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Richmond, Va.

Record No. 5304

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

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

v. (Virginia State Ports Authority)

SIDNEY C. DAY, JR.,
COMPTROLLER OF VIRGINIA

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

8-17-18-64

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5304

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 6th day of March, 1961.

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

against (Virginia State Ports Authority)

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

Upon a Petition for Writ of Mandamus

This day came the Attorney General of Virginia and presented to the court a petition praying that a writ of mandamus do forthwith issue requiring and compelling Sidney C. Day, Jr., Comptroller of Virginia, to issue warrants upon the State Treasurer for the payment of such amounts as may be authorized by the vouchers of the Virginia State Ports Authority, pursuant to the provisions of the Code of Virginia, as more specifically set out in said petition.

And the petitioner further prays that Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to said petition and be required to answer same, and for other relief.

And it appearing to the court that copies of the notice of this application and of said petition have been duly served upon the respondent, it is ordered that the cause be docketed,

and that Aubrey R. Bowles, Jr., Esquire, be and he is hereby appointed as counsel to represent the said Comptroller in this proceeding.

And on motion of the parties agreed, it is further ordered that the record be printed promptly after it is completed; that the respondent file with the clerk his answer to the petition for writ of mandamus on or before April 17, 1961; that 25 printed copies of the petitioner's brief be filed with the clerk on or before May 1, 1961; that 25 printed copies of the respondent's brief be filed with the clerk on or before May 29, 1961; that 25 printed copies of the petitioner's reply brief, if any, be filed with the clerk on or before June 5, 1961; and the cause is hereby placed on the privileged docket of the June, 1961, session of this court.

RECORD

* * * * *

Rec'd. 3/6/61.

H. G. T.

NOTICE OF APPLICATION FOR WRIT OF MANDAMUS.

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

Please take notice that on the 6th day of March, 1961, at 9:30 A. M., the undersigned will make application to the Supreme Court of Appeals of Virginia at the Supreme Court of Appeals Building, in the City of Richmond, Virginia, for a writ of mandamus, a copy of the petition for said writ being hereto attached.

A. S. HARRISON, JR.,
Attorney General of Virginia,
By KENNETH C. PATTY
Asst. Attorney General.

Service of the foregoing notice of application for a writ of mandamus with attached copy of the petition for said writ is accepted this 6th day of March, 1961.

SIDNEY C. DAY, JR.
Comptroller.

* * * * *

PETITION FOR WRIT OF MANDAMUS.

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

I.

The Virginia State Ports Authority (the "Authority") is a body corporate created under Sections 62-106.1 to 62-106.19, inclusive, of the Code of Virginia, as amended, (the "Enabling Act"), for the purposes and with the powers and duties therein prescribed, including the powers

(a) to develop and improve the harbors or seaports of the State for the handling of water-borne commerce.

(b) to acquire, construct, equip, maintain, develop, improve and operate such harbors or seaports and their port facilities, including wharves, docks, piers, quays, warehouses and other structures and facilities needful for the convenient use thereof in aid of commerce,

(c) to rent, lease, buy, own, acquire and dispose of such property, real or personal, as the Authority deems proper to effectuate the purposes and provisions of the Enabling Act,

(d) to lease to another such part or all of its property, real or personal, for such period or periods of years, upon such terms and conditions, with or without an option on the part of the lessee to purchase any or all of the leased property at such price, at or after the retirement of all indebtedness incurred by the Authority on account thereof, as the Authority shall determine, and

(e) to issue revenue bonds, payable solely from the rents, charges and other revenues pledged for their payment, for the purpose of paying the costs connected with the Authority's acquisition, construction, reconstruction or control of any port facilities.

II.

At its 1958 Session, the General Assembly of Virginia adopted House Joint Resolution No. 70, which reads as follows:

"WHEREAS, the continuing development of the ports of Virginia is essential in any program of economic or industrial development of the Commonwealth; and

"WHEREAS, the commerce moving through Virginia's ports is of proven benefit to the entire State; and

"WHEREAS, Virginia's ports have achieved their present position of eminence in world commerce with port terminals and facilities at the State's major seaports provided, maintained and operated by private industry; and

"WHEREAS, Virginia's ports are in competition with ports of other states which have and are now receiving substantial financial assistance from their respective state governments in the construction and acquisition of terminals, piers, and other port facilities; and

"WHEREAS, the increasing pressure of competition from ports with publicly supported terminals and facilities has made it impossible for private industry to provide the necessary new and improved facilities which Virginia's ports must have if they are to obtain the oceanborne general cargo commerce, potential to them, maintain their present volume of trade or to properly serve Virginia agriculture and industry; and

"WHEREAS, the Virginia State Ports Authority, in the discharge of its responsibilities for developing and promoting Virginia's ports and their commerce, has recommended a program for general cargo facilities acquisition and construction at Hampton Roads based upon financial investment by the State and private industry which, through force of circumstances, could not be presented to the Governor and the General Assembly for consideration until after the State's budget requirements for other purposes had been largely determined, resulting in the General Assembly being unable to appropriate the money requested to inaugurate the program in the 1958-1960 biennium; now, therefore, be it

"RESOLVED by the House of Delegates, the Senate concurring, That by reason of the high decree of importance of further port development to the economy of the Commonwealth, the General Assembly of Virginia directs the Virginia State Ports Authority to proceed to obtain facts and information regarding the cost of acquisition and construction of such port terminals and facilities for presentation to the Governor and the General Assembly at the regular session of 1960."

III.

In order to enable the Authority to carry out the intent of such resolution, in the Appropriations Act of 1958, Item 24, the Governor was empowered to transfer to the Authority the sum of $50,000.00 during each of the fiscal years 1958 and 1959 for the "development of firm proposals for the acquisition and construction of port terminals and facilities by such Authority" for presentation to the General Assembly in 1960. Acts, 1958 c642.

IV.

Following the refusal of the Comptroller of Virginia to issue warrants in payment of the expense of an engineering

and cost survey made pursuant to such resolution, this Court upheld the constitutionality of the Enabling Act in *Harrison* v. *Day*, 200 Va. 764, 107 S. E. (2d) 594 (1959).

V.

Pursuant to said Joint Resolution, the Authority proceeded to obtain the facts and information therein called for, and conducted extensive negotiations with the Norfolk and Western Railway Company, a Virginia corporation, (the "Railway"), which owns and operates marine terminals at Norfolk, Virginia, as a result of which negotiations the Authority obtained from the Railway on or about November 13, 1959, a proposal (the "Port Facility Proposal"), a copy of which, designated "Appendix I to Chairman Ernst's Letter to Governor Almond of December 7, 1959," is hereto attached and made a part hereof. (Extensive negotiations were contemporaneously conducted by the Authority with the Chesapeake and Ohio Railway, which also owns and operates marine terminals at Newport News, Virginia, in an effort, as yet unsuccessful, to elicit from it a similar proposal.)

VI.

By letters bearing date on the 7th day of December, 1959, and 12th day of January, 1960, addressed and mailed to the Honorable J. Lindsay Almond, Jr., Governor, Commonwealth of Virginia, copies of which were mailed to the members of the General Assembly of Virginia, the Authority reported its progress to date in carrying out House Joint Resolution No. 70, and particularly the receipt and terms of the Port Facility Proposal. Copies of said letters, respectively designated "Exhibit 1" and "Exhibit 2," are hereto attached and made a part hereof.

VII.

In order to enable the Authority to effectuate the Port Facility Proposal, after being fully informed of the nature and terms thereof, the General Assembly at its 1960 Session

(a) amended Section 62-106.8(b) of the Virginia Code in order to vest in the Authority express authorization "to lease to another such part or all of its property, real or personal, for such period or periods of years, upon such terms and conditions, with or without an option on the part of the

lessee to purchase any or all of the leased property at such price, at or after the retirement of all indebtedness incurred by the Authority on account thereof, as the Authority shall determine;" and

(b) appropriated the sum of $336,750.00 for the first year and $1,310,000.00 for the second year of the biennium beginning on the 1st day of July, 1960, "for the acquisition, development, construction and operation of port facilities by the Authority" (1960-62 Appropriation Act, Item 166).

VIII.

In the exercise of its powers and for the purpose of effectuating the Port Facility Proposal, the Authority entered into an agreement with Lockwood Greene Engineers, bearing date on the 26th day of July, 1960, a copy of which marked "Exhibit 3" is hereto attached and made a part hereof, providing for the preparation of the plans and specifications for the new port facilities referred to in such Proposal and also for the supervision of the construction thereof.

IX.

In order to effectuate the Port Facility Proposal, the Authority and Railway have entered into a contract (the "Port Facility Contract") bearing date on the 1st day of February, 1961, providing, among other things, for the following:

(a) the purchase by the Authority from the Railway, at a price determined in accordance with Section 1.02 of the Port Facility Contract, estimated to be about $12,000,000.00, of certain property, situated at Lamberts Point and Sewells Point, in the City of Norfolk, Virginia, which price is substantially less than the fair market value of said property (the major portion of said property having been appraised, at the request of the Authority, by The Lloyd-Thomas Company, Appraisers, of Chicago, Illinois, in June, 1959, at $38,853,000.00);

(b) the construction on such property by the Authority of certain new port facilities and improvements, at a cost estimated at about $15,000,000.00;

(c) the issuance and sale by the Authority of its revenue bonds (the "revenue bonds"), in an amount sufficient to defray the costs of such acquisition and construction and all related expenses, which revenue bonds are to be secured by a trust agreement ("Trust Agreement") substantially in the

form of the Trust Agreement attached to and made a part of the Port Facility Contract;

(d) the lease by the Authority to the Railway of said property, including the facilities and improvements to be constructed thereon, substantially in the form of the lease (the "Lease") attached to and made a part of the Port Facility Contract; and

(e) an agreement by the Authority (Section 4.03) that it will urgently request the General Assembly, at each session thereof during the original term of the lease, to make an appropriation for the purpose of participating in the cost of such port facilities to the extent of 50% of the basic rent payable during such term, and that all amounts ("State contributions") received by the Authority for such purpose shall be deposited to the credit of the Sinking Fund created under the Trust Agreement.

A copy of the Port Facility Contract, Lease and Trust Agreement, designated "Exhibit 4," is hereto attached and made a part hereof.

X.

The Lease contains, *inter alia,* the following provisions:

(a) The original term thereof is 30 years, and the Railway is to pay a net basic rent during said term in an amount (estimated at about $60,000,000.00), payable in semi-annual installments, sufficient to enable the Authority to pay, when due, all the principal, interest and redemption premiums payable on the revenue bonds and to make such deposits as are required by the Trust Agreement. If and when all the revenue bonds shall have been fully paid, the basic rent shall thereafter be reduced in accordance with the agreement of the parties or failing such agreement in accordance with a formula set forth in the Lease. (Section 1.03 of Lease.)

(b) The Authority shall promptly pay over to the Trustee any State contributions which the Authority receives, for deposit to the credit of the Sinking Fund created under the Trust Agreement, for the payment of the principal of and the interest on the revenue bonds and if the Railway is not then in default under the Lease, the next installment or installments of the basic rent payable by the Railway shall be reduced by an amount equal to such contributions. (Section 1.08 of Lease.)

(c) The Railway will operate the leased premises as port

terminal facilities for use by the general public, on a fair and reasonable basis, free of any unreasonable or unjust discrimination and shall provide reasonable services in connection with said operation. (Sections 3.01 and 3.02 of Lease.)

(d) The rates, charges, regulations, practices and requirements respecting the use of the leased premises and related services shall be fixed by the Railway on a fair and reasonable basis, free of any unreasonable or unjust discrimination, and shall be presumed, as between the Authority and the Railway, to be in full compliance with the Lease unless and until otherwise determined in the manner provided in the Lease. (Section 3.03 of Lease.)

(e) If the Railway realizes a profit from the operation of the demised premises during the term of the Lease, the Authority shall be entitled to receive such portion of said profit as shall be determined in accordance with the formula set out in the Lease. (Sections 8.01 and 7.04 of Lease.)

(f) The Railway is given the option to extend the term of the lease for two periods of thirty years each, at rentals and on other terms and conditions which shall be mutually agreed upon, taking into account certain facts and factors specified in the Lease. (Section 11.01 of Lease.)

(g) At the expiration of the original or either renewal term of the Lease (but only after the retirement of all the revenue bonds), the Railway has the option to purchase the leased premises at a price representing a portion of the Authority's depreciated cost, determined in accordance with a formula set forth in the Lease. (Section 11.02 of Lease.)

XI.

The operations of the Railway under the Lease will probably be productive of a loss; but the Authority is not obligated to pay or bear any part of such loss.

XII.

The principal and interest due on the revenue bonds shall be payable solely from the revenues derived by the Authority from the demised premises and (as required by Section 62-106.19 of the Code) the revenue bonds shall contain *inter alia* the following provisions:

"This bond shall not be deemed to constitute a debt of the State of Virginia (referred to also herein as the "Commonwealth of Virginia") or of any political subdivision thereof

or a pledge of the faith and credit of the Commonwealth of Virginia or of any such political subdivision, but shall be payable solely from the special fund provided therefor from revenues of the Project (hereinafter defined). The issuance of this bond shall not directly or indirectly or contingently obligate the Authority, the Commonwealth of Virginia or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, and neither the Commonwealth of Virginia nor the Authority shall be obligated to pay this bond or the interest thereon except from revenues of the Project, and neither the faith and credit nor the taxing power of said Commonwealth or of any political subdivision thereof is pledge to the payment of the principal of or the interest on this bond." (Trust Agreement p. 9.)

XIII.

The Board of Commissioners of the Authority, at meetings thereof duly convened and held on January 30, 1961, and February 22, 1961, adopted a resolution approving and authorizing the execution of the Port Facility Contract, and approving the Lease and proposed form of Trust Agreement, and a resolution authorizing the issuance of the revenue bonds, copies of which resolutions, designated "Exhibit 5" and "Exhibit 6," respectively, are hereto attached and made a part hereof.

XIV.

In order to pay some of the compensation payable to Lockwood Greene Engineers for engineering services rendered pursuant to the aforesaid agreement of July 26, 1960, the Authority presented to the respondent herein, the Honorable Sidney C. Day, Jr., Comptroller of Virginia, (the "Comptroller"), its voucher for the payment of $143,960.36 out of the aforesaid appropriation for the first year of the biennium. A copy of said voucher, marked "Exhibit 7," is hereto attached and made a part hereof.

XV.

The Comptroller declined to issue a warrant authorizing said payment, and by letter bearing date on the 6th day of March, 1961, notified your petitioner that he entertained doubt respecting the constitutionality of Section 62-106.8(b) of the

Code of Virginia, as amended in 1960, the proper construction and interpretation of the Enabling Act, the validity of the Port Facility Contract and Lease and the terms and conditions thereof, and the validity of the proposed financing through the sale and issuance of the Authority's revenue bonds; and the Comptroller further notified your petitioner that he did not feel that it would be proper or safe, and that he would, therefore, refuse, to issue any warrants in payment of obligations payable out of monies appropriated under the aforesaid Item 166 until there has been a final adjudication by the Supreme Court of Appeals of Virginia determining any and all the questions raised by the Comptroller or by this petition pertaining thereto. A copy of the Comptroller's letter, designated "Exhibit 8," is hereto attached and made a part hereof.

XVI.

The specific questions raised by the Comptroller in said letter are as follows:

1. Does Section 62-106.8(b) of the Code of Virginia, as amended in 1960, violate Section 185 or 188 of the Constitution of Virginia?

2. Is any of the transactions contemplated in, or any of the provisions of, the Port Facility Contract or Lease (and particularly the provisions of Section 1.03, 3.03, 8.01, 11.01 or 11.02 of the Lease) illegal or unconstitutional, and particularly is there any violation thereby involved of Section 185, 188, 168 or 183 of the Constitution of Virginia, or Section 62-106.8(b), 62-106.14, or 62-106.17 of the Enabling Act?

3. Does any of the provisions of the Port Facility Contract or Lease (and particularly of Section 4.03 of the Port Facility Contract) or of Section 62-106.14 of the Enabling Act, relating to the obtaining, pledge or use of State funds, violate Section 184, 184a or 184b of the Constitution of Virginia?

XVII.

Said letter from the Comptroller to your petitioner constitutes sufficient ground for this Court to exercise jurisdiction in this case, and to consider and determine all questions raised in said letter or in this petition, or in the respondent's answer, such jurisdiction being expressly conferred in Section 8-714 of the Code of Virginia.

XVIII.

Your petitioner believes, and so avers, that Section 62-106.8(b) of the Code of Virginia, as amended in 1960, is a valid enactment of the General Assembly of Virginia and is not in violation of any of the provisions of the Constitution of Virginia, that the Port Facility Contract and Lease, and the terms and conditions thereof, and the proposed financing through the sale and issuance of the Authority's revenue bonds are in all respects valid and constitutional, and that the three questions of the Comptroller set forth in paragraph XVI of this petition should be answered in the negative.

WHEREFORE, your petitioner files this petition and prays that this Honorable Court will consider and determine all questions raised herein and will adjudge that Section 62-106.8(b) of the Code of Virginia, as amended in 1960, is a valid enactment of the General Assembly of Virginia and is not in violation of any of the provisions of the Constitution of Virginia, that the Port Facility Contract and Lease, and the terms and conditions thereof, and the proposed financing through the sale and issuance of the Authority's revenue bonds, are in all respects valid and constitutional, and that each of the three questions enumerated in paragraph XVI of this petition should be answered in the negative; and your petitioner further prays that the said Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to this petition and be required to answer the same; and that a writ of mandamus be issued by this Honorable Court directed to the said defendant, Sidney C. Day, Jr., Comptroller of Virginia, requiring him to issue warrants upon the State Treasurer for payment of such amounts as may be authorized by the vouchers of the Authority, pursuant to the powers granted it.

A. S. HARRISON, JR.
Attorney General.

This is to certify that on March 6, 1961, I personally served a copy of the foregoing petition for writ of mandamus, with attached exhibits, upon the Honorable Sidney C. Day, Jr., Comptroller of Virginia, at his office in Richmond, Virginia, together with notice that the petition would be filed in open court at 9:30 A. M. on March 6, 1961.

KENNETH C. PATTY
Asst. Attorney General.

Supreme Court of Appeals of Virginia
State Library Building
Richmond, Virginia

AFFIDAVIT OF PETITIONER.

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

This day personally appeared before me a Notary Public in and for the City aforesaid in the State of Virginia, Kenneth C. Patty, who stated upon oath that he is Assistant Attorney General of Virginia and that the matters and things stated in the petition for writ of mandamus in the above styled matter are true to the best of his knowledge, information and belief.

Given under my hand this 6 day of March, 1961.
My commission expires on the 24th day of November, 1964.

M. L. WADDILL
Notary Public.

* * * * *

EXHIBIT 1.

COMMONWEALTH OF VIRGINIA

VIRGINIA STATE PORTS AUTHORITY
254 Granby Street
Norfolk 10
Cable Address Vastports

December 7, 1959.

Honorable J. Lindsay Almond, Jr.
Governor
Commonwealth of Virginia
Richmond, Virginia

My dear Governor Almond:

You will recall that the Authority's program for the Expansion and Improvement of the General Cargo Facilities at Hampton Roads was first brought to your attention by a communication under date of January 16, 1958, from the late Fred W. McWane, then Chairman of the Authority's Board

of Commissioners. Mr. McWane's letter described the Authority's proposal as well as giving justification for it. By House Joint Resolution No. 70 (agreed to by the House of Delegates March 5, and by the Senate, March 8, 1958) the 1958 General Assembly approved in principal the Authority's proposal and directed the Authority to develop proposals for The Acquisition and Construction of the Terminals for presentation to the Governor and the 1960 General Assembly. It appears timely to report to you on the Authority's progress to date in carrying out this directive.

The question of the constitutionality of the program raised by the Comptroller was upheld by the Supreme Court of Appeals of Virginia in awarding a Writ of Mandamus to the Attorney General on March 16, 1959. Following this, the Authority entered into contracts for preliminary engineering studies, and estimates for the proposed new terminals, and for the appraisal of the properties and improvements which it proposed to acquire. The cost of these contracts was borne by appropriations of $50,000 in each year of the current biennium, and an additional $40,000 of which the Norfolk and Western, and the Chesapeake and Ohio Railways each contributed $20,000. The appraisal has been completed, and the reports are in hand. The engineering studies have also been completed and the reports are expected in a few days.

The commissioners and staff of the Authority have held innumerable conferences with representatives of terminal owning railroads, investment banking houses, bond counsel, Hampton Roads port interests, and members of the Legislature to develop the proposals directed by the 1958 General Assembly. Late in August, the Authority received a proposal from the Norfolk and Western Railway. They propose to sell their general cargo facilities and properties at Sewells Point and Lamberts Point, Norfolk, at their depreciated book value. The Authority would construct at Lamberts Point a new fourberth terminal and supporting facilities. The Norfolk and Western would lease back for 30 years these properties at a rental which would service and amortize during the period of the lease the revenue bonds to be sold for the acquisition and construction, on the condition that the rental be reduced by 50 per cent through funds to be made available to the Authority by the Legislature. Since August the Norfolk and Western's proposal has been modified and refined. At a meeting held November 23, the Commissioners approved the November 13, 1959, draft of this proposal for submission to the Governor and the 1960 General Assembly (copy attached, marked Appendix I).

The Authority's budget estimates for the 1960-62 biennium,

forwarded to the Director of the Budget under date of August 30, 1959, contained requests for funds to implement the Norfolk and Western's proposal for The Acquisition and Construction of Port Terminals and Facilities at Norfolk, and also for carrying forward the programs at Newport News and Portsmouth, Virginia, under the same general terms. (See Appendix II attached.) Negotiations are continuing with the Chesapeake and Ohio Railway with the view and the hope of arriving at similar arrangements for Newport News; but so far the Authority has not found a qualified operator interested in entering into a lease agreement that would permit going ahead with a new terminal at Pinners Point, Portsmouth.

The property at Pinners Point is owned by the Atlantic Coast Line Railroad, some of it being under long term lease to the Southern Railway. The Atlantic Coast Line has agreed to sell its water front property to the Authority at the depreciated book value, but is not interested in entering into a lease for the construction of a new terminal. The Southern Railway has indicated they have need for their leased properties at Pinners Point, and are not interested in leasing a new terminal. The Authority and the Port Committee of the Portsmouth Chamber of Commerce are still seeking a qualified operator interested in leasing a new terminal at Pinners Point, but in the event one is not found, the Commissioners recommend the Authority be provided with a minimum of $301,000 for Pinners Point, Portsmouth, in the next biennium for the purchase of the Atlantic Coast Line water front properties as a site for future terminals.

The urgency for the General Cargo Improvement and Expansion Program at Hampton Roads was set forth by Mr. McWane in his letter of January, 1958. The passage of time has served only to increase the urgency. Terminal programs with public support at competitor ports have progressed, and additional programs have been announced. (A brief outline of these public supported terminal programs at other Atlantic Coast ports to which we are already losing traffic is attached, marked Appendix III.) The commerce now enjoyed by Virginia's ports is a valuable and important segment of the economy of the Commonwealth. A Survey by the Bureau of Population and Economic Research at the University of Virginia entitled "Measuring the Impact of the Waterborne Commerce of the Ports of Virginia on Employment, Wages, and Other Key Indices of the Virginia Economy, 1953-1958" indicates that in 1958 Virginia's waterborne commerce was responsible for the employment of 37,624 persons with wages totaling $176,558,126. It further indicates that tax payments

to state and local governments in 1958 generated by this commerce totaled $17,744,045. For the six years 1953-1958 these tax payments totaled $87,245,240. There are other interesting and important statistics in the Survey, a copy of which is forwarded herewith.

If the general cargo commerce found by a nationally known engineering firm to be potential to Virginia's ports can be realized, there is prospect in future years of substantially greater employment, wages and tax payments. The Authority's facilities program is believed to be an essential step in realizing this potential.

A further report on the Authority's progress in developing the directed proposals will be made to you early in January.

Respectfully,

FRANK A. ERNST
Chairman.

FAE/Cb

cc: Members, General Assembly of Virginia

Appendix I to Chairman Ernst's letter to Governor Almond of December 7, 1959

Proposals with respect to purchase, construction and lease of general cargo handling facilities at Lamberts Point and Sewells Point resulting from extended negotiations between Virginia State Ports Authority and Norfolk and Western Railway Company, submitted November 13, 1959, and approved by the Board of Commissioners for submission to the Governor and the 1960 General Assembly at the meeting held November 23, 1959

1. Norfolk and Western Railway Company would convey or cause to be conveyed to the Authority merchandise cargo terminal facilities and property useful for the location of a new pier and supporting facilities as follows:

(a) At Sewells Point 35.815 acres, more or less, with improvements, as shown on the attached print of Norfolk and Western Map 12062-C, dated May 6, 1959;

(b) At Lamberts Point several parcels of land containing an aggregate of approximately 85 acres, together with improvements, shown colored yellow on the attached print of

Norfolk and Western's Map No. 14592-A, dated January 30, 1959, and revised September 11, 1959;

(c) At Lamberts Point adjacent to the existing merchandise terminal several parcels of land acquired in the name of the Railway Company's subsidiary, Virginia Holding Corporation, containing an aggregate of approximately 21 acres, shown colored red, and several parcels of land to be acquired in the name of Virginia Holding Corporation containing an aggregate of approximately 12 acres, shown colored green on the aforesaid print of Map No. 14592-A.

2. The property described in paragraph 1 (a) and (b) above would be conveyed at its depreciated book value as of the date of conveyance and the property described in paragraph 1(c) above would be conveyed at the actual cost of acquisition by Virginia Holding Corporation.

3. The Authority would cause to be constructed at Lamberts Point on and outward from the lands described in paragraph 1(c) above a new merchandise pier, with supporting facilities, at a cost currently estimated at $16,410,000.

4. The Authority would lease to the Railway Company all of the properties so conveyed and improved for an initial term of approximately 30 years, with privilege of renewal at the option of the Railway Company for two additional terms of approximately 30 years each, and upon conditions hereinafter described.

5. The Authority would finance the purchase and construction program by the sale of revenue bonds to an amount currently estimated at $31,262,000 and the Railway Company and its subsidiary would be paid the consideration for the conveyances aforesaid in cash upon sale of these bonds.

6. The revenues with which to discharge the bonds would be derived from and guaranteed by the lease to the Railway Company and the rental payments required by that lease would be of an amount sufficient to service and amortize, during the initial term of the lease, the entire cost of acquiring, constructing, and financing the proposed program.

7. Through legislative enactment, preferably earmarking a specific source of revenue, but alternatively by appropriations from the General Fund, the State of Virginia would make available to the Authority funds to be applied annually in such manner as to reduce by fifty per cent the rental obligations of the Railway Company. It would be understood that the State could not be contractually obligated to continue these appropriations beyond the first legislative biennium following the adoption of the plan, but the expectation of such continued appropriations would be represented to the General Assembly

as an essential ingredient of the negotiations between the Authority and the Railway Company and the Authority would undertake to make urgent request for funds for this specific use in submitting its budgetary requirements to successive sessions of the General Assembly during the initial term of the life of the lease agreement.

8. The expense of maintaining and operating the facilities would be borne by the Railway Company as lessee during the initial term of the lease but the Authority would share equally with the Railway Company in net profits from terminal operations after reimbursement of the Railway Company for all losses incurred during any period when the rental payments and other costs of operation have exceeded revenues, provided the rental obligations of the Railway Company have been regularly reduced by fifty per cent as set forth in paragraph 7 above.

9. Provision would be made in the lease agreement to assure reasonable access to the leased premises, and to the books and records pertaining to the operation thereof, by the personnel of firms with which the Authority might contract for inspection as to maintenance, bookkeeping and operating procedures or for construction and alteration work on the facilities or for other purposes related to the development of the properties.

10. The Railway Company would have the option to renew and extend the lease for two additional terms of not more than 30 years each at rental rates and upon conditions mutually satisfactory to the parties, but upon the understanding that in the negotiation of such rental rates and conditions effect would be given to (1) the fact that the cost of the facilities will then have been fully amortized, (2) the utility of the facilities as measured by the volume of cargoes handled over them during the last preceding term, (3) the record of profits or losses from maintenance and operation of the facilities, and (4) any other changes in conditions affecting the value, use or operation of the facilities which may have occurred during the last preceding term of the lease. The Railway Company will, at least one year prior to the end of the original and of the first renewal term, specify to the Authority in writing the rental rates and other terms (taking into account the facts and factors above mentioned), which it proposes shall be applicable during the following renewal period. If such proposal is not acceptable to the Authority, the parties shall promptly thereafter negotiate with a view to composing their differences.

11. While it is not anticipated that any serious difficulty will be encountered in agreeing with the Authority upon

renewal terms which are mutually fair and reasonable, it is essential that the Railway Company have continuing access to the sea, on reasonable terms. Therefore, in case the parties are unable to agree upon mutually satisfactory renewal terms, the Railway Company would have the option to purchase the leased premises at the end of the initial term, or at the end of the first renewal term, and the Railway Company would also have the option to purchase the leased premises at the end of the last renewal term, at a figure to be arrived at in the following manner:

(1) Add:

(a) The purchase price of the lands involved;
(b) The purchase price of the original structures which are located on the lands at the time the Railway Company exercises the option to purchase;
(c) The construction cost of any structures hereafter erected on the lands and in existence at the time the Railway Company exercises the option to purchase.

(2) Subtract depreciation of the purchase price and construction cost of the structures calculated on the basis of the useful life of such structures;
(3) Multiply the result by the percentage of the entire cost actually paid by the Authority in reduction of the initial term rental obligations of the Railway Company or otherwise.

Provision would also be made for the Railway Company to have the first refusal of the properties on a similar basis in the event of a decision by the Authority to sell prior to the expiration of the lease.

12. Under the lease agreement the properties would be operated by the Railway Company as public facilities open to other rail and motor carriers as well as the Norfolk and Western, but wharfage, handling and other charges would be assessed on a reasonable basis, with the proviso that the Norfolk and Western would not be required to provide any such service to others at less than cost.

APPENDIX II

To Chairman Ernst's letter to Governor Almond dated 7 December, 1959

FUNDS REQUESTED BY THE VIRGINIA STATE PORTS AUTHORITY FOR EACH YEAR FOR THE 1960-1962 BIENNIUM FOR THE ACQUISITION AND CONSTRUCTION OF PORT TERMINALS AND FACILITIES.

Formula	Norfolk	Newport News	Portsmouth	Total
A. Book value of existing facilities	12,200,000	3,693,000	301,000	16,194,000
B. Construction of new facilities	16,270,000	18,720,000	16,250,000	51,240,000
C. Escalation to 1960 @ 5.6%	910,000	1,050,000	910,000	2,870,000
D. Total value	29,380,000	23,463,000	17,461,000	70,304,000
E. Interest on B & C for two years	1,718,000	1,977,000	1,716,000	5,411,000
F. Total Bond Issue	31,098,000	25,440,000	19,177,000	75,715,000
G. Amortize F @ .06505 (Guaranteed annual rental)	2,020,000	1,680,000	1,250,000	4,950,000
H. Net annual rental	1,010,000	840,000	625,000	2,475,000
I. Amortization cost to state	1,010,000	840,000	625,000	2,475,000
J. Annual service contract	8,000	6,000	4,000	18,000
TOTAL COST TO THE STATE	1,018,000	846,000	629,000	2,493,000

NOTE: The above formula based on 30 years bond issue with 5% coupon.

Appendix III to Chairman Ernst's letter to Governor Almond of 7 December 1959

A BRIEF RESUME OF FACILITIES PROGRAMS WITH PUBLIC SUPPORT UNDERWAY AND PROPOSED AT OTHER ATLANTIC COAST PORTS AS OF NOVEMBER 1959.

All major ports on the Atlantic and Gulf Coasts with the exception of Hampton Roads have received or are receiving substantial public support for terminal construction, and in some instances for terminal operation. Brief resumes of the facilities programs at these ports follow:

1. *Boston, Massachusetts*—The State of Massachusetts through the issuance of general obligation bonds has acquired or constructed port facilities at Boston costing more than $34 million. In 1958 the United States Government, while retaining ownership of the Boston Army Terminal, authorized the State of Massachusetts to lease that terminal for operation by a private company in return for the payment by the State of Massachusetts of 10% of an $11 million modernization program. In addition to these port facilities, the Massachusetts Port Authority owns tunnel and airport properties which are producing $7-1/2 million net operating revenues annually.

2. *New York*—The port of New York Authority receives revenues from tunnel and bridge crossings between New York and New Jersey. Before 1957, the Authority had spent $82 million on waterfront improvements and now proposes to finance and build the $320 million Narrows Bridge for sale later to the City Bridge Authority. At Brooklyn, the Port of New York Authority is in the midst of an $85 million 7-year redevelopment program involving 11 new general cargo piers built on 34 acres of land purchased by the Port of New York Authority for $7-1/2 million. Of these, 5 have been or will be completed in 1959 at a total cost of over $35 million. At Port Newark, the Port of New York Authority has launched a $125 million master terminal construction plan. One pier costing over $6 million has been completed and another is under construction. At Elizabeth, New Jersey, the Port of New York Authority has started a $150 million terminal construction program. In recent years the Department of Marine and Aviation of the City of New York spent about $41 million in

the rehabilitation of old piers, and is currently progressing a $200 million 5-year pier development program in Manhattan. Four piers estimated to cost nearly $38 million are already completed or under construction. The Department of Marine and Aviation has requested from the City of New York a capital appropriation of $94 million for waterfront improvements projects in 1960.

3. *Philadelphia*—The Delaware River Port Authority operates two bridges across the Delaware River, which produced net revenues of about $16 million per year. Any of these revenues in excess of bridge amortization charges is available for port improvement projects. As part of their master plan for port improvement they have spent nearly $2 million in 1958 alone to modernize existing piers and have recently completed reconstruction of piers 38 and 40 at a cost of $3 million. They propose to start construction on a new $13 million general cargo terminal.

Congress has approved a bill authorizing the sale of the Philadelphia Army Base to the City of Philadelphia. The city proposes to spend $3-1/2 million to rehabilitate and improve these piers in addition to putting up the "fair market value" for their purchase, which is "substantially more" than $500,000. The city is expected to continue to lease the piers to the present operators.

4. *Baltimore*—The Maryland Port Authority is authorized to issue general obligation bonds of the State of Maryland not to exceed $15 million for construction or improvement of pier facilities. Also, by its enabling act the Authority is given 10 per cent of the revenues derived from the Maryland corporation income tax, which provides the Authority with continuing annual revenues in excess of $2 million. The Authority has purchased from the Federal Government 137 acres of land at Hawkins Point on which facilities costing $3.5 million are to be erected and leased to the Baltimore and Ohio Railway for operation. Proposed is the construction of a new general cargo pier at Locust Point at a cost of $16.5 million. The Authority also has purchased from Baltimore County and Baltimore City, for use in their long-range, comprehensive plan a waterfront airport, consisting of 353 acres and costing more than $4 million. The purchase was financed partly with cash from the Authority's fixed income, and partly with State-guaranteed general obligation bonds.

5. *North Carolina*—The North Carolina State Ports Authority, reorganized in November, 1958, owns $7.5 million

worth of port facilities at Wilmington and Morehead City, built entirely with capital appropriations from the state. In the 1957-1959 biennium, the North Carolina legislature made an additional capital appropriation of $3.9 million to the Authority. For the 1959-61 biennium, the legislature has made a further appropriation and authorized construction of facilities at Wilmington amounting to $560,000, and at Morehead City amounting to $357,000. Gov. Hodges has recently been quoted in the North Carolina press as saying that the legislature "missed the boat" in not appropriating more for the development of the ports of North Carolina. The North Carolina facilities are operated by the Authority.

6. *South Carolina*—The South Carolina State Ports Authority operates substantial facilities at Charleston which are owned by the Federal Government but are leased to the Authority for the cost of maintenance only. The Authority has been authorized by the state legislature to issue general obligation bonds of the state not to exceed $21 million to provide additional terminal facilities. Under this 3-year $21 million program, the Authority has already spent $7.5 million for port improvements at Charleston and North Charleston, and has created two new ports at Port Royal and Georgetown by the construction of a $1.5 million pier and shed at each of these sites. The Authority also has purchased an additional tract of 847 acres at Port Royal for $140,000 for future expansion of that port.

7. *Georgia*—Some years ago, the State of Georgia purchased from the Federal Government for $800,000 terminal facilities costing $25 million and turned them over to the Georgia Ports Authority for operation. In 1957, the legislature authorized the Governor to expend from any available funds the sum of $8 million for the purpose of constructing port facilities at Savannah and at other state ports. In 1958, the Georgia Ports Authority bought terminal facilities in Savannah from the Central of Georgia Railway for $3.75 million, and in 1959 the Authority purchased an additional 388-acre tract in Savannah for $970,000 for future expansion. Construction is well under way of a new general cargo pier and supporting facilities at Brunswick for $1,367,000 and is planning a barge terminal at Augusta to cost $400,000.

* * * * *

EXHIBIT 2.

COMMONWEALTH OF VIRGINIA

VIRGINIA STATE PORTS AUTHORITY
254 Granby Street
Norfolk 10
Cable Address Vastports

January 12, 1960.

Honorable J. Lindsay Almond, Jr.
Governor
Commonwealth of Virginia
Richmond, Virginia

My dear Governor Almond:

Pursuant to the provisions of House Joint Resolution No. 70 of the 1958 General Assembly, in a letter dated December 7, 1959, I reported to you and the members of the Legislature on the Authority's progress in developing proposals for the expansion and improvement of general cargo terminal facilities at Hampton Roads. This is a further report supplementing that of December 7th.

The earlier report forwarded a copy of the proposal from the Norfolk and Western Railway. This is still the only acceptable proposal for provision of new facilities the Authority has received. For convenience, a copy of that proposal is enclosed.

Negotiations are continuing with the Chesapeake and Ohio Railway for implementing the program at Newport News. The proposed facilities are urgently needed, and it is believed that ultimately a satisfactory agreement will be reached.

Efforts to find a qualified tenant for the proposed facilities at Pinners Point, Portsmouth, also continue. The Portsmouth Port Commission, with the approval of the City Council, recently met with representatives of the Southern Railway System and offered a subsidy from the city based on actual tonnage handled in the event the Southern became the tenant for a new terminal the Authority would construct at the Pinners Point site. The sum offered by the City of Portsmouth is considered to be roughly equivalent to the amount of tax income to be lost to the cities of Norfolk or Newport News through the acquisition of terminal properties by the Authority. The Southern is studying the offer.

It is recommended that the Legislature appropriate the funds requested in the Authority's budget estimates forwarded August 31, 1959, for the Acquisition and Construction of Port Terminals, a summary of which is enclosed. The engineering analyses and cost estimates for the Norfolk and Newport News sites, recently received, confirm the bases for the sums requested.

The Authority is keeping in close touch with all activities connected with the Hampton Roads facilities program, and will report any further significant developments.

Respectfully,

FRANK A. ERNST
Chairman.

FAE/Cb
encs. (2)

cc: Members of the General Assembly
Lieutenant Governor Stephens

Proposals with respect to purchase, construction and lease of general cargo handling facilities at Lamberts Point and Sewells Point resulting from extended negotiations between Virginia State Ports Authority and Norfolk and Western Railway Company, submitted November 13, 1959, and approved by the Board of Commissioners for submission to the Governor and the 1960 General Assembly at the meeting held November 23, 1959

1. Norfolk and Western Railway Company would convey or cause to be conveyed to the Authority merchandise cargo terminal facilities and property useful for the location of a new pier and supporting facilities as follows:

(a) At Sewells Point 35.815 acres, more or less, with improvements, as shown on the attached print of Norfolk and Western Map 12062-C, dated May 6, 1959;

(b) At Lamberts Point several parcels of land containing an aggregate of approximately 85 acres, together with improvements, shown colored yellow on the attached print of Norfolk and Western's Map No. 14592-A, dated January 30, 1959, and revised September 11, 1959;

(c) At Lamberts Point adjacent to the existing merchandise terminal several parcels of land acquired in the name of the Railway Company's subsidiary, Virginia Holding Corpora-

tion, containing an aggregate of approximately 21 acres, shown colored red, and several parcels of land to be acquired in the name of Virginia Holding Corporation containing an aggregate of approximately 12 acres, shown colored green on the aforesaid print of Map No. 14592-A.

2. The property described in paragraph 1 (a) and (b) above would be conveyed at its depreciated book value as of the date of conveyance and the property described in paragraph 1(c) above would be conveyed at the actual cost of acquisition by Virginia Holding Corporation.

3. The Authority would cause to be constructed at Lamberts Point on and outward from the lands described in paragraph 1(c) above a new merchandise pier, with supporting facilities, at a cost currently estimated at $16,270,000.

4. The Authority would lease to the Railway Company all of the properties so conveyed and improved for an initial term of approximately 30 years, with privilege of renewal at the option of the Railway Company for two additional terms of approximately 30 years each, and upon conditions hereinafter described.

5. The Authority would finance the purchase and construction program by the sale of revenue bonds to an amount currently estimated at $31,098,000 and the Railway Company and its subsidiary would be paid the consideration for the conveyances aforesaid in cash upon sale of these bonds.

6. The revenues with which to discharge the bonds would be derived from and guaranteed by the lease to the Railway Company and the rental payments required by that lease would be of an amount sufficient to service and amortize, during the initial term of the lease, the entire cost of acquiring, constructing, and financing the proposed program.

7. Through legislative enactment, preferably earmarking a specific source of revenue, but alternatively by appropriations from the General Fund, the State of Virginia would make available to the Authority funds to be applied annually in such manner as to reduce by fifty per cent the rental obligations of the Railway Company. It would be understood that the State could not be contractually obligated to continue these appropriations beyond the first legislative biennium following the adoption of the plan, but the expectation of such continued appropriations would be represented to the General Assembly as an essential ingredient of the negotiations between the Authority and the Railway Company and the Authority would undertake to make urgent request for funds for this specific use in submitting its budgetary requirements to successive

sessions of the General Assembly during the initial term of the life of the lease agreement.

8. The expense of maintaining and operating the facilities would be borne by the Railway Company as lessee during the initial term of the lease but the Authority would share equally with the Railway Company in net profits from terminal operations after reimbursement of the Railway Company for all losses incurred during any period when the rental payments and other costs of operation have exceeded revenues, provided the rental obligations of the Railway Company have been regularly reduced by fifty per cent as set forth in paragraph 7 above.

9. Provision would be made in the lease agreement to assure reasonable access to the leased premises, and to the books and records pertaining to the operation thereof, by the personnel of firms with which the Authority might contract for inspection as to maintenance, bookkeeping and operating procedures or for construction and alteration work on the facilities or for other purposes related to the development of the properties.

10. The Railway Company would have the option to renew and extend the lease for two additional terms of not more than 30 years each at rental rates and upon conditions mutually satisfactory to the parties, but upon the understanding that in the negotiation of such rental rates and conditions effect would be given to (1) the fact that the cost of the facilities will then have been fully amortized, (2) the utility of the facilities as measured by the volume of cargoes handled over them during the last preceding term, (3) the record of profits or losses from maintenance and operation of the facilities, and (4) any other changes in conditions affecting the value, use or operation of the facilities which may have occurred during the last preceding term of the lease. The Railway Company will, at least one year prior to the end of the original and of the first renewal term, specify to the Authority in writing the rental rates and other terms (taking into account the facts and factors above mentioned), which it proposes shall be applicable during the following renewal period. If such proposal is not acceptable to the Authority, the parties shall promptly thereafter negotiate with a view to composing their differences.

11. While it is not anticipated that any serious difficulty will be encountered in agreeing with the Authority upon renewal terms which are mutually fair and reasonable, it is essential that the Railway Company have continuing access to the sea, on reasonable terms. Therefore, in case the parties

are unable to agree upon mutually satisfactory renewal terms, the Railway Company would have the option to purchase the leased premises at the end of the initial term, or at the end of the first renewal term, and the Railway Company would also have the option to purchase the leased premises at the end of the last renewal term, at a figure to be arrived at in the following manner:

(1) Add:

(a) The purchase price of the lands involved;
(b) The purchase price of the original structures which are located on the lands at the time the Railway Company exercises the option to purchase;
(c) The construction cost of any structures hereafter erected on the lands and in existence at the time the Railway Company exercises the option to purchase.

(2) Subtract depreciation of the purchase price and construction cost of the structures calculated on the basis of the useful life of such structures;
(3) Multiply the result by the percentage of the entire cost actually paid by the Authority in reduction of the initial term rental obligations of the Railway Company or otherwise.

Provision would also be made for the Railway Company to have the first refusal of the properties on a similar basis in the event of a decision by the Authority to sell prior to the expiration of the lease.

12. Under the lease agreement the properties would be operated by the Railway Company as public facilities open to other rail and motor carriers as well as the Norfolk and Western, but wharfage, handling and other charges would be assessed on a reasonable basis, with the proviso that the Norfolk and Western would not be required to provide any such service to others at less than cost.

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J. Annual service contract	8,000	6,000	4,000	18,000
Total Cost to the State	1,018,000	846,000	629,000	2,493,000

NOTE: The above formula based on 30 years bond issue with 5% coupon.

EXHIBIT 3.

AGREEMENT.

VIRGINIA STATE PORTS AUTHORITY
with
LOCKWOOD GREENE ENGINEERS.

THIS AGREEMENT, Made this 26th day of July, 1960, by and between the VIRGINIA STATE PORTS AUTHORITY, a body corporate of the Commonwealth of Virginia, (hereinafter sometimes referred to as the "Authority"), the first party, and LOCKWOOD GREENE ENGINEERS, a partnership of which Edward B. Moebus, J. Robert Potter and H. Morgan Rogers, Jr., are the general partners, with officers at 41 East 42nd Street, New York 17, New York, (hereinafter sometimes referred to as the "Engineers"), the second party.

WITNESSETH

WHEREAS under Title 62 Chapter 6.1, Code of Virginia of 1950, as amended, (Secs. 62-106.1 through 62-106.19) the Authority was established as a body corporate for the purposes and with the powers therein set forth; and

WHEREAS the Authority desires and intends to acquire certain property situated at Lambert's Point and Sewells Point, in the City of Norfolk, Virginia, to construct thereon the port terminal facilities and improvements hereinafter mentioned, to finance such acquisition and construction through the issuance and sale of its revenue bonds, and to lease said property, together with such facilities and improvements, to the Norfolk and Western Railway Company (hereinafter sometimes referred to as the "Railway") for operation as public facilities; and

WHEREAS said transactions cannot be carried out until a favorable authoritative determination has been made of certain legal questions respecting the said transactions; and

WHEREAS the General Assembly of Virginia, at its 1960 Session, made an appropriation for use by the Authority during the biennium beginning July 1, 1960, in the acquisition, development and operation of the port facilities; and

WHEREAS said appropriation and the sale of said revenue

bonds constitute the only sources of funds available to the Authority for the purpose of paying the costs connected with such acquisition and construction, and before utilizing any portion of such appropriation or issuing and selling its revenue bonds, it is necessary that said legal questions be favorably and authoritatively determined; and

WHEREAS in order to expedite the accomplishment of the Authority's objectives, the Authority desires to engage the services, at this time, of the Engineers in connection with the design and supervision of construction of said facilities and improvements, and the Engineers are willing to furnish such services, upon the terms and conditions hereinafter set out:

NOW, THEREFORE, in consideration of the premises and the mutual agreements of the parties hereto, hereinafter set out, it is stipulated and agreed by and between said parties as follows:

1. The Engineers agree that they will perform the services hereinafter stipulated in connection with the design and supervision of construction of the following facilities and improvements (herein sometimes collectively referred to as the "new facilities"):

(a) The general cargo terminal and supporting facilities at Lambert's Point, in the City of Norfolk, Virginia, described in the report of Uhl, Hall and Rich, Engineers, of Boston, Massachusetts, dated December, 1959, entitled "Engineering Analysis and Cost Estimate," as heretofore or hereafter modified by the Authority; and

(b) Certain improvements at Sewells Point, in the City of Norfolk, Virginia, consisting of the regrading, widening and repaving of the approach road from Hampton Boulevard to the Grain Elevator and the construction of truck loading platforms at tailgate level at the inboard end of Piers A and B.

2. The services to be performed by the Engineers hereunder shall comprise all those customarily performed by engineers in preparing the plans and specifications for, and in the general supervision of the construction of, a project of the nature of the new facilities, and (without limiting the generality of the foregoing) shall include the following:

(a) Consultations and conferences, from time to time, with the Authority and the Railway for the purpose of ascertain-

ing their views and wishes respecting the character and details of the new facilities;

(b) Preparation of preliminary sketches of the new facilities (including all equipment and dredging), studies of alternate types of layout and construction thereof, and cost estimates for the various types and designs;

(c) Obtaining approval of the U. S. Army Corps of Engineers and any other agencies having jurisdiction respecting the matter;

(d) Preparation of final and complete engineering drawings and specifications, which shall meet the approval of the Authority and the Railway, in proper form for submission to contractors in order to obtain firm bids for all the construction work required for the completion of the entire project;

(e) Preparation of the drawings and specifications for the purchase of Gantry Cranes, Transfer Bridge and special process or handling equipment;

(f) Preparation of pertinent bidding and contract documents and assisting the Authority in securing and analyzing the bids and awarding contracts for all the construction work involved;

(g) Interpretation and clarification, if and when required, of the design drawings and specifications;

(h) Establishment and maintenance of a field office on the job site, staffed with sufficient suitably skilled personnel, under the direction of an experienced and qualified resident engineer, to provide competent supervision of construction on a full time basis, during the entire period of construction;

(i) Checking of vendors' shop drawings covering equipment and material to be furnished by the various contractors and suppliers;

(j) Inspection of the work and material to assure compliance with the drawings, specifications and other pertinent documents;

(k) Coordination of construction work with activities of the Railway;

(l) Determination of approximate quantity and value of construction work accomplished, and the preparation and certification of construction payment estimates;

(m) Maintaining records of construction progress and construction costs, and submitting to the Authority and the Railway monthly progress reports, beginning one month after the execution of this agreement and ending with a final report upon completion of the work;

(n) Negotiation, checking and processing of change orders and requests for extras; and

(o) Complete inspection and approval before final acceptance of each part of the work.

The services of the Engineers shall be divided into two parts, herein referred to as Part 1 and Part 2. The Part 1 services shall be started promptly after the execution and delivery of this agreement and shall be completed with reasonable dispatch, estimated to be within a period of eight months after approval by the Authority and the Railway of the preliminary sketches. The Part 1 services shall embrace all those incident to the preparation of the engineering designs, drawings, specifications, cost estimates, and all other documents needed to obtain from contractors firm bids for the construction of the complete new facilities; and Part 1 services shall end upon the letting of the contracts for the construction of the new facilities. Part 2 services shall begin immediately after contracts have been entered into by the Authority for the construction of the new facilities, and shall embrace all services specified in the foregoing paragraphs 2(g), 2(h), 2(i), 2 (j), 2 (k), 2 (1), 2 (m), 2 (n) and 2 (o) in connection with the construction of the new facilities until the completion and acceptance thereof.

3. The Authority agrees to pay to the Engineers, in the manner hereinafter provided, as compensation for all their services rendered hereunder and as reimbursement for all expenses incurred by them in connection therewith, an amount (subject to the limitation hereinafter prescribed) equal to the total of the costs, as hereinafter defined, incurred by the Engineers, and a fixed fee of Fifty Thousand Dollars ($50,000.00).

The costs incurred by the Engineers in the performance of their work hereunder, for which they shall be entitled to reimbursement are:

(a) The total compensation (which shall be based on the actual payroll rate plus twenty-five per centum (25%) thereof to cover such items as vacations, paid holidays, illness, hospitalization, social security, unemployment insurance, workmen's compensation, public liability insurance and pension plan) of the engineers, draftsmen and technical personnel (except all personnel referred to in the next following paragraph designated (b)) for the time they are employed directly on the Part 1 and Part 2 work to be performed hereunder; plus an amount equal to seventy-five per centum (75%) of such compensation, to cover the overhead and general expenses of the Engineers, including all stenographic, clerical and accounting services and the time devoted by partners and

associates of the Engineers to the work to be performed under this Agreement;

(b) The salaries and wages, at actual payroll rates, of the personnel who are employed at the job site, during the Part 2 work, in connection with the supervision of construction, plus an amount equal to twenty per centum (20%) of such salaries and wages, to cover the estimated costs incident to such personnel's vacations, sick leaves, insurance and other items; and

(c) The out-of-pocket expenses actually incurred by the Engineers for surveys, borings, reproductions of drawings, specifications, documents and reports, long distance telephone calls, telegrams, the maintenance of a field office on the project site, and the travelling and subsistence of personnel while in a travel status.

Bills shall be rendered monthly by the Engineers to the Authority, covering the previously incurred costs for which the Engineers are entitled to reimbursement, relating to Part 1 services, plus a proportionate part (computed on the basis of the maximum amount of $650,000.00 payable hereunder) of the fixed fee of $50,000.00 to which the Engineers are entitled. As soon as the Authority has funds available for the payment of said bills, the Authority shall pay to the Engineers ninety per centum (90%) of the aggregate amount of the bills previously rendered, it being understood that ten per centum (10%) thereof shall be retained by the Authority until the completion of the Part 1 work. Ninety per centum (90%) of each bill received by the Authority after funds shall become available to it for the payment thereof shall be paid promptly after the receipt thereof, it being understood that ten per centum (10%) of the amount of said bills shall likewise be retained by the Authority until the completion of the Part 1 work. When the Part 1 work will have been completed, or as soon thereafter as funds are available to the Authority for the purpose, the Authority shall pay to the Engineers the balance due, including the retained percentage, on all bills previously rendered.

The Part 2 work shall not be undertaken by the Engineers unless and until the Authority in writing notifies the Engineers of the availability of funds with which to fully pay the amount which will be payable to the Engineers hereunder. Bills for the costs incurred by the Engineers in connection with the Part 2 work, plus a proportionate part (computed on the basis of the maximum amount of $650,000.00 payable hereunder) of the fixed fee of $50,000.00 to which the Engineers are entitled, shall be rendered monthly by the Engineers to

the Authority, and upon the receipt of each such bill ninety per centum (90%) thereof shall be paid by the Authority to the Engineers, it being understood that ten per centum (10%) thereof shall be retained by the Authority until the completion of the Part 2 work. Upon the completion of the Part 2 work, the Authority shall pay to the Engineers the balance due, including the retained percentage, on all bills previously rendered in connection with the Part 2 work and the unpaid balance of the fixed fee to which the Engineers are entitled.

It is expressly understood and provided, however, that in no event shall the aggregate amount payable hereunder by the Authority to the Engineers exceed Six Hundred Fifty Thousand Dollars ($650,000.00), and when that amount will have been paid to the Engineers, no further payment shall be due or payable hereunder. This provision shall not be construed to relieve or release the Engineers, in any way or to any extent, from any of their obligations hereunder.

The correctness of all bills rendered by the Engineers to the Authority hereunder shall be certified to by one of the partners or a duly authorized representative of the Engineers.

4. The Engineers shall keep and maintain at all times books, accounts and records conforming with good accounting practice, pertaining to all costs incurred in the performance of this contract, and such books, accounts and records shall be open at all reasonable times to examination and/or audit by the Authority or the Railway, or the authorized representatives of either of them.

5. The Authority agrees that it will endeavor to obtain a prompt, favorable, authoritative determination of the legal questions respecting the aforementioned transactions; and that in the event the aforesaid appropriation made by the General Assembly of Virginia at its 1960 Session is not available for use by the Authority in paying to the Engineers the amount due them for their services and expenses hereunder, the Authority will endeavor to obtain another appropriation from the Commonwealth of Virginia in an amount sufficient to reimburse the Engineers for the costs previously incurred by them in connection with their work hereunder; and that the Authority will pay to the Engineers the amount to which they are entitled hereunder as soon as any funds become available to the Authority for such purpose.

6. The Authority agrees that it will make available to the Engineers all data respecting the physical aspects of the subject property, which the Authority has accumulated prior to the execution of this Agreement or which the Authority is able to obtain, without costs, from the Railway.

7. The Authority may, at any time after the execution of this agreement, terminate the services of the Engineers; and in the event of such termination the Engineers shall be entitled to reimbursement for the costs (computed as above set out) incurred by them prior to the date of termination and to such percentage of said fixed fee of Fifty Thousand Dollars ($50,000.00) as the work previously performed by the Engineers bears to the maximum of Six Hundred Fifty Thousand Dollars ($650,000.00) payable hereunder.

8. The Engineers agree to comply with all Federal, State and local laws, ordinances and regulations which are applicable to the performance of this agreement, and to procure all legally required licenses for their work hereunder.

9. The Engineers shall be responsible for any and all damage to persons or property arising from, connected with, or growing out of, in any way, the prosecution of the work of the Engineers under this agreement, and the Engineers shall indemnify and save harmless the Authority, the Commonwealth of Virginia, the Railway and their respective officers, agents and employees, from and against any and all liability, loss, cost, damage and expense, of every kind whatsoever, arising therefrom or in any way connected therewith; and the Engineers agree that they will carry, at all times during the performance of this agreement, a public liability insurance policy, with limits of not less than $100,000.00 for injury (including death) to one person and $300,000.00 for injury (including death) to more than one person, covering the prosecution of the Engineers' work and liability as indemnitor under this agreement, in which policy the Engineers, the Authority, the Commonwealth of Virginia, the Railway and their respective officers, agents and employees, as their respective interests may appear, shall be designated as the insured.

10. In the event any controversy or claim arises out of this agreement and it is not resolved by the parties hereto within sixty (60) days thereafter, it shall, at any time thereafter that either party so desires, be referred to and settled by a board of arbitrators, consisting of three members, one of whom shall be selected and appointed by the Authority, one by the Engineers, and the third by the two arbitrators so selected. When the party seeking arbitration has appointed its arbitrator, it shall give written notice thereof to the other party and such other party shall, within thirty (30) days thereafter, appoint its arbitrator and give written notice thereof to the party seeking arbitration. In the event the two arbitrators so selected fail to agree within thirty (30) days after their appointment upon the third arbitrator, such third arbitrator shall

be appointed by the then Judge of the Corporation Court of the City of Norfolk, Virginia. The decision of any two arbitrators serving hereunder shall be final and binding on the parties hereto, and such decision shall be reported in writing to such parties. All costs and expenses connected with any such arbitration proceeding shall be borne equally by the parties hereto.

IN WITNESS WHEREOF the Virginia State Ports Authority has caused this agreement to be signed in its name and behalf by Frank A. Ernst, Chairman of its Board of Commissioners, and its corporate seal to be hereto affixed and attested by D. M. Thornton, its Secretary, thereunto duly authorized, and Lockwood Greene Engineers has caused this agreement to be signed in its name and behalf by H. Morgan Rogers, Jr., its general partner, thereunto duly authorized, the day and year first above written.

VIRGINIA STATE PORTS AUTHORITY

By .....
Chairman.

Attest:

.....
Secretary.

LOCKWOOD GREENE ENGINEERS

By .....
General Partner.

* * * * *

(Exhibit No. 4 filed in separate volume.)

EXHIBIT 5.

COMMONWEALTH OF VIRGINIA

VIRGINIA STATE PORTS AUTHORITY
Maritime Tower
Norfolk 10, Virginia
Cable Address Vastports

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE PORT FACILITY CONTRACT BETWEEN VIRGINIA STATE PORTS AUTHORITY AND THE NORFOLK AND WESTERN RAILWAY COMPANY.

WHEREAS, under Section 62-106.1 to 62-106.19, inclusive, of the Code of Virginia, as amended (herein sometimes referred to as the "Enabling Act"), the Virginia State Ports Authority, a body corporate of the Commonwealth of Virginia (herein sometimes called the "Authority") has been established with powers and duties as defined in the Enabling Act, including the power to develop and improve the harbors or seaports of the State for the handling of waterborne commerce, to acquire, construct, equip, operate, maintain, develop and improve such harbors or seaports and their port facilities, including, *inter alia,* wharves, docks, piers, quays, warehouses and other structures and facilities needful for the convenient use thereof in aid of commerce, and to buy, own and acquire such property, real or personal, as the Authority deems proper; and

WHEREAS, the Authority is further authorized under the Enabling Act to lease, as lessor, such part or all of its property, real or personal, at such rental, for such period or periods of years, upon such terms and conditions, with or without an option on the part of the lessee to purchase any or all of the leased property at or after the retirement of all indebtedness incurred by the Authority on account thereof, as the Authority shall determine; and

WHEREAS, in order to effectuate the purposes of the Enabling Act, the Authority deems it desirable and in the public interest to acquire from the Norfolk and Western Railway Company, a corporation duly organized under the laws of the Commonwealth of Virginia (herein sometimes called the "Railway"), and the Railway is willing to sell and convey and cause to be sold and conveyed to the Au-

thority, certain port facility property (herein sometimes called "Port Facility Property") situated at Sewells Point and at Lamberts Point, in Norfolk, Virginia; and

WHEREAS, in order to provide modern and efficient marine terminal facilities comparable to those existing at other ports for the loading, unloading, interchange, servicing, and storage of general cargo, the Authority deems it to be in the public interest to construct in and upon the Port Facility Property certain port facilities (herein sometimes called the "New Port Facilities") consisting generally of certain improvements at Lamberts Point as more fully described in "Proposed General Cargo Facilities, Lamberts Point, Norfolk, Virginia, Engineering Analysis and Cost Estimate," dated December, 1959, prepared for the Authority by Uhl, Hall and Rich of Boston, Massachusetts, and certain approach road improvements and loading platforms at Sewells Point; and

WHEREAS, the Authority has further found and determined that the public interest will be best served and that the objectives of the Enabling Act can more advantageously be attained by the authorization and issuance of its revenue bonds in an aggregate amount sufficient to pay the cost of the acquisition of the Port Facility Property and the provision and construction of the New Port Facilities, such bonds to be secured by a Trust Agreement to be executed by the Authority and a Trustee to be hereafter designated by resolution of the Board of Commissioners of the Authority; and

WHEREAS, the Authority has further found and determined that it is desirable and in the public interest and in furtherance of the objectives of the Enabling Act to lease to the Railway the Port Facility Property and the New Port Facilities under an Agreement of Lease (herein sometimes called the "Lease") prescribing the terms and conditions of such leasing (the Port Facility Property and the New Port Facilities, including all additions, improvements, extensions, alterations, fixtures, equipment and appurtenances thereto and therefor excepting those expressly excluded under the Lease, being herein sometimes called the "Project"); and

WHEREAS, the Railway and the Authority have considered ways and means for effectuating the objectives and purposes of the Enabling Act through a cooperative undertaking between the Railway and the Authority and as a result

of such consideration over a long period of time a draft of a contract designated the "Port Facility Contract" has been prepared for execution by and between the Railway and the Authority, which contract provides (a) for the Authority's acquisition from the Railway of the Port Facility Property, (b) for the provision and construction by the Authority of the New Port Facilities, (c) for the authorization and issuance by the Authority of its revenue bonds to pay the cost of the Project, and (d) for the leasing of the Project by the Authority to the Railway; and

WHEREAS, pursuant to resolutions heretofore adopted by this Board authorizing their execution in behalf of the Authority, there have been executed, between the Authority and the partnership firm of engineers named Lockwood Greene Engineers, an Agreement bearing date of July 26, 1960, under which the firm of Lockwood Greene Engineers has agreed to perform certain design and construction supervision services in connection with the construction of the New Port Facilities under an arrangement for the payment of compensation therefor specified in said Agreement, and has performed a substantial portion of the design services; now, therefore,

BE IT RESOLVED by the Board of Commissioners of the Virginia State Ports Authority that:

Section 1. The Authority hereby finds and determines that the Port Facility Contract and the provisions of the Trust Agreement and of the Lease attached thereto and marked "Exhibit A" and "Exhibit B," respectively, are in conformity with the Enabling Act and will facilitate the carrying out of the purposes and objectives of the Enabling Act.

Section 2. The Authority further finds and determines that the execution of the Port Facility Contract is desirable, is in the public interest and is in full conformity with the Enabling Act, and the Authority hereby approves the Port Facility Contract, including the Trust Agreement and the Lease, substantially in the forms attached hereto, and authorizes the execution of the Port Facility Contract for and in behalf of the Authority, and hereby empowers and directs Frank A. Ernst, Chairman of the Board of Commissioners of the Authority, to sign the Port Facility Contract in the name and in behalf of the Authority and empowers and directs the Secretary of the Authority, D. M. Thornton, to cause the corporate seal of the Authority to be affixed thereto and to be attested by said Secretary, and further directs that upon such execution thereof for and in behalf of the Authority the

Executive Director shall deliver the Port Facility Contract to the Railway for execution for and in behalf of the Railway.

Section 3. Upon execution of the Port Facility Contract by both the Authority and the Railway, the members, officers and employees of the Authority, the engineers and accountants employed by the Authority, and the officers and agents of the Trustee are hereby authorized and directed to do all acts and things required of them under the Port Facility Contract and this resolution.

I, D. M. Thornton, do hereby certify that I am Secretary of the Board of Commissioners of the Virginia State Ports Authority, that the foregoing is a true and correct copy of a preamble and resolution adopted at a regular meeting of the Board of Commissioners of the Virginia State Ports Authority which was duly convened and held, after due notice, at its office in the Maritime Tower, Norfolk, Virginia, on the 30th day of January, 1961, at which a quorum was present, and that said preamble and resolution are still in full force and effect on the date hereof.

Given under my hand and the seal of the Virginia State Ports Authority this 14th day of February, 1961.

D. M. THORNTON
Seal Secretary.

EXHIBIT 6.

COMMONWEALTH OF VIRGINIA

VIRGINIA STATE PORTS AUTHORITY
Maritime Tower
Norfolk 10, Virginia
Cable Address Vastports

A RESOLUTION AUTHORIZING THE ISSUANCE OF PORT FACILITIES REVENUE BONDS OF VIRGINIA STATE PORTS AUTHORITY AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST AGREEMENT SECURING SAID BONDS.

BE IT RESOLVED by the Board of Commissioners of the Virginia State Ports Authority:

Section 1. The Virginia State Ports Authority (hereinafter sometimes called the "Authority"), has found and determined and does hereby declare that pursuant to Sections

62-106.1 to 62-106.19, inclusive, of the Code of Virginia, as amended (herein sometimes referred to as the "Enabling Act"), the Authority has been established as a body corporate of the State of Virginia empowered:

(a) to exercise the powers of a body corporate, including the power to make contracts, and in general to do and perform any act or function which may tend to or be useful toward the development and improvement of the harbors and seaports of the State and to the increase of commerce, foreign and domestic, through its harbors and seaports;

(b) to acquire, construct, maintain, equip and operate wharves, docks, ships, piers, quays, elevators, compressors, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto and the construction of shipping and transportation facilities incident thereto and useful or convenient for the use thereof;

(c) to rent, lease, buy, own, acquire and dispose of such property, real or personal, as the Authority deems proper to carry out the purposes and provisions of the Enabling Act, and to lease to another such part or all of its property, real or personal, for such period or periods of years, upon such terms and conditions, with or without an option on the part of the lessee to purchase any or all of the leased property at such price, at or after the retirement of all indebtedness incurred by the Authority on account thereof, as the Authority shall determine:

(d) to issue revenue bonds of the Authority, payable solely from the rents, charges and other revenues pledged for their payment, for the purpose of paying all or any part of the cost of any project of the Authority for the acquisition, construction, reconstruction or control of port facilities, or any portion or portions thereof;

(e) to fix and revise from time to time and to charge and collect rents and charges for the use of the port facilities under the Authority's control; and

(f) in general to do and perform any act or function which may tend to be useful toward the development and improvement of the harbors and seaports of the State and to the increase of commerce, foreign and domestic, through its harbors and seaports.

Section 2. In exercise of the powers vested under the Enabling Act, the Authority has entered or will enter into a

contract (herein sometimes referred to as the "Port Facility Contract") with the Norfolk and Western Railway Company, a corporation duly organized under the laws of the State of Virginia (herein sometimes called the "Railway") pursuant to which the Railway has agreed to sell and convey to the Authority and the Authority has agreed to purchase certain property (herein sometimes referred to as the "Port Facility Property") situated at Sewells Point and at Lamberts Point in the City of Norfolk, Virginia consisting of certain parcels of land, together with cargo terminal facilities and other improvements thereon, all as more specifically described in the memorandum entitled "Description of Port Facility Property" attached to and made a part of the Port Facility Contract.

Section 3. Under the terms of the Port Facility Contract the Authority has agreed to provide and construct or cause to be provided and constructed with all reasonable dispatch, in and upon the Port Facility Property, certain port facilities and other improvements (herein sometimes referred to as the "New Port Facilities") consisting generally (a) at Lamberts Point, of a pier, transit shed, warehouses, cold storage warehouse, service building, gantry cranes, service trackage, transfer bridge, access road, loading platforms, bulkhead (or dikes), alterations to an existing pier and other supporting and incidental facilities, all of which facilities are more fully described in "Proposed General Cargo Facilities, Lamberts Point, Norfolk, Virginia Engineering Analysis and Cost Estimate," dated December, 1959, prepared for the Authority by Uhl, Hall and Rich of Boston, Massachusetts, and (b) at Sewells Point, of approach road improvements and loading platforms.

Section 4. Under the terms of the Port Facility Contract the Authority and the Railway have agreed to enter into an Agreement of Lease (said Agreement of Lease and any and all future agreements amendatory thereof being herein sometimes called the "Lease") substantially in the form of lease attached to and made a part of the Port Facility Contract, under which Lease the Authority shall demise, lease and rent to the Railway and the Railway shall take, accept and rent from the Authority and shall use, occupy, operate as a public facility, manage, repair and maintain the Port Facility Property and the New Port Facilities (the Port Facility Property and the New Port Facilities, including all additions, improvements, extensions, alterations, fixtures, equipment and appurtenances thereto and therefor with such exceptions as are provided in the Lease, being herein sometimes collectively called the "Project").

Section 5. The Lease provides that the original term thereof is thirty (30) years and that the Railway shall assume and bear all costs incurred in the use, occupancy, operation, management, repair and maintenance of the Project and to pay rent therefor as provided in the Lease, consisting of "basic rent" payable in semi-annual installments during the original term of the Lease and certain fees, other costs and losses called "additional rent," in addition to the payment by the Railway of all taxes, assessments and insurance premiums, of every kind and nature, relating to the Project or any interest therein and all costs, expenses, liabilities and charges, of every kind and nature, relating to the maintenance, repair, replacement and improvement of any of the buildings, structures, facilities or equipment thereon, or to the operations or services conducted or provided thereon, or in connection therewith which may arise or accrue during the term of the Lease.

Section 6. For the purpose of providing funds, with other available funds, for paying the cost of acquiring the Port Facility Property from the Railway and paying the cost of providing and constructing the New Port Facilities, the issuance of revenue bonds of the Authority designated "Port Facilities Revenue Bonds" is hereby authorized. Said bonds shall be in such aggregate principal amount, shall bear such date, shall bear interest at such rate, and shall mature, subject to the right of prior redemption, at such time or times, as shall hereafter be determined by the Authority by resolution of its Board of Commissioners and as shall be provided for in the Trust Agreement (hereinafter provided for).

Section 7. The definitive bonds shall be issuable as coupon bonds, registrable as to principal alone, in the denomination of One Thousand Dollars ($1,000) each, and as registered bonds without coupons in denominations of One Thousand Dollars ($1,000) or any multiple thereof. At the principal office of the Trustee under the Trust Agreement (hereinafter provided for), in the manner and subject to the limitations and conditions provided in the Trust Agreement, registered bonds without coupons may be exchanged for an equal aggregate principal amount of coupon bonds of the same maturity, bearing interest at the same rate and having attached thereto coupons representing all unpaid interest due or to become due thereon, or of registered bonds without coupons of the same maturity, of any denomination or denominations authorized by the Trust Agreement and bearing interest at the same rate; and coupon bonds with all coupons appertaining thereto representing all unpaid interest due or to become due thereon may in like manner be exchanged for an equal aggregate principal

amount of registered bonds without coupons of the same maturity, of authorized denominations and bearing interest at the same rate. The bonds shall bear the facsimile signature of the Executive Director of the Authority, and a facsimile of the official seal of the Authority shall be imprinted on the bonds and attested by the manual signature of the Secretary of the Authority. The coupons attached to the coupon bonds shall bear the facsimile signature of the Executive Director of the Authority. The coupon bonds issued hereunder and the interest coupons attached thereto and the provisions for registration endorsed thereon, the registered bonds without coupons issued hereunder, and the certificate of authentication by the Trustee endorsed on all such bonds shall be, respectively, substantially in the forms set forth in the Trust Agreement.

Section 8. Both the principal of and the interest on the bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of the coupon bonds (unless registered) and the interest on all coupon bonds shall be payable at the principal office of such bank or trust company in Virginia or, at the option of the holder, at such bank or trust company in the Borough of Manhattan, City and State of New York, as shall be determined by the Authority by resolution of its Board of Commissioners prior to the issuance of said bonds. The principal of all registered bonds without coupons and of all coupon bonds registered as to principal alone shall be payable at the principal office of the Trustee under the Trust Agreement, and payment of the interest on each registered bond without coupons shall be made by said Trustee on each interest payment date to the person appearing on the registration books of the Authority provided for in the Trust Agreement as the registered owner thereof, by check or draft mailed to such registered owner at his address as it appears on such registration books. Payment of the principal of all bonds shall be made upon the presentation and surrender of such bonds as the same shall become due and payable. Payment of the interest on the coupon bonds shall be made upon the presentation and surrender of the coupons, if any, representing such interest as the same respectively become due and payable.

Section 9. In order to secure the payment of the principal of and the interest on the bonds herein authorized, including any redemption premium thereon, and any additional bonds that may be issued under the provisions of the Trust Agree-

ment, according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants, agreements and conditions in said bonds, the execution and delivery of a Trust Agreement by and between the Authority and such Trustee as shall hereafter be designated by the Authority by resolution of its Board of Commissioners, are hereby authorized, which Trust Agreement (herein sometimes called the "Trust Agreement") shall be substantially in the form presented at this meeting and attached to the Port Facility Contract, subject to such minor changes, variations, omissions and insertions as may be approved by the Executive Director of the Authority and by said Trustee, and shall be executed in the manner therein set forth. The execution of the Trust Agreement by the Executive Director of the Authority and by the Trustee shall be conclusive evidence of their approval of any such minor changes, variations, omissions and insertions in the Trust Agreement.

Section 10. The bonds herein authorized, when sold in accordance with the provisions of the Enabling Act, shall be executed in the form and manner hereinabove provided and shall be deposited with said Trustee for authentication and delivery in accordance with and subject to the provisions of Section 208 of the Trust Agreement; provided, however, that the Trustee shall not authenticate and deliver the bonds unless simultaneously therewith the Railway shall convey to the Authority title to the Port Facility Property as provided in the Port Facility Contract and the Agreement of Lease shall be duly executed and delivered. The bonds shall be appropriately numbered.

Section 11. The Executive Director of the Authority is hereby authorized to cause the bonds and coupons to bear his facsimile signature and the Secretary of the Authority is hereby authorized to sign the bonds manually in attestation of the facsimile of the official seal of the Authority which the Secretary is hereby authorized to cause to be imprinted on the bonds. The members, officers and employees of the Authority, the Design Engineers and the Consulting Engineers and the officers and agents of the Trustee and the Accountant are hereby authorized and directed to do all acts and things required of them by the provisions of the bonds and of the Trust Agreement for the full, punctual and complete performance of all the terms, covenants, provisions and agreements of the bonds and of the Trust Agreement, and also to do all acts and things required of them by the provisions of this resolution.

Section 12. The Trustee, when appointed by the Authority by resolution of its Board of Commissioners to act as Trustee under the Trust Agreement, shall be entitled to such estates, powers, rights, authorities, benefits, privileges, immunities and exemptions as are set forth in the Trust Agreement.

I, D. M. Thornton, do hereby certify that I am Secretary of the Board of Commissioners of the Virginia State Ports Authority, that the foregoing is a true and correct copy of a preamble and resolution adopted at a special meeting of the Board of Commissioners of the Virginia State Ports Authority which was duly convened and held, after due notice, at its office in the Maritime Tower, Norfolk, Virginia, on the 22nd day of February, 1961, at which a quorum was present, and that said preamble and resolution are still in full force and effect on the date hereof.

Given under my hand and the seal of the Virginia State Ports Authority this 23rd day of February, 1961.

D. M. THORNTON
Seal Secretary.

* * * * *

COMMONWEALTH OF VIRGINIA
COMP. FORM 5-(11-57) 300M SETS

ORIGINAL

INVOICE

Exhibit 7

Purchase Order No. _____

Requisition No. _____

Date of invoice February 14, 1961

How Shipped _____

Terms and discount _____

(Name and address of State Agency receiving goods or service)

SOLD TO

Virginia State Ports Authority
1600 Maritime Tower
Norfolk, Virginia

(Name and address of Vendor)

BY

Lockwood Greene Engineers
Montgomery Building
Spartanburg, S. C.

NOTICE TO VENDOR

All invoices against agencies of the Commonwealth of Virginia must be prepared on this form and four copies sent directly to the agency to which merchandise was shipped or for which service was rendered. Invoices must be complete in detail. Render a separate invoice for each purchase order promptly upon completion of shipment, or performance of service. Retain last copy for your records. If charges for freight or express are added to invoice, original bill of lading or receipt must be attached.

DATE OF SHIPMENT OR SERVICE	DESCRIPTION OF ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT		LEAVE BLANK
2/4	For engineering services to date rendered in connection with Lambert's Point Development and connected improvements. Invoice and supporting schedules attached.				159,955	94	
	Less 10% retained in accordance with Clause 3C of Contract				15,995	58	

47-A

VENDORS SHOULD NOT WRITE BELOW THIS LINE	VENDOR'S TOTAL				143,960	36	

Delivery:—Complete ☐ Incomplete ☒

Voucher No. 1 Month February

Approp.-Activity-Object (Allot.-Quarter) Amount

407-01-1130-10-3

DEDUCTIONS	
Discounts.....%	
Other (Specify):	
.....	
.....	
Amount certified for payment	143,960 36

Audited:

Charged:

Receiving stamp.—Div. of Acc'ts and Control

Entered by Comptroller register of warrants

TO THE COMPTROLLER:

It is hereby certified that the goods or services specified above have been received, or performed, payment therefor has not been previously authorized and that this expenditure is a proper charge to the appropriation indicated. This account is approved for payment.

Signature of approving officer [signature]

(Use ink or indelible)

Title Director, Bureau of Administration

(EXHIBIT #7—Continued)

LOCKWOOD GREENE
Engineers . . . Architects
41 East 42nd Street
New York 17, N. Y.

Virginia State Ports Authority
1600 Maritime Tower
Norfolk 10, Virginia

Attention: Colonel D. C. Hill

Job No. 60095 Date February 4, 1961 Bill No. 61-29

For Engineering Services rendered in connection with Lambert's Point Development and connected improvements.	Accumulated Total Including This Billing	Total January 1961 Only
Amount of Fee Due in accordance with Clause 3 of contract as shown on attached schedules:		
Lockwood Greene		
Blackburn & Blauvelt		
Actual Payroll $5,754.77 5,737.47	$ 53,628.29	$ 11,492.24
Plus 25% to cover fringe benefits to employee.	13,407.08	2,873.06
SUB-TOTAL	$ 67,035.37	$ 14,365.30
Plus 75% to cover the overhead and general expenses of the Engineers in accordance with Clause 3a of contract.	50,276.52	10,773.97
SUB-TOTAL LABOR ONLY	$117,311.89	$ 25,139.27
Expenses at Incurred Cost in accordance with Clause 3c of contract as shown on attached	30,339.97	872.88
SUB-TOTAL LABOR AND EXPENSES	$147,651.86	$ 26,012.15

Proportional amount of fixed fee in accordance with Clause 3c of contract.	12,304.08	2,167.50
TOTAL CHARGES	$159,955.94	$ 28,179.65
Less 10% retained by owner in accordance with Clause 3c of contract.	15,995.58	2,817.96
TOTAL BILLING TO DATE (Less 10% retainage)	$143,960.36	$ 25,361.69
Less Amount Previously Paid	—	—
BALANCE PAYABLE	$143,960.36	$ 25,361.69

Certified:

By: RITA A. GALLAGHER
Secretary & Assistant Treasurer
Lockwood Greene Engineers of New York, N. Y.

February 4, 1961

LOCKWOOD GREENE JOB NO. 60095
VIRGINIA STATE PORTS AUTHORITY
TECHNICAL AND PRODUCTION PAYROLL FOR JANUARY, 1961
WEEKS ENDING (1961):

	Jan. 7	Jan. 14	Jan. 21	Jan. 28	Total Hours	Rate	Amount
J. C. Cox, Sr. Drfts.	32	24	40	40	136	$3.50	$ 476.00
B. L. Curry, Drfts.	32	40	40	40	152	3.00	456.00
T. A. Fridy, Sr. Engr.	18	24	9	29	80	5.00	400.00
D. H. Garren, Sr. Drfts.	4	36	—	—	40	3.75	150.00
J. A. Gaulden, Drfts.	22	6	—	—	28	2.50	70.00
M. E. Hatfield, Sr. Drft.	20	31	40	8	99	3.25	321.75
H. L. Jenkins, Drfts.	28	24	40	32	124	2.625	325.50
M. T. Jones, Drfts.	32	40	8	—	80	2.625	210.00
W. J. Lindemann, Des.	28	40	—	—	68	3.75	255.00
J. B. Link, Jr. Drfts.	32	40	40	38	150	2.25	337.50
R. D. Looper, Sr. Drfts.	32	40	40	40	152	3.30	501.60
J. McCarthy, Jr. Engr.	30	30	40	32	132	4.125	544.50
C. E. Meyer, Sr. Drfts.	27	32	8	16	83	3.125	259.38
K. B. Stubbs, Des.	4	5	4	—	13	3.75	48.75
L. Thigpen, Drfts.	27-1/2	30	40	40	137-1/2	2.50	343.75
L. A. Webb, Jr. Engr.	12	12	—	10	34	3.975	135.15
P. Wood, Drfts.	32	40	40	40	152	2.375	361.00
M. L. Boggs, Sr. Engr.	—	32	10-1/2	9	51-1/2	4.625	238.19
F. E. Glenn, Des.	—	8	6	—	14	3.75	52.50
E. P. Light, Sr. Drfts.	—	11	—	8-1/2	19-1/2	3.375	65.81

LOCKWOOD GREENE
Engineers . . . Architects
41 East 42nd Street
New York 17, N. Y.

* * * * *

February 4, 1961.

In reply
refer to 60095

VIRGINIA STATE PORTS AUTHORITY LAMBERT'S POINT DEVELOPMENT.

Expenses at Incurred Cost:

Blueprint Charges	$ 24.70
Shipping Charges	1.00
Telephone Toll Charges	72.11
Photos	22.00
Seal	9.79
Travel Expenses:	
Mr. Rogers, Spartanburg to Norfolk December 12, 1960	40.53
Mr. McCarthy, Spartanburg to New York January 3rd to 5th	65.00
Mr. Fridy, Spartanburg to New York, January 3rd to 5th	87.97
Mr. Fridy, Spartanburg to Norfolk, January 9th to 10th	59.39
Mr. Boggs, Spartanburg to Norfolk, to Richmond, January 9th to 13th	153.27
TOTAL LOCKWOOD GREENE EXPENSES	$535.76

P. A. Lowry, Sr. Drfts.	—	8	4	—	12	3.50	42.00
D. G. Sherer, Sr. Dfts.	—	1	—	—	1	3.25	3.25
K. A. Makella, Sr. Engr.	5-1/2	—	—	—	5-1/2	5.60	30.80
C. G. Richardson, Des.	—	—	4	—	4	3.975	15.90
J. M. Evans, Sr. Drfts.	—	—	—	16-1/2	16-1/2	3.375	55.69
M. V. Gelders, Sr. Engr.	—	—	—	4	4	5.375	21.50
A. L. Styles, Jr. Drfts.	—	—	—	14	14	2.375	33.25
Totals	418	554	413-1/2	417	1,802-1/2		$5,754.77

Invoice No. 6

BLACKBURN & BLAUVELT
Technical and Production Payroll on Virginia Ports Project for January, 1961
WEEKS ENDING

Engineers	Jan. 7	Jan. 14	Jan. 21	Jan. 28	Total Hours	Rate	Amount
W. M. Beckwith Civil Engineer	32	40	40	40	152	$5.18	$ 787.36
G. C. Blankenship Draftsman	32	32	37	40	141	2.99	421.59
C. O. Bodie, Jr. Civil Engineer	13	37	40	40	130	3.31	430.30
R. E. Booth C. E. Designer	3	1	23	30	57	3.17	180.69
W. F. Clark Civil Engineer	2			21	23	3.65	83.95
D. F. Detwiler, Jr. Civil Engineer	32	40	12	21	105	2.88	302.40
C. D. Farmer Draftsman	32	34	19	39	124	1.84	228.16
W. W. Fleming, Jr. Civil Engineer		10	14	17	41	4.75	194.75
L. N. Ford Civil Engineer	28	4	23	51	106	3.65	386.90
T. L. Hancock Draftsman	32	38	40	40	150	3.11	466.50

W. M. Jones Civil Engineer	26	30	22	34	112	6.47	724.64
F. Kahmer Civil Engineer	32	40	40	40	152	3.02	459.04
J. V. Lewis, Draftsman				5	5	1.87	9.35
C. G. Mercer, Civil Engineer			18	24	42	2.88	120.96
W. E. Oxenreider Civil Engineer	32	40	40	40	152	3.31	503.12
W. D. Vick Civil Engineer	32	40	40	40	152	2.88	437.76
	328	386	408	522	1644		$5,737.47

Invoice No. 6

LAMBERT'S POINT DEVELOPMENT

Expense Accounts:

L. A. Blackburn—January 9-10, 1961	$ 55.60
W. M. Jones—January 9, 1961	10.45

Out-of-Pocket Expense:

8/4/60—Commodore Maury Hotel—W. M. Jones			$ 17.90	
8/4/60—Commodore Maury Hotel—C. G. Mercer			9.20	
8/5/60—Photo Craftsmen, Inc. (Aerial Photographs)			180.00	
12/12/60 Piedmond Air Lines—(Two-Richmond to Norfolk and return)			38.06	
Telephone Toll:				
12/12/60	Spartanburg	$ 1.40		
	Norfolk	2.00		
12/19/60	"	1.40		
12/23/60	Spartanburg	4.25		
12/29/60	Norfolk	1.20		
12/30/60	Spartanburg	3.40		
1/3/61	"	4.15		
1/6/61	"	1.00		
	Norfolk	1.20		
	"	1.20		
	"	.60		
1/9/61	"	1.75		
		$23.55		
	Tax	2.36	25.91	271.07
				$337.12

EXHIBIT 8.

COMMONWEALTH OF VIRGINIA

Office of the Comptroller
P. O. Box 6-N
Richmond 15, Va.

March 6, 1961.

* * * * *

Honorable A. S. Harrison, Jr.
Attorney General of Virginia
Supreme Court Building
Richmond, Virginia

Dear Mr. Harrison:

Item 166 of the Appropriation Act of 1960-62 provides for appropriation of $336,750 for the first year of the biennium (beginning on the 1st day of July, 1960) for the acquisition, development, construction and operation of port facilities by the Virginia State Ports Authority (hereinafter referred to as the "Authority"). In order to pay some of the costs incident thereto the Authority has presented its voucher for the payment of $143,960.36 of said appropriation, but I have declined to issue a warrant authorizing said payment. The relevant facts, together with my reasons for declining said payment, are hereinbelow set out.

The Authority has entered into an agreement (hereinafter referred to as the "Port Facility Contract") with the Norfolk and Western Railway Company (hereinafter referred to as the "Railway") bearing date on the 1st day of February, 1961, providing for (a) the purchase from the Railway of certain property situated at Lamberts Point and Sewells Point, in the City of Norfolk, Virginia, (b) the construction thereon of certain port terminal facilities and improvements, in accordance with plans and specifications therefor to be prepared by Lockwood Greene Engineers, a partnership, (c) the financing of such acquisition and construction through the sale and issuance of the Authority's revenue bonds, and (d) the lease of the aforesaid property, including the facilities and improvements to be constructed thereon, to the Railway for a term of thirty years at an annual rental sufficient to fully amortize and retire said bonds, as well as pay the interest accrued thereon, during the term of said lease. The

agreement of lease (hereinafter referred to as the "Lease") grants the Railway two options of extension for terms of thirty years each, and also an option to purchase the demised premises upon the terms and conditions set out therein. In anticipation of the foregoing the Authority entered into an agreement with Lockwood Greene Engineers, bearing date on the 26th day of July, 1960, providing for the preparation of the plans and specifications for said facilities and improvements, and also for the supervision of the construction thereof. In order to secure the aforesaid revenue bonds, the Authority proposes to execute a trust agreement between the Authority and a Trustee to be designated. On January 30, 1961, the Board of Commissioners of the Authority adopted resolutions authorizing the execution of the Port Facility Contract and approving the Lease and a proposed trust agreement; and on February 22nd, 1961, said Board of Commissioners adopted resolutions authorizing the issuance of the aforesaid revenue bonds.

Attached hereto are copies of the following instruments:

(1) Port Facility Contract, Lease and Trust Agreement.
(2) The aforesaid voucher, in the amount of $143,960.36.
(3) The agreement with Lockwood Greene Engineers.
(4) The resolution of January 30, 1961.
(5) The resolution of February 22, 1961.

The Lease is to be executed pursuant to the provisions of Section 62-106.8(b) of the Code of Virginia which provides in part:

"* * * and to lease to another such part or all of its property, real or personal, for such period or periods of years, upon such terms and conditions, with or without an option on the part of the lessee to purchase any or all of the leased property at such price, at or after the retirement of all indebtedness incurred by the Authority on account thereof, as the Authority shall determine * * *"

However, because of the questions hereinafter enumerated, I entertain doubt respecting the constitutionality of Section 62-106.8(b), particularly the quoted portion, the proper construction and interpretation of Sections 62-106.1 to 62-106.19, inclusive, of the Code of Virginia, the validity of the Lease and Port Facility Contract and the terms and conditions thereof, and the validity of the proposed financing through the

sale and issuance of the Authority's revenue bonds. More specifically, I have the following questions:

1. Does Section 62-106.8(b) of the Code of Virginia, as amended in 1960, violate Section 185 or 188 of the Constitution of Virginia?
2. Is any of the transactions contemplated in, or any of the provisions of, the Port Facility Contract or Lease (and particularly the provisions of Section 1.03, 3.03, 8.01, 11.01 or 11.02 of the Lease) illegal or unconstitutional, and particularly is there any violation thereby involved of Section 185, 188, 168 or 183 of the Constitution Virginia, or Section 62-106.8(b), 62-106.14, or 62-106.17 of the Enabling Act?
3. Does any of the provisions of the Port Facility Contract or Lease (and particularly of Section 4.03 of the Port Facility Contract) or of Section 62-106.14 of the Enabling Act, relating to the obtaining, pledge or use of State funds, violate Section 184, 184a or 184b of the Constitution of Virginia?

In view of the foregoing questions, I do not feel that it would be proper or safe to expend any of the money appropriated under Item 166 of the Appropriation Act of 1960-62 until there has been a final adjudication by the Supreme Court of Appeals of Virginia determining any and all questions raised herein or that may be raised in a petition filed by the Attorney General pertaining thereto; and, accordingly, I hereby notify you that I shall not issue any warrants in payment of obligations incurred under said Item 166 until such adjudication has been made.

Yours very truly,

SIDNEY C. DAY, JR.
Comptroller.

* * * * *

DEMURRER AND ANSWER OF THE RESPONDENT.

Respondent's Demurrer.

The respondent, Sidney C. Day, Jr., Comptroller of Virginia, says that the petition of the Attorney General of Virginia in this matter is not sufficient in law for the relief prayed for and states for the ground of his demurrer that it fully appears from the petition, the exhibits therewith and made a part thereof, and the acts and joint resolution of the

General Assembly referred to therein, that Section 62-106.8 (b), Va. Code, 1950, as amended, of Chapter 6.1 of Title 62 of the Code of Virginia, 1950, as amended, and more particularly Sections 62-106.1 through 62-106.19, inclusive, as construed and interpreted by the Virginia State Ports Authority, and the proposals of said authority, the agreement with Lockwood Greene Engineers, the Port Facility Contract, Trust Agreement and Agreement of Lease, shown as exhibits with the petition herein, and all other agreements, acts and actions of any officer or agent of the Commonwealth of Virginia and of the Virginia State Ports Authority and all resolutions of the Board of Commissioners of said Authority in furtherance of the purposes expressed by and exhibited in said Acts of Assembly, are in violation of Sections 168, 183, 184, 184(a), 184(b), 185 and 188 of the Constitution of Virginia.

Respondent's Answer.

Notwithstanding his demurrer to the petition hereinabove set forth and without waiving the benefit of the same, the said respondent, Sidney C. Day, Jr., Comptroller of Virginia, for answer to the petition for writ of mandamus sets forth the following:

1. The respondent admits that the Virginia Ports Authority is a body corporate created under Sections 62-106.1 through 62-106.19 inclusive, of the Code of Virginia, 1950, as amended, and that the purpose of the General Assembly in enacting Chapter 6.1 of Title 62 of the Code of Virginia was to confer on said Authority the powers set out in numbered paragraph I of the petition.

2. The respondent admits that the General Assembly of Virginia adopted at its 1958 session House Joint Resolution No. 70, as set forth in numbered paragraph II of the petition.

3. The respondent admits that Item 24 of the Appropriations Act of 1958 undertook to empower the Governor of Virginia to transfer funds as set out in numbered paragraph III of the petition.

4. The respondent admits that this Court, in *Harrison* v. *Day*, 200 Va. 764, 107 S. E. (2d) 594, referred to in numbered paragraph IV of the petition, upheld the constitutionality of the actions therein shown to have been taken at that time pursuant to the Acts of the General Assembly then in force and effect.

5. The respondent is advised that the facts set out in numbered paragraph V of the petition are true and therefore does not deny them, but asserts that they are irrelevant and im-

material because the purposes envisaged by such negotiations and proposals violate Sections 168, 183, 184, 184(a), 184(b), 185 and 188 of the Constitution of Virginia and may not lawfully be carried into execution.

6. The respondent admits the allegations of numbered paragraph VI of the petition, but asserts that they are irrelevant and immaterial for the reasons next hereinabove assigned.

7. The respondent admits the allegations of numbered paragraph VII of the petition.

8. The respondent admits that the Virginia State Ports Authority entered into the agreement dated July 26, 1960, with Lockwood Greene Engineers and that "Exhibit 3" with the petition is a true copy thereof, as alleged in numbered paragraph VIII of the petition, but denies that said agreement was executed by said Authority in the exercise of any power lawfully conferred upon it and asserts that such agreement violates the sections of the Virginia Constitution hereinabove specified in paragraph 5 hereof.

9. The respondent admits that the Virginia State Ports Authority and the Norfolk and Western Railway Company have entered into an agreement dated February 1, 1961, known as the "Port Facility Contract," and that such contract contemplates and provides for the execution of a Lease, a Trust Agreement and other undertakings, all as set forth in "Exhibit 4" with the petition, and that said "Port Facility Contract" provides, *inter alia,* for the things set out in numbered paragraph IX of the petition. The respondent has no knowledge concerning the fair market value of the properties involved nor the cost of constructing the proposed new improvements thereon as alleged therein but is advised and verily believes that the allegations with respect thereto are true and therefore does not deny them, but the respondent asserts that all matters and things alleged in said paragraph are irrelevant and immaterial because the said Port Facility Contract, the proposed Trust Agreement, the proposed Lease and all other agreements, proposed agreements and undertakings therein specified violate the sections of the Virginia Constitution hereinabove enumerated and may not lawfully be carried into execution.

10. The respondent admits that the proposed Lease filed as a part of "Exhibit 4" with the petition contains, *inter alia,* the provisions set out in numbered paragraph X of the petition but asserts that they are irrelevant and immaterial because the Lease violates the sections of the Virginia Constitution hereinabove enumerated.

11. The respondent has no knowledge whether the operations of the Railway under the Lease will be productive of a loss but is advised and verily believes that there may be such loss which the authority will not be obligated to pay or bear and therefore the respondent does not deny the allegations of numbered paragraph XI of the petition but asserts that they are irrelevant and immaterial because the Lease violates the sections of the Virginia Constitution hereinabove enumerated.

12. The respondent admits that Section 62-106.19 Va. Code, 1950, as amended, provides that principal and interest due on the revenue bonds shall be payable solely from revenues derived by the Authority from the demised premises as set out in numbered paragraph XII of the petition for writ of mandamus and that the revenue bonds proposed to be issued shall contain the provisions therein quoted, but asserts that said allegations are irrelevant and immaterial because the issuance of the bonds for the purposes, in the manner and under the circumstances intended by Chapter 6.1 of Title 62 of the Code of Virginia, as amended, violates the sections of the Virginia Constitution hereinabove enumerated.

13. The respondent admits the allegations of numbered paragraph XIII of the petition but asserts that they are irrelevant and immaterial because the acts included in and contemplated and authorized by the resolutions designated as "Exhibit 5" and "Exhibit 6" with the petition violate the sections of the Virginia Constitution hereinabove enumerated.

14. The respondent admits the allegations of numbered paragraph XIV of the petition.

15. The respondent admits the allegations of numbered paragraph XV of the petition.

16. The respondent agrees that numbered paragraph XVI of the petition correctly sets forth the constitutional questions raised by the respondent.

17. The respondent does not dispute the jurisdiction of this Court in this matter pursuant to Section 8.714, Virginia Code, 1950, invoked by numbered paragraph XVII of the petition.

18. The respondent denies the allegations of numbered paragraph XVIII of the petition.

And now having fully answered the petition for writ of mandamus, this respondent prays that the Court deny the prayers of the petitioner; that it adjudge and decree that Section 62-106.8(b), Virginia Code, 1950, as amended is not a valid enactment of the General Assembly; that it further ad-

judge and decree that all of the transactions and acts contemplated and all contracts, trust agreements, leases and other undertakings made or proposed by the Virginia State Ports Authority pursuant to Chapter 6.1 of Title 62 of the Code of Virginia, 1950, as amended, and as set forth in the petition for writ of mandamus are in violation of Sections 168, 183, 184, 184(a), 184(b), 185 and 188 of the Constitution of Virginia; that the three questions enumerated in numbered paragraph XVI of the petition for mandamus be answered in the affirmative; that the writ of mandamus be refused; and that the respondent be hence dismissed with his reasonable costs by him in this behalf expended.

SIDNEY C. DAY, JR.,
Comptroller of Virginia
By AUBREY R. BOWLES, JR.
901 Mutual Building
Richmond 19, Virginia
Counsel.

State of Virginia,
City of Richmond, ss:

Sidney C. Day, Jr., the respondent named in the foregoing answer to the petition for writ of mandamus herein, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

SIDNEY C. DAY, JR.,
Respondent.

Subscribed and sworn to before me, a Notary Public in and for the City and State aforesaid, in my City aforesaid, this 17th day of April, 1961.

My commission expires: Jan. 25, 1964.

G. P. MILLER, JR.
Notary Public.

CERTIFICATE OF SERVICE.

The undersigned, Aubrey R. Bowles, Jr., attorney of record for the respondent herein, hereby certifies that a true copy

of the foregoing demurrer and answer was delivered to the petitioner, Albertis S. Harrison, Jr., Esquire, Attorney General of Virginia, and to Kenneth C. Patty, Esquire, Assistant Attorney General of Virginia, and that a copy thereof was also mailed, postage prepaid, to Charles L. Kaufman, Esquire, Special Assistant to the Attorney General, and William P. Oberndorfer, Esquire, of Counsel for the petitioner, 515 National Bank of Commerce Building, Norfolk, Virginia, on April 17th, 1961, prior to filing the same in the Clerk's Office of the Supreme Court of Appeals of Virginia.

AUBREY R. BOWLES, JR.

Rec'd. 4/17/61.

A. L. L.

* * * * *

Rec'd. 4/18/61.

H. G. T.

STIPULATION AS TO THE RECORD.

It is hereby stipulated that:

1. The record herein shall consist of the following, which shall be printed:

(a) Petition for Writ of Mandamus, filed March 6, 1961;
(b) Notice of Application for Writ of Mandamus, served March 6, 1961;
(c) Order entered March 6, 1961, docketing the cause, appointing counsel to represent respondent, ordering the record to be printed, fixing the time for filing briefs, and placing the cause on the privileged docket of the June, 1961, session of the Court;
(d) Exhibits 1, 2, 3, 5, 6, 7 and 8, attached to and made a part of the Petition for Writ of Mandamus (Exhibit 4, which consists of copies of the Port Facility Contract, Lease and Trust Agreement, being excluded because it has been heretofore separately printed);
(e) Respondent's Demurrer and Answer to Petition for Writ of Mandamus;
(f) This Stipulation as to the Record; and
(g) Order filing this Stipulation as to the Record.

2. In addition to the foregoing parts of the record which are to be printed, the record shall include the following, which need not be again printed, but copies thereof shall be furnished to each Justice for his convenience:

(a) The said Exhibit 4 attached to the Petition for Writ of Mandamus;

(b) The report entitled SURVEY OF GENERAL CARGO FACILITIES AT HAMPTON ROADS, VIRGINIA, dated June, 1957, made by the engineering firm of Tippets-Abbett-McCarthy-Stratton, a copy of which, designated "Exhibit 1 to Stipulation," is hereto attached and made a part hereof;

(c) The report entitled MEASURING THE IMPACT OF THE WATERBORNE COMMERCE OF THE PORTS OF VIRGINIA ON EMPLOYMENT, WAGES, AND OTHER KEY INDICES OF THE VIRGINIA ECONOMY 1953-1959, prepared by the Bureau of Population and Economic Research, University of Virginia, Charlottesville, dated December, 1960, a copy of which, designated "Exhibit 2 to Stipulation," is hereto attached and made a part hereof;

(d) Any further stipulations of the parties, any depositions which may be taken and filed herein by either party, and any other papers designated by order of the Court.

3. The respondent reserves the right to deny the materiality or relevance of any portion of the above mentioned exhibits.

IN WITNESS WHEREOF the parties have signed and filed this stipulation at Richmond, Virginia, on April 18th, 1961.

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

By .....
Of Counsel for Petitioner.

SIDNEY C. DAY, JR.,
Comptroller of Virginia,
Respondent

By AUBREY R. BOWLES, JR.
Counsel for Respondent.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Order—March 6, 1961	1
Record	3
Notice of Application for Writ of Mandamus	3
Petition for Writ of Mandamus	3
Exhibit No. 1	13
Exhibit No. 2	24
Exhibit No. 3	30
Exhibit No. 5	38
Exhibit No. 6	41
Exhibit No. 7	47-A
Exhibit No. 8	57
Demurrer and Answer of the Respondent	59
Stipulation as to the Record	64