen shows the percentage of Blue Cross patients. Is all of that correct?

page 193 } A. Yes.

Q. In how many years has the total operating income exceeded the total operating loss?

A. Only one year and that was in 1955, I believe. Yes, in 1955, it was the only year since the hospital has been opened.

Q. Taking the seven years in question, what was the total operating gain or loss?

A. There has been a total operating loss of $99,992.00 and that does not include our Blue Cross adjustments.

Q. Now in those years what was the total number of patients?

A. 23,113 patients.

Q. And of that number, how many were charity patients?

A. 426.

Q. And on a patient day basis, what is the percentage?

A. 71,776 patient days, 1,427 charity days.

Q. Give the comparative figures for 1958 with respect to those two items, that is, the number of patients and the number of charity patients in 1958.

A. Yes. In 1958 we had, charity patients, 22 out-patients and 125 in-patients, or 456½ patient days, ex-
page 194 } clusive of Blue Cross.

Q. Give the number of charity patients in each of the years in question.

Mrs. Julia W. Waters.

A. Year	Out Patients	In Patients	Patient Days
1952		8	44
1953		16	62
1954		33	113
1955	2	72	222
1956	3	86	192
1957	1	86	337½

Q. I believe you have already given us 1958. Have you kept any record in 1958 of the number of patients who had Blue Cross insurance coverage or other hospital insurance coverage?

A. Yes, I do, Mr. Hunton.

Q. What percentage of the patients admitted to the hospital in 1958 had some kind of hospitalization coverage?

A. Well, it was 58.8% of them, that is, Blue Cross. Other insurance and compensation, I don't have the actual comparison of days.

Q. What percentage of patients?

A. 19%. That would be 55% of the patients were Blue Cross, 19% of the patients were other insurance
page 195 } and compensation, and 26% were personal or charity.

Q. What percentage of those not covered by some form of hospital insurance were charity patients?

A. 13%.

Q. Mrs. Waters, would you be good enough to file that chart with your evidence as your Exhibit No. 5?

A. Yes.

Note: The chart was marked Waters Exhibit No. 5 and filed.

By Mr. Hunton:

Q. Mrs. Waters, were all of the funds available to provide for charity patients utilized during the year 1958?

A. No, they were not. We had $150.00 that had been given us by the Lions Club that was not used.

We also had a balance in our Helen Nolde Sheppard trust account, the income of which only can be used. We had a balance of $408.00.

All of our general donations go for charity purposes. We had the Schwarzschild fund. Mrs. Schwarzschild is the largest contributor to that and it is not restricted and we

used the whole amount for charity. In that fund we had $280.00 at the first of the year.

All of our doctors were told at staff meetings and notices posted that we have these funds available and we were not able to find enough patients to use it and that

page 196 } balance will be used in 1959.

Q. Mrs. Waters, I hand you a copy of the Virginia Medical Monthly for February 1953. On page 22 of this magazine I call your attention to an advertisement of the Richmond Eye Hospital and the Richmond Ear, Nose and Throat Hosptial. Is that a photograph of the building which you have described and an advertisement of the institution?

A. Yes, sir.

Q. Read, if you will, the text of the material, after the name and address and so on.

A. (Reading)

"A new non-profit community hospital specially constructed for the treatment of eye, ear, nose and throat diseases, including laryngeal surgery, bronchoscopy and plastic surgery of the nose. Professional care offered a limited number of charity patients."

Q. Would you be good enough to file that with your evidence?

A. Yes.

Note: The magazine was marked Waters Exhibit No. 6 and filed.

By Mr. Hunton:

Q. I hand you likewise a copy of the Virginia

page 197 } Medical Monthly of January 1959 and call your attention to the advertisement at the top of page 54 which I think reads the same with respect to the Richmond Eye Hospital.

A. It hasn't changed, except as to the Administrator.

Q. And the same type of advertisement has been used in the Medical Monthly between those dates?

A. Yes, sir.

Q. And will you file this magazine with your evidence?

A. Yes, I would be glad to.

Mrs. Julia W. Waters.

Note: The magazine was marked Waters Exhibit No. 7 and filed.

Q. Now Mrs. Waters, when a patient comes into the hospital who is believed to be in need of financial help, what is the method pursued in determining whether that patient is to receive such help or not?

A. Most of our patients come either through the contracts we have or some agency or by recommendation of our active staff doctors. Those coming through our active staff, except in case of emergency where they do not have time, they call and ask if I will see the patient and let them make application, but they do recommend them for charity. They say either they can pay part *of* none of their bill. In many of the cases the doctor will say, "We are giving our services if they can make any arrangements concerning the hospital bill."

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Those persons come down and we have an application blank and I take that application by recommendation from the doctor and ascertain what their financial condition is and it is approved by a committee of the Board of Directors.

Q. You referred to an application. Is this the application form to which you refer?

A. Yes, it is one of our own. We copied it from Sheltering Arms. It asks the same type of questions.

Q. Would you be good enough to file a copy of that with your evidence?

A. Yes.

Note: The form of application was marked Waters Exhibit No. 8 and filed.

Q. Now in the auditor's report on operating income, there is an item "Free Service and Adjustments, Contractual" on page 11 in the amount of $2,899.54. Of what does that consist?

A. That is the difference between what is paid by the various state organizations or state agencies, I should say, that we have contracts with. Also our own patients that we take for charity and our Sheltering Arms cases. We have religious organizations that we have a special rate with. Also, some of the civic clubs. It also includes school cases for Dr. Outland. That comes from that fund.

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Mrs. Julia W. Waters.

That does not include any part of bad debts or any part of Blue Cross.

Q. It does, however, include the free work that may be done?

A. It is the difference between any of the agencies we take care of patients for.

Q. What are some of the state agencies for whom you do work under contract?

A. The state agencies that we have contracts with are the State Board of Education, Vocational Rehabilitation, State Commission for the Blind. It used to be the State Commission for the Blind, it is now the Commission for the Visually Handicapped. It has changed the name.

Also the SLH Program and the State Welfare, Child's Bureau; also the McCauley Students. They are paid for by the state in their health plan and we have a contract with them.

Q. Now what are the arrangements you have with certain religious organizations? I think you said there were some you had special rates for?

page 200 } A. Yes. We have a discount of 33 1/3 per cent of the first day's bill and 20 per cent thereafter for all charitable organizations paying the bills for medically indigent patients. All that have asked for it have gotten it. The ones that we have arrangements with are the Baptist Home for the Aged, Catholic Charities, Golden Cross, Lions Club, Masonic Home, Methodist Orphanage, Richmond Home for Boys and Rotary Club.

Q. Why do you refer to them as religious organizations?

A. Religious and civic. They are not all religious.

Q. And is the discount to which you refer included in that item of $2,899.54?

A. Yes.

Q. I hand you a sheet entitled "Charity Work, May 19, 1952 to December 31, 1958." Was that prepared by you or under your direction?

A. Yes.

Q. From the auditor's figures?

A. Yes.

Q. It shows, I believe, the number of out-patients in each year and the number of in-patients in each year and the number of patient days of charity work done?

page 201 } A. Yes.

Q. What do the next columns indicate?

A. The funds covering the charity.

Mrs. Julia W. Waters.

Q. Taking the year 1958, while the auditor's report showed $2,899.54 as being free service and adjustments, contractual, your additional free services done and charged to the Helen Nolde Sheppard fund and the Schwarzschild fund income are shown on this sheet?

A. Yes. That is also in our audit.

Q. In the amounts as shown on this supplemental sheet?

A. Yes.

Mr. Hunton: I ask that this be filed as Waters Exhibit No. 9.

Note: The tabulation was marked Waters Exhibit No. 9 and filed.

Q. Mrs. Waters, in the event the eye hospital has profits in the years to come, what use will be made of the excess over expenses?

A. Well, I think that it is imperative for us to generate some surplus, first of all to provide for repairs and modern equipment. We find every year the equipment we bought a year before, particularly for the operating room, is outmoded. That will have to be provided for in amounts that are not taken care of in our depreciation.

page 202 } Also, if we ever do have that profit we would like to be able to purchase an essential parking lot. We have a very small parking lot. We have about 33 active men of the doctors that are practicing, but we have only a 17-car parking lot for our doctors which makes parking a very bad thing.

Then, in order not to be too crowded on the days during the week when we are doing most of our surgery, we do need one additional floor, whenever the time comes we can have additional funds to take care of that.

We also would like to be able to render a much greater free service, which would be in keeping with the wishes of our first benefactor. Mrs. Beveridge pointed that out in her will in giving the money.

Q. Has the board adopted a policy with regard to discounts and charitable organizations?

A. Yes, we have. We have had one since 1952.

Q. Do you have a copy of the resolution adopted by the board on July 1, 1958?

A. Yes, I have a copy of that.

Mrs. Julia W. Waters.

Q. Would you be good enough to file that with your evidence as Exhibit No. 10?
A. Yes. It is here.

Note: The copy of resolution was marked Waters Exhibit No. 10 and filed.

page 203 } By Mr. Hunton:
Q. There was a previous one adopted in 1952, I believe, was there not?
A. Yes.
Q. Would you be good enough to file that as your Exhibit No. 11?
A. Yes.

Note: The paper entitled "Report of Policies on Charity Work" was marked Waters Exhibit No. 11 and filed.

By Mr. Hunton:
Q. The one on July 1, 1958, that is in line, is it, with the evidence which you gave with regard to discounts and the charity policy?
A. Yes.
Q. And is that the policy you are now following?
A. Yes. Our various rates from the state agencies had gone up and I wanted to know if the board wanted to keep that.
Q. Now would you be good enough to state the manner in which the free service is rendered?
A. Well, first of all, no distinction is made with our patients when they come in. Nobody knows, except those of us in the office, they are charity patients. All of our rooms are set up as double rooms. They are given identical care and the people on the floor know nothing about it. No one
page 204 } but the business office knows they are charity or part charity patients.
We have about four classifications of the type of patient we have. For instance, those patients who come in and take care of their account fully, either by paying personally or by Blue Cross or some other hospitalization.
Then another classification we have are those patients who are originally admitted as free service patients and to whom no bills are rendered whatsoever.
Then occasionally we have admitted pay patients who come in with all idea of paying their bill but later they find out

that they are unable to pay their bill in full or in part, and in the light of various facts which are brought to our attention, we may reclassify those patients as charity patients. I may add that among that group there are those who come in thinking they are going to be in two days and their illness is prolonged to weeks and they find they cannot take care of it. And then occasionally they will come in thinking they are fully covered by insurance and after we investigate the insurance we find that has been exhausted or denied and the patient finds he is going to have to make some adjustment concerning his account. Then there is the patient whose disability is going to keep him from returning to

page 205 } work or will force him to change his financial status, or the patient has been proven indigent.

In all these cases the patient requests financial aid and we have the doctor recommend him for charity, in that it changes his status with the doctor in that he will not be paid fully or in part, so they are recommended by the attending physician and they are classified as charity.

Then we have patients under contract from the various state agencies. We also have an oral contract—we don't have anything in writing—with Dr. Nancy King, Henrico County Welfare Clerk. We take care of some of her patients without any charge on her recommendation they are eligible welfare cases. There were 14 of those last year.

We also have another category that is not investigated by us. These are cases from Sheltering Arms, the eye, ear, nose and throat type of case. In 1955 Sheltering Arms was getting a very heavy load of eye, ear, nose and throat cases and they asked us if we would help them. We had much better equipment to take care of those patients and they asked us would we help them, and they said they would pay us something for this service, but the board elected to take care of as many of those as we could for Sheltering Arms

page 206 } without any charge whatsoever. The exact number of those has been 133 patients and two outpatients, for a total of 138 days.

I believe they are the only categories of patients.

Q. Mrs. Waters, what is the policy of the hospital and what has in fact been done, I should say, with respect to patients who may be brought there in need of financial aid? Are they accepted or sent somewhere else?

A. If they are of the type of patient we can take care of in our particular field, we do, yes. I can never recall any eligible patient being turned down since I went in office in

Mrs. Julia W. Waters.

1953 and absolutely since 1956, since the Helen Nolde Sheppard fund started. I know of no patient being refused charity who is eligible for our type of work.

Q. Does the eye hospital maintain an emergency room?

A. No, we don't. We have some few out-patients. We do not have a strictly emergency room in the sense that would be found in the general hospital at the present time because of the limited space and we felt there was no real need in the community since Medical College has such a large one right across the street from us.

page 207 } Q. I believe a summons was served on you to produce certain information at the request of the city, was there not?

A. Yes.

Q. Do you have that information accumulated and have it available if Mr. McGuire wants it?

A. Yes, I do.

Q. Mrs. Waters, I hand you a letter dated June 12, 1946 addressed to the Richmond Eye and Ear Hospital, Dr. W. Wallace Gill, President, from the Treasury Department. Is that a letter received by you or by the hospital in regard to the tax status of the hospital under the Federal Laws?

A. Yes, it is.

Q. They held you were not taxable at that time?

A. Yes.

Mr. Hunton: I would like to have that filed as Waters Exhibit No. 12. I am going to substitute copies for each of these last exhibits and in so doing I call attention to the fact the date does not appear on the copies. The date on that is June 12, 1946.

Note: The letter referred to was marked Waters Exhibit No. 12 and filed.

By Mr. Hunton:

page 208 } Q. I hand you a second letter dated April 17, 1951, to the Richmond Eye Hospital from the Treasury Department. Is that also a letter holding that the Richmond Eye Hospital is tax exempt under the Federal Laws?

A. Yes, it is.

Note: Copy of the letter referred to was marked Waters Exhibit No. 13 and filed.

Mrs. Julia W. Waters.

By Mr. Hunton:

Q. And the third letter is dated July 26, 1956, to the Richmond Eye Hospital from the Treasury Department. Is that to the same effect?

A. Yes, it is.

Q. Would you be good enough to file that as your Exhibit 14?

A. All right.

Mr. Hunton: The date on that one is July 26, 1956. It looks like 1966.

Note: The letter referred to was marked Waters Exhibit No. 14 and filed.

By Mr. Hunton:

Q. I don't believe I asked you, has the Richmond Eye Hospital received contributions from the Ford Foundation?

A. Yes.

Q. In what year?

A. In 1956 we qualified for those funds and received from the Ford Foundation $19,300.00, which was a portion of the two million dollars granted to non-profit hospitals in Virginia.

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Q. In connection with that, were you required to submit to them the letters from the Treasury Department which you have just introduced?

A. Yes.

Mr. Hunton: I have no further questions.

Note: There followed a recess.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Mrs. Waters, did I understand correctly—the terms of Mrs. Beveridge's will are in evidence, of course—but did I understand that the A. D. Williams gifts and bequest was simply for the general purposes of the hospital with no restriction on their use?

A. The A. D. Williams?

Q. Yes.

A. That is my understanding.

Q. Is that true of all of the funds except the Helen Nolde

Mrs. Julia W. Waters.

Sheppard and the Schwarzschild and the Lions Club fund?

A. Yes.

Q. Have you given the amount of those gifts?

A. I don't believe I have.

Q. Will you give those, please ma'am?

page 210 } A. Yes, I will. The Helen Nolde Sheppard trust fund which was established January 1954, this is the income from it, and that is restricted. It allows us to use only the income and it has to be used solely for charity patients. The total principal in that fund is $38,233.00. Of that amount, I don't have the exact figure of the income but I can tell you how many patients we have taken care of and how much we have left in that fund. We have taken care of through the Helen Nolde Sheppard fund a total of 48 patients.

Q. Over what period of time?

A. Since the first income came in late in 1955 and at that time it was less than $100.00, and the first was not used until 1956, I believe. Yes, the first was used in 1956.

Q. Thank you, ma'am. Now would you tell me about the other two?

A. Yes, I will. In the Schwarzschild fund—we speak of it as the Schwarzschild fund because that is where all general donations go. Mrs. William H. Schwarzschild has been the largest contributor and so we speak of it as the Schwarzschild fund, and that is used entirely for charity, principal and all.

Q. Is that by direction of the board?

A. No. She gives that to Dr. Thomason and

page 211 } tells him to use it for his needy patients. He in turn has turned it over to the hospital and we use it not only for his needy patients but for any patients. To date we have used from that fund for 50 patients the sum of $3,025.56. At the end of the year we had left in that fund $280.00 for charity which was not used.

Q. Wasn't there a third one?

A. The Lions Club, the Richmond Lions Host Club, Charter Members and Deceased Members memorial fund, which was started in 1957, I believe. They invest their own fund which I understand amounts to nearly $10,000.00. We received the first income from that, which is all we will receive, and we received that in November 1958 and the amount was $150.00. That is restricted for charity patients and eye patients only and only in the City of Richmond, so we have not had any calls for that. That will be used in 1959.

Q. Mrs. Waters, all of the charity patients that you have

spoken of this morning, are they included in your two exhibits, Waters Exhibit No. 5, headed "Operating Data, Statistical and Financial" and the other is No. 9, headed "Charity Work, May 1952 to December 1958." Are all those charity patients you have mentioned this morning as being cared for from these funds, they are included in those funds?

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A. Yes. That is everything but the Blue Cross and those that are wholly paid for by the agencies.

Q. You filed two other exhibits—I don't remember the numbers—but they are extracts from the minutes of the Board of Directors. One was headed "Charity Work Policies Effective on July 1, 1958," and one was headed "Report of Policies of Charity Work" and that was approved by the executive committee on September 26, 1955.

A. Yes.

Q. Those exhibits list a good many organizations with which you have special arrangements, such as the Baptist Home for the Aged, Catholic Charities, Masonic Home, and so forth, and also they include your contracts with the state.

A. Yes.

Q. And the Sheltering Arms cases and so on. Are all those people who received discounts for one reason or another, are they included in your list of charity or part charity patients on Exhibits 5 and 9?

A. Yes, they are.

Q. They are?

A. Yes.

Q. I have in my hand the Richmond Eye Hospital report of A. M. Pullen & Company for the year 1958 which was introduced yesterday as Waters Exhibit No. 4 and I am looking at page 11. I call your attention to the item on page 11 on which there was some discussion on yesterday. Do you want to see this?

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A. Yes.

Q. The item listed is a deduction from operating income called "Free Service and Adjustments, Contractual" in the amount of $2,899.54.

A. Yes.

Q. Am I correct in thinking that that includes all of your services furnished to charity patients, part charity patients and all the people who received discounts by special arrangements?

A. No, not all of them. In here are the patients that are not Blue Cross but are other agencies, and those that are

not paid for through the two other funds we have listed. The one here listed on page 10, "Endowment For Restricted Purpose, Helen Nolde Sheppard,"—that lists the payments on patients' bills for the year 1958 in the amount of $589.95.

There also is another fund listed which is the endowment fund for general purposes which is usually called the Schwarzschild fund and that also lists some payments on patients' bills in the amount of $719.20 in 1958.

page 214 } Q. Well, do those three figures then include all those people who were treated free or part free or through discount by contract?

A. Yes.

Q. Thank you, ma'am. I believe I would like to read into the record at this point from that same page 11, the total operating income before deductions appears to have been $298,347.84. After deducting the free service and adjustments, contractual, in the amount of $2,899.54, and the loss on Virginia Hospital Service Association members in the amount of $16,000.08, the total operating income appears to be $279,448.22.

Mrs. Waters, I believe your Exhibit No. 9 headed "Charity Work, May 19, 1952 to December 31, 1958," includes in the last column for the year 1958 all of those three figures you took from that statement?

A. Yes.

Q. And the figures in the last column do the same thing for the other years, 1952 through 1957?

A. Yes, that's right.

Mr. Hunton: I have no further questions.

Mr. McGuire: If the court please, I have here annual statements of the Richmond Eye Hospital for the years 1952, 1954, 1955, 1956 and 1957. The first four I ob-

page 215 } tained from the securities division of the State Corporation Commission, certified by the clerk. The one for the year 1957 is the one which Mr. Hunton furnished me. I do not wish to examine Mrs. Waters about them but I believe those figures should be in the record and I would like to offer them as exhibits. I don't know why I don't have 1953, but these I obtained from the Corporation Commission for the years 1952, '54, '55 and '56, and Mr. Hunton has handed me statement for the year '57.

That will give us the complete story except for the year 1953. I would like to offer all those in evidence. Mr. Hunton wishes to withdraw his 1957 statement in order to have copies

made of it. I tried to have them made last night but it would not work on our machine. This is a carbon copy and it is not very clear.

Mr. Hunton: I have no objection.

Note: The auditor's reports offered by Mr. McGuire were filed in evidence and marked as follows:

Report for the year 1957, City Exhibit No. 1.
Report for the year 1952, City Exhibit No. 2.
Report for the years 1954, 1955 and 1956, City Exhibit No. 3.

page 216 } By Mr. McGuire:

Q. Mrs. Waters, I think Mr. Hunton asked you yesterday afternoon if you had the information that was set out in the affidavit filed by the city in support of the summons served on the Richmond Eye Hospital to produce books and records. I think you said you did have that information. I believe most of it is already in the record but I think we had better make sure.

A. All right.

Q. Have you given the present number of beds in the Richmond Eye Hospital?

A. I don't remember, but I will repeat that. We have 20 rooms with two beds each, which gives us 40 beds. We have no private rooms. If the need arises and we can spare the space, we remove a bed and make a private room, but those times are very limited.

Q. Have you given your present schedule of rates?

A. In our semi-private rooms the rate is $12.50 per day. If we remove a bed and make a private room it is $19.00 a day. That includes room, board and general nursing care.

Q. You have operating room charges and laboratory fees, do you not?

A. I don't have all the laboratory charges.

page 217 } Q. I am not interested in the details. I just want to know the main items.

A. Our operating rooms, the rates are minor operations $6-to-20; major operations, $20.00 to $31.00. There is a five-dollar charge added for each hour of any operation that exceeds more than two hours in duration.

Q. I believe the number of patients admitted for each year appears on your Exhibit 5. That is the one headed "Operating Data, Statistical and Financial."

Mrs. Julia W. Waters.

A. Yes, it does.

Q. And that shows the daily average census of patients?

A. Yes.

Q. And it also shows the number of paid patients admitted and the number of charity patients admitted?

A. Yes.

Q. And the number of operations performed?

A. Yes.

Q. And the number of operations performed upon charity patients without charge or for less than the normal charge?

A. Yes.

Q. Do you have the information about the number of patients treated at Richmond Eye Hospital without any charge being made by the physician or surgeon

page 218 } who attends them?

A. We do not keep a record at all of the physicians, but that is understood that if we do charity on them, it is in the same proportion they do it, and that is pointed out also to the patient.

Q. The situation is substantially that the patient which the hospital cares for without charge is not charged by the physician?

A. Yes. I would like to say the greater majority of the charity patients we have come in through Sheltering Arms or some agency, and we arrange for the operation and then the doctor who is scheduled for that day, we ask him to do one or two or three charity patients while he is there and he does them and he doesn't make any charge whatsoever.

Q. But for other work the doctors as well as the hospital make their normal charges?

A. Yes, for all except charity patients. But often they will recommend charity patients. They will say, "I think this patient can pay one-half or one-third and I am cutting my fee accordingly."

Q. And the patient who pays full charge to the hospital also pays full charge to the attending physician?

A. I should think they would, yes.

Q. Do any of the physicians and surgeons on

page 219 } your staff receive salaries?

A. No, we have no salaried doctors on our staff.

Q. Do any of them have offices in your building?

A. No, we have no offices in our building.

Q. I forgot to ask you about the $19,000.00 received from the Ford Foundation.

Mrs. Julia W. Waters.

A. Yes.

Q. Can you tell me the terms of that gift and what the money was used for?

A. All of our money has not yet been used. Through the Ford Foundation grant we had to correspond with the Ford Foundation to let them know what we would like to use the money for and then they approved or disapproved the way we were going to use it.

We asked that we be allowed to purchase with that money additional property for a parking lot for our staff members and to use for special equipment in the operating room, and it was approved for that.

To date we have only used about $2,000.00 of it for special equipment in the operating room and we have a balance of $17,000.00 we hope to be able to purchase a piece of property near the hospital for a parking lot.

Q. I see. Mrs. Waters, I believe that sometimes patients are taken at Richmond Eye Hospital and treated
page 220 } there for diseases or ailments not of the eye, ear, nose or throat. Is that sometimes true?

A. Yes. Since we opened in 1952, particularly in the late year of 1952, we have admitted some few patients of a highly selected type other than our specialty, and I have those broken down into years. In 1952 we had three, in 1953 we had 112.

I would like to point out that was the year in Richmond when the hospital beds were at a premium. We were asked by some of the hospitals why we had some empty beds and where should patients go needing hospital care, and we did, of course, point out that they would have to be a very selected type, minor surgical patients, because we were equipped to adequately take care of such but we didn't have general equipment. 1953 was the year we had the most patients.

In 1954 we had 33; in 1955 we had 23; in 1956 we had 9, and in 1957 there were four, and since the Richmond Memorial Hospital has opened there has been practically nil. In 1958 we had no patients of that type admitted.

That makes a total of 184 such patients.

Q. Do you happen to know whether any of those were charity patients?

A. I am afraid I cannot tell you. I didn't look
page 221 } up that information.

Mr. McGuire: That's all right. It does not matter. I have no further questions.

Lillian F. Lindsey.

Witness stood aside.

Note: There followed a brief recess.

MRS. LILLIAN F. LINDSEY,
a witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and residence.

A. Lillian F. Lindsey, 714 Club Drive, Richmond, Virginia. I am Administrator of the Retreat for the Sick.

Q. What is the Retreat for the Sick, Mrs. Lindsey?

A. The Retreat for the Sick is a non-profit corporation.

Q. Here in Richmond?

page 222 } A. Yes, sir.

Q. And what is its business?

A. It is a general hospital.

Q. State how long you have been Administrator of the Retreat?

A. I have been the Administrator since January 1950.

Q. Were you with Retreat prior to that time?

A. Yes, sir. I have been with the Retreat, I think, since April 1, 1930, except for two leaves of absence.

Q. Will you describe briefly the history of the Retreat for the Sick? Do you recall when it was organized?

A. It was organized in 1877 in the City of Richmond. At first we were leasing a building by the old Medical College of Virginia, and later bought another building on 12th Street and moved from there to 2621 Grove Avenue in 1920.

Q. And it is a non-stock, non-profit corporation?

A. Yes, sir.

Q. Organized under the laws of Virginia?

A. Yes, sir.

Q. How many beds do you have at Retreat now?

A. 89 beds and 25 bassinets.

Q. I believe you said the Retreat is a general

page 223 } hospital?

A. Yes, sir.

Q. Is the staff open or closed?

A. The staff is open. The doctors have to be qualified members before they are elected to the staff.

Lillian F. Lindsey.

Q. But no restriction other than proving their medical or surgical qualifications?

A. Yes, sir.

Q. How is the Retreat governed, Mrs. Lindsey?

A. By a Board of Directors, 21 members.

Q. Are they lay people?

A. Yes, sir.

Q. Does Retreat have an endowment of any kind?

A. Yes, sir, we have an endowment fund of approximately $325,000.00 that we invest ourselves and then we participate in the Davenport Fund. We receive the income from $450,000.00. That is held by the Virginia Trust Company and we receive the income each year.

Q. What use is made from the income you receive from the endowment funds?

A. We take care of charity patients, indigent patients.

Q. What is the principal source of income of Retreat?

A. The principal source is income from pay
page 224 } patients.

Q. Is it the policy of the hospital to charge all who can afford to pay?

A. Yes, sir, it is.

Q. Mrs. Lindsey, at my request have you prepared a tabulation which is intended to show primarily the extent of free service rendered by Retreat?

A. Yes, sir.

Q. I would like to ask you to file that. Is this the exhibit you have prepared?

A. Yes, sir, that's right.

Note: The tabulation entitled "Retreat for the Sick" was marked Lindsey Exhibit No. 1 and filed.

By Mr. Powell:

Q. Mrs. Lindsey, I will not ask you to read all of this but I will ask a few questions about it. Will you state for each of the three years shown by the exhibit the total income, which I assume is the same as total billings?

A. Yes, sir.

Q. And then state the amount of that income which was free service or charity patients, giving the percentage in each instance.

A. In 1956, 6 1/2% of our billings to patients or income

Lillian F. Lindsey.

from patients was paid from our endowment
page 225 } funds.

Q. I think we might read into the record the total dollars of the billing and the amount of free service shown.

A. $602,288.00 income and paid from our benevolent funds $39,826.00, or approximately 6 1/2%.

In 1958 the income or billings to patients was $549,843.00 and paid from benevolent funds $35,103.00.

In 1958 $537,318.00 income or billings to patients, and $45,-602.00 or approximately 8% paid from benevolent funds.

Q. Mrs. Lindsey, the figures indicate a downward trend in total billings. Was there any construction work going on at Retreat during any of these years?

A. Yes, sir. On August 1, 1957, we started a construction program which was not finished until September 1958 and in the course of that program we did away with 20 beds in order to accommodate our ancillary services and during the construction program we had as many as 33 to 35 beds out of occupancy.

Q. Does that account for the apparent downward trend of those figures?

A. Yes, sir.

Q. Moving on to the figures relating to the numbers of patients admitted, I will ask you in the interest of brevity merely to give the percentages of free care, first
page 226 } with respect to patients admitted and then with respect to births for each year.

A. In 1956, 12% of our total adult and children patients were charity patients, and 5% of the births in 1956 were charity.

In 1957, 14% of our total admissions of adults and children were charity, and 8% of the births were charity.

Our audit has not yet been completed, but in 1958, 15% of the adults and children were charity patients and 12% of the births.

Q. Mrs. Lindsey, there is a note on your exhibit with reference to three classifications of charity patients. Will you state briefly what those three classifications are?

A. In the first class they are known to be all free or part free cases at the time of admission.

In the second category of those who are admitted as pay patients and many times make a deposit on admission and maybe take care of their second week's bill and then they find they haven't the funds to pay for further hospitalization.

Lillian F. Lindsey.

We, of course, investigate those cases and they are either accepted or arrangements made for time payment. We feel, of course, that all of them need the necessary
page 227 } medical care regardless of their ability to pay.

The third classification includes those who have left the hospital and have agreed to pay the balance of their bill on time but they find they cannot meet the obligation. Of course, there are many who do not make any effort to pay. These are considered forced charity cases. Those who make no effort to pay are turned over to our collector for recovery and if the collector collects anything on those that have been considered forced charity, those funds are returned to the benevolent funds.

Q. To the benevolent funds?

A. Yes, sir.

Q. Are all three classifications of charity patients included in the figures tabulated and in the percentages which you have stated for the record?

A. Yes, sir.

Q. Mrs. Lindsey, has the income from your benevolent fund exceeded the amount of free service rendered in all three of the years in question?

A. In 1956 and 1957 we had a balance to carry over into 1958, but in 1958 our income was not sufficient to take care of it and we had to use the balances brought forward from the previous years.

Q. You do have a balance in the benevolent
page 228 } account?

A. Yes, sir.

Q. Even though you have been able to reimburse your general treasury by use of endowment income. Please state for the record whether or not Retreat has been able to operate profitably in these years.

A. There have been years in the past when we operated in the red. We did last year because of our construction program. We had to hold our employees so when our program was completed we would have employees ready to take care of our patient load, but in the past we have been able to operate with profit.

Q. Mrs. Lindsey, Retreat serves everyone without regard to whether they can pay or not?

A. Yes, sir.

Q. But if you think they can pay, you endeavor to collect it?

Lillian F. Lindsey.

A. Yes, sir.

Q. Has the City of Richmond ever imposed a tax on the Retreat for the Sick, on its real estate or its tangible personal property?

A. No, sir.

Q. Not in the entire history of the hospital?

A. Not to my knowledge.

Q. And you hope they will not?

A. I hope they won't.

page 229 } CROSS EXAMINATION.

By Mr. McGuire:

Q. Mrs. Lindsey, I think you and I have had some correspondence in the past years, have we not?

A. I am sure we have.

Q. It is my impression you have a considerable number of separate endowment funds that have come from various sources?

A. Yes, sir.

Q. Are most of those limited as to the purpose for which they may be applied?

A. Yes, sir, they are restricted.

Q. They are restricted usually for charity patients?

A. Yes, sir.

Q. When you have a charity patient, I gather, the hospital corporation is paid out of one of these funds?

A. Yes, sir.

Q. Mrs. Lindsey, have you a list of the officers and directors and staff of the Retreat for the Sick Hospital?

A. I did not bring that with me but I see no reason I cannot take that out of my auditor's report which I have
page 230 } here.

Q. If it will not inconvenience you.

A. I will be glad to.

Q. Does that contain the names of the staff as well as the officers?

A. No, sir, but I will be glad to get those.

The Court: Why don't you let the witness prepare a typewritten statement and we will insert it in the record later?

Mr. Powell: Are you asking for the entire medical staff and the paid employees?

Mr. McGuire: I mean the members of the staff. Of course,

if it entails some tremendous amount of trouble, I will not bother her.

A. We have approximately 425, but I have a prepared list I can send you.

By Mr. McGuire:

Q. Do you have different kinds of staffs?

A. Yes, sir, we have an active and a courtesy staff.

Q. I would like to have that information in the record, if you would be so kind.

A. Delighted.

Mr. Powell: I cannot see any relevancy but we certainly have no objection, if he wants the list of the
page 231 } doctors who practice at that hospital. The understanding is she will prepare it and we will file it in the record later.

Note: The list referred to was later filed among the paper in this case and marked Lindsey Exhibit No. 2.

By Mr. McGuire:

Q. I meant to ask you this, Mrs. Lindsey. The physicians who practice there, to what extent do they donate their services?

A. We have a rotating service. Each doctor on the attending staff, that is, the law-making body of the staff, the attending staff rotates on the charity patients. They are assigned certain months during the year to take care of our charity patients.

Q. And otherwise they make the normal charge for their work?

A. For their private patients.

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. Mrs. Lindsey, what interns do you have at Retreat now?

A. Two general practice residents and three externs.

Q. And these doctors you mentioned help those staff members with the charity patients?

page 232 } A. Yes, sir.

Witness stood aside.

Woodrow W. Walston.

Mr. McGuire: If the court please, I think I must make a statement for the record. It appears from the briefs and arguments hitherto made for the Richmond Eye Hospital, by counsel, and from statements made by counsel, that the Richmond Eye Hospital insists that the city admits that the Retreat Hospital is a hospital properly exempt from taxation under Section 183 of the Constitution. I must inform the court and counsel that is not true. The city does not admit that. The position of the city is that it was in the investigation made necessary by the early application of the Richmond Eye Hospital that we made inquiries and found that Retreat for the Sick was on the non-tax list and we also found that the amount of charity work done there was much less than I personally had supposed. We decided, however, page 233 } we would not do anything about Retreat for the Sick, not disturb their situation, until this litigation should be determined. Of course, we had no idea it would take so long but I must make it clear the city does not admit that the Retreat for the Sick is a tax exempt hospital.

Mr. Hunton: Your Honor, it seems to me that a policy on the part of the city as to tax exemption from 1877 to 1959 is about as conclusive an admission it is not taxable as anything can possible be, particularly when this litigation has been pending as long as it has and the matter has been under investigation by the city and they still have not taxed it at any time in the past five years.

Mr. McGuire: Mr. Hunton is entitled to argue that administrative construction, but the court and Mr. Hunton know the rules about administrative construction laid down by the Court of Appeals. The City of Richmond is bound as to these years by any administrative construction, but it may change the administrative construction at any time it becomes satisfied, it is erroneous. It can do that only for the current year and *in futuro*. I am not arguing page 234 } the legal effect of the past administrative construction. I am simply stating the position I took and have taken from the beginning as counsel for the city in this litigation.

The Court: I understand.

Note: There followed a recess.

WOODROW W. WALSTON,

a witness called by the Richmond Memorial Hospital and the

Woodrow W. Walston.

Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and residence.

A. Woodrow W. Walston, 2302 Langston Avenue, Apartment B, Richmond, Virginia.

Q. What is your business or profession?

A. Administrator of Richmond Community Hospital.

Q. How long have you held that position?

A. Since July 1, 1958.

Q. Have you previously been in the business of hospital administration?

page 235 } A. Yes, sir.

Q. State briefly what your past experience has been.

A. Lincoln Hospital in Durham, North Carolina, as a trainee, for six months in 1946. In 1946, I was Business Manager of the Reynolds Memorial Hospital in Winston-Salem, North Carolina. In 1952, I came to Virginia, as Administrator of the Martinsville Community Hospital.

Q. In Martinsville, Virginia?

A. Yes, sir.

Q. Is the Richmond Community Hospital a non-stock or a stock corporation?

A. Non-profit corporation.

Q. Organized under the laws of Virginia?

A. Yes, sir.

Q. Where is it located?

A. 1219 Overbrook Road.

Q. What is its size in terms of beds?

A. 28 beds and 10 bassinets.

Q. Where does the Richmond Community Hospital obtain its income?

A. From patients, and we do have a drive during the month of November each year to solicit funds for the improvement and operation of the hospital.

Q. What percentage of your revenue is derived

page 236 } from that drive, approximately?

A. This year we have collected so far $9,322 and some odd cents.

Q. From the drive?

A. Yes, sir.

Woodrow W. Walston.

Q. What will your total revenue for 1958 be approximately?

A. It will be approximately between 140 and 150 thousand dollars.

Q. 140 to 150 thousand dollars. Does that include the $9,000 of charitable gifts that were made?

A. Yes, sir.

Q. Do you have any endowment fund, Mr. Walston?

A. No, we do not.

Q. What is the policy of the hospital with respect to charging patients?

A. We charge similar to Mr. Alberti and Mr. Flannigan. We charge all patients the same. Of course, some we have to charge off, but we charge all patients the same.

Q. Do you charge all patients who can pay?

A. Yes, we do.

Q. And you attempt to collect everything you can?

A. That's right.

page 237 } Q. Approximately what percentage of your charges are either charitable patients or patients who do not pay their bills?

A. For the six months operation of 1958 during the time I was there, we had approximately 25% that we did not collect for. Of course, that doesn't mean we will not collect a portion of that probably in 1959.

Q. You expect to collect some part of that 25%?

A. Yes, sir. If I were going to make a guess, I would say we will probably collect anywhere from 8 to 10% of that.

Q. And you make an effort to collect all you can?

A. Yes, sir.

Q. Do you make any distinction between patients whom you would call free service patients or charity patients on the one hand and those whom you eventually charge off as uncollectable accounts?

A. Yes, sir, we have some uncollectable and a portion of that would be charged off to charity patients.

Q. And these figures and percentages you gave would include both of those categories?

A. Yes, sir.

page 238 } Q. Does the City of Richmond tax your hospital?

A. During the six months I have been here, no, and I was informed by the President of the board they have never been taxed.

Woodrow W. Walston.

Q. Is your hospital an open staff hospital in the sense that any qualified doctor may practice there?
A. Yes, sir.

CROSS EXAMINATION.

By Mr. McGuire:
Q. Mr. Walston, when was Richmond Community Hospital organized and when did it commence operations?
A. 1932.

Mr. McGuire: I have no further questions.

Witness stood aside.

Mr. McGuire: I must make to the court, and for the record, the same statement in regard to the Richmond Community Hospital. Our position is the same as to that hospital as the position I stated with reference to the Retreat for the Sick. We do not admit it is a tax exempt hospital.

page 239 } Note: There followed a brief recess.

Mr. McQuire: Your Honor, I should make this statement to the court. I expect this next witness is going to have something to say about the Halifax Community Hospital situation and perhaps I ought to say now what I had intended to say when the city began putting on its case. At the proper time I intend to offer in evidence the exhibits, all except the newspaper clippings, which were offered in support of the summons to answer interrogatories and which the court, as I understood, rejected at that time. My recollection is they were rejected as premature. I could now, if it is desired, read what those items are from one of the orders entered on the interrogatories.

The reason I am making this statement now is because among those exhibits is the petition for correction of assessment and the order entered by the Circuit Court of Halifax County in the case involving the hospital. In addition to tendering those papers again, I expect to offer the transcript of the evidence taken in that case, which I either did not have at the time we argued the interrogatories or did page 240 } not realize I had them in my file. I thought Mr. Hunton should know this before he puts this witness on.

JAMES E. EDMUNDS, JR.,
a witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hunton:

Q. Please state your name, residence and occupation.

A. My name is James E. Edmunds, Jr. I am an attorney living at Halifax Courthouse.

Q. How long have you lived in Halifax, Mr. Edmunds?

A. All my life.

Q. Are you an official of the Halifax Community Hospital?

A. Yes, sir, I am.

Q. What is your official connection with Halifax Community Hospital?

A. I am President of the Board of Managers of the hospital. I think you call it the Board of Trustees. This is my fifth year as President. Prior to that I was a

page 241 } member of the Board of Managers and Chairman of the Finance Committee of the Hospital.

Q. What is the official title of the hospital?

A. Halifax Community Hospital Association.

Q. Mr. Edmunds, will you state briefly the nature of the hospital owned and operated by Halifax Community Hospital Association?

A. Halifax Community Hospital is a non-stock, non-profit community hospital. The policy is formed by a Board of Managers of 24 members. The Board of Managers is elected by the membership, and the membership is composed of the people who have contributed to the hospital. Our total membership, I would say, is about 4,000.

Q. From what sources were the funds derived for the construction of the hospital?

A. The hospital was started—if I may inject this—by the administrators of the county who petitioned the County Board of Supervisors to proceed with such a movement, and the County Board of Supervisors made the initial contribution to the hospital. They sold a poor house farm for $22,500.00 and they gave the proceeds of that and later on contributed $30,000.00.

The Town of South Boston contributed $25,000.00 and later added $15,000.00 from a fund set up for a recreational building.

James E. Edmunds, Jr.

page 242 } The rest came from public subscriptions and the Hill-Burton Program. We had approximately 4,500 contributors to the hospital and in two campaigns they pledged about $750,000.00.

Q. The Hill-Burton Program to which you refer is a fund of the Federal Government, is it not?

A. Yes, sir.

Q. Were there any contributions from the State of Virginia?

A. Yes, sir, the Commonwealth of Virginia participated under the Hill-Burton Act, in the amount of $55,500.00, which came into the original construction, and we are now building an addition to the hospital and I believe the state participated in that to the amount of about $40,000.00, but I am not sure.

Q. What is the total cost of the hospital and the addition?

A. Approximately one million five hundred thousand dollars.

Q. Now I think you said that there were some 4,800 members of the hospital association. What is the basis of membership?

A. To become a member one has to make a contribution.

Q. That is about the only qualification?

page 243 } A. The only qualification.

Q. And they have the right to meet to choose the trustees?

A. We have a meeting every year to which the membership is invited and the trustees or Board of Managers is elected at that time by the full membership.

Q. Now in the operation of the hospital in Halifax, what are the main sources of its income?

A. The main source of income, practically the sole source of income, is from the money collected from patients who use the hospital. We are attempting to educate the public to make as many contributions as possible and as many bequests as possible. We have had two or three, but the number is very small at this time. We have had a few pieces of equipment that have been given us and some contributions toward the equipment.

Q. Do you take care of any patients for the county, indigent patients?

A. The hospital accepts and treats to the extent necessary any patient who comes to the hospital in need of medical care, whether that patient be a patient who can pay his bill or not. The hospital endeavors and it must endeavor to

collect from all patients who can pay their bill. A considerable portion of the people who present themselves
page 244 } for treatment there—some of them are accident victims, some emergency cases, some just too poor to pay the bill, but all are accepted and all get the same care.

A fair amount of the work done is work for which we cannot collect the bills. We do have a contract with Halifax County and they pay us for such cases as are approved by the Welfare Department the sum of $18.50 a day. That does not cover the actual cost of those patients.

I would like to add, however, that the amount of welfare funds available in our county, and I suppose it applies elsewhere, is absolutely insufficient to cover the large number of people who cannot pay their hospital bill. They pay for the very worst ones and only the ones who can get approved or recommended by the supervisor from the particular area in which they live, but there are many, many cases we can never get on welfare, and even if we try—and many times we have tried—we do not have any luck. The funds are exhausted.

Last year, for example, the funds were exhausted about the middle of the year and there wasn't any more welfare money and even before the funds were exhausted we couldn't get everyone on there whom we felt were really welfare cases.

Q. In the case of a person needing hospital care who you know is unable to pay and cannot get on the
page 245 } welfare rolls, how do you handle that situation so far as charges are concerned?

A. Well, as I indicated, every patient is taken into the hospital and treated and kept there as long as necessary or advisable—as long as the doctors says he or she should be there. Then the business office is instructed by the Board of Managers to evaluate the patient's financial standpoint. An attempt is made to find out whether or not the patient is able to pay his or her bill, whether the patient has some kind of hospitalization insurance, and if it is a case where the patient has none, an attempt is made to get that patient on the county welfare.

If we cannot get it on the welfare roster, as we frequently cannot, or no source of payment is foreseeable, as is frequently the case, we just go ahead and prepare a statement and bill for that person and later on write it off as an uncollectable item.

James E. Edmunds, Jr.

Regardless of the bookkeeping mechanism, it is just charity work.

Q. Do you have a record here of the total billings in 1953 to 1958 inclusive, for the hospital?

A. Total billings for that period were $2,224,677.01.

Q. And what was the amount charged off as bad debts in that time?

page 246 } A. I wouldn't call it a bad debt. I would call it an uncollectable account, or really charitable work.

We charged off during that period of time, just went through the books—the auditors or maybe the finance committee, we have an active finance committee who knows the people in the community—they wrote off $77,340.81.

Again let me say by no manner of means are all the uncollectable items shown there. For example, if a person is making payment on a thousand dollar bill, as long as there is a little life the administration hopes they are going to get it. Frequently it is carried over because they are reluctant to say it is a charity case and we are holding them over. Actually the uncollectable accounts amount to considerably more than that, but we have written off upwards of $77,000.00.

Q. And what is the percentage of your total billings which has been written off?

A. Approximately 3 1/2% so far.

Q. How is the staff of the hospital selected? Is it an open staff or closed staff?

A. I would call it an open staff hospital. Any physician may make application for membership on the staff and I believe when application is made, the doctor has to fill out a form sheet and that is immediately referred to the

page 247 } credentials committee of the medical staff. It passes on the qualifications of that doctor and then the credentials committee makes a recommendation to the full medical staff and that recommendation is brought to the Board of Managers, which has the final and full authority as to the rights and privileges a doctor should be granted.

I would like to say, however, as a practical matter the board without any alteration accepts the recommendations of its medical staff, which is qualified to judge the privileges a doctor should have.

Q. Mr. Edmunds, can you tell me approximately how many physicians and surgeons are on your medical staff at the present time?

A. We have various categories—active staff, courtesy staff

and another category which is honorary, I believe. All told, I would say about 30 doctors. Every doctor in Halifax County has membership on one staff or another. Also, several doctors of the Danville Area. I suppose we would put some of the Richmond doctors on if we could get them down there.

Mr. McGuire: If I might interrupt, if I understand the purpose of calling this witness I don't think I have any objection to it, but I believe I would like to ask Mr. Hunton to state the purpose of this evidence.

page 248 } Mr. Hunton: The purpose is to prove the administrative practice in similar instances with respect to taxation by public officials elsewhere, the administrative practice.

Mr. McGuire: Administrative practice?

Mr. Hunton: Yes, sir.

Mr. McGuire: Wasn't this hospital taxed, assessed by the Commissioner of Revenue?

Mr. Hunton: Assessed by the Commissioner of Revenue and the court held it was not taxable, and it has not been taxable since, but that holding related only to a single year.

Mr. McGuire: And you call it an administrative construction since the year in which the case was brought, the year to which the case applied?

Mr. Hunton: That's right.

Mr. McGuire: All right, sir.

By Mr. Hunton:

Q. In addition to the medical staff how many employees—I should not say in addition to them because the medical staff is not paid by the hospital, is it?

A. No, sir.

Q. How many employees does the hospital have?

A. Approximately one hundred.

page 249 } Q. Are there other people who work on a volunteer or part time basis?

A. Yes, sir, we have a ladies' auxilliary, a number of chapters spread through the county. There are approximately 300 members in that and they perform volunteer services in the hospital and they give the hospital equipment and they also made a right liberal pledge or contribution to the building fund.

Of course, the Board of Managers contributes quite substantially. We had quite a struggle financially and they had

to meet regularly and pursue collection of pledges, which is a very liberal contribution that able and experience businessmen make to the running of the hospital without any compensation.

In addition to that the doctors bring their patients to the hospital and they are told their fee for services is a private matter, but they also render a very valuable service to the hospital, without charge. We don't have any interns down there and one or another of the doctors will spend the night at the hospital and help the institution out in a number of ways.

Q. What was your figure as to the per diem cost of operation of the hospital during the year 1958?

A. About $20.00—$20.07.

Q. In arriving at that figure, do you include
page 250 } depreciation?

A. Yes, sir, we include depreciation.

Q. Do you include any charge for the service of these volunteer ladies to whom you refer?

A. No charge for the volunteer work or the contributions made by generous citizens to it.

Q. Is any charge made on account of the capital investment in the building and grounds and equipment?

A. No, sir. All patients, whether they pay or not, get the benefit and result of the sacrificial giving on the part of the people who contributed to make the hospital possible and also the work of all volunteers, including the Board of Managers and ladies' auxilliary and all equipment given us.

On the depreciation item, we carry that on our books but it is more or less just on the books. We never have been able to get our hands on that money. I don't know where it goes, but it goes to keep the equipment up and one thing and another. It is just a matter of accountnig, setting up an item of depreciation on the books.

Q. Mr. Edmunds, I hand you a document entitled "Virginia, in the Circuit Court of Halifax County. In *Re*: Relief From Erroneous Assessment of Halifax Community Hospital." There is another one attached as a part
page 251 } of the same thing, "An Order In *Re*: Relief From Erroneous Assessment of Halifax Community Hospital" attested by Mr. A. G. Lacy, Clerk of the Circuit Court of Halifax County, under seal of the court. Is that a copy of the petition and order in the proceeding which was

held in Halifax County concerning a tax which was assessed against the hospital?

A. Yes, sir.

Q. What year was that?

A. I believe it was December 1954. The order was entered December 18, 1954.

Q. Will you file that with your evidence as Edmunds Exhibit No. 1?

A. Yes, sir.

Note: The document referred to was marked Edmunds Exhibit No. 1 and filed.

By Mr. Hunton:

Q. What was the outcome of that proceeding?

A. The hospital was relieved from the payment of the tax which had been assessed against it and relieved from a further assessment. We have not been billed for taxes since.

Q. I was going to ask you if they ever had been assessed by the County of Halifax for real estate taxes since that time.

page 252 } A. No, sir.

Mr. Hunton: I have no further questions.

CROSS EXAMINATION.

By Mr. McGuire:

Q. I take it you are the James E. Edmunds, who, with Mr. James S. Easley, was counsel for the Halifax Community Hospital in that proceeding?

A. Yes, sir.

Q. I have here what purports to be a transcript of the evidence taken in that case.

A. I have one here.

Q. If you could look at that and see whether or not it is the same, I would like to offer it as an exhibit.

A. It certainly appears to be the same. Of course, I haven't had a chance to go through the various items, but I think it is the same.

Mr. McGuire: I think I should say to the court and counsel, I am not offering with this the two sheets I found clipped with it, which purports to be a statement about the non-assessment of other hospitals in the state. I don't know what

those sheets are. It is not signed or authenticated. I don't know whether it was a stipulation made in the
page 253 } case or what it is. I am not willing to stipulate those things are fact, but I cannot offer this record without these pages without calling that to the attention of the court and opposing counsel.

Mr. Powell: Are they a part of the original evidence?

Mr. McGuire: They were clipped in there.

The Court: I think Mr. Edmunds could answer the question.

A. It was stipulated by counsel, including the Commonwealth's Attorney, those hospitals shown on the sheet are non-profit hospitals in Virginia and that statement was made a part of the record. The top of it states "The following hospitals are in operation in the State of Virginia. Each and every one is a non-profit hospital devoting all monies received from patient care to the maintenance, operation and expansion of the hospital."

On the last page it says "Taxes are not assessed and have not been assessed against the real estate and personal property of any of these hospitals, which are a vast majority of the non-profit hospitals in the State of Virginia."

That is what was admitted in our case as being pertinent.

page 254 } Mr. McGuire: I cannot stipulate that. It is a fact Mr. Hunton and I several years ago contemplated making several stipulations about how hospitals throughout the state were treated. Some of them at that time were assessed for taxation and some were not assessed. I was not willing to stipulate the hospitals were not assessed, without knowing something about why they were not assessed.

The Court: If you are going to offer part of the record, you should offer the record in its entirety.

Mr. McGuire: I don't mind its being in there if it is understood, and I don't see why it cannot be understood, that I do not agree to this stipulated fact. I mean, the contents of what Mr. Edmunds said was a stipulation.

Mr. Hunton: As I understand the situation, this was a stipulation entered in the Halifax case. I therefore think it may be introduced as a part of the record. I fully understand Mr. McGuire does not agree with the conclusions in their stipulation. Is that it?

Mr. McGuire: Yes, sir, that is agreeable to me.

Note: The transcript referred to was marked page 255 } Edmunds Exhibit No. 2 and filed.

By Mr. McGuire:

Q. Mr. Edmunds, Mr. Frank S. McKinney was Commonwealth's Attorney of Halifax County?

A. Yes, sir.

Q. And he represented the county in that case?

A. Yes, sir.

Q. Did he contest the case?

A. He put in an appearance there. I don't think it is up to me to say. Yes, he contested it. The record shows he was there. He might not have contested quite as vigorously as you are.

Q. The order recites that the case was defended by the Commonwealth's Attorney because the statute, Section 58-1145 and succeeding sections, requires that the order recites that the Commissionerer of Revenue testified and the Commonwealth's Attorney defended the case. Did Mr. McKinney put on any evidence?

A. No, sir. He accepted the evidence we put on as being the true statement of facts.

Q. Did he argue the case?

A. Now I cannot recall so clearly. He made a statement to the court. The exact substance of it I do not recall.

Q. Wasn't his statement to the court to the page 256 } effect that he agreed with counsel for the hospital that the hospital was exempt from taxation?

A. He might well have done that, sir.

Mr. Hunton: The record speaks for itself.

The Court: I think the order of December 18, 1954, Mr. McGuire, introduced as part of the record, states that the court certifies that Frank L. McKinney, Commonwealth's Attorney, did appear at the hearing and did defend the said assessment.

Mr. McGuire: That is what the statute requires.

The Court: I don't think counsel can go behind the court's order, having introduced it.

Mr. McGuire: The statute says it must appear in the order that the Commissioner of Revenue testified and the Commonwealth's Attorney defended the same. Now the fact is, I believe, that this case was not contested at all. What I want to do is read Mr. Edmunds from the newspaper clip-

ping that appeared at the time and ask him if that is correct or incorrect.

The Court: I think the court's order is the best evidence in the case, Mr. McGuire.

Mr. McGuire: I understand Your Honor's rul-
page 257 } ing, but may I ask him the question for the purposes of the record?

The Court: Yes, you may ask him about it for the record, but the court feels the record in the case in Halifax speaks for itself.

Mr. Hunton: While we introduced the order, if Your Honor please, Mr. McGuire said he was going to introduce it, and he is now going to attempt to impeach an order he said he was going to introduce.

Mr. McGuire: I am not attempting to impeach the order. I am attempting to show there was no real contest in this case whatsoever.

The Court: As I stated before, I think the court's order of December 18th speaks for itself and I don't think counsel can go behind that order.

Mr. McGuire: I am not arguing against the court's ruling, but may I make up our record, Your Honor?

The Court: You may complete the record and read from the newspaper article.

Mr. McGuire: Thank you, sir.

Mr. Powell: It is understood this is subject to our objection?

The Court: Yes, sir. I don't think the newspaper article is germane to the case.

By Mr. McGuire:

page 258 } Q. Mr. Edmunds, I have here a clipping from the Richmond Times Dispatch of December 18, 1954, which recites that Judge Mitchell ruled that the Halifax Community Hospital was a charitable institution and therefore exempt from the payment of 1954 property taxes levied by Halifax County, and at the end of the clipping there appears this:

"Commonwealth's Attorney Frank L. McKinney, representing the Board of Supervisors, said his exhaustive study of the matter left him of the opinion that the hospital is a charitable institution. 'I could not be honest to myself or to the public,' McKinney said, 'Unless I stated my opinion that under the provision of the constitution this institution is not

taxable.' He then ruled the hospital had been assessed erroneously."

Mr. Edmunds, is that in accordance with your recollection of Mr. McKinney's position?

A. I don't recall the exact words of Mr. McKinney. He was present at the trial; he studied the situation; he defended it, I am sure, in accordance with what he conceived to be his duty. What he said at that time, I don't recall.

page 259 } Mr. McGuire: I think that's all I wanted to ask you.

Witness stood aside.

Note: There followed a recess.

WILLIAM H. FLANNIGAN,

a witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hunton:

Q. Please state your name, residence and occupation.

A. William H. Flannigan, 2641 Nottingham Road, Roanoke Virginia. I am Administrator of the Roanoke Memorial Hospital.

Q. Mr. Flannigan, how long have you been Administrator of the Roanoke Memorial Hospital?

A. Four years.

Q. What has been your education and occupa-
page 260 } tion prior to that?

A. I have been fifteen years in the hospital field. Prior to that I was educated at Hampden-Sydney College and graduated in 1940. I was in the armed services and in the Veterans Administration Hospital here in Richmond, and also the State Health Department. I was associated with the Hill-Burton construction program, and was Administrator of Franklin Memorial Hospital in Rocky Mount, Virginia, and the Roanoke Memorial Hospital in Roanoke.

Q. Did you hold any position in Roanoke prior to the position of Administrator of the hospital?

A. No, sir.

William H. Flannigan.

Q. Are you familiar with the history of the Roanoke Memorial Hospital and how it was created?

A. Yes, sir.

Q. Would you be good enough to state briefly to the court the organization and present setup?

A. In 1895 the Circle of the King's Daughters started a small charitable hospital in the City of Roanoke, and when it started outgrowing the facilities and needing money for further expansion, a group of citizens, and the gas company, water company and the Norfolk & Western Railroad, were interested in further building of the hospital, and a corporation, the Roanoke Hospital Association, page 261 } was formed. This was a non-profit association. Land was obtained and a building was erected and in 1899 it was incorporated as the Roanoke Hospital Association to operate the Roanoke Hospital, as it was known in those days, and since then it has continued to grow and expand by donations, public subscriptions, and in 1951 and 1952 a public subscription campaign was held and with matching funds from that from the state and federal government under the Hill-Burton Act, the new structure was erected and the old hospital was remodeled at the same time.

Q. Did your hospital receive any funds from the Ford Foundation?

A. Yes, sir.

Q. What is the basis of its operating income?

A. It is from money collected from patients able to pay.

Q. Do you have an endowment?

A. Yes, sir.

Q. Approximately how much is it?

A. About $100,000.00. Actually it is several endowments of which the total is $120,000.00, I believe.

Q. What is your policy with respect to patients who are unable to pay?

A. They are charged as charitable and marked as such, after investigation.

Q. Do you charge on your books all patients page 262 } coming into the hospital?

A. Yes, sir.

Q. And then how is it determined whether or not such charges should be charged to free service or charged off as bad debts?

A. They are investigated by our credit department, by our out-patient department, the welfare section of that, and the welfare agencies in the churches and the counties and it is

determined then if they are to be classified as medically indigent patients.

Q. Of what is the staff composed in your hospital, the medical staff? Is it an open staff institution or otherwise?

A. It is what the public, I think, would call open staff. I think it is closed staff in that all credentials of physicians who apply must be passed on by the medical staff and also by the Board of Trustees, but any doctor is eligible to apply for privileges.

Q. Does your hospital have contracts under the state and local health programs?

A. Yes, sir.

Q. And what compensation do you receive for patients who are admitted under that program?

A. It is based on the audited cost each year, and the maximum you may receive is $18.50, if your cost exceeds that.

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Q. Have you gotten together any figures for the operating costs for 1958 as yet?

A. No, sir.

Q. Do you know what they were in 1957, whether they were more or less in 1957 or '58?

A. Under the SLH program I think our cost was $18.70.

Q. And what was your over-all per diem cost in 1957?

A. No, sir. I cannot recall a close enough exact figure on it.

Q. Do you know approximately what it was?

A. An over-all per diem cost?

Q. Yes, sir, your operating cost, your per diem operating cost in 1957?

A. It was that figure of $18.70—some odd cents, I think.

Q. Mr. Flannigan, during the time that you have been Administrator of the Roanoke Memorial Hospital, has it ever been assessed for taxes by the City of Roanoke?

A. Not since I have been there, no, sir.

Q. Was it at any time prior to that, or do you know?

A. Yes, sir.

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Q. Do you happen to know what the year was?

A. 1949.

Q. Approximately what percentage of your total over-all billings is charged off either on account of free service or bad debt?

A. 16%.

Q. And how much of that would you say was free service and how much uncollectable debts? Can you divide it?

Homer E. Alberti.

A. Repeat your question.

Q. How much of the 16% was really free service and how much of the 16% was bad debts?

A. Bad debts are not in that. The 16% is free service.

Q. 16% free service?

A. Yes, sir.

Q. In the free service, do you charge the difference between your per diem cost and the amount received under these state and local health programs?

A. That is charged off as charitable.

Q. That is included in that?

A. The difference, yes, sir.

Q. What about the difference between the amount received from Blue Cross and your operating cost?

A. That is put in as a separate allowance for page 265 } loss on Blue Cross patients.

Mr. Hunton: May it please the court, I desire to file this copy of order entered in the Hustings Court of the City of Roanoke on May 18, 1949, exonerating certain persons listed in the order from the levy of real estate taxes for the years 1948 and 1949 and I call the court's attention particularly to the provision with respect to Roanoke Memorial Hospital. There are several other taxpayers who are listed.

Mr. McGuire: If the court please, the city objects to the introduction of that, which I assume is designed to show a judicial decision in Roanoke that a hospital similar to the Richmond Eye Hospital is exempt from taxation under the constitution and the statute. I don't believe there has been a sufficient showing of similar facts. That is my only reason for objecting and I would like to ask Mr. Hunton if he has a transcript of the evidence taken in the Roanoke Court in that case.

Mr. Hunton: I do not. As far as I know there is none available.

Note: The copy of decree referred to was marked Flannigan Exhibit No. 1 and filed.

Witness stood aside.

page 266 } HOMER E. ALBERTI,

a witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

Homer E. Alberti.

DIRECT EXAMINATION.

By Mr. Hunton:

Q. State your name, residence and occupation, please, sir.

A. Homer E. Alberti, 217 Parkwood Street, Winchester, Virginia. I am Administrator, Secretary and Treasurer of the Winchester Memorial Hospital in Winchester, Virginia.

Q. How long have you been Administrator of the Winchester Memorial Hospital?

A. Nearly 14 years.

Q. What were your educational qualifications and prior business experience?

A. I was professionally associated with a hospital in Kansas City, Kansas, for about ten years prior to coming to Winchester. Prior to that time I had been in the banking business and got into the hospital business sort of by accident. After getting in the hospital business, I attended various hospital institutes and had various training in the field.

page 267 } Q. Are you a member of any professional organization of hospital administrators?

A. I am Past President of the Virginia Hospital Association. I am former Secretary of the Carolina-Virginia Hospital Conference. I am a personal member of the American Hospital Association, a personal member of the Virginia Hospital Association. I am a fellow of the American College of Hospital Administrators. I have served on a number of committees of the American College of Hospital Administrators and also the Virginia Hospital Association.

Q. Mr. Alberti, what is the number of beds in the Winchester hospital of which you are the Administrator?

A. Normally 300. Right at the present time we have about 320 beds occupied.

Q. And what type of hospital is it?

A. We are a community non-profit general hospital.

Q. Is it a corporation?

A. It is, sir.

Q. And what is the management of it?

A. The management is vested in a Board of Directors, 100 in number. They meet only twice a year, and delegate the directorship power to an executive committee composed of 10 members which, to all intents and purposes, is the

page 268 } governing body of the hospital.

Q. Are they compensated in any way?

A. No, sir.

Homer E. Alberti.

Q. Who establishes the policies with respect to the medical staff?

A. The executive committee of the hospital.

Q. What are those policies?

A. Members of the medical staff are elected and/or re-elected annually. In order for an individual to enjoy membership on the staff, he must first declare his specialty. He must reside and maintain his office in Winchester or within a radius of ten miles of Winchester in order to be eligible for the so-called active staff.

However, when he first comes on, being recommended by the active medical staff and elected by the executive committee, he comes on in the capacity of associate member of the staff. He must serve a period of probation for 18 months during which time he serves under two preceptors, generally specialists in his same field. At the end of his eighteen-month period of probation, his preceptors make recommendation to the credentials committee of the medical staff; the credential committee in turn makes recommendations to the active staff; if the active staff recommends him, it then devolves on the executive committee of the staff to elect or reject him.

page 269 } Q. Is it an open staff or closed staff hospital?

A. We are in about the same—in fact, we are in the identical position of Mr. Flannigan who just testified. We are closed to the extent that anybody can apply—I should say, we are open to the extent that anybody can apply, but we are not open to the extent that we are not bound to elect anybody who in our opinion is not properly qualified to practice his specialty.

Q. Would you state briefly the history and background of the Winchester Hospital, please, sir?

A. The Winchester Memorial Hospital was founded and incorporated in the year 1901. It opened for business in 1903. In order to open for business as a non-profit general community hospital, public subscriptions were obtained, not only locally but also in New York City where there happened to be two individuals who had previously lived in Winchester but who had become very wealthy after they had gone to New York.

As time went on over the period of years, periodically, there have been, of course, each year a substantial number of contributions from the public generally. I am told that in years past it was necessary, occasionally, to go out to the public for

Homer E. Alberti.

funds to offset the operating deficit. That is quite some years ago, however.

page 270 } In 1948 we expanded the hospital again through the medium of gifts and contributions and subscriptions, to the extent of nearly $900,000.00, plus the proceeds of a Hill-Burton grant, and at that time we engaged in new construction and also modernization of the old facilities.

Q. Did you receive any contribution from the City of Winchester as such?

A. As such, we received a contribution outright from the City of Winchester in the amount of $5,000.00.

Q. Did you receive any contribution from the Boards of Supervisors of the surrounding counties?

A. The Board of Supervisors of the county, not anything.

Q. Has the hospital an endowment?

A. Excuse me. I was speaking of public subscription campaigns, and so forth. I might state at this time, too, that we received a gift in cash of half a million dollars from one individual which enabled us to accomplish the thing we wanted to accomplish.

Q. That was in 1948?

A. Actually that gift came in 1949, I think, or possibly early 1950, but in time to help pay for the construction.

page 271 } Q. That was in addition to the very handsome gifts received on the organization of the hospital in 1901?

A. That is correct. This same man contributed over a period of years a total of $850,000.00 including the half a million.

Q. Has the hospital an endowment?

A. Yes, sir, we have about $550,000.00 in endowments.

Q. What is the source of its revenue for the care of patients as it is presently operated?

A. Almost entirely through the medium of collection from patients for services rendered. These endowment funds, of course, provide some income but that income is used exclusively to defray free services.

Q. What is the practice of your hospital with regard to billings and charges for services? Do you charge everyone who is admitted as a patient?

A. In order not to be discriminatory, we do have one charge and one only, so that every patient who enters is charged the same, according to the accommodation occupied. If the case turns out to be charity, quite naturally it is written off.

Homer E. Alberti.

Q. How do you determine whether it is to be treated as a charity case?

A. Of course, to begin with the account isn't paid and the credit department makes good and sufficient in-
page 272 } vestigation through the medium of the Retail Credit Company and otherwise. We find it often quite difficult to determine at the outset whether in reality it is charity or whether it is a bad debt, so-called, and the result is a good many of our accounts are initially charged to bad debts. Later we ascertain they are strictly charity.

Q. So that in your final accounting you do make a distinction between free service or charity cases and bad debts?

A. No, not quite as we would like to. We have a total to free service and within that general free service category we do have breakdowns, yes, and one of the breakdowns is charity. Another breakdown is bad debts, but the only point I emphasize is that isn't a correct reflection since initially a lot of these are charged to bad debts and should be charity.

Q. About what percentage, approximately is the total of charity and bad debts of the whole income of the hospital, the most recent figures you have available?

A. It varies, of course, from year to year, but the percentage runs from a minimum of about 6½%, generally, to a maximum of not over 10%, although we have gone over 10% a time or two.

Q. Do you happen to have that figure available
page 273 } for last year?

A. I do, sir.

Q. What was it last year?

A. Well, taking charity and bad debts into account and also allowances to welfare agencies representing the difference between our charges and what they paid, and including charges of charity items to endowment income, last year it would have been the equivalent of about 7%.

Q. From what you have just said, am I correct in my understanding that you charge to that same account the difference between the amount received under the state and local health programs and your operating costs?

A. Yes, sir, which last year amounted to $6,200.00.

Q. What was your per diem cost last year?

A. We do not have the figures for the year 1958. For 1957 the per diem operating cost was $20.00 and, I believe, 21 cents. For the first six months of 1958 that figure was up about 4% and I think will, for the total of 1958, be about 4% beyond the 1957 level.

Q. And what amount did you receive from the local agencies under those contractuual arrangements?

A. Only $17.00 per day from the agencies in Virginia. We received $18.00 per day from the agencies in West Virginia.

page 274 } Q. Do you have contractual arrangements with agencies in West Virginia as well as those in Virginia?

A. Yes, sir.

Q. Mr. Alberti, do you know whether the Winchester Memorial Hospital has ever been assessed for taxation by the City of Winchester?

A. Not during my administration.

Q. Or any other taxing jurisdiction?

A. No, sir, it has not.

Mr. Hunton: That's all.

Mr. McGuire: I have no questions.

Witness stood aside.

Note: There followed a recess.

page 275 } GEORGE BUGBEE,

a witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name.

A. George Bugbee.

Q. Where do you reside, Mr. Bugbee?

A. New York City.

Q. What is your profession or business?

A. I am President of the Health Information Foundation, but I consider myself also a hospital administrator or executive.

Q. Will you describe very briefly the functions and nature of the Health Information Foundation?

A. It is concerned with social and economic research in the health field.

Q. What position did you hold prior to becoming the head of the Health Information Foundation?

A. I entered the hospital field on graduation from the Uni-

versity of Michigan in 1926, and for 12 years worked at the University Hospital there in various administrative capacities and then for five years as superintendent of
page 276 } City Hospital in Cleveland and 11 years as Director of the American Hospital Association.

Q. What is the American Hospital Association?

A. It is a voluntary organization to which most hospitals in the country belong. It is concerned with improving standards of hospital operation, country-wide.

Q. Do the hospitals in Richmond belong to this association?

A. I imagine most of them do, since most hospitals throughout the country belong.

Q. I see. Have you received any awards or are you connected with or affiliated with any organizations or associations in this general field of public health?

A. I am a life member of the American Hospital Association; a fellow of the American College of Hospital Administrators, and of the American Public Health Association.

Q. Have you at any time acted as a professor or lecturer at any university?

A. Yes, sir. I presently have an appointment at the school of public health and administrative medicine at Columbia University.

Q. Mr. Bugbee, at my request have you prepared a statement for use as your testimony in this case which outlines the development, the organization and the general
page 277 } philosophy of non-profit hospitals in the United States?

A. I have.

Mr. Powell: If Your Honor please, Mr. Bugbee has prepared this statement and I would like to have him read it into the record.

Mr. McGuire: I would like to see it.

Mr. Powell: I will, of course, give him a copy and I think it would be appropriate if he read it and then we could file the statement itself for the assistance of the reporter.

Mr. McGuire: I think perhaps I am going to object to the statement. I have no objection to that method of putting it in the record but I think I would object to it when I see it.

The Court: What bearing does this have on this case?

Mr. Powell: Your Honor please, I would be perfectly frank with the court and say I do not think it is necessary evidence. On the other hand, in view of the position taken by the city, as I understand it, that before one is entitled to

tax exemption under Section 183 of our constitution there must be a hospital such as Sheltering Arms, it seems important to me to get into the record of this case, through a gentleman whom we think is a leading expert in
page 278 } the United States in this field, this sort of testimony. I think when the court hears it the court will agree it is relevant, although not essential to our case.

Mr. McGuire: May I have a moment to look at it?

The Court: Yes, you may.

Note: There followed a brief recess.

Mr. McGuire: If the court please, I have examined this statement. When Mr. Powell made his statement to the court about the method in which he intended to present Mr. Bugbee's evidence, what generally frightened me was the use of the word "philosophy" and I wanted to look at this thing to see what it was. I do object to the introduction of this in evidence. It is not fact or history. I think Mr. Powell's use of the word "philosophy" was made advisedly. This document is addressed to the general desirability of community hospitals—to use a brief descriptive phrase—and why they are desirable and why Mr. Bugbee thinks they are true charities, and so forth. It is not based on any fact. I assume Mr. Powell's first questions were designed to qualify Mr. Bugbee
page 279 } as an expert in the field of hospital administration or something of that sort.

This thing can have no relevancy. In this case we are confronted with a question of law on the facts relating to Richmond Memorial Hospital and Richmond Eye Hospital, which is a question of fact, whether or not they are exempt from taxation by the City of Richmond, and this goes beyond any proper expert testimony.

I do object to its introduction as to any evidence Mr. Bugbee may give along this line.

Mr. Powell: If Your Honor please, I suppose the ultimate question in this case is what the language of our constitution means when it refers to a charitable institution. We have argument on this so I will not make an argument at this point, other than to say I think the court will find Mr. Bugbee's statement—while perhaps not informative specifically to the court in view of the elaborate arguments we have had earlier in the case—nevertheless it does bear quite materially on the general concept and meaning of the phrase "charitable in-

stitution" as used with respect to hospitals. That is the purpose of this statement.

page 280 } The Court: Isn't that a matter the court will have to decide, rather than any view the witness may advance as to his thoughts on the subject?

Mr. Powell: Of course, Your Honor, but we thought the broad experience of this witness might be of assistance.

Mr. McGuire: I might say it is not the reading of the paper I object to. It is the character of the paper. Mr. Powell wishes the witness to read to which I object.

The Court: The court hasn't read the paper and I don't know what it says. I am not prepared to pass on whether it is proper or not until I read what the witness has prepared.

Mr. Powell: Shall the witness go ahead and read it, subject to your ruling after you hear it?

The Court: I will permit the evidence at this time. The could will pass upon it at a later time. I don't see how I can do otherwise.

By Mr. Powell:

Q. Mr. Bugbee, will you read your prepared statement, please?

A. (Reading)

page 281 } "I am here today to outline the development, organization and financing of the non-profit general hospital in our country. I will not attempt to define such terms as charitable, philanthropic or benevolent. Rather, I hope to bring examples from my own knowledge and experience that may serve to illustrate accepted concepts of the nature and character of hospital care.

"I have had the privilege of working in the health field for more than 30 years. I consider it a privilege because of the ultimate objective of trying to provide compassionate care to sick people in order that pain and disability may be minimized or avoided and that life may be extended and death delayed. These objective are not casual incentives for those who work in the hospital field. In the individual hospital there is continual proof of the importance of understanding, benevolent, affectionate and considerate care; indeed, the need is so great that under the best of circumstances performance

page 282 } almost inevitably falls short of the ideal measured in terms of the needs of the ill. Obvious—and scarcely in need of emphasis—is the fact that those who are

treated in our hospitals, and frequently their families as well, are undergoing some of the major crises in their lives. The episodes are almost always critical because of apprehension and fear, because of the difficulty of planning for the future, and because of the possibility that life itself may be lost.

"For those who are sick, the nature of illness has never fundamentally changed, even though we have learned more about illness and its treatment in the past century than did all of our predecessors throughout the history of mankind. And our hospitals today, through tradition and in their full development of administrative community support, are still evidence of our efforts to fulfill what we understand generically as Christian philosophy. The care of the sick and unfortunate is one of the primary tenets of that philosophy; another is that disease is not a form of punishment, but a matter usually beyond the control of the indi-
page 283 } vidual whether he be rich or destitute. These basic beliefs are as much at the heart of hospital care now as they were in 17th Century England, when the Black Plague roused that nation to provide institutions for the ill, the dying and the homeless.

"The first hospitals on this continent were established in Spanish and French settlements by churches in Mexico and Canada. The first to be organized in what is now the United States was founded by Benjamin Franklin in 1751 when he urged an appropriation by the Pennsylvania Assembly which was to be matched by contributions from private citizens. This action established the Pennsylvania Hospital in Philadelphia, and the money so collected provided a building which even to this day serves patients in that city.

"Such early hospitals were, however, very different from our present community hospitals. Medical knowledge was scant; treatment of the sick took place largely in the home. Almost until the turn of this century most hospitals were institution for those who were not only ill, but poor
page 284 } and homeless. Many of these were really almshouses or poor houses, more dedicated to providing shelter than treatment. They were intended for the poverty-stricken, the casualties of war and the victims of pestilence."

The Court: Excuse me. I hate to interrupt the gentleman but I don't think this is proper evidence. You may file the paper that has been prepared but the court will rule, as far as it has heard, that the evidence is not germane to the case.

George Bugbee.

Mr. Powell: I would point out the witness has not progressed very far and it may be you would rule otherwise if you heard more of it. This is sort of an historical background.

The Court: From what I have heard it is very intellectual.

Mr. McGuire: I don't want to argue this after the court has ruled, but I do think perhaps I should complete my objection for the record. The fundamental rule about expert testimony, as I understand it, is that the expert testimony must be an opinion of some sort based on facts, either facts observed by the witness from his own investiga-
page 285 } tion or facts placed in evidence by other witnesses, and I cannot see that this statement has any basis whatsoever except the witness' own thoughts and, of course, it is fundamental when the expert witness departs from opinion based on facts and starts arguing the case, then it becomes inadmissible.

Mr. Powell: I do point out to Your Honor that Mr. Bugbee is probably better qualified to speak on this basic issue of what is a charitable institution in the hospital field—granted he is talking as a layman, of course, concerning legal phases—than anyone else in the United States. We have endeavored to bring here the most qualified individual in the United States, having been a hospital administrator himself and having for 11 years been executive director of the entire organization of the United States. He is familiar with the whole concept of the types of hospitals and how they develop. I don't think we could find a more expert witness, if the court wishes to hear this sort of testimony.

The Court: Here we are only interested in the Richmond Memorial Hospital and the Richmond Eye Hos-
page 286 } pital and whether those two hospitals are subject to taxation. From what I heard, the statement the witness has prepared does not have any bearing on this case before the court.

Mr. Powell: Very well. I understand we may file his statement subject to the court's ruling. For the reasons stated, we think it is proper evidence.

By Mr. Powell:

Q. Mr. Bugbee, will you file that statement with your evidence?

A. Yes.

Note: The statement of the witness was marked Bugbee Exhibit No. 1 and filed.

Mr. McGuire: May I ask Mr. Bugbee one question for the record before he leaves the stand?

The Court: Very well.

By Mr. McGuire:

Q. Mr. Bugbee, are you a medical doctor?

A. I am not.

Witness stood aside.

page 287 } Mr. Powell: If Your Honor please, Mr. Chandler is the City Assessor as I understand it. It appears from the definition of Section 58-1149 of the Code that in cases of this kind it is appropriate if not necessary that the public official responsible for making the assessment appear as a witness. I don't know whether that means we are supposed to call him or the city is supposed to call him, but in any event we call him at this time as an adverse witness in his official capacity as the official responsible for making these assessments.

RICHARD CHANDLER,

an adverse witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and position with the city.

A. Richard Chandler, Assessor of Real Estate.

Q. How long have you held that position?

page 288 } A. Since the latter part of 1956.

Q. Describe briefly what your duties are as Assessor of Real Estate of the City of Richmond.

A. Very briefly to assess all the real estate within the corporate limits.

Q. Are you the officer of the city who assessed the taxes on the Richmond Memorial Hospital? I may say here I am examining you on behalf of Richmond Memorial Hospital. Mr. Hunton and Mr. Haw represent the Eye Hospital. Did you assess those taxes?

A. I would be responsible for the years 1957 and 1958.

Q. And your office was responsible for the year 1956?

A. Of course.

Richard Chandler.

Q. Are you generally familiar with Section 183(e) of the constitution of Virginia?

A. 183(e)? I would like to see it. I think so, yes, sir. It is the section providing for exemptions?

Q. Yes, sir. I have it here.

A. Yes, sir.

Q. Do you want to refresh your recollection by reading it?

A. I have. I glanced at the part that was under-
page 289 } scored.

Q. Who made the decision to assess these taxes on these two hospitals, Mr. Chandler?

A. I suppose that decision was made when the hospital commenced construction which was sometime in 1955. I imagine it was the assessor's decision then. I was with the office at that time but I don't recall in particular worrying about whether the property was going to be non-tax. I do believe we have asked the city attorney for an opinion, but I am not positive.

Q. You say the decision to tax the hospital was made in 1955 when it was under construction?

A. I would assume so. We placed a partial assessment on it, as I recall, in 1956, but there again I would rather look at the records to make sure.

Q. It was assessed on January 1, 1956. Do you know whether it was assessed January 1, 1955 or January 1, 1954?

A. It may have been. It may have been to the Bryan estate or the previous owner.

Q. Was the hospital operating in the sense it was receiving patients in 1955? I now refer to Richmond Memorial Hospital.

A. I really don't know. I don't know when the completion of the hospital was but I was assuming it was—I don't be-
lieve it was even completed in 1955, but I am not
page 290 } positive.

Q. But you made the first assessment, the first one you yourself made, was January 1, 1957?

A. That would have been the year I would have been responsible for it, as city assessor.

Q. Was the hospital still under construction then or had it commenced to receive patients?

A. I would have to look at my records for that.

Q. You were subpoenaed in this case on yesterday, were you not?

Richard Chandler.

A. Yes, sir, but not told to bring records.

Q. Did you review your records at all in preparation for testifying?

A. I have some books there. I haven't particularly reviewed them.

Q. I wish you would look at your records and see if you can ascertain from them what the status of the hospital was on January 1, 1957.

Note: The witness refers to his papers.

A. On January 1, 1957, we have placed what we call a partial assessmeut on the building. In our terminology that means the building was not completed 100% for us. It means we had not placed a final assessment on the improvement as of that date.

Q. What is the status according to your records page 291 } on January 1, 1958?

A. It was a completed assessment as of January 1, 1958, which means the building as far as we were concerned was completed sometime during the year 1957.

Q. Let's take January 1, 1958 for the purpose of the next few questions.

A. All right, sir.

Q. Who made the decision to establish the taxes as of January 1, 1958 on Richmond Memorial Hospital?

A. It would have been my decision.

Q. What was the basis for that, Mr. Chandler?

A. I could find no reason to exempt it.

Q. Did you consider Section 183(e) of the Constitution of Virginia?

A. Yes, sir.

Q. Now tell me what facts you have in your file and upon which you relied in arriving at your official decision that Section 183(e) of the constitution did not apply to this hospital?

A. I think for one thing the city attorney's opinion No. 1319. Then, too, as I understand it—I am not an attorney but the provision says "operating exclusively as a charity."

Q. You had the city attorney's opinion No. what?

A. It is written on the card here, we received page 292 } Opinion No. 1319, I believe it is.

Q. Do you have that opinion with you?

A. No, sir.

Richard Chandler.

Q. Will you arrange to bring it here before this case concludes?

A. Well, they are bound.

Mr. McGuire: I will undertake to produce it. I don't know what the opinion is, what opinion he is referring to. I have refrained from interrupting Mr. Powell and I don't now want to interfere with his examination of this witness, but of course these are legal questions and I think it is proper for me to say that I recall considerable discussion on these matters. I don't remember the issuance of any actual opinion about the Richmond Memorial Hospital, but there have been a number of opinions about these charitable exemptions in general and I can remember having considerable discussion on these matters with Mr. Chandler's predecessor in office, Mr. Rountrey. I don't believe Mr. Chandler actually knows of his own knowledge what went on in that regard.

I will produce anything from the city attorney's office in the way of opinions that Mr. Powell wants.

page 293 } The Court: Is that satisfactory?

Mr. Powell: It is satisfactory to me to have Mr. McGuire say he will produce this opinion, but I do not consider it satisfactory as a matter of law for the man responsible for assessing these taxes not to be able to state the reasons why he did it.

Mr. McGuire: What was the number of that opinion?

Mr. Powell: He said No. 1319.

A. I will look, Mr. McGuire. I recall putting some information in the file regarding this hospital. It has not been an unknown factor to me it was under litigation, but so far as I am personally concerned, I will not say I completely reviewed the Richmond Memorial Hospital file on January 1, 1957 or on January 1, 1958, but as a layman in reading Section (e) of 183 of the constitution, I cannot say the Richmond Memorial Hospital is operating exclusively as a charity and nobody made a claim for exemption to me in 1957 or 1958.

By Mr. Powell:

Q. I understood you to say you knew these applications for relief were pending?

A. Well, yes, sir, I am sure I did.

Q. So you know the hospital was objecting to

page 294 } these assessments?

A. I would assume so, but they didn't object to me personally.

Richard Chandler.

Q. But you knew they were objecting?

A. For the years up to that point, yes, sir.

Q. Do I understand your testimony is you didn't make any new or independent review of whether or not the Richmond Memorial Hospital was entitled to an exemption in 1957 and 1958?

A. Any new or independent?

Q. That's right.

A. No more than was in the file already, no, sir.

Q. Did you yourself review the file in connection with the assessments for either of those years?

A. I have reviewed the files, yes, sir, I would say I reviewed the files, yes, but not for any particular point.

Q. The truth is you didn't make any independent or fresh or new review as to whether or not this hospital, after it commenced to receive patients, was entitled to the tax exemption, either for 1957 or 1958.

A. I would say I took it under consideration. I am not trying to avoid your question.

Q. I know you want to be fair and we want to be fair with you. If you did make any investigation and any
page 295 } independent review and decision, just say so and tell us exactly what you did. If you did not, then say you did not.

A. I would say in the year 1957 I reviewed all the files then pending, which included the Richmond Memorial Hospital and Richmond Eye Hospital at that time.

Q. You mean, pending on complaints of taxpayers?

A. Yes, sir, from my predecessor and, of course, things have come up from time to time and of course we have had to review our files and from time to time Richmond Memorial Hospital and Richmond Eye Hospital have come up. I don't know whether you call that an independent or fresh review or not.

Q. Are you prepared to state that on or about January 1, 1957, you made any review as to the tax-exempt status of Richmond Memorial Hospital?

A. No, sir, I wouldn't say I did it on that date.

Q. Or in connection with that date or any date during the year?

A. During the year? If I reached the conclusion Richmond Memorial Hospital was exempt, I suppose we could easily say I could make the decision retroactive to January 1st of that year.

Q. Do you have any memorandum or any data in your file

Richard Chandler.

with respect to the status of this Memorial Hos-
page 296 } pital? If so, I would like to see it.

A. Any memorandum?

Q. Any data, any memoranda.

A. I assume so, yes, sir.

Q. But you don't know?

A. I know we have quite a bit.

Q. Do you have it in that folder in your lap?

A. No, sir. I wasn't alerted to what the testimony would be today and we have almost a file drawer downstairs.

Q. Are you familiar with the section of the code that requires you to testify in cases of this type?

A. No, sir, I am not familiar with that particular section.

Q. Have you ever seen an operating statement of Richmond Memorial Hospital?

A. No, sir.

Q. Have you ever asked for one?

A. No, sir.

Q. How are you able to formulate any decision it is not operating exclusively as a charity?

A. From the previous correspondence in the file.

Q. Correspondence with whom?

A. I don't know. I would have to look at the file.

page 297 } Mr. Powell: Your Honor, Mr. Hunton makes the suggestion that we might request the court for a five-minute recess to enable the city assessor to bring up all his files on these two hospitals. I would like to get to the bottom of how he made this assessment.

Mr. McGuire: We certainly are not going to conceal any files. I am glad to have Mr. Chandler go and get what he wants, but I am sure the court knows and I am sure Mr. Powell and Mr. Hunton know why the assessor of real estate has assessed these hospitals.

Mr. Powell: I certainly do not know.

Mr. Hunton: I would like very much to find out.

The Court: I don't know either.

Mr. McGuire: I don't want to say in the presence of the witness. I don't want to put words in his mouth.

Mr. Hunton: I would like to ask, if Your Honor please, if the witness would also bring the files on Retreat for the Sick and Richmond Community Hospital at the same time.

A. For how far back?

Mr. Hunton: From their organization. From page 298 } 1871.

Mr. McGuire: I think that is somewhat unreasonable. I don't know what files are there.

A. We have destroyed some correspondence.

By the Court:

Q. You certainly have the files for the last five or ten years, do you not?

A. Yes, sir, but they consume file cabinets of the size of that door. They are not filed according to subject matter, but I will bring everything I can.

Note: There followed a recess.

A. I think I have perhaps two pieces of correspondence that may answer your question.

By Mr. Powell:

Q. You have two pieces of correspondence pertaining to the assessment of these hospitals?

A. Two opinions. Here is one regarding the Richmond Memorial Hospital which was requested in 1955 and we got the answer. I think the pertinent part is right there. While I have been unable to find a copy of the opinion, here is the bound opinion where Mr. Saville, Chairman of the Board of Assessors, requested information regarding the taxable assessment of the Richmond Eye Hospital and here is that opinion in this book.

Q. Do you have another letter?

A. I didn't know what letters you might want.

page 299 } Note: There followed a recess.

By Mr. Powell:

Q. Mr. Chandler, the letter which you handed me is dated June 30, 1955, from the city attorney addressed to Mr. Rountrey.

A. Yes, sir.

Q. Mr. Rountrey was the assessor at that time?

A. Yes, sir.

Q. He was your predecessor in office?

A. Yes, sir.

Q. Were you an assistant assessor?

Richard Chandler.

A. I was an appraiser at that time.
Q. Working for Mr. Rountrey?
A. Yes, sir.

Mr. Powell: The letter, Your Honor, is an opinion letter from the city attorney. Since reference has been made to it, I think it ought to go into the record. Of course we do not agree with the legal conclusions expressed. We do not introduce it as our document. We merely think it ought to be identified since this witness is going to be talking about it.

Mr. McGuire: I think the paper Mr. Powell has bears the number 1319 and I think Mr. Chandler made some reference when he was on the stand earlier this page 300 } morning to Opinion No. 1319. There is some confusion about that number. I have the bound volume of opinions for the years 1954 and 1955 and Opinion No. 1319 in that volume is addressed to the Director of Public Utilities on some entirely different subject. I do not see this in the index of the bound volume and it perhaps was not issued as an official opinion. Mr. Chandler says on the original the number has been scratched out.

Of course, I admit that amounts to an opinion of the city attorney and is what the assessor has relied on.

By Mr. Powell:

Q. Mr. Chandler, will you file this letter for the purpose of enabling me to ask you questions about it?
A. Yes.

Note: The letter referred to was marked Chandler Exhibit No. 1 and filed.

Mr. Powell: I would like to state this is not being offered by me as evidence but merely to enable me to examine the witness with respect to its content. I do not agree with any of the opinions expressed therein as to the law.

By Mr. Powell:

page 301 } Q. Mr. Chandler, when you referred earlier in your testimony to an opinion of the city attorney, was this letter of June 30, 1955 the opinion you referred to?

A. That was the one I had in mind, yes, sir. It wasn't until I went downstairs I discovered that No. 1319 is different.

Richard Chandler.

Q. There is just some confusion about the numbers, but this is the opinion you had in mind?

A. Yes, sir.

Q. Is there any other writing of any kind with respect to Richmond Memorial Hospital which was used in connection with the assessment of this tax?

A. We are looking now, sir. I don't think there is anything more important than that.

Q. Do you know of anything else?

A. No, sir, I don't. We are now searching the files. There may have been some correspondence with your firm or with the city attorney or perhaps in the hospital file.

Q. I am asking you about data, information, facts or figures of any kind which were used by your office in determining to assess this tax.

A. I assume you mean by "assess" to hold it taxable or non-taxable?

Q. That's right.

page 302 } A. No, sir. We relied solely on that.

Mr. McGuire: Your Honor, I wish to inform you what occurred on November 8, 1955. The city attorney issued a great long opinion which was No. 1323 and which I do not think mentions either of these two hospitals by name but it dealt with the general subject of tax exempt real estate under the provisions of Section 183 of the constitution and Section 58-12 of the Code. That was addressed to Mr. Rountrey on that date and it dealt with exempt hospitals as well as exempt institutions of other kinds. That, I think, was the basic opinion of all of them.

By Mr. Powell:

Q. Mr. Chandler, did I understand from your testimony that the sole and only reason that you, as city assessor, have assessed taxes on these two hospitals is the city attorney advised you to do so?

A. Yes, sir, that, and as I say, I am familiar with the reasoning behind Mr. Rountrey's assessment and of course I am familiar with mine, but that would be basically it. Even though we might consider something non-taxable, if we found the city attorney disagreed with us, we would rely on him because he is the legal expert. We are appraisers.

page 303 } Q. You make no effort to pass on legal questions?

Richard Chandler.

A. I try to pass on them but if the city attorney's office overrules me, I would listen to that.

Q. I am asking you whether you make any investigation as to facts, as to whether an institution is operated as a charity or not.

A. We originate investigations and try to form our opinion.

Q. Did you make any such investigation in the case of either of these hospitals?

A. I did not personally.

Q. Did anybody in your office?

A. I understand that either in the latter part of 1954 or in 1955 Mr. Rountrey and the entire staff made an investigation of all the exempt properties as generally as we could and these two were under consideration. I believe Mr. Rountrey made a study of these and then he requested the city attorney's opinion.

Q. You know Richmond Memorial Hospital wasn't completed until the fall of 1956. Now was there any investigation after that date made by you or anybody in your office?

A. Not by me.

Q. Concerning either one of these hospitals?

A. No, sir.

page 304 } Q. You are the head man responsible for the proper assessment of taxes in Richmond, are you not?

A. Yes, sir.

Q. And are you willing to state no investigation was made by your office prior to this assessment?

A. Since 1957.

Q. You mean, since you became the assessor?

A. Yes, sir, which was December 1956.

Q. So there has been none since December 1956?

A. No, sir.

Q. During all that time you relied solely on an opinion of the city attorney dated June 30, 1955, written before Richmond Memorial Hospital had commenced to operate in the sense of receiving patients or, indeed, before it had been built.

A. That is correct, sir. It seemed to me that the opinion encompasses more than that.

Q. How in the world could you have told on June 30, 1955 whether on January 1, 1958 Richmond Memorial Hospital would be operating as a charitable institution under the constitution or not?

A. I could assume by its certificate of incorporation.

Richard Chandler.

Q. Have you examined that document?

A. I have not personally, no, sir.

page 305 } Q. If you go by that document there can be no possible doubt as to its tax exempt status.

A. I relied on my legal advice.

Q. But you state no legal advice was had after June 30, 1955.

A. No, sir, but I am sure the city attorney is kept apprised of developments after that date.

Q. Did you request any other opinion?

A. No, sir. It was under litigation from that point on.

Mr. McGuire: Your Honor, I object to any further questions along this line. It is my personal opinion that Mr. Chandler has discharged his duties correctly. This examination appears to be addressed to the principle that Mr. Chandler has not properly discharged his duties as the assessing officer. Whether he has or not does not alter the fact these hospitals have been assessed and has no relevancy to the question of whether or not they have been properly assessed. I am certainly willing to take, before this court or anywhere else, the responsibility for the assessment of these hospitals. I think that is where the responsibility properly lies. Mr. Chandler sought the advice of the city

page 306 } attorney, which is the only place he has to seek it, and that is the advice he got, that these hospitals are taxable in our opinion. I do not think Mr. Powell should examine him further along this line.

Mr. Powell: I would make the observation that the law imposes the duty of making the assessments on the city tax assessor, the gentleman on the stand. The law does not impose that duty on the city attorney.

Mr. McGuire: The law imposes a duty on the city attorney to advise all the officers of the city in regard to their duties.

Mr. Powell: I think the testimony speaks for itself, Mr. McGuire. At the moment I am going to pursue another line.

By Mr. Powell:

Q. Mr. Chandler, did the city attorney ever give you any advice as to how to determine whether or not an institution operating in the City of Richmond under your jurisdiction was a charitable institution entitled to this tax exemption?

A. We have volumes of opinions and we have a massive

opinion, the general opinion written in 1955. I forget the number, but it covers exemptions in general and, of course, any question we have we naturally would seek
page 307 } the advice of the city attorney and request a formal opinion.

Q. Tell us what factors you consider to be relevant in making your decision as to whether or not an institution is entitled to this exemption?

Mr. McGuire: If the court please, those are purely legal questions and I don't think it is proper for Mr. Powell to go further with this examination, which has nothing to do with the question of law before this court. I cannot sit here without objection and allow Mr. Powell to continue to examine Mr. Chandler in this manner.

Mr. Powell: It seems obvious to me the taxpayers are entitled to know the criteria or standards used by the tax assessing authorities to decide this question of mixed fact and law. Essentially it is a question of fact. We have been here all week putting in the facts. Here is the gentleman responsible for the assessment and I think these litigants, as well as the public, are entitled to know what the criteria are on which he relies.

Mr. McGuire: I have referred Mr. Powell to opinion No. 1323 issued late in 1955, which represented the
page 308 } best judgment the city attorney was capable of and the best attempt the city attorney's office could make to give the general standards and explain, as well as the city attorney could, what the city attorney thought these constitutional and statutory provisions meant with reference to all of the then decisions of the Court of Appeals. Your Honor knows, as any lawyer must know, each individual case has to stand on its own feet and there is no way for Mr. Chandler to sit there in the witness stand and tell this court in general what the criteria are.

I don't think it is proper examination, and I am going to ask the court to rule on my objection before it is allowed to be continued.

The Court: I certainly think—of course the court understands that the city assessor is going to be governed by the opinion of the city attorney's office. On the other hand, I think Mr. Powell has a right to question the witness as to his methods used to reach the assessment he has on this particular parcel of real estate and for that reason I think his line of questioning is proper, Mr. McGuire.

Richard Chandler.

Mr. McGuire: We except to the courts' ruling.
page 309 } Mr. Powell: Would the reporter read the last question?

Note: The question was read by the reporter as follows:

"Question: Tell us what factors you consider to be relevant in making your decision as to whether or not an institution is entitled to this exemption?"

A. From his prior opinions and, of course, we attempt to see if anyone who requests exemption falls under the provisions of Section 183 of the constitution or 58-12 of the Code. If they do not clearly fall under it and there is reasonable doubt, then we request the city attorney's office for an interpretation to guide us.

By Mr. Powell:

Q. If there is any doubt you request an opinion?

A. Yes, sir. In the case of a college or charity, it seems to me the constitution clearly provides that would be exempt, but in a borderline question, if you would question it, I would feel inadequate to answer it and seek the city attorney's advice.

Q. Do you have anything you look for to see whether or not a non-stock, non-profit corporation in the categories listed in Section 183(e) of the constitution is or is not entitled to this exemption?

page 310 } A. I have never had the opportunity to investigate one.

Q. You have been making these assessments against some and not against others without any criteria whatsoever?

A. We try to go by the provisions of the code and the constitution. There again, in this case, that was investigated.

Q. Investigated by whom?

A. By Mr. Rountrey, I believe. The files indicate we checked each of the hospitals at that time. I don't know what criteria he used. I don't know what conversations went on at that time?

Q. I know you are a busy public official and I imply no personal criticism of you whatsoever. I trust you understand that?

A. Yes, sir.

Q. You say you have been in office two years?

A. Yes, sir.

Richard Chandler.

Q. You have been in office two years and during that time you have established no criteria for determining whether or not non-stock, non-profit corporations listed among the categories in Section 183(e) are or are not entitled to tax exemption. Can you answer that question yes or no?

page 311 } Mr. McGuire: I don't think that is a proper question for the reason it is impossible, obviously, for anyone to have established criteria by which to determine whether these various corporations would fall within the dozen different categories in the constitution.

Mr. Powell: If he will answer the question, I will follow it up.

A. We would use the criteria set out in Section 183(e). We have been constantly cautioned that each case that would come before us for examination would have to stand upon its own feet regarding the set of facts in each case, as to whether it is entitled to exemption. Now your question is have I set up any criteria for determining whether a hospital was qualified for exemption, and I believe I would wait until the hospital requested exemption from me and then determine whether it would, and I would probably seek the city attorney's advice again.

Q. And although you agree each case must stand on its own feet and must stand on its own independent facts, you have also testified you have made no investigation of any of these facts concerning each of these hospitals? Is that correct?

page 312 } A. That is correct, inasmuch as we had already received the advices of the city attorney on it.

Q. That was in 1955?

A. Yes.

Q. Do you know whether or not the Retreat for the Sick Hospital is taxed under Section 183(e) of the constitution?

A. I believe it is exempt under it.

Q. Do you know whether it is taxed or exempted by your office?

A. Our records indicate it is exempt.

Q. What are the reasons for exempting it for the year 1957-'58?

A. The only thing we have in our files is that question came up during the old board of review and was recorded in a set of minutes which has since been destroyed.

Richard Chandler.

Q. When did the old board of review go out of office?
A. January 1, 1954.

Mr. McGuire: I think he means the old board of assessors.

A. I beg your pardon. I mean the board of assessors.
Q. So your files contain no information since 1954?

page 313 } A. Except the investigation the previous assessor made in the latter part of 1954 or in 1955.

Q. What facts or criteria were deemed controlling in 1954 to entitle the Retreat for the Sick to exemption?
A. The provisions of the constitution, I would imagine.
Q. What provisions?
A. Section (e).
Q. What language in the provision?
A. Whether it was operated—
Q. Exclusively as a charitable institution?
A. No, sir. I will read it to you. That's right—not operated for profit but exclusively for charity. It has been held exempt since its inception.
Q. Do you know what percentage of patients at the Retreat for the Sick were charity patients at any time since 1954?
A. At one time it was 10%.
Q. Do you know what percentage of patients at Richmond Memorial Hospital were charity patients at any time since 1954?
A. No, sir.
Q. Do you know what percentage of patients at the Richmond Eye Hospital were charity patients at any time since 1954?

page 314 } A. No, sir.

Q. And I assume you do not know with reference to the Richmond Community Hospital?
A. I may have it. I would have to refer to the files. I would have to refer to each one.
Q. Is the percentage of charitable patients the controlling factor in cases where you have made no investigation whatsoever?

Mr. McGuire: I think that is a question of law.
Mr. Powell: I think so, too, but I am trying to find out what this office does, if anything, in these cases.

Richard Chandler.

A. At the time the investigation was made I don't know if they used the percentage of charity patients or not. If the question of any one of these hospitals would come before me to qualify for exemption, I would seek the advice of the city attorney.

Q. Unless someone raised the question, you would go ahead and assess them the same way they were assessed in previous years?

A. Yes, sir.

Q. What percentage of services rendered by the YMCA is free service?

A. I don't know.

Q. Do you have any data on the YMCA or the page 315 } YWCA?

A. Mr. Powell—

Q. State whether or not they are tax exempt?

A. They are tax exempt under the constitution.

Q. The same provision we are discussing here, Section 183(e)?

A. They are spelled out by name.

Q. Doesn't the statute also say they must be operated purely as a charity?

Mr. McGuire: If the court please. I don't think that has any relevancy to these two cases. They are entirely different classifications.

The Court: It is a question of law.

By Mr. Powell:

Q. I would like to know why the YMCA and the YWCA were exempted from taxation. Do you consider they do not have to be operated as charitable institutions?

Mr. McGuire: That is a pure question of law.

Mr. Powell: It may be a question of law but I would like to know why the city assessor taxes some institutions under 183(e) and does not tax others.

Mr. McGuire: I object to the question because it is a pure question of law and because it is irrelevant page 316 } to the controversy before the court here. I don't think Mr. Chandler ought to be made to go into that.

The Court: I think the witness can respond to the question if he knows. If he does not know he can say so. It is a question of law.

Richard Chandler.

Note: The last question was read by the reporter, as follows:

"Question: I would like to know why the YMCA and the YWCA were exempted from taxation. Do you consider they do not have to be operated as charitable institutions."

A. I have been guided somewhat by legal opinions. I believe the Supreme Court has ruled they are exempt whether they rent out parts of their buildings to members or not.

Q. You are thinking about the Lynchburg case, but that doesn't answer my question. Do you know why they have not been taxed in the City of Richmond?

A. Yes, sir, because they fall under Section (e) and because of the previous communications and opinions we have had from the city attorney.

Q. Have you considered whether or not the YMCA and the YWCA are operated as charitable institutions?

A. To be frank, I have not considered that particular point, no, sir. It seems somewhat removed, after we
page 317 } receive so many communications they were exempt.

Q. Are you familiar with the Virginia Diocesan Home located at 1621 Grove Avenue?

A. No, sir. Is that the Virginia Methodist Home?

Q. The Diocesan Home.

A. No, sir, I am afraid not.

Q. You don't know whether it is taxed or not?

A. No, sir, I do not.

Q. You don't know whether the patients in that home pay for their care or not?

A. No, sir. There again, I would have to refer to the records. It is difficult to recall one out of 60,000 parcels.

Q. Do you know whether Richmond Community Hospital is taxed or not?

A. I believe you asked me that before. I asked them to pull the cards on Richmond Community Hospital and they indicate they are non-taxed and have been so since the inception of the assessor's office, which was 1935, I believe.

Q. Do you know whether or not it was disclosed by your file whether or not that hospital operates exclusively as a charity institution?

A. The records indicate it was investigated by
page 318 } the old board of assessors. I don't know whether they brought in any opinion on it. When I left

the office downstairs most of the records had been destroyed or at least we couldn't find them.

Q. When we are taking the noon hour recess I would like you to check on the Richmond Community Hospital, the YWCA, the YMCA and the Retreat for the Sick.

Mr. McGuire: I think it is reasonable for Mr. Powell to ask for Retreat for the Sick and Richmond Community Hospital, but I don't think the Court should make him bring the files on the YMCA, which is an entirely different proposition.

Mr. Powell: I would like to look at them. I have no idea whether there will be anything in there which seems to be relevant.

The Court: If he has a file on the YMCA I see no reason why he should not produce it.

Mr. Powell: And we may examine the file?

The Court: Yes.

By Mr. Powell:

Q. Didn't you say Mr. Rountrey made a report in 1955?

A. Made an investigation, I believe.

Q. We would like to see the report or the results of that investigation.

page 319 } A. Actually a lot of this, as you can understand, has not been reduced to memorandum form and kept in the files.

Q. I would like to ask you two or three more questions. I wish you would listen carefully to certain facts which regard to the evidence in this case and tell me whether or not you, as city assessor of Richmond, have known about or considered any of these facts in assessing taxes on the two hospitals here in controversy:

Whether or not these hospitals are open or closed staff hospitals.

Whether or not the funds for these hospitals were generated by contributions from the public, and state and federal funds.

Whether or not the hospitals conduct educational activities which enure to the benefit and health of the entire community.

Whether or not all patients who apply are served.

Richard Chandler.

What percentage of patients are free in whole or in part, in each of these hospitals.

What contracts with public authorities under SLH programs or welfare programs these hospitals have.

Do you know anything about any of these facts with respect to either one of these hospitals?

page 320 } A. I didn't personally look into those facts. I was under the impression most of that was given to the city attorney's office.

Q. In 1955?

A. Yes.

Q. But that is a guess on your part?

A. That is certainly a guess on my part.

Q. Do you know any of those facts with respect to the Retreat for the Sick and Richmond Community Hospital?

A. No, sir, I do not.

Mr. McGuire: I think the record should show counsel for the city does not think all those things which Mr. Powell has stated to Mr. Chandler are facts established by the evidence.

Mr. Powell: There has been testimony on all of them. That will be for the court to decide.

Mr. McGuire: I agree with that. I wanted it understood I do not admit them all.

By Mr. Haw:

Q. I have one question in regard to the Richmond Eye Hospital. Do you have an opinoin with regard to the tax status of the Richmond Eye Hospital?

A. Yes, sir.

Q. What was the date of that?

A. December 23, 1952.

page 321 } Q. Would you be good enough to file a copy of that with your evidence?

A. I don't have a copy of it. All I have it this bound volume.

Q. That will be all right.

A. All I have is this. I think the original opinion has probably since been destroyed.

Q. Would you be good enough to have that copied and filed as your exhibit?

A. Yes, sir.

E. Glenn Jordan.

Note: Copy of opinion No. 1198 dated December 23, 1952, addressed to Robert L. Saville, Chairman, Board of Real Estate Assessors, was marked Chandler Exhibit No. 2 and filed.

By Mr. Haw:

Q. Do your record show any investigations were made in regard to the Richmond Eye Hospital beyond the statement of the charter provision which is referred to in that letter?

A. Do I have any knowledge of it?

Q. Do your files show any investigation of facts beyond the charter provision. I am referring to the charter provision which was quoted in the opinion referred to.

A. I haven't checked my files, but to my personal knowledge I would imagine the investigation on our page 322 } part stopped at this point.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Chandler, have you yourself, since you have been in office as assessor of real estate for the City of Richmond, received any communication from or had any conversation with the city attorney or any of his assistants about the Retreat for the Sick Hospital or Richmond Memorial Hospital?

A. We are looking for that now, sir. Since I took office?

Q. Yes, sir.

A. I don't recall any but we are looking. It is hard for me to recall all communications and conversations.

Q. You don't recall any communications or conversations about either of those two hospitals?

A. No, sir. I don't know if Mr. Blackwell has found anything on it yet or not, but apparently not.

Mr. Powell: Your Honor, this witness may be excused subject to our recalling him if, after looking at the records during the lunch hour, we think it is necessary.

Witness stood aside.

page 323 } E. GLENN JORDAN,

a witness called by the Richmond Memorial Hospital and the Richmond Eye Hospital, after being duly sworn, testified as follows:

E. Glenn Jordan.

DIRECT EXAMINATION.

By Mr. Powell:

Q. Please state your name and official position with the city?

A. E. Glenn Jordan, Commissioner of Revenue for the City of Richmond.

Q. Mr. Jordan, are you familiar with the subject matter of this litigation?

A. I didn't get the question.

Q. Are you familiar with this case and what it involves?

A. Yes, sir, I am.

Q. Do you have any responsibility for taxes which are assessed against these two hospitals?

A. Not the real estate tax, no, sir.

Q. Have any tangible personal property taxes been assessed against either one of these hospitals by your office?

A. No, sir.

Q. So you have nothing whatever to do with
page 324 } this litigation?

A. No, sir.

CROSS EXAMINATION.

By Mr. McGuire:

Q. Mr. Jordan, have you ever asked the city attorney whether or not in his opinion the tangible personal property or the intangible personal property of these hospitals was exempt from taxation?

A. No, sir, I have not. I have inquired of the State Tax Department and the corporation department over there—Mr. Lake who is delegated to look after the corporations which are subject to tax—and he was of the opinion, as I myself am, they qualify under Section 15-12 of the State Tax Code and are exempt from taxes. I concur in that and for that reason I did not ask for any opinion.

Q. I assume that was with reference to intangible personal property taxes?

A. Intangible and tangible, also.

Q. You asked Mr. Lake about the tangible, too?

A. Yes, sir.

Q. But you have not discussed the matter with the city attorney?

A. No, sir.

Witness stood aside.

page 325 } A. CHURCHILL YOUNG, JR.,
a witness called by the City of Richmond, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McGuire:

Q. Please give your name and residence.

A. A. Churchill Young, Jr., 207 Lock Lane, Richmond.

Q. What is your occupation, Mr. Young?

A. I am President of E. M. Todd Company, Incorporated, and Hermitage Ice and Storage, Incorporated.

Q. Have you any connection with the Crippled Children's Hospital in Richmond?

A. Yes, I am Vice President of the Crippled Children's Hospital.

Q. Are you a member of the Board of Directors?

A. Yes, sir.

Q. Do you know what sort of corporation operates that hospital?

A. A non-profit corporation.

Q. Do you know what sort of patients are admitted?

A. Children, free patients, that come for deformities and patients who have had polio—children from the
page 326 } State of Virginia.

Q. Are any of those children or their parents charged for the services provided by the hospital?

A. No, sir.

Q. What physicians and surgeons are on the staff of the hospital? I don't mean to name them, but tell generally who they are.

A. Dr. Tucker, Dr. Jim Tucker, is the head of the surgeons and all of them that operate out there in the different departments give their services. There is no charge.

Q. No charge by any physician or surgeon on the staff?

A. No, sir.

Q. Have you any literature or pamphlets which show generally the facts concerning Crippled Children's Hospital?

A. Yes, sir. You have some of them there.

Mr. McGuire: If other counsel have no objection, I should like to offer these three pamphlets or circulars in evidence as Exhibits Young Nos. 1, 2 and 3.

Note: The three pamphlets offered by Mr. McGuire were marked Young Exhibits Nos. 1, 2 and 3, and filed.

page 327 } By Mr. McGuire:

Q. Mr. Young, do you know what is approximately the capacity of the Crippled Children's Hospital?

A. Yes, sir. It has around 100 beds, approximately.

CROSS EXAMINATION.

By Mr. Hunton:

Q. Mr. Young, what is the source of income from which the hospital is operated?

A. From the gifts received on Donation Day and from the income received from the fund which the hospital has built up through the years from gifts, legacies and that type of thing.

Q. Don't you receive any money from the federal government?

A. From the federal government?

Q. Yes, sir.

A. Not that I know of.

Q. Do you receive any money from the Child Welfare Care Program?

A. We get some little through the state occasionally on some of the patients that are sent by them.

Q. Do you have any contracts under these

page 328 } state and local health programs?

A. Not that I know of, Mr. Hunton. I wouldn't say that isn't so but I would like to say that I am the Vice President of the board and have been on the board for six or seven years. Mr. Gordon is President and he is away. I have not come prepared, I did not know that I should be prepared to give the information as to the corporate setup and the data that possibly you may want to ask some questions about.

Q. So you don't know whether there are any funds from the federal government?

A. We get some from deNemours, which is given the polio. Of course, in the past few years fortunately due to the Salk vaccine and what have you, the polio patients have gone down so our income from that is down. We get some from the state from Dr. Gardner, I think is her name, who is in charge of sending them, but that is relatively small.

As a matter of fact, our expenses are around $360,000.00 in the year and we were close to $40,000.00 in the red and

A. Churchill Young, Jr.

WRVA put on this radio appeal at Christmastime which helped us, although we are still about $15,000.00 in the red for last year's operations, which has been made up out of our working capital.

page 329 } Q. Isn't there a direct appropriation from the State of Virginia to Crippled Children's Hospital?

A. Frankly I don't think so, Mr. Hunton, but I cannot say. I may not be right in that. I just did not come prepared to answer all questions of that nature.

Q. Did I understand you to say that there were no charges made to the patient for the services?

A. That's right.

Q. Do you all investigate as to whether they are able to pay or not?

A. No, sir. We take the children when they come. There is some investigation, I am quite certain, as to whether they need to come, but that is the extent that the hospital investigates.

Q. So even a child whose parents are able to pay, there is no charge made?

A. That's true, if such a child comes out there, there is no charge for any of the children.

Witness stood aside.

page 330 } Mr. Powell: At this time, Your Honor, in the light of the evidence in this case on behalf of the Richmond Memorial Hospital, I would like to state on the record that we feel that not only is this hospital entitled to the exemption under Section 183(e) of the constitution for all of the grounds we have argued to this court, but it now appears from the undisputed testimony that there has been a failure to comply with the statutes of Virginia with respect to equalization of assessment. I refer to Section 68-1145, which refers to one of the grounds of the proceeding with respect to which the litigant has the burden of proof, and that is to show whether or not the assessment was uniform in its application. If Your Honor please, it is perfectly manifest from the testimony in this case there can be no uniformity whatever in the application of this tax assessment and there has been no uniformity in the application of taxes on institutions within the category specified by Section 183 of the constitution.

I would like to put the city attorney on notice
page 331 } that while we have not had an opportunity since
the case commenced, we reserve the right to contend not only that the statutes have been violated in that respect, but also that our hospitals have been deprived of their property contrary to the constitution, both of Virginia and of the United States, with respect to the requirement of equality in the assessment of taxes. That is an entirely separate ground from the basic ground upon which we relied and upon which we still rely, and that is that we are entitled to full exemption under Section 183(e).

Mr. McGuire: Mr. Powell is entitled to argue any legal principle he thinks applicable, if he cares to do so. I would like to ask wherein lies the inequality. I assume he is referring to the failure of the city to assess Retreat for the Sick and Richmond Community Hospital. He may perhaps have other reasons.

Mr. Powell: That is only a part of it. It was very evident from the testimony of the city assessor that the exemption accorded by Section 183(e) of the constitution if applied in the most haphazard manner and without any factual investigation as to whether or not one institution
page 332 } is entitled to it and another may not be entitled.
I have no idea of the extent to which that applies on a city-wide basis.

I am not unsympathetic to the city assessor's problem and yet, from the standpoint of the taxpayer, it is perfectly manifest, we submit, there has been no uniformity in the application of that provision of the constitution.

Mr. McGuire: All I wanted at this point was to be sure I understood his position.

Mr. Hunton: In order that the record should be entirely clear, may it appear that this is for the Richmond Eye Hospital as well as for the Richmond Memorial Hospital?

Mr. McGuire: I understand. I believe this is the proper time for me to say—I think I have already indicated intention so to do—but I think now is the proper time for me to say I again tender and ask that the court admit in evidence as exhibits all of the documents which I tendered at the time of the hearing on the interrogatories in the two cases, except the newspaper articles. I have a copy of the order entered with reference to Richmond Memorial Hospital and the order
entered with reference to the Richmond Eye Hos-
page 333 } pital is identical as to this part. I think perhaps
I had better read from this order the list of docu-

ments which the court rejected at that time, so it may be clear just what I am now offering.

1. Certified copies of the interrogatories propounded by the City of Richmond and the answers thereto filed by the Richmond Eye Hospital in the case therein pending by Richmond Eye Hospital for correction of erroneous assessment of real estate taxes.

2. Typewritten copies of the Attorney General's opinions of January 14, 1951 and August 21, 1953 in connection, respectively, with Shenandoah County Memorial Hospital and Halifax County Hospital.

3. Letter of December 1, 1952 from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and of letter to John P. McGuire, Jr., Esq., of October 28, 1953.

4. Copies of the application and the order in the case of *Leigh Memorial Hospital, Inc.* v. *Norfolk;* and *Hospital of St. Vincent* v. *Norfolk;* and the case of *Halifax Community Hospital Association, Inc.* v. *Halifax County.*

page 334 } I may say that the application and order in the Halifax County case have already been placed in evidence by Mr. Hunton as Exhibits with Mr. Edmunds' testimony and at my request the transcript of the evidence in that case was also introduced.

Those are the documents, all of which are in that brown envelope with the papers in the case. I now renew my tender of those documents and ask that they be admitted as exhibits. My recollection of the court's position at that time, as evidenced by a note in the envelope clipped to the Richmond Eye Hospital interrogatories, was that the tender was premature. I now tender those again.

Mr. Hunton: If Your Honor please, in view of the fact that the record in the Halifax Hospital Case has already been introduced, it seems to me pertinent and I have no objection to the introduction of the application and the order in the Leigh Memorial Hospital case and the Norfolk case involving the Hospital of St. Vincent.

With reference to the letter from the State Tax Commissioner to Mr. A. G. Howell, Administrator of Louise Obici Memorial Hospital, and to Mr. McGuire, noted in Item 3, I submit they are not admissible in that they are
page 335 } letters written by Mr. Morrison, for whom I have the highest regard, but he is State Tax Commissioner and has no jurisdiction in connection with the assess-

ment of real estate taxes, which is the question here under consideration.

The letters of the Attorney General of January 14, 1951 and August 21, 1953 again involve the same proposition. The Attorney General has no jurisdiction of local taxes whatsoever and in addition to that, the evidence in relation to Shenandoah Hospital, according to my recollection, is not in accord with the facts in this case, whereas in the case of the Halifax County Hospital, the court has already decided the question there and, as we have shown, the hospital has not been subject to further taxation.

As to the interrogatories in the case pending in the Chancery Court of the City of Richmond brought by the Richmond Eye Hospital, I have no objection to their admission for what they may be worth.

Mr. Powell: I would like to state the position of the Memorial Hospital. As to the interrogatories, I have not examined them but I assume they are not being introduced insofar as the Richmond Memorial Hospital is

page 336 } concerned.

Mr. McGuire: No, sir.

Mr. Powell: I concur in what Mr. Hunton said on Mr. McGuire's points 2 and 3. Opinions of the Attorney General may be used by attorneys in briefs or arguments, but they are not proper as evidence in a case, certainly in a case such as this where the opinion concerning the Shenandoah Hospital, we are informed, involved an entirely different set of facts and there is no evidence to show any similarity to this case. The same situation pertains with respect to the tax commissioner's letters and we object to the introduction of them.

I would have no objection to the filing of the certified copy of the order of the court in the Norfolk case. Were you proposing to introduce the record in the Norfolk case?

Mr. McGuire: No, sir. I was not able to obtain the record.

Mr. Powell: I would have no objection to the filing of the application and order. I have never seen the record in that case.

Mr. McGuire: Naturally the only use I intend to make of the opinions of the Attorney General and of

page 337 } the State Tax Commissioner is as authority. I believe they should be in evidence and I think it is entirely proper for them to be in evidence as administrative construction by these officers. I will read the letter I wrote on the subject last spring to Mr. Hunton.

(Reading)

"I think the opinions of the Attorney General are relevant and admissible, since Section 2-86 of the Code of Virginia requires him generally to issue opinions when requested to do so by Commissioners of the Revenue, and we know it is his practice to advise Commissioners of the Revenue with reference to all tax matters both state and local. Further, Section 183 of the constitution and Section 58-12 of the code exempt endowment funds as well as real estate, and although real estate has now been segregated for local taxation the state still taxes intangible personal property.

"I think the same considerations apply to the rulings of the State Tax Commissioner who by Section 58-33 is required to supervise the administration of the tax laws page 338 } and to supervise Commissioner of the Revenue in regard to state taxes. In addition to *Great Atlantic and Pacific Tea Company* v. *City of Richmond,* 183 Va. 931, and *Prentice Poultry Plant* v. *City of Richmond,* 197 Va. 724, the court held or implied that the administrative rulings of the State Tax Commissioner, while not binding on the City of Richmond in city license tax matters, were relevant in cases involving city license taxes. Also, in *Richmond Food Stores* v. *Richmond,* 177 Va. 592, the court over the objection of counsel for the city, permitted a letter from Mr. Morrissett to counsel to the taxpayer to be used in argument, and quoted it in the opinion, on the ground that while the letter had not been proven in evidence Mr. Morrissett was a recognized tax expert and the court would take notice of his views as it would of the views of any text writer. These cases, as you know, were all license tax cases but I think they are applicable to the property tax cases we are now engaged in."

page 339 } For those reasons, I think it is entirely proper for the Attorney General's opinions and the State Tax Commissioner's ruling to be in evidence and, therefore, I ask that they be admitted.

The Court: Mr. McGuire, the letters from the Attorney General are not certified as true copies of his opinion and the one concerning the Shenandoah Memorial Hospital likewise is not certified as a copy of the original.

Mr. Hunton: We make no point of the absence of certification, if Your Honor please.

Mr. McGuire: Thank you.

The Court: I am of the opinion that counsel can refer to these letters in his brief but certainly I do not think they should be received in evidence. Now there is no objection to the Hospital of St. Vincent and the Leigh Memorial Hos-

pital papers or the Chancery Court papers, so the court will admit those.

Mr. McGuire: I note an exception as to the ruling of the court on the Attorney General's opinion and the State Tax Commissioner's opinion.

The Court: I think you can use those in your
page 340 } argument but I do not think they should be in the record.

Note: The documents referred to were marked as Exhibits and filed as follows:

City Exhibit No. 4 certified copies of interrogatories and answers to interrogatories, Richmond Eye Hospital.

City Exhibit No. 5 decree of Corporation Court, City of Norfolk, case of *Hospital of St. Vincent of Paul* v. *Norfolk.*

City Exhibit No. 6 decree of Corporation Court, City of Norfolk, in the matter of the petition of Leigh Memorial Hospital.

Mr. Hunton: May it please the court, in view of the introduction of the records in those other cases, I ask leave of court at this time to introduce this certified or attested copy of an order with respect to the Raiford Memorial Hospital in Southampton County, and of a letter from the Commissioner of Revenue to Mr. Frazier dated yesterday advising that that hospital has not subsequent to that date been assessed for taxation by the county.

I am putting these in at this time in order that they might follow along with Mr. McGuire's.

page 341 } I also offer an attested copy of a resolution adopted by the Board of Supervisors of Nansemond County on October 1, 1953, to the effect that in the opinion of the Board the Louise Obici Memorial Hospital is actually and exclusively occupied and used by said hospital, which is conducted not for profit but exclusively as a charity, and such property is exempt from taxation. The resolution also directs the Commissioner of Revenue and the Treasurer of Nansemond County to treat such property as exempt from local taxation and that they should carry the said property in their records as exempted property.

There is attached to this copy of resolution a letter addressed to my attention on April 12, 1958 from the Commissioner of Revenue of Nansemond County to the following effect:

"The Nansemond County Board of Supervisors ruled that the Louise Obici Memorial Hospital was tax exempt and

would continue to be exempt as long as it was operated under the same conditions as in 1953. There has been no assessment made against the hospital since 1953."

Mr. McGuire: I think I should state to the
page 342 } court in the record that the city's position is that no action of that sort by the Board of Supervisors of Nansemond County can have any legal effect.

Mr. Hunton: I have requested a similar certificate of the Commissioner of Revenue for the City of Norfolk with respect to the subsequent taxation of the Leigh Memorial Hospital and the Hospital of St. Vincent de Paul. It has not arrived. I would like to reserve the right to put it in when it has been received.

Mr. McGuire: I assume you mean a letter saying since the decision in those cases they have not been assessed?

Mr. Hunton: That is my understanding.

Mr. McGuire: All right.

Note: The documents offered by Mr. Hunton were marked as exhibits and filed, as follows:

Petitioners' Exhibit No. 1: Copy of resolution of Board of Supervisors of Nansemond County October 1, 1953, and a letter of April 12, 1958 from Willie H. Rountree, Commissioner of Revenue of Nansemond County, to Eppa Hunton, IV.

Petitioners' Exhibit No. 2: Letter dated Jan-
page 343 } uary 21, 1959, from Franklin Edwards, Commissioner of Revenue of Southampton County, to Harry Frazier, III, relating to assessment of Raiford Memorial Hospital.

Petitioners' Exhibit No. 3: Copy of letter of November 2, 1948, from Franklin Edwards, Commissioner of Revenue of Southampton County, to Judge John K. Hutton, and an order of November 5, 1948, correcting erroneous assessment of taxes on Raiford Memorial Hospital.

Petitioners' Exhibit No. 4: Letter dated January 22, 1959, from W. R. Moore, Commissioner of Revenue of Norfolk, Virginia, to Harry Frazier, III, relating to assessment for taxation of Leigh Memorial Hospital, Norfolk General Hospital and de Paul Hospital.

EVELYN HEATH,

a witness called by the City of Richmond, after being duly sworn, testified as follows:

Evelyn Heath.

DIRECT EXAMINATION.

By Mr. McGuire:

Q. Miss Heath, would you please give your
page 344 } name and residence?

A. Evelyn Heath, 1008 East Clay Street, Richmond, Virginia.

Q. What is your occupation?

A. I am Administrator of Sheltering Arms Hospital.

Q. Miss Heath, do you know what sort of corporation operates that hospital?

A. Non-profit corporation.

Q. What is the capacity of the hospital?

A. We have 72 adult beds and 7 children's beds.

Q. Is that hospital in the City of Richmond?

A. Yes, sir.

Q. What sort of patients do you admit to Sheltering Arms Hospital?

A. Medically indigent patients. They are all free patients.

Q. Do you receive some monies from the City of Richmond for taking certain city patients for which the city is responsible?

A. We receive some monies from the state and from various counties. We have contracts with about 30 counties in Virginia and also the City of Richmond, the SLH contracts, but they are very few cases.

Q. What proportion of your cases would you say are city contract patients?

page 345 } A. For instance last year we received $79.00 from the City of Richmond. That was the last fiscal year. From the counties we received $2,574.08.

Q. Do you know how many patients that represented?

A. No, sir.

Q. What is your regular source of income?

A. Essentially the same as Crippled Children's Hospital. We have an endowment fund which has been built up over the years through bequests and legacies. Part of our income is derived from that and from Donation Day.

Q. Does Sheltering Arms Hospital make any charges at all to the patients themselves?

A. No, sir.

Q. What physicians constitute the staff of Sheltering Arms Hospital? I don't mean to name them, but generally who are they?

A. All the recognized and reputable physicians in Richmond are on our staff.

Q. Do they charge for their services at Sheltering Arms Hospital?

A. They do not.

Q. Have you any literature, any pamphlets or circulars or brochures you use to give the facts about Sheltering Arms Hospital?

A. Yes.

page 346 } Mr. McGuire: If other counsel have no objection, I would like to offer these in evidence as exhibits.

Note: The pamphlets offered by Mr. McGuire were marked as exhibits and filed, as follows:

Heath Exhibit No. 1: Booklet entitled "Sheltering Arms Hospital, 1008 East Clay Street, Richmond, Virginia."

Heath Exhibit No. 2: Booklet entitled "Dreams Do Come True."

CROSS EXAMINATION.

By Mr. Hunton:

Q. Miss Heath, I think you said that you receive payment for city patients under this SLH program?

A. Yes, we do.

Q. And approximately how much was that last year?

A. $79.00.

Q. What percentage of the beds was occupied last year?

A. 63%.

Q. So that you have facilities available for more patients than you are taking care of?

A. We did last year, yes.

page 347 } Q. Hasn't that been true for a good many years?

A. Yes, it has been. I have been at Sheltering Arms for going on five years and it has been about that way ever since I have been there.

Q. You also receive help toward your operation in services other than those of the physicians, do you not?

A. Yes, we do.

Q. As a matter of fact, aren't some of your tonsil and adenoid cases, aren't they taken care of by the Richmond

Eye Hospital?

A. Yes, they have been. We have not been able to get them on our schedule.

Q. And no charge is made by Richmond Eye Hospital?

A. No, sir.

Q. And a great deal of your laboratory work is taken care of at the Medical College of Virginia?

A. They give us a reduction in what the laboratory costs are.

Q. For a great many years it was done without charge, was it not?

A. I don't know. We have paid since I have been at the hospital.

Q. How much is that reduction?

A. 50%.

page 348 } Q. Do you make an investigation as to a patient's ability to pay before a patient is admitted?

A. Yes, we do. All of our patients are admitted by application. There is financial data on the application, the doctor has to sign the application saying he thinks the patient is a candidate for Sheltering Arms, they have to list the number in the family and the salaries, and we have an application's committee on our board which goes over these applications and decides who is acceptable and who is not.

Q. Do you take any part pay patients?

A. No, sir.

Witness stood aside.

DR. GUY W. HORSLEY,

a witness called by the City of Richmond, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McGuire:

Q. Doctor, please give your name and resi-
page 349 } dence.

A. Guy W. Horsley, Three Chopt Road, Richmond, Virginia.

Q. What is your occupation or profession?

A. Surgeon.

Q. You are connected, I think, with St. Elizabeth's Hospital?

Dr. Guy W. Horsley.

A. Yes.
Q. That is a private hospital, is it not?
A. Yes.
Q. Operated by a private stock corporation?
A. Operated by a corporation, yes.
Q. Is the corporation or the stock in the corporation owned wholly or jointly by the staff of the hospital?
A. Yes.

Mr. Hunton: I object. I don't know what the relevancy can possibly be of the ownership of the stock of the corporation.
Mr. McGuire: I wanted to show this was a private hospital and I wanted to show the purpose for which it was organized.
Mr. Hunton: We admit St. Elizabeth's is a private hospital operated by a corporation, organized for profit.
The Court: I see no objection to it.

page 350 } A. All except one person, who owns stock, and that is a widow of an ex-staff member.

By Mr. McGuire:
Q. What is your connection with the hospital?
A. President of the corporation.
Q. And you are one of the stockholders?
A. One of the stockholders.
Q. Would you briefly describe the organization of the medical and surgical staff of the hospital?

Mr. Hunton: Your Honor please, I don't see the relevancy of the organization of the medical and surgical staff of this private hospital and I object on that ground.
Mr. McGuire: The chief purpose of calling Dr. Horsley is what I have stated. I want Dr. Horsley to tell the court what is the primary purpose of the establishment and operation of such a hospital as St. Elizabeth's. That is the purpose of this examination and I think it is entirely relevant.
The Court: I think it is, Mr. McGuire. I will let him answer the question.
Mr. Hunton: Note an exception.

A. Well, St. Elizabeth's Hospital was founded
page 351 } in 1912 by my father. At that time there were very few available hospital beds, so I am told, and three hospitals were built within a year of each other.

Dr. Guy W. Horsley.

By Mr. McGuire:

Q. What hospitals were they?

A. Grace, Stuart Circle and St. Elizabeth's.

Q. All right. Go ahead.

A. They were built, according to my understanding, because those doctors had no place to send their patients and it was built as a facility for their patients.

Q. Is it operated for the same purpose today?

A. Still is operated for the same purpose.

Mr. Powell: Your Honor please, I would like to ask the attorney for the city to state the purpose of adducing evidence with respect to privately owned stock hospitals here in Richmond. We know he has subpoenaed other doctors and I would like to know what the purpose or relevancy of evidence as to the stock hospitals may be in this litigation, sir.

The Court: Mr. Powell, I think Mr. McGuire will attempt to show by this witness the type of hospital being operated and that they also do a certain amount of charity work, even though it is a stock corporation. That is what I am surmising at this moment. I have allowed counsel on both sides a good deal of latitude in the case because of the page 352 } nature of the case as a whole. I think you may have some grounds for objection later, but I see no objection to the question at the moment.

Mr. Powell: The reason I would like to make myself clear is I foresee that if Mr. McGuire puts on the heads of the fine stock hospitals we have in Richmond it is going to be necessary for Mr. Haw and Mr. Hunton and me, in the presentation of our cases, to probe very fully into the manner in which they operate. Aside from the fact that is going to be an inconvenience and embarrassment to these gentlemen to have to disclose the operating facts and figures of private hospitals, it will take a lot of time of the court and I submit it is not relevant to a case involving Section 183(e) of the constitution.

The Court of Appeals held in the Danville Hospital case, where a tort litigation was involved and the hospital tried to contend it was entitled to charitable status for tort purposes because it accepted some charity patients, as all hospitals do, Your Honor, yet the Court of Appeals held that since it had elected to do business through the form of a private stock corporation, that was the complete page 353 } answer. It was immaterial and unnecessary to examine into anything else. The non-stock pro-

visions are available to all; the profit provisions of the code are available for all. I think it is fair for the city attorney to bring in any and all of the non-stock hospitals in the State of Virginia but if we are going to start examining the private hospitals, I can see no end to where we will go.

The Court: I can assure you I am not going to let counsel go into the operation of a private corporation except in a general way, and I am going to restrict his questions as to the percentage of charity patients they treat and the approximate percentage of services given free, and he can go no further.

Mr. Powell: I want to be fair to Dr. Horsley and these other doctors. If they go into testimony about their charity patients, I expect to call on them to produce the same records and details we showed for Retreat for the Sick,—total income, total expenses, what percentage is charity and in what category. I don't want to go into that, but if it is relevant to the case, of course, we have to do it. Yet it is not fair for the hospitals before this court for some
page 354 } generalizations to be put in the record unless we can prove the true facts and circumstances, and for that reason we object to any testimony from these private hospitals for that reason, if the purpose of introducing it is as the city attorney has stated.

Mr. McGuire: I don't propose to ask Dr. Horsley or any of the other gentlemen about their charity patients. I had just about asked Dr. Horsley all I was going to ask him. I want to show the purpose for which these hospitals are established and maintained. Of course, I don't mind telling Mr. Powell that I expect to argue that the Richmond Memorial Hospital and Richmond Eye Hospital were organized and are operated for precisely the same purpose, that is, to furnish a medical facility where the patients of the staff doctors may be attended and treated.

The Court: I am not going to permit you to go into the financial question.

Mr. McGuire: I have no intention of asking that.

The Court: Very well.

Mr. McGuire: I think Dr. Horsley has now answered all of the questions I wanted to ask him.

page 355 } Mr. Hunton: You say you are not going to permit us to ask any questions in regard to the financial operations of the hospital?

The Court: Not in detail. I don't think it is necessary

in this case. Mr. McGuire has not raised any question that makes it necessary.

Mr. Haw: I move that the evidence of Dr. Horsley be stricken.

The Court: One second. I want to find out which counsel is going to represent the Richmond Memorial Hospital.

Mr. Haw: Either one of us.

The Court: I think one of you should make the motion or the objection.

Mr. Hunton: I move that the evidence be stricken as being irrelevant, immaterial and having no bearing on this case.

Mr. McGuire: I think I have said all I have to say. I have stated the purpose of it.

CROSS EXAMINATION.

By Mr. Hunton:

Q. Dr. Horsley, in the operation of St. Elizabeth's Hospital, do you endeavor to make a profit?

A. We have never paid any dividends. We page 356 } don't try. We try to keep it—

Q. I asked you if you endeavor to make a profit.

A. We try to keep it in the black, yes.

Q. And when you do make a profit, what is done with the profits?

A. It is used for improvements to our building.

Mr. Hunton: I have no further questions, in view of Your Honor's ruling.

Mr. Powell: If Your Honor please, I am not sure I understood what, if anything, Dr. Horsley has put on this record as to his operations. I don't think there is anything, but I would like to have the reporter read it back.

Note: All of the testimony of Dr. Horsley was read by the reporter.

Witness stood aside.

Note: There followed a recess.

page 357 } Mr. Powell: If Your Honor please, just for the record and so we will not have to interrupt, I renew the objection we made yesterday to testimony from

private stock corporations and I say again, Your Honor, it is hard to know where to draw the line when we get into this. If we open it up I don't know how far it is necessary for us to go, and I don't see that the testimony is relevant in any respect.

Mr. McGuire: I am going to ask Dr. Johns almost exactly what I asked Dr. Horsley.

Mr. Powell: I object to it.

Mr. Hunton: We note the same objection.

The Court: I will overrule the objection. I think as far as he went is all right.

DR. FRANK S. JOHNS,

a witness called by the City of Richmond, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McGuire:

Q. Please state your full name for the record.

A. Frank S. Johns.

page 358 } Q. Where do you live, Dr. Johns?

A. Richmond.

Q. What is your profession?

A. Surgeon.

Q. Are you connected with Johnston-Willis Hospital?

A. I am, sir.

Q. In what capacity?

A. Well, I am Surgeon-in-Chief and President of the Corporation.

Q. Are you also a stockholder in the corporation?

A. I am, sir.

Q. Is Johnston-Willis operated by a private stock corporation?

A. Yes.

Q. Is the stock wholly or largely owned by the physicians and surgeons on the staff of the hospital?

A. Well, not wholly. We have many widows that have sentimental reasons for keeping their stock.

Q. Let me ask you, when was the Johnston-Willis Hospital founded?

A. 1909.

Q. By whom?

Dr. Frank S. Johns.

A. Dr. John B. Johns, Dr. Christopher Tompkins and Dr. Bob Willis.

page 359 } Q. And the present hospital on Kensington Avenue, is that the same?

A. Yes, it is.

Q. Tell the Court for what purpose the hospital was established and for what purpose it is now being operated?

A. The hospital was established for the purpose of taking care of sick people.

Q. What sick people?

A. Well, the patients of the doctors that founded the hospital, primarily, but not necessarily.

Q. For what purpose is it now being operated?

A. For the same purpose—sick patients.

Q. Does that mean the patients of the doctors on the staff?

A. Doctors on the staff and doctors on other staffs also come into the hospital.

Q. Doctors who have the privilege of practicing at that hospital?

A. That's right, the privilege of practicing there.

CROSS EXAMINATION.

By Mr. Hunton:

page 360 } Q. Dr. Johns, you said the hospital was organized in 1909?

A. 1909.

Mr. Hunton: If Your Honor please, in my cross examination it should be understood we do not waive our objection to the testimony of this witness.

By Mr. Hunton:

Q. You say it was organized in 1909. Was it incorporated at that time?

A. I am not sure. That was before my time but I am sure it was, Mr. Hunton.

Q. Did I understand you to say Dr. McGraw Tompkins or Dr. Christopher Tompkins?

A. Dr. Christopher Tompkins.

Q. Dr. McGraw Tompkins' father?

A. That's right.

Q. It has been a stock corporation at all times, has it not?

Dr. Frank S. Johns.

A. It has.

Q. Now you said that some of the stock was owned by widows of staff doctors?

A. That's right.

Q. Who hold it for sentimental reasons?

A. That's right.

Q. Doesn't it pay dividends?

page 361 } A. Well, if the hospital is run, we hope, on an economical basis, they earn dividends and pay dividends, but I think if we would consider what amount has been put into it—it would be hard to answer that question. I will say this. There is no poorer investment than a hospital, unless it is two hospitals, and I advise all widows to get rid of it.

Q. You are President of the corporation?

A. Yes.

Q. What percentage dividend does it pay?

A. 5%.

Q. What is the par value of the stock?

A. $100.00.

Q. What is the capitalization of the corporation?

A. I don't really know.

Q. Do you know how many shares of stock there are issued and outstanding?

A. I think there are nine hundred and some.

Q. What is the funded debt?

A. There is no debt on the hospital now. We have added to it and paid off the debt. I might say we put money back in the hospital from time to time. In the last eight or nine years we have spent $250,000.00 and of course that money was put up by the staff.

Q. You say it was put up by the staff?

A. Yes, sir.

page 362 } Q. How was it put up by the staff?

A. Well, we borrowed the money and paid it back.

Q. So it is borrowed from the staff and paid back to the persons from whom it was borrowed?

A. Borrowed from the banks and paid back.

Q. So it is money supplied by the banks to the corporation?

A. That's right.

Q. And not by the individual doctors on the staff?

A. Well, it has been put up by individual doctors from time to time.

Dr. Frank S. Johns.

Q. I am talking about this $250,000.00.
A. Some of that was put up by members of the staff, too.
Q. How much was put up by the banks?
A. I don't recall exactly.
Q. Did you put up some yourself?
A. Yes, sir, I did.
Q. And how much of it, sir?
A. I don't recall how much. I put up money from time to time.
Q. I am talking about the $250,000.00 you referred to.
A. I don't recall how much I put up.
page 363 } Q. Has it been paid back?
A. Yes, sir.
Q. With interest?
A. Yes, sir, with interest.
Q. You say there is no funded debt of the corporation at the present time?
A. Not at the present time.
Q. How many beds are there in the hospital?
A. Well, we added 75 beds. We had 250, but we have taken some space to add additional bathrooms and various things. I am not sure—maybe 240 beds. I am not sure of the exact number right now.
Q. Do you happen to know the number of stockholders of the corporation?
A. No, I haven't the slightest idea.
Q. Do you have a stock list available?
A. I have it in my office.

Mr. Hunton: I would like to ask for a list of the stockholders showing which are members of the staff. I don't care for the individual names but I would like to have a list of the stockholders showing who among the stockholders are members of the staff and who are individuals, not members of the staff.
page 364 } The Court: What bearing has this on the case?
Mr. Hunton: I submit it has no bearing on the case, but I feel in view of the examination of this witness by the city that the information is material and what we are trying to do is show this is an ordinary business corporation, as distinguished from a non-profit corporation.
Mr. McGuire: The city attorney will certainly admit that. It is organized as a private stock business corporation.
Mr. Hunton: Then I submit the evidence ought not to have been admitted in the first place.

Dr. Frank S. Johns.

Mr. McGuire: I have stated the purpose of the testimony and I understand the court has ruled the evidence is admissible.

Mr. Hunton: Your Honor will recall that the list of staff membrs of Retreat for the Sick was put in evidence by the city, and if it is pertinent there it is certainly pertinent here. As I understand the position of the city, they are trying to show this is a facility for the staff of the hospital, in which to work. What I am trying to show here is this is an ordinary business corporation, the stock of which is owned by the page 365 } members of the staff and by persons outside of the staff as well.

Mr. McGuire: I concede that. Dr. Johns has said some of the stock was owned by the widows. I don't have the least objection to the information being in the record. The only thing that concerns me is the inconvenience to Dr. Johns.

The Court: I think it is a private matter, a private institution.

Mr. Hunton: I concur. But I must say that in view of the ruling as to the evidence in chief, I think this is pertinent.

Mr. McGuire: I concede what Mr. Hunton wishes to prove.

By Mr. Hunton:

Q. Do you know whether there have been any sales or transfers of the stock in the last three or four or five years?

A. Oh yes, there have been sales of the stock in the last four or five years.

Q. What is the most recent one of which you have knowledge?

A. I think Dr. VanderHoof's stock.

Q. Do you know at what price it was sold and by whom it was bought?

page 366 } The Court: Mr. Hunton, I don't think it is necessary to pursue this any further. It has been conceded it is a private corporation, a stock corporation. That has been conceded by the city attorney.

Mr. Powell: Your Honor, I would like these doctors to understand this as well as the court. I know it is an inconvenience and embarrassment for them, but these non-profit hospitals did not bring these doctors here. We think they have no business to bring them in. The city attorney has not yet stated why he brought them here.

Mr. McGuire: I have done it several times. My purpose is to prove by this witness and these other witnesses that these

hospitals are established and operated not as investments but as facilities in which the doctors of the staff may practice their profession and in which they may have their patients cared for. That is what I desire to prove and I stated yesterday I intend to argue that the Richmond Memorial Hospital and the Richmond Eye Hospital are established and operated for precisely the same purpose. I have stated that more than once before.

page 367 } Mr. Powell: I think that is utterly irrelevant, but in view of the city attorney's statement that is his intention, I think we have to ask these gentlemen to disclose how they operate the private hospitals. We don't want to do it. It is embarrassing to them and to us. It has nothing to do with the case, but under those circumstances we have no choice.

Mr. McGuire: I have conceded the principle they seek to establish. I do not concede that the details of the operation are relevant.

The Court: I am not going to permit the questions to go to the operation of the private hospitals.

Mr. Hunton: What I am asking Dr. Johns right now is in response to a statement of counsel for the city, in which he states he is attempting to show these are not operated as investments but as facilities, and what I am addressing myself to is to show they are investments, and I think that is a fair matter for cross examination.

page 368 } Mr. Haw: Mr. McGuire has stated his sole purpose is to show this hospital, Dr. Johns' hospital and the other private hospitals, are operated solely for the benefit of the staff as a business proposition, to take care of their patients. He said that is the purpose. He suggests that is his reason and states that his purpose in attempting to prove that is because the Richmond Eye Hospital and the Richmond Memorial Hospital are operated on the same basis. Now that very admission on his part, of the purpose of the formation of those hospitals and how they are operated, would certainly exclude Dr. Johns' testimony and Dr. Horsley's testimony from this case, because the evidence in the case, which is undisputed, is that the Richmond Eye Hospital was formed not for any such purpose but formed pursuant to the will of Mrs. Beveridge and with money donated by Mr. Add Williams and with public funds donated, including the assistance of the Medical College of Virginia, for one purpose—namely, to form a non-profit hospital

operated not for the benefit of the staff but for the benefit of the public.

In addition to that, the Richmond Memorial Hospital was established by the generous gifts and donations of the public at large and other individuals who gave large sums for a like purpose as the Richmond Eye Hospital.

Therefore, the evidence he is seeking to introduce from these gentlemen has no relevancy and therefore I
page 369 } move that the evidence of Dr. Horsley and Dr. Johns be excluded.

The Court: I have overruled that already. I have already ruled on it.

Mr. McGuire: What the evidence means, of course, is a matter for argument. I have certainly said what I intend to argue from the evidence.

The Court: I have overruled the motion because I am not going to allow counsel to go into the internal operations of the private hspitals.

Mr. Hunton: Note an exception. Your Honor, I would like to have the evidence introduced for the purpose of the record. I don't know how I can otherwise address myself to this proposition. The city attorney has said he is trying to show they are not investments but facilities.

By Mr. Hunton:

Q. Dr. Johns, you said you were President of the Johnston-Willis Hospital Corporation?

A. Yes, sir.

Q. What salary, if any, do you receive as President?

A. Salary?

Q. Salary.

A. My God, none!

page 370 } Q. Do you have an office there?

A. I do.

Q. Who are the other officers of the corporation?

A. Well, Dr. Hutcheson is Vice President and Dr. Talley is Secretary.

Q. Do they have offices at the hospital?

A. No, sir.

Q. Now they are the only other officers, are they?

A. I think that's right.

Q. Is the staff of the hospital an open or closed staff?

A. Well, I would say it is an open staff.

Q. What are the requirements, if any, for practice there?

A. Well, I don't know. Shall I go into that, Your Honor?

I will have to bring them down here. I can't say what the requirements are, they are so rigid.

Q. Are they in typed or written form?

A. I think so.

Q. Would you be good enough to let us have a copy to be filed with your evidence, please, sir?

A. If the court so orders, I will.

The Court: I don't see what bearing this has on this particular case.

page 371 } Mr. Hunton: I am trying to show, if Your Honor please, it is not a similar situation at all to the Richmond Memorial Hospital or the Richmond Eye Hospital. They are open staff hospitals and the doctor has just stated the staff of this hospital—the requirements are so rigid and so strict he doesn't feel he could even state what the requirements are for admission to the staff, although he says it is an open staff hospital.

Mr. McGuire: If Your Honor please, I think this has gone far enough.

A. I might say, Your Honor, the regulations are not set up by Johnston-Willis. They are set up by an organization we belong to so we will be qualified for teaching students. It is not set up by me.

By Mr. Hunton:

Q. But they are adopted by your hospital?

A. They have to be approved or we will not be approved.

Q. They are adopted by your Board of Directors?

A. We have to approve them.

Q. What was the percentage of occupancy of the hospital during the past year? Do you know approximately?

A. No, I do not.

Q. Do you know what it was during 1957?

page 372 } A. No, I do not, not accurately. I imagine it would be between 7,500 and 8,000 patients. I don't really know.

Q. What was the average length of stay of the patient?

A. Too long. Nine days, I think, or thereabouts.

Q. But you don't know the percentage of bed occupancy, even approximately?

A. No, I don't.

Q. Do you have an emergency room?

A. We do.

Dr. Frank S. Johns.

Q. And how many patients did you have there?
A. I haven't the slightest idea. It was in the thousands.
Q. Thousands?
A. Yes, sir.
Q. You have your books audited annually, do you not?
A. Oh, yes.
Q. Has the audit for 1958 been completed as yet?
A. No, sir.
Q. I assume the audit for 1957 has been completed, has it not?
A. Yes, sir.

The Court: Mr. Hunton, I don't think your
page 373 } line of questioning is at all pertinent to this case.

Mr. Hunton: I was going to ask him if he would file the five latest annual statements that are available and my purpose is to show that it is an investment. I don't know of anything in the world that is more essential to the question of whether a property is an investment than a statement of its assets and liabilities and returns. That is the best "rock" on which any man bases his determination of whether a thing is an investment or not, and that is the thing that the city is undertaking to show this is not. I am trying to show it is, and how in the world can I possibly do it without figures?

Mr. McGuire: If the court please, it is in the evidence and the city attorney has freely admitted that this hospital is operated by a stock corporation which endeavors to pay dividends. Dr. Johns has said that it paid a dividend one year—last year, I believe he said. There is none of this information which Mr. Hunton is asking for which I feel unfavorably affects the city's legal position, but I do think it my duty to protect these witnesses I have called by stating that I do not
think this is proper cross examination or relevant
page 374 } to the case or related at all to the direct examination. I am going to ask that the court not require Dr. Johns to produce this information.

The Court: I am not going to require it.

Mr. Hunton: May I at least get it in for the record?

The Court: I don't think it is necessary.

Mr. Hunton: You mean Your Honor will not permit us to make the record?

The Court: I will see counsel in chambers.

Note: There followed an off the record discussion between

the court and counsel in chambers, following which this stipulation was dictated into the record.

Mr. Hunton: It is stipulated by and between the two petitioners and the city, by their respective counsel, that the stock of the Johnston-Willis Hospital corporation is to be considered as an investment with respect to its stockholders and that the staff of the hospital is a closed staff, limited to those who may be admitted by action of its Board of Directors and Officers.

Mr. McGuire: As counsel for the city, I will make that stipulation with reference to Johnston-Willis Hospital and with reference to St. Elizabeth's Hospital; also with reference to St. Luke's, Stuart Circle and Grace Hospital, provided it is understood that I may argue that the primary purpose of the establishment and operation of those hospitals was and is to provide a facility by the stockholding physicians who organized the hospitals or who may now own stock in them.

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Mr. Powell: I would like to say this. My understanding of the stipulation with respect to the character of the staff of these hospitals is this:

That it is agreed by the city attorney that the private hospitals named by him have closed staffs as contrasted with the open staffs of the two hospitals involved in this litigation, the closed staffs of the private hospitals being controlled by the doctor-stockholders who are also the officers and directors of the private hospitals.

Mr. McGuire: I will agree to that with the understanding that I may refer in argument to what the evidence has already revealed about how doctors are admitted to membership in the staffs of the Richmond Memorial Hospital and the Richmond Eye Hospital.

Mr. Powell: I would agree to that but I would not agree to your considering Dr. Johns' testimony as being contrary to our stipulation.

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Mr. McGuire: I think that is reasonable and I understand Mr. Powell's position and accept it.

Mr. Powell: In other words, the stipulation controls and supersedes everything Dr. Johns has said on the subject of the stipulation?

Mr. McGuire: That is true, where there is any inconsistency.

Note: The following occurred in open court.

Dr. Frederick Clark.

Mr. McGuire: With the permission of the court, counsel has been able to agree and stipulate in the record certain facts in reference to the private hospitals of the city which will make it unnecessary to require further testimony from Dr. Johns and will make it unnecessary for me to require Dr. Brown, Dr. Herring, and Dr. Williams to take the stand, so I will ask the court to excuse these gentlemen.

The Court: It will not be necessary to ask Dr. Johns to furnish the information.

Mr. Hunton: That is correct, sir, and entirely agreeable to us.

Witness stood aside.

page 377 } Note: There followed a recess.

DR. FREDERICK CLARK,

a witness called by the City of Richmond, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McGuire:

Q. Will you give your name, please?

A. Frederick Clark.

Q. You are a medical doctor?

A. Yes, sir.

Q. What is your connection with the City of Richmond?

A. Director of the City Health Department and have been since August 1958.

Q. My purpose in calling you as witness, Dr. Clark, is to ask you the number of indigent patients or medically indigent patients, or whatever is the term for it, the city is responsible for and who are cared for under contracts with various hospitals. My purpose was to ask you how many such patients were cared for under those contracts during some recent year. If you have the year 1958, I will ask you for that.

page 378 } Mr. Hunton: I object. It is utterly irrelevant how many indigent patients the city has.

The Court: What bearing does this have?

Mr. McGuire: I have gathered from the evidence on behalf of the Richmond Eye Hospital and the Richmond Memorial Hospital that their counsel contends there is no particular demand for free service at those hospitals and I simply wanted

Dr. Frederick Clark.

to show there were this many indigent patients who needed medical attention and could not pay for it themselves.

The Court: That would not necessarily mean they needed hospitalization.

Mr. McGuire: These people needed hospitalization and the people got it and the city paid for it.

The Court: I don't think the evidence is relevant.

Mr. McGuire: May I put it in the record?

Mr. Hunton: It will be understood our objection goes to this entire line.

Mr. Haw: I might suggest also the evidence shows that Sheltering Arms was only 63% occupied and that page 379 } would further indicate this is not relevant.

The Court: I have ruled on it.

By Mr. McGuire:

Q. You may proceed.

A. I might preface what I am about to say with this statement. Through the fiscal year 1957-'58 we were receiving applications largely from only those individual residents of the city who were public assistance recipients, and we are doing the same thing at the present time. We call them indigent, as opposed to the medically indigent. They can supply their own shelter and clothes, but not medical care.

In 1957-'58, the city authorized 1,077 patients, 964 of which were Social Service Bureau recipients. That amounted to almost 12,000 hospital days, almost all of these at the Medical College of Virginia. The City of Richmond has SOH contracts only with Medical College of Virginia and Sheltering Arms.

Because of our policy, restricted to Social Service Bureau recipients, the vast bulk of the city's roughly $302,000.00 spent last year for indigent hospitalization went to the Medical College of Virginia.

I might add that we turned down requests made to us for payment, almost all of which came from the page 380 } Medical College of Virginia, a total of 469 patients, 334 of which were turned down because of lack of city budget money. One thirty-five of the 469 were rejected for reasons not connected with money—out of city residents, enough family income, and so forth. But 334 of these fell into the category, on investigation, of not being able to pay. They were not able to pay their hospital bill but the city did not reimburse the hospital at all.

Q. How does the patient qualify for care?

Dr. Frederick Clark.

A. At the present time the vast bulk of our patients are qualified because they are certified and active public assistance recipients and they have been investigated, their family investigated and property investigated, and have been determined unable to supply their own food, clothing and shelter.

Q. Are they the only people that the city accepts under these contracts?

A. Since March of last year that is correct. We have accepted four medically indigent patients in this year. Two TB patients were sent to Charlottesville University Hospital.

When our budget monies permit we have a criterion set up for constant investigation in each individual case as to the individual's acceptability for city authorization. This includes property investigation, relative investi-
page 381 } gation, investigation of family income, total number of individuals being support, legal debts, length of hospitalization, extent of medical care needed, and so on.

Q. What is the paper you have been referring to?

A. This is a summary I got up yesterday afternoon showing the amount of money spent out of city-authorized funds for medical aid programs in the city from 1951 projected through 1960.

Mr. McGuire: Subject to the court's ruling, which I take it applies to this as well as to the oral testimony, I would like to offer this as an exhibit with Dr. Clark's testimony.

Note : The tabulation entitled "Table No. 1, Patient Data, Medical Aid Program, MCV, Department of Public Health" was marked Clark Exhibit No. 1 and filed.

By Mr. McGuire:

Q. I would also like to file this other one.

A. I would like to add one further point. The exact dollar figures will not match the welfare department's SOH report specifically, nor will it match Miss Heath's figures, because there is a difference in what segment of the month the money was picked up and recorded as having been spent.

Note: The tabulation entitled "Table No. 2,
page 382 } Total Cost of Medical Aid Program, Department of Public Health" was marked Clark Exhibit No. 2 and filed.

Dr. Frederick Clark.

Mr. Hunton: My objection went to this whole line of testimony. It is not necessary to renew it as to the two exhibits.

Mr. Powell: On behalf of both hospitals.

Mr. McGuire: I understood the court's ruling to apply to exhibits as well as the testimony, and of course I except to the ruling.

CROSS EXAMINATION.

By Mr. Hunton:

Q. How many did you say were refused hospitalization by the city? How many did you say were in need but refused because of lack of city funds?

A. If you are speaking of refusal of hospitalization rather than refusal of payment of hospitalization, I would have to say none.

Q. How many were refused payment of hospitalization by the city who were in need of it?

A. In the year 1957-'58, 468 applications, the bulk of which came from the Medical College of Virginia, which the city turned down for one reason or another.

page 383 } These applications were sent to the city by Medical College of Virginia only after their investigation revealed the bills could not be collected.

Q. How many were turned down, the payment was turned down by the city, because of insufficient appropriation?

A. 334.

Q. Do you know whether any of those failed to get the required hospital care?

A. These individuals all received the desired and required hospital care.

Q. Do you know how many of them got care at the respective hospitals?

A. Almost all of these were at Medical College of Virginia. There may have been a very, very few, a proportionately much smaller amount at Sheltering Arms. To my certain knowledge over the past 18 months—I was acting Director of the Department nine months before I became Director—we have received no applications for city assistance for hospitalization for any patient from any hospital in the city other than Medical College of Virginia, Sheltering Arms and one or two from Retreat.

Q. Do you follow those up, those which you are unable to pay, to see to what hospitals they go?

A. May I repeat, our applications are received after the

Dr. Frederick Clark.

individual has been admitted. In other words,
page 384 } the applications are received by us after the in-
individual has been admitted. We have an individual that is active on the wards at the Medical College of Virginia who takes cognizance of indigent and medically indigent patients, so these individuals recorded here did receive hospitalization.

Q. So after the application is turned down by the city, the hospital concerned has no choice but to continue to take care of the patient?

A. Yes, sir. In this case, the Medical College of Virginia.

Q. In which case?

A. I would say for roughly 325 of these 334.

Q. And the others are in other hospitals?

A. Sheltering Arms and possibly one or two at Retreat.

Mr. Powell: Your Honor, subject to our objection I would like to ask the witness a few questions.

By Mr. Powell:

Q. Did I understand from your testimony that these patients you have been discussing are patients who have entered the Medical College of Virginia and then have not paid their bills in whole or in part and the Medical College
requests the city to take them on as medically
page 385 } indigent patients entitled to city funds?

A. In large part, yes, sir, because the college is aware of the fact that our standard acceptance policy at the time is to accept only recipients of public assistance.

Q. Have you had any request from Richmond Memorial Hospital?

A. To my knowledge, we have not.

Q. Richmond Memorial Hospital has not called on the city to bear the cost of any of its indigent or charity cases?

A. No, sir.

Q. You have no contract with Richmond Memorial Hospital?

A. No, sir.

Q. You have not asked Richmond Memorial Hospital to make any contract?

A. No, sir.

Q. I notice in your exhibit a certain amount budgeted for patients at Sheltering Arms. I cannot put my finger on it at the moment.

A. That is Table 2, the next to the last column.

Dr. Frederick Clark.

Q. I see $368.00 budgeted in 1957-'58 for Sheltering Arms.

A. That is actually spent.

page 386 } Q. I understood from the testimony that $79.00 was spent.

A. I remarked a little bit ago there was some small difference, depending upon at what stage the money was actually recorded as having been spent. You notice the figure at the bottom, the State Health Department annual report, does not quite jibe with our city budget figures.

Q. Do you expect to spend $2,998.00 in 1958 at Sheltering Arms?

A. No, sir. That was the amount budgeted and I believe the latest figure indicates that thus far we have accepted two patients at Sheltering Arms with the total less than $50.00.

Q. If there are beds available at Sheltering Arms and if you have more than you can accommodate, why don't you utilize the full amount?

A. That is a very good question. 80% of our hospital money goes to the colored population. We have other medical aid programs operated in connection with the Medical College of Virginia, home care, emergency room, out-patient clinics—almost all of the patients admitted are public assistance clients and they are admitted to the Medical College of Virginia emergency room or from the home care program or from the out-patient clinic.

page 387 } The records have been established and maintained and we have an agreement with the college they go ahead and admit the individual. This is the reason for the city's great reliance first on the Medical College of Virginia rather than instituting other agreements with other hospitals, because we know, because of the way our entire medical care operations interlock and also the fact the city only pays emergency room service for social service recipients, not for medically indigent and the same is true with the O-P clinic and the dental clinic—it is because of these reasons the current situation exists.

We do attempt to identify by what mechanism we can get patients who would otherwise be eligible admitted to Sheltering Arms.

I might add that during the past year we have requested applications from hospitals caring for patients whose investigation indicated they could not pay their hospital bills. These are the city's responsibility. We knew we didn't

have funds to pay for them, but we were attempting to establish statistics.

Q. Some of these funds came from the state as well as from city sources?

A. Yes, sir.

Q. Does it include any federal money?

page 388 } A. No.

Q. Does the emergency room of a large general hospital, such as the Medical College, generate a large number of free or medically indigent type cases?

A. I am not sure I completely understand your question.

Q. Does a hospital with a modern, fully-staffed emergency room, as a result of the emergency room, generate a larger number of free care patients than a hospital without such a facility?

A. I would not say generate. I would say it attracts patients from all socio-economic classes.

Q. So a hospital with such an emergency room receives a larger number of indigent patients or patients who can pay less?

A. Yes. I don't think there is any question about that.

Witness stood aside.

page 389 } Note: There followed a recess.

Mr. Powell: If Your Honor please, in response to our request made before the recess of Mr. Chandler to check his records, Mr. Chandler has brought to our attention a document dated August 2, 1955, addressed to the Honorable Counsel of the City of Richmond, prepared and signed by J. Edward Rountrey, then Assessor of Real Estate for the City of Richmond, which purports to list all of the tax-exempt property not owned by state, federal or local governments within the City of Richmond.

With the consent of the city attorney I am going to read into the record portions of the two paragraphs in this report which relate to the Retreat for the Sick Hospital and Richmond Community Hospital.

Mr. McGuire: I have no objection. I agreed with Mr. Powell he might do so.

Mr. Powell: With reference to Retreat for the Sick, after stating the name, address and assessment of $525,000.00, it states as follows:

page 390 } "Revenue is from patient fees, endowment funds and bequests. Five hundred fifty-one charity patients out of a total of 5,015, or slightly more than 10%."

In this report on the Richmond Community Hospital, it gives the name, the address and the assessment of $63,000.00, and then states as follows:

"Source of income is charges to patients and donations. Some charity patients accepted. The exact number not available, but estimated by Administrator as less than 10%. Non-profit."

Mr. McGuire: I think I might say for the record that that is the list which the city counsel requested of the then Assessor of Real Estate, Mr. Rountrey, when there had been some discussion of tax-exempt institutions. Opinion No. 1323 was issued in November 1955 by the city attorney, which has been mentioned earlier in this case while Mr. Chandler was on the stand, and was the opinion Mr. Rountrey requested following that report to the counsel. It is just a general opinion.

Mr. Powell: If Your Honor please, that con-
page 391 } cludes our case.

Mr. McGuire: The city has no further witnesses.

The Court: I understand you gentlemen wish to submit briefs. Is that correct?

Mr. McGuire: I should like to submit a brief.

Mr. Powell: If Your Honor please. We will of course do whatever is most helpful to the court. In the discussions which Mr. Hunton and I had at lunch—I didn't have an opportunity to confer with Mr. Haw—we attempted to review in our minds and memories the briefs that had been filed. As you recall we argued this case very fully for the better part of a day and our judgment is, sir, that it would be very difficult indeed to supply any additional light to the court beyond that contained in the briefs already filed.

The Court: Unless you do so on the second point, the one raised today.

Mr. Powell: Yes, with respect to that point it may be that ought to be briefed, although, if Your Honor please, I may be frank with the court in saying that it is
page 392 } certainly our view that the evidence we have heard the last three days abundantly confirms

everything that was stated to the court at that time, to such an extent we would think, in effect, the law in this case has been established. We would think on the basis of the law of the case that ought to end the matter and the court should enter an order relieving these two hospitals of these assessments. In other words, I am suggesting that in view of the law of the case having been established so plainly and the evidence having come in fully corroborating in every respect all that was represented to this court, I think it is unnecessary to brief the second point we have raised.

Mr. McGuire: It is not my desire to argue to the court any matter the court considers it has already disposed of. I do have some additional authorities I wish to present and I would like to file a short supplemental brief.

The Court: I don't think further argument is necessary. As Mr. Powell says, you covered it fully.

Mr. Powell: May we have the privilege of replying to Mr. McGuire's brief?

The Court: Yes.

page 393 } Mr. Haw: My feeling was that the matter had been fully covered in our original brief and there was no necessity for any further argument, but of course if Mr. McGuire files a brief, we would like the privilege of replying to it.

Mr. Powell: May we inquire whether the briefs already filed are deemed to be a part of the record in this case?

The Court: Yes.

Adjourned.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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