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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6196

In the Supreme Court of Appeals of Virginia at Richmond

CITIZENS' FOUNDATION OF THE RICHMOND PROFESSIONAL INSTITUTE, INC.

v.

CITY OF RICHMOND

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6196

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 3rd day of August, 1965.

CITIZENS' FOUNDATION OF THE
RICHMOND PROFESSIONAL INSTITUTE, INC.,
Plaintiff in error,

against

CITY OF RICHMOND, Defendant in error.

From the Law and Equity Court of the City of Richmond
Robert Lewis Young, Judge

Upon the petition of Citizens' Foundation of the Richmond Professional Institute, Inc., a writ of error and *supersedeas* was awarded it by one of the Justices of the Supreme Court of Appeals on August 2, 1965, to a judgment rendered by the Law and Equity Court of the City of Richmond on the 1st day of February, 1965, in a certain motion for judgment then therein depending wherein City of Richmond was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of nine thousand dollars, with condition as the law directs.

RECORD

* * * * *

page 1]

* * * * *

Filed in the Clerk's Office the 2d day of August, 1963.

Teste:
LUTHER LIBBY, JR., Clerk
By D. BIRCKHEAD, D. C.

MOTION FOR JUDGMENT

1. The plaintiff is a municipal corporation of the Commonwealth of Virginia, authorized by §2.02 of its Charter, and by the general laws of the Commonwealth, to levy and collect *ad valorem* taxes on real estate situated within the City of Richmond.

2. The defendant is a Virginia corporation, formerly known as The Citizens Foundation of the Richmond Professional Institute of the College of William and Mary, Incorporated, and as The Endowment Association of the Richmond Professional Institute of the College of William and Mary, Incorporated.

3. The defendant owns and holds, in fee simple, the land and buildings in the City of Richmond known as 921 West Franklin Street, acquired by deed dated February 4, 1960; 923 West Franklin Street, acquired by deed dated December 31, 1956, and 327 North Harrison Street, acquired by deed dated November 21, 1955.

4. Said property has been assessed annually by the plaintiff for local *ad valorem* real estate taxes.

page 2] 5. The defendant has paid to the plaintiff taxes assessed against said property known as 327 North Harrison Street for the tax years 1956, 1957, 1958 and 1959, and has paid to the plaintiff taxes assessed against said property known as 923 West Franklin Street for the tax years 1957, 1958 and 1959.

6. The defendant has refused to pay the local real estate taxes assessed against it with respect to said property for the tax years 1960, 1961, 1962 and 1963.

7. The amounts of taxes assessed against the defendant with respect to said property are as follows:

Tax Year	921 W. Franklin	923 W. Franklin	327 N. Harrison
1960	$270.72	$948.82	$222.98
1961	338.40	948.82	222.98
1962	338.40	948.82	222.97
1963	338.40	948.82	222.97

8. The defendant is indebted to the plaintiff for the amounts stated in the preceding paragraph, and, in addition, for penalty and interest thereon, and advertising costs, as prescribed by law.

WHEREFORE, the plaintiff demands judgment against the defendant in the amount of $10,000.00 and its costs.

Respectfully submitted,

CITY OF RICHMOND
By JAMES A. EICHNER
Counsel

* * * * *

page 5]

* * * * *

GROUNDS OF DEFENSE

Defendant Citizens Foundation of the Richmond Professional Institute, Inc., for its grounds of defense to the motion for judgment says:

1. All allegations of the motion for judgment except Paragraph 8 are admitted to the extent they are material to this action.

2. The allegations of Paragraph 8 of the motion for judgment are denied.

3. Further answering, defendant denies that the aforementioned taxes are properly charged to defendant, since the property described in Paragraph 3 of the motion for judgment is exempt from such taxation under §183 of the Constitution of Virginia and the statutes enacted pursuant thereto.

Now having fully answered, this defendant prays to be dismissed with its costs in this behalf expended.

CITIZENS FOUNDATION OF THE RICHMOND PROFESSIONAL INSTITUTE, INC.
By LEWIS T. BOOKER
Counsel

Filed Sep 16 1963

Teste:
LUTHER LIBBY, JR., Clerk

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page 10]

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Filed Nov 14 1963

Teste:
LUTHER LIBBY, JR., Clerk

ANSWERS TO INTERROGATORIES

Defendant, by E. V. Woodall, its Secretary-Treasurer, for answer to the Interrogatories previously filed on it in this action, says:

1. What use and occupancy has been made of said real estate since January 1, 1960.

Answer.
327 N. Harrison Street. Apartment house rented to two tenants.
921 W. Franklin Street. January 1, 1960 — February 4, 1960, not owned by defendant. February 4, 1960, — present, used as dormitory for Richmond Professional Institute students.
923 W. Franklin Street. Used as dormitory for Richmond Professional Institute students.

2. What rent or other revenue has been received by the defendant during each of the calendar years 1960, 1961, 1962 and 1963.

page 11] Answer.

	1960	1961	1962
327 N. Harrison Street	$1,740.00	$1,740.00	$1,740.00
921 W. Franklin Street	$3,429.00	$6,616.00	$6,375.00
923 W. Franklin Street	$20,230.00	$18,018.00	$19,720.00

This defendant is unable to state the revenue for the calendar year 1963, since that year has not yet been completed.

3. From what persons or organizations such rent or revenue has been received.

Answer. Miss Louise M. Bernard and Miss Nedra Tyre have paid the rent for the premises No. 327 N. Harrison Street; the Commonwealth of Virginia has paid the rent for the premises No. 921 and 923 W. Franklin Steet.

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E. V. WOODALL, (SEAL)

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page 13]

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MOTION TO REQUIRE BILL OF PARTICULARS

The plaintiff respectfully moves the Court to require defendant to file on or before January 6, 1963, a bill of particulars stating in detail for what reasons it is alleged in the grounds of defense that the property described in the motion for judgment is exempt from taxation, and stating in detail what subsections of Section 183 of the Constitution and what subsections of the statutes of Virginia are relied on.

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Received and Filed Nov. 22, 1963

Teste: LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

page 14]

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Respectfully submitted,

CITY OF RICHMOND
By JAMES A. EICHNER
Counsel

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page 15]

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BILL OF PARTICULARS

Defendant Citizens Foundation of the Richmond Professional Institute, Incorporated, for its Bill of Particulars, states:

1. Defendant relies upon Sections 183(a) and (d) of the Constitution of Virginia.
2. Defendant relies upon Sections 23-49.3, 58-12(1), and 58-12(4) of the Code of Virginia, 1950, as amended.

CITIZENS FOUNDATION OF THE
RICHMOND PROFESSIONAL
INSTITUTE, INCORPORATED
By LEWIS T. BOOKER
Counsel

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Filed Dec. 31 1963

Teste:
LUTHER LIBBY, JR., Clerk

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page 20]

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ORDER REQUIRING AMENDED BILL OF PARTICULARS

On motion of plaintiff, after due notice to counsel for de-

fendant, it is ORDERED that the bill of particulars filed by defendant December 31, 1963, be stricken, and that defendant file, on or before April 1, 1964, an amended bill of particulars, stating in detail:

1. Whether defendant contends that the property involved in this controversy is "owned directly or indirectly by the Commonwealth or any political subdivision thereof" within the meaning of §183(a) of the Constitution and §58-12(1) of the Code of Virginia.

2. If defendant so contends, the facts upon which said contention is based, including a description of each deed, agreement, corporate resolution or other document relied on in support of said contention.

page 21] 3. Whether defendant contends that the property involved in this controversy is or was real estate standing in the name of the corporate body designated "The Richmond Professional Institute;" "The Colleges of William and Mary;" or "The College of William and Mary in Virginia" within the meaning of §23-49.3 of the Code of Virginia.

4. If defendant so contends, the facts upon which said contention is based, including a description in detail of each deed, agreement, corporate resolution or other document relied on in support of said contention.

5. Whether defendant contends that it is an incorporated institution of learning within the meaning of §183(d) of the Constitution and §58-12(4) of the Code of Virginia, and whether defendant contends that the property involved in this controversy is "primarily used for literary, scientific or educational purpose or purposes incidental thereto."

6. If defendant so contends, the facts upon which said contention is based, including a detailed description of the activities engaged in by defendant, and the use made of each parcel of such real estate from January 1, 1960, to date.

Enter

R. L. Y.
Mar. 2, 1964

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page 22]

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Filed
Apr. 23 1964

Teste:
LUTHER LIBBY, JR., Clerk

AMENDED BILL OF PARTICULARS

Defendant, for its Amended Bill of Particulars, states:

1. Defendant contends that the property involved in this controversy, No. 327 N. Harrison Street, Richmond, Virginia, and Nos. 921-3 W. Franklin Street, Richmond, Virginia, is property owned directly or indirectly by the Commonwealth of Virginia or a political subdivision thereof.

2. Defendant's contention that such property is so owned is based upon an agreement, dated February 7, 1941, by and between the College of William and Mary in Virginia and defendant's predecessor corporation, which agreement provides:

"THIS AGREEMENT, made and entered into this 7th day of February, 1941, by and between the College of William and Mary in Virginia, hereinafter called the 'College,' and the Richmond School of Social Work and Public Health, Incorporated, hereinafter called the 'Corporation':

WITNESSETH

"WHEREAS, since July 1, 1925, the College, with the cooperation of the Corporation, has maintained and operated an educational institution in the City of Richmond now known as the Richmond Professional Institute, College of William and Mary; and

page 23] "WHEREAS, for this purpose the Corporation has from time to time acquired certain real estate, incurring substantial debts therefore; and

"WHEREAS, it is desired by both parties to define by this agreement certain rights and duties of the College and of the Corporation, respectively, with respect to such property;

"NOW, THEREFORE, in consideration of the services of the College in managing and administering the affairs of said educational institution, and of the expenditures made by the College in that behalf, the Corporation hereby covenants and agrees, upon the request of the College, to transfer and convey unto the College all of the property and any and every kind

now owned or hereafter acquired by the Corporation, provided, however, that such property shall not be so transferred and conveyed unless and until all outstanding indebtedness of the Corporation, of whatever kind, shall have been fully discharged or assumed.

"IN WITNESS WHEREOF the College of William and Mary in Virginia by its Board of Visitors has authorized this agreement to be executed in its name and on its behalf by John Stewart Bryan, its President, and its corporate seal to be affixed and attested by Charles J. Duke, Jr., its Secretary, and the Richmond School of Social work and Public Health, Incorporated, by its Board of Trustees has authorized this agreement to be executed in its name and on its behalf by J. J. Scherer, Jr., its President, and its corporate seal to be affixed and attested by H. H. Hibbs, its Secretary, the day and year first above written."

COLLEGE OF WILLIAM AND MARY IN VIRGINIA
By: s/ JOHN STEWART BRYAN
President

Attest: s/ Charles J. Duke, Jr.
Secretary

RICHMOND SCHOOL OF SOCIAL WORK AND PUBLIC HEALTH, INCORPORATED
By: s/ J. J. SCHERER, JR.
President

Attest: s/ H. H. HIBBS
Secretary

3. Defendant does not contend that record title to No. 327 N. Harrison Street, Richmond, Virginia, and Nos. 921-3 W. Franklin Street, Richmond, Virginia, stands in the name of the corporate body designated "The Richmond Professional Institute," "The Colleges of William and Mary," or "The College of William and Mary in Virginia."

page 24]

4. Defendant contends it is accountable to an incorporated institution of learning within the meaning of § 183(d) of the Constitution of Virginia and § 58-12(4) of the Code of Virginia, and that the property involved in this controversy is primarily used for literary, scientific or educational purposes incident to such institution.

5. Defendant's contention is based upon the agreement set

forth above. The property involved in this controversy is used for housing for students and faculty and for the future development and expansion of the Commonwealth of Virginia or a political subdivision thereof.

6. Defendant reserves the right to amend its Amended Bill of Particulars as and when it is advised.

CITIZENS FOUNDATION OF THE RICHMOND PROFESSIONAL INSTITUTE, INCORPORATED
By LEWIS T. BOOKER
Of Counsel

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page 27]

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Filed
Jun 4 1964

Teste:

LUTHER LIBBY, JR., Clerk

ANSWERS TO INTERROGATORIES

Defendant, by E. V. Woodall, its Secretary-Treasurer, for answer to the Interrogatories previously served on it in this action, says:

1. What rent or other revenue has been received by defendant during the calendar year 1963 for the use or occupancy of each of the parcels described in the motion for judgment, known as 327 North Harrison Street, 921 West Franklin Street and 923 West Franklin Street?

Answer.

327 North Harrison Street	$ 1,740.00
921 West Franklin Street	$ 6,212.00
923 West Franklin Street	$19,994.50

2. From what persons or organizations was such rent or revenue received?

Answer.

327 North Harrison Street	Miss Louise Bernard Miss Nedra Tyre
921 West Franklin Street) 923 West Franklin Street)	These buildings are dormitories used by students who pay dormitory rent either to Richmond Professional or to the Commonwealth of Virginia; the rent so received is transferred by the Commonwealth of Virginia to the Foundation.

page 28]

3. What is the name, address, and faculty rank of each faculty member occupying any of the property mentioned above during the calendar years 1960, 1961, 1962 and 1963?

Answer. 921 and 923 West Franklin Street have not been occupied by faculty members during the period 1960-1963 but have instead been occupied by students.

327 North Harrison Street has been occupied during that period by Miss Louise Bernard, who was formerly on the faculty as Director of the School of Distributive Education, and is now Supervisor of Distributive Education in vocational education. Miss Nedra Tyre has lectured in various classes from time to time at Richmond Professional Institute.

4. What was the outstanding indebtedness of defendant, exclusive of real estate taxes on the property involved in this action, on January 1, 1960, January 1, 1961, January 1, 1962, January 1, 1963 and January 1, 1964?

Answer. None.

5. Has the College of William and Mary or the Richmond Professional Institute ever requested defendant to transfer and convey to the College of William and Mary or the Richmond Professional Institute any of the property involved in this action?

Answer. No.

6. If the answer to the preceding interrogatory is yes, state in detail the date of each such request; the names of the persons by whom and to whom each such request was made; the property involved in each such request; the terms and conditions of each such request; and the action taken thereon.

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Answer. See answer to Interrogatory 5.

7. In what respects is defendant "accountable to an incorporated institution of learning" as stated in paragraph 4 of the amended bill of particulars.

Answer. Interrogatory 7 calls for a conclusion of law and

not a statement of facts and hence is improper, *Hornback* v. *State Highway Commissioner,* 135 S.E. 2d 136 (Va. 1964).

E. V. WOODALL

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Received and Filed
Jun 15 1964

Teste: LUTHER LIBBY, JR., Clerk
By EDW. G. KIDD, D. C.

REQUEST FOR ADMISSIONS

Plaintiff calls on defendant to make the following admissions on or before June 25, 1964:

1. Neither Miss Louise Bernard nor Miss Nedra Tyre has been regularly employed as a member of the faculty of Richmond Professional Institute at any time since January 1, 1960.
2. Neither Miss Bernard nor Miss Tyre has had any teaching responsibilities at Richmond Professional Institute since January 1, 1960, except for occasional appearances as guest lecturers or as seminar or "workshop" participants.
3. Miss Bernard is, and has been, since prior to January 1, 1960, employed full-time as supervisor of distributive education for the Virginia State Department of Education.
4. Miss Bernard has not served as director of the School of Distributive Education of Richmond Professional Institute since prior to January 1, 1960.

page 32] 5. Miss Tyre is, and has been since prior to January 1, 1960, a full-time employee of the Christian Children's Fund, Inc., 108 South 3rd Street, Richmond, Virginia.

6. The statements in paragraphs 1, 2 and 3 of defendant's answers to interrogatories filed November 14, 1963, are true.
7. The statements in paragraphs 1, 2, 3 and 5 of defendant's answer to interrogatories filed June 4, 1964, are true.

Respectfully submitted,
CITY OF RICHMOND
By JAMES A. EICHNER
Counsel

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page 33]

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Filed
Jul 1—1964

Teste:
LUTHER LIBBY, JR., Clerk

ADMISSIONS

Defendant, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, in response to the Request for Admissions served upon it, says:

1. Defendant admits that neither Miss Louise Bernard nor Miss Nedra Tyre has been regularly employed as a member of the faculty of Richmond Professional Institute at any time since January 1, 1960.

2. Defendant admits that neither Miss Bernard nor Miss Nedra Tyre has had any teaching responsibilities at Richmond Professional Institute since January 1, 1960, except for occasional appearances as guest lecturers or as seminar or workshop participants.

3. Miss Bernard is, and has been, since prior to January 1, 1960, employed full time as State Supervisor of Distributive Education, Virginia State Board of Education.

page 34] 4. Miss Bernard has not served as director of the School of Distributive Education of Richmond Professional Institute prior to January 1, 1960.

5. Defendant is informed that Miss Tyre is, and has been since prior to January 1, 1960, employed by the Christian Children's Fund, Inc., but has no direct knowledge of this.

6. The statements in Paragraphs 1, 2 and 3 of defendant's Answers to Interrogatories filed November 14, 1963, are true.

7. The statements in Paragraphs 1, 2, 3 and 5 of defendant's Answers to Interrogatories filed June 4, 1964, are true.

CITIZENS FOUNDATION OF THE
RICHMOND PROFESSIONAL
INSTITUTE, INC.
By LEWIS T. BOOKER
Counsel

* * * * *

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ORDER

This day came the parties, by their attorneys, and it appearing to the court that on May 27, 1964, the name of the defendant was changed, it is hereby ordered that the style of this action be amended to read: "City of Richmond, a municipal corporation of the Commonwealth of Virginia, Plaintiff, v. RPI Foundation, formerly known as Citizens Foundation of the Richmond Professional Institute, Incorporated, a Virginia corporation, defendant."

Thereupon, the plaintiff, by its attorney, not insisting upon its motion for summary judgment and agreeing, with defendant, that the court, without a jury, determines all questions of law and fact, the evidence and argument of counsel were fully heard, but the court not now being advised of its decision to be rendered herein doth take time to consider thereof.

Enter R.L.Y. Dec. 1, 1964

JAMES A. EICHNER
Counsel for Plaintiff
LEWIS T. BOOKER
Counsel for Defendant

page 64] LAW AND EQUITY COURT
OF THE
CITY OF RICHMOND
Richmond, Virginia
January 11, 1965

James A. Eichner, Esq.
Assistant City Attorney
City Hall
Richmond, Virginia

Lewis T. Booker, Esq.
Attorney at Law
Electric Building
Richmond 12, Virginia

Re: *City of Richmond*
v.
Citizens Foundation of the Richmond Professional Institute, Incorporated

Gentlemen:

In my opinion paragraph (d) of Section 183, Constitution of Virginia, is not applicable here. This case turns on whether the real property involved here, standing in the name of the corporate defendant, not a political subdivision of the Commonwealth, is "owned . . indirectly by the Commonwealth," within the meaning of paragraph (a) of said Section. This Court is not concerned with the high motives of the public spirited gentlemen who created in times past conducted, or do now conduct the affairs of this corporation; the question is simply does the law exempt its real property from taxation.

It is true that in *Fireman's Mutual Aid Association* v. *Commonwealth,* 166 Va. 34, at p. 38, our Court of Appeals speaks of "*indicia* of . . . ownership" in the corporation's charter and its method of operation, but it does not say, as, indeed it would have been unnecessary to say, that where the Commonwealth enjoys most, or all, of the rights of an owner it is, in fact, indirectly the owner within the intent of the exemption. There is a distinction between "owned by" and "belonging to," as used in Section 183, the former meaning absolute ownership. *Supervisors* v. *Medical Foundation,* 204 Va. 807, at pp. 811, 812. In my opinion real property is indirectly owned by the Commonwealth when a public corporation created, managed and controlled by State, holds legal title. *Phillips* v. *University,* 97 Va. 472, 475; *Richmond* v. *Turnpike Au-*
page 65] *thority,* 204 Va. 596, 600.

The case of *People* v. *University of Illinois Foundation,* 388 Ill. 363, 58 N.E. 2d 33, cited with approval in the *Medical Foundation* Case, *supra.,* helps none at all here. The Illinois exemption related to "any other real estate used by such schools." (204 Va. at p. 814).

Draft of a final judgment order in favor of the plaintiff may be presented.

Yours very truly,

ROBERT LEWIS YOUNG

RLY:b

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ORDER OF FINAL JUDGMENT

All matters in controversy between plaintiff and defendant, as set out in the motion for judgment, grounds of defense, bills of particulars, admissions, and evidence having been submitted to the court without a jury, by agreement of counsel, and the court having maturely considered said evidence, and arguments of counsel, and the court being of the opinion, for the reasons expressed in its memorandum of January 11, 1965, filed herewith, that real estate owned by defendant is not exempt from taxation by the plaintiff, in that defendant is not an incorporated institution of learning, and its property is not indirectly owned by the Commonwealth or any political subdivision thereof, within the meaning of section 183 of the Constitution of Virginia and section 58-12 of the Code of Virginia, and that the plaintiff is entitled to recover the taxes listed in the motion for judgment, plus penalty, interest and advertising costs thereon, as provided by law, as follows:

page 67]

Tax Year	Tax	Penalty	Advertising Costs	Interest to January 31, 1965	Total
			921 West Franklin Street		
1960	$270.72	$13.54	$1.50	$ 64.97	$ 350.73
1961	338.40	16.92	1.50	60.91	417.73
1962	338.40	16.92	1.50	40.61	397.43
1963	338.40	16.92	1.50	20.30	377.12
					$1,543.01
			923 West Franklin Street		
1960	$948.82	$47.44	$1.50	$227.72	$1,225.48
1961	948.22	47.44	1.50	170.79	1,168.55
1962	948.82	47.44	1.50	113.86	1,111.62
1963	948.82	47.44	1.50	56.93	1,054.69
					$4,560.34
			327 North Harrison Street		
1960	$222.98	$11.15	$1.50	$ 53.52	$ 289.15
1961	222.98	11.15	1.50	40.14	275.77
1962	222.97	11.15	1.50	26.76	262.38
1963	222.97	11.15	1.50	13.38	249.00
					$1,076.30
				TOTAL	$7,179.65

it is hereby

ORDERED, ADJUDGED AND DECREED

page 68] that the plaintiff have and recover of defendant the sum of $7,179.65, plus interest thereon at the rate of 6% per annum from February 1, 1965, until paid, and its costs.

Defendant, by counsel, objected and excepted to the foregoing action of the court, upon the grounds that the property involved in the controversy was indirectly owned by the Commonwealth or a political subdivision thereof on each of the tax years in question herein, and upon the ground that defendant is an incorporated institution of learning, and said property is used for educational purposes or purposes incidental thereto, and therefore exempt from taxation under Section 183 of the Constitution of Virginia and Section 58-12 of the Code of Virginia.

WHEREUPON, the defendant, having indicated to the court that it intends to appeal from this judgment of the court, execution of the aforesaid judgment is suspended for a period of four months from the date of entry of this judgment, and if a petition for writ of error from and *supersedeas* to the aforesaid judgment is presented to the Supreme Court of Appeals of Virginia, or one of the justices thereof, within the said four months, then the operation of the aforesaid judgment is suspended thereafter until the court or justice thereof shall have acted upon the petition; all of the foregoing suspension of execution of judgment is upon the condition that the defendant, or someone for it, on or before February 15, 1965, shall enter into a suspending and *supersedeas* bond in the penalty of $9,000.00 with surety to be approved by the Clerk of this court conditioned and payable as the law applicable thereto directs.

I respectfully ask for this:

JAMES A. EICHNER
Counsel for Plaintiff

Enter R.L.Y. Feb. 1, 1965

page 69]

I object to this:

LEWIS T. BOOKER
Counsel for defendant

page 70]

* * * * *

Filed Mar. 25, 1965

Teste:

LUTHER LIBBY, JR., Clerk

NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR

To Mr. Luther Libby, Jr., Clerk
Law and Equity Court of the City of Richmond
City Hall
Richmond, Virginia

Defendant hereby notes an appeal from the judgment entered in this action on February 1, 1965, and hereby signifies its intention of filing a petition for writ of error and *supersedeas* with the Clerk of the Supreme Court of Appeals of Virginia or with one of the Justices of that Court within the time prescribed by law.

Defendant assigns as error:

1. Failure of the trial court to hold that the real property owned by defendant and sought to be taxed by plaintiff in this action is in fact property exempt from taxation pursuant to Section 183 of the Constitution of Virginia and Section 58-12 of the Code of Virginia, 1950, as amended, upon the ground that it is indirectly owned by the Com-
page 71] monwealth on each of the tax years in question.

2. Failure of the trial court to hold that the real property owned by defendant and sought to be taxed by plaintiff in this action is in fact property exempt from taxation pursuant to Section 183 of the Constitution of Virginia and Section 58-12 of the Code of Virginia, 1950, as amended, upon the ground that the property was used for educational purposes or purposes incidental thereto on each of the tax years in question.

CITIZENS FOUNDATION OF
RICHMOND PROFESSIONAL
INSTITUTE, INCORPORATED
By LEWIS T. BOOKER
Of Counsel

* * * * *

page 4] RICHARD A. CHANDLER
being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. Your full name and occupation, please?

A. Richard A. Chandler, Assessor of Real Estate for the City of Richmond.

Q. How long have you been Assessor?

A. Since 1956.

Q. And did you make assessments against the defendant here now known as RPI Foundation for the years 1960 through 1963?

A. Yes, we did.

Q. Inclusive?

A. Yes.

Q. I am referring to the property known as 921 West Franklin Street, 923 West Franklin Street and 327 North Harrison Street. Are the amounts of those assessments as stated in the motion for judgment?

A. Yes, sir.

* * * * *

page 5]

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Mr. Eichner: If your Honor please, the assessments and the ownership of the property have all been admitted. And the defense is that the defendant is exempt from taxation under the constitution and the statutes. We contend, of course, that it is not. And we rest at this time.

* * * * *

page 6] HENRY H. HIBBS
being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Booker:

Q. Dr. Hibbs, have you been connected with the Richmond Professional Institute at any time?

Henry H. Hibbs

A. I have been connected with it as the Chief Administrative Officer from the time of its establishment in 1917 to my retirement in 1959.

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page 7]

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Q. How did you first become interested in what is now RPI?

A. Just after I received a Doctor of Philosophy Degree at Columbia University, the Chief Health Officer of the City of Richmond, Dr. Roy K. Flanagan, wrote me a letter—I mean wrote a letter to the head of the Child-helping Department of the Russell Sage Foundation in New York and asked him—and told him that there was a group of people in Richmond interested in establishing a professional training school for social workers and public health nurses and asked him to suggest someone to be the head of it and the organizer.

And the Foundation suggested me. And the Board of Directors of that group appointed me the Director and organizer.

Q. Is that group what is now known as the RPI Foundation?

A. Yes, sir.

Q. When were you appointed?

A. Well, it was along in the spring of 1917.

Q. Describe what courses were offered by the school at that time and what its general curriculum was.

A. It was a school for training social workers and public health nurses. They trained public health nurses

page 8] for war work in rural areas where at that time doctors were leaving to enter the service of the United States Government in World War I. The students were all in those two groups.

Q. Has the foundation always been a non-profit, non-stock corporation since you first were affiliated with it in 1917?

A. Yes, sir, that is right.

Q. How was it originally financed?

A. Well, when I came here in the spring of 1917, they had had a financial campaign soliciting funds from the citizens of Richmond. And I think they raised about $1,500, or maybe $1,800 before I came. All of that had been spent in organizational work except $400 when I got here.

I asked them, the members of the Board, how they expected to finance the college. And they said that they expected to raise the money from the public. But I looked over the names of the members of the Board of Directors, and there weren't any businessmen or leaders in the business community on the Board. And I didn't see how they could raise the money.

But I was young and inexperienced and unmarried and didn't have many responsibilities. So, we undertook the task.

But the first thing that we did was to endeavor to interest some Richmond businessmen who had access to page 9] other wealthy citizens of the city. And to make a long story short, we were able to obtain the interest of Mr. John M. Miller, Jr., who was at that time vice president, and very soon after president, of the First National Bank; and Mr. T. M. Carrington, who was a prominent member of the Board and administrative group of the Chamber of Commerce; Mr. I. J. Marcuse, who was a prominent businessman; and others.

And they agreed to form a finance committee and become sponsors, you might say, or to assist in money raising. And they put on financial campaigns yearly—or sometimes every two years—and raised the money until 1925.

Q. What were the funds which were raised between 1917 and 1925 used for?

A. They were used to pay the salaries and miscellaneous expenses that would be incident to the operation of a professional school like that. And these funds that were raised from the public were added to the amount collected in tuition fees.

Q. Prior to 1925, did the Foundation have any connection with either the state or the city?

A. Well, first as to the city: at the time, in 1917, the foundation did not—the Board of Directors did not have any building to run a school in. And they didn't own any real estate. And, as I said, they only had this $400 which page 10] couldn't be used to pay rent and pay salaries. And the wife of the Director of the Health Bureau, I think it was called, of the City of Richmond, Mrs. Roy K. Flanagan—she and her husband, of course, have long since been dead—she took me to see the head of the administrative board of the City of Richmond, Mr. John Hirschberg. At that time that was the administrative setup in this city.

I don't think they had a mayor then. But the administrative head of the government was the chairman of this administra-

tive board. His name was Mr. John Hirschberg. He has since passed on, too, long ago. And Mrs. Flanagan and I told Mr. Hirschberg what our problem was. And he said—or Mrs. Flanagan suggested to him, since she knew this—she suggested to him that the city owns three old buildings where the State Library now stands, right over here. And one of these buildings was used by the Richmond Juvenile Court. And they had the courtroom and the probation officer's quarters on the first floor. The judge had his office in one of the second floor rooms. But all the rest of the second floor and all the third floor of the building was vacant.

It was a quite old building and didn't have any system of lighting in it at all. And it didn't have any way to heat it except from wood-burning stoves. And, as I said, there being no lighting, Mr. Hirschberg had the City of Rich-
page 11] mond's mechanics to go in that building, which the City owned, and light it with gas—the pipes to be lighted with gas. Then the City offered this building as the headquarters for the school.

And we moved in there and started the school in September 1917.

Now, that is as regards the city. They didn't charge us any rent. And they didn't charge anything for furniture—such furniture as was collected out of the storeroom of the City of Richmond.

Q. (By Mr. Booker) How long did the school remain at that location?

A. It stayed there two or three years—I have forgotten which it was—two years or three years. Then about that time at the end of that two or three years—

Q. Where did you go after that period of time?

A. We went down to a building which still stands on the corner of College Street and Broad Street next to the Monumental Church.

Q. And then where did you go? Well, who owned that building?

A. That belonged to the Monumental Church. They let us have that building rent-free.

page 12] Q. Then where did you go from there?

A. Well, we stayed there two or three years and rented a building over on—opposite the YWCA called 17 North Fifth Street. It has since been torn down and is now a parking lot next to that Doctors Building there.

Q. What support, if any, did you get from the City of Rich-

mond other than the building, which you used for two or three years?

A. We didn't get any.

About that time—well, you asked about relation to the state and the city.

Q. Yes.

A. Well, now, what I said—unless someone has some question—what I said referred to the city's relationship to it. Mr. Hirschberg went out of office some time after that. And it seems to me, if I recall correctly, that the administrative board was abolished and another system of government was organized. I don't know. But, at any rate, Mr. Hirschberg and that group went out of office. And one day he met me on the street and asked me if the city put us out of that building, the Juvenile Court Building that we were occupying—he asked me if they put us out. I said no. He was then out of office. I told him no they hadn't put us out; that we had moved because we could get larger space in this building owned by the church.

page 13] Well, it turned out, however, that that location down there was unsatisfactory, because at that time it was a right slummy area. And the students didn't like to go down there at night time.

That brings me then to answer your second question which you asked me about—the relation with the state.

Q. Yes, sir.

A. Well, the first way in which this institution or organization became related to the Commonwealth of Virginia was that in 1920—at that time Dr. J. A. C. Chandler, who was the president—I mean Dr. J. A. C. Chandler had been Superintendent of Public Schools in Richmond for a good many years. And the president of the College of William and Mary resigned at that time, about that time; and Dr. Chandler was given that position. He became president of William and Mary.

William and Mary was a very small enterprise at that particular time. And he was expected to build it up, and did build it up.

Now, in order to build it up, he, as I said, had been a Superintendent of Public Schools and had directed the public schools in Richmond and knew that one of the great difficulties in the city operating the schools in Richmond was that there were very few teachers who were college graduates. If not very few, at least there were very many in Richmond who

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page 14] were not college graduates. And Dr. Chandler wanted to have them become college graduates.

Almost all of them had been trained in what at that time was called the Richmond Normal School, which was operated by the City of Richmond at the expense of the City of Richmond entirely. And these people had had two years of college work, but no more. And he wanted them to have the third and fourth year to take part—well, he wanted this group to organize themselves so that they could give courses in the late afternoons and at night for these teachers so as to upgrade them.

And then during the summer school, they would go down to Williamsburg and would take work there. And in that way, they would obtain degrees. For example, there was a school principal here named Miss Cornelia Adair, a very distinguished—she later became a very distinguished woman both nationally and in the state and in the city. And she enrolled for one of these classes—she enrolled for some of these classes along with a lot of other teachers. And in that way—by taking this work in the late afternoon and in the evening, she was able—and by going to the summer school at Williamsburg—she was able to obtain a college degree, she and a great many others. She was just an example. She was one of the most distinguished examples.

page 15] She then became a member at one time, I think, of the Board of Visitors at William and Mary. There is a building down there named after her, although her connection with William and Mary College was merely going to these summer schools. Most of the rest of this work she had taken here at RPI.

Well, Dr. Chandler wanted that to be done. And they asked me if I would be the director of it. Of course, I said yes, that I would be the director of that, and also would continue to be the Director of this daytime work, don't you see.

Q. (By Mr. Booker) The daytime work was the Foundation school?

A. Yes, that is right.

And then at the same time I asked Dr. Chandler, or President Chandler, if he would allow these professors who were coming from Williamsburg to give these classes mainly for teachers if they could also do some work in the morning and day time for these others. And he said yes. And in that way William and Mary became connected with this group that we now refer to—this private corporation and group of people

we now refer to as the RPI Foundation.

Q. Who paid your salary during this period from 1920 to 1925?

page 16] A. Who paid it?

Q. Yes.

A. About half of it was paid by the State, by the college--well, it originally was paid by the college, but later checks would come from the state. And the other half was paid by this group. That is true of most of the teachers.

Q. Were you receiving any financial support from the City of Richmond between 1920 and 1925?

A. No, we didn't receive any.

Q. What happened to the Foundation in 1925?

A. Well, Mr. Miller and Mr. Carrington and Mr. Marcuse and those other leaders of the business community of Richmond felt like holding these annual financial campaigns were too much. And it wasn't customary for colleges to do that. And they felt that was going too far, and that the people were going to get mighty tired of it. Therefore, they became interested in having the school taken over by some state college. None of the colleges took any interest in it except William and Mary. And they had already taken this interest because of their interest in these school teachers, you see.

We had many meetings with the president of the College of William and Mary. And Mr. Miller told him how they couldn't keep on raising this money. And, therefore, there was a contract drawn up, or an agreement was made

page 17] whereby if the citizens of Richmond would hold one more campaign—and that was supposed to be the last—if they would hold one more campaign and raise $100,000 to provide this school, as the contract said, with a permanent home, the College would take it over and support it.

Well, it didn't say support it. It said operate it permanently in the City of Richmond.

The College agreed to that and so did the group of businessmen, who in the meantime had all been made members of this board, don't you see. And, so, in that way it came about that we bought a house, a large old mansion known as the Saunders-Willard House at 827 West Franklin Street, which was the corner of Shafer Street and where we now are located. And at that time the City Library was immediately across the street.

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That was one of the reasons for buying that particular piece of property.

They took that $100,000—they raised that $100,000 in Richmond. And it was all paid in—the pledges were all paid in by 1930. And by 1930, they owned the building without debt.

Q. Describe what the history of RPI and William and Mary has been since William and Mary took over in 1925. Describe it very briefly, if you will.

A. Well, there weren't very many students.
page 18] But the night school operated the night part of it, which William and Mary was chiefly interested in. That flourished up there at Franklin and Shafer, because the building was an old residence and it was not very good from the standpoint of classrooms, nevertheless its location was ideal.

And teachers liked to go there. And it was a well-policed and well-looked-after neighborhood at that time. And they felt perfectly safe; and these students would come at nights.

And it worked out quite well in that way. The City Library, as I said, was right across the street, and the students could go over there and study. Because not many other people used it in the morning hours. It was a very good arrangement.

The enrollment went up, and we began to expand the curriculum. The original idea of William and Mary was, I think, that we would get a lot of Richmond students who would take the freshman and sophomore work and then go down to Williamsburg to complete their junior and senior work.

Well, that never did work out that way. There were not so many that went down there—that wanted to go to Williamsburg. Most of them wanted to stay here in the city and continue if they were going on to get a degree. So, we opened a good many other departments. And, finally I guess as
page 19] many as thirteen or fourteen. The first one was a School of Arts, which became very large. Then there was the School of Occupational Therapy. And then one of Vocational Distributive Education. And numerous other professional groups of that sort. Being careful at all times not to offer anything in the way of curriculum or program of study that duplicated that of other colleges.

Q. Describe how RPI was operated in relation to William and Mary?

A. Well, this Board now known as the RPI Foundation was supposed to go out of existence and have no—and just close up and quit, as it were, as far as they were concerned and leave

the whole business to William and Mary, as it were—if I may use that word "business." In other words, it is better to say "leave the whole enterprise" to William and Mary.

And they ran it just like they would any other branch college. That was the way it was supposed to be done. And as far as the classroom activities were concerned, that was done that way. They did run it just like almost any other college. But as far as expansion and physical plant was concerned, it was quite different.

Q. What function has the Foundation served over the years since William and Mary took over in 1925 in relation to the physical plant of RPI?

page 20]

A. Well, if it hadn't been for this Foundation, there never would have been any physical plant up there to run in. Because in making this original contract with William and Mary, no provision was made in it as to where the money was going to come from. I guess no one thought about it. I was right young at that time and had had no experience in such complicated matters. And William and Mary agreed to take the college over and operate it in the City of Richmond, to quote the contract.

All of us thought that was all there was to it and there was no use to worry about it any more. But that didn't last—that feeling didn't last more than a year. Because we soon found out that the College had responsibilities at Williamsburg and they didn't have any money to run anything more than that.

And, so, instead of depending on the state and the college to provide us with a physical plant—which they wouldn't do, or couldn't do—why, Dr. Chandler and I agreed that the best thing to do—he suggested it to me and I carried it out in dealing with these board members—whereby they would persuade this board of directors to continue, don't you see, and continue to operate and go over and still help out.

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Well, Mr. Miller said he didn't have time for that. And the original agreement was that they would go out of business just as soon as that Shafer and Franklin property was paid for, which was 1930.

Well, when that time came, we did succeed in getting most of those members to continue their interest. Mr. Miller didn't so much—well, by that time the bank's work had gotten so large and he was the president of it instead of the vice president, and his responsibilities were required there. So, he didn't do so much, but Mr. Carrington and various others did. And

once in a while we would raise some more money, but not so very much more.

But we did raise some more. And by bringing the institution away from this neighborhood down here which was rather slummy, as I said, at that time—that was long before the State and the Medical College had built up that area—we got more students and were able to raise the fees, and in that way we could get along.

And another thing: we opened a dormitory.

Q. (By Mr. Booker) When did you first offer dormitory space to students?

A. Well, I haven't got the records before me, and I am not positively certain. But I am almost certain that we had a dormitory the first year. The second year I know we did.

page 22] Q. Now, when you say "first year," do you mean first year at the present location?

A. Yes, up there at Shafer and Franklin.

Q. Which was 1925?

A. In other words, during the second year I am positive—during the second year up there—that would be 1926—

Q. Who owned the dormitory?

A. It was owned by these citizens, this board of directors, the foundation. The foundation owned it, because it still had a mortgage on it. But as soon as they paid that mortgage off, they deeded the property to the college. You see, these pledges had not been all paid in, don't you see; and it took five years for all of that money to be paid in. They kept the title of the property. The property was not in the name of the state, but it was in the name of this corporation.

They kept the title of that property and had to keep it until these donations that had been made had been paid in and the mortgage paid off.

Q. Since 1930 what has the foundation done with its funds?

A. Well, Dr. Chandler, the president of William and Mary, told me that the College of William and Mary could accept property that was donated to the College subject

page 23] to mortgages, don't you see. You know what I mean?

Q. Yes.

A. Excuse me. They would accept property subject to mortgages; but that the college couldn't go out and buy property itself like that without the consent of the General Assembly. So, he said—well, let me go back just a moment, if you please, sir.

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The City Library was across the street and it belonged to the City of Richmond. Well, Major Dooley died about that time—he was a major in the Confederate Army and a man of wealth—he had no children, as I recall it—and he gave the city the money to have a new library. Well, they moved the library and decided not to—or at least they decided not to have that library where it was, but to move it further downtown where it is now. So, they did that. That was in about 1930.

The City put that library on the market to sell it. That is, sell it as surplus city-owned property.

Now, at that time the College of William and Mary had been developing this same kind of work in Norfolk. Not all of this professional work, but the academic part of it and the part for teachers—they were doing that in Norfolk. Well, the City of Norfolk, it is interesting to note, declared surplus a school down there called the Larchmont School. I think

page 24] it was called Larchmont School. And they offered to give it to the College of William and Mary—the city offered to give it without any strings to it—they offered to give that to the College of William and Mary if the college would do this work down there for these teachers and the various other students that the City of Norfolk wanted to have done.

It was a good arrangement, and the college agreed to it. They passed the title of that property to that school from the City to the college, and, therefore, of course, made it owned by the State.

Well, we immediately approached them. At that time the City had a mayor. And we immediately approached the mayor and the chairman of the finance committee and the governing body and said "Why not give this library to William and Mary so to do this work better?" No, sir, they wouldn't think of it.

And I don't think anybody did think of it in the city. They didn't consider it very much. But they said they wanted to sell it and would be willing to make one concession, namely, not require a down payment of more than ten thousand dollars.

They agreed to sell it, I think, for maybe about $85,000—about that. And only would have to have $10,000 in cash.

page 25] Well, the College of William and Mary, Dr. Chandler, through gifts or some way—I never

knew just where the money came from—but some way he got that $10,000. Then Mr. Miller at the First and Merchants Bank agreed to loan the corporation, the foundation, half of the rest of the money. That made a first mortgage. And the City of Richmond agreed to take the rest of the money in the form of a second mortgage and to postpone any payments on that mortgage, except interest, until the first mortgage had been paid off to the bank.

Well, now, they made no concessions. But those were all that were made. They wouldn't consider for a moment doing anything like donating or giving this surplus property to what is now RPI like the City of Norfolk had done with this surplus school.

Q. Was that property owned by the foundation?

A. Yes. Dr. Chandler looked at it—if you all will pardon me for repeating myself a little bit—I said in the first place that the—well, I have forgotten just what I did say; but I am getting tangled up here.

What I meant to say was Dr. Chandler—I was right young then—and he explained to me that this corporation now owned without any encumbrances on it this 827 West Franklin Street property, don't you see. They owned that. It didn't have any encumbrances on it at all.

page 26] Well, now, the city won't give us this public library, and they have gone so far as to postpone these payments considerably so that the demand for funds won't be so great immediately. He explained to me "Why don't you get that board, the foundation, to buy this public library and postpone the transfer and deeding of this 827 West Franklin Street to the state; don't deed that; keep the title to that; buy this public library; then mortgage both pieces of property?"

You see what I mean. Mortgage both pieces of property so that the bank would be more interested in taking the mortgage on where they got the security, not only the new property being bought but the property will be paid for. And then we went ahead and bought the public library property.

Q. What was that used for by RPI?

A. It was used partly for—it was used partly and mainly for classroom and teaching purposes, because we took the original property and used it and made it exclusively a dormitory. Now, that gave the institution two buildings—a dormitory for women and this building that had been the library, the former Ginter residence—made that the school building. But

even though it was the school building, we still rented the rooms on the third floor and part of the second floor. The house was really four stories high. Those upper floors, we rented those to older graduate students.

page 27] Q. Did the foundation continue to purchase property through the years? And, if so, to what use was that property put?

A. Well, after we obtained one dormitory, 827 West Franklin, and obtained the building we are running the college in, 901 West Franklin—after we obtained those, that was about the time the depression began. And the federal government began to appropriate money and give it to institutions—if they were state-owned—they would give it to institutions that were state-owned with the understanding that the institutions would employ labor on relief—labor that was on relief.

The depression, as I say, came on at that time. And it greatly decreased the value of real estate around in that neighborhood. As I can remember it, some time after we had bought the state library property two real estate propositions were made to us. A lady came to us and said she owned a house where the gymnasium building now stands. It was about 817 Franklin Street—about that. And she said she would be willing to sell the house for $4,500.

So, the RPI Foundation hadn't thought much about expanding real estate. But they agreed to buy that house. Mr. John Stewart Bryan was president of William and Mary then. We agreed to buy that house and pay $4,500 for it.

page 28] And we sold the house to a wrecking company for a thousand dollars and made it net cost thirty-five hundred.

Then about that same time another propostion was made to the effect that 910 West Franklin and 908, the property where the president's house now stands, and various other activities—that we would buy that also for fifteen hundred dollars a year until paid for. So, the bank didn't have to extend any loan on that. And that property that we paid $4,500 for, I can't remember whether they loaned any money on that or not, or whether the foundation had the money in hand and paid for it, the three thousand five hundred dollars net.

Q. Dr. Hibbs, without telling us the history of each particular parcel, can you tell us in general terms what the foundation did with its money over the period involved from 1930—

A. You mean with respect to real estate?

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Q. Yes, sir.

A. We bought about, oh, I guess, fifteen or twenty pieces of property.

Q. Is that property still in the foundation's name?

A. Some of it is. Most of it is now in the name of the state.

Q. Under what circumstances would the title

page 29] be conveyed from the foundation to the state?

A. Well, that wasn't done until about a year ago.

Q. That has not been done yet, has it?

A. I don't know whether it has been completed or not. But the Governor gave his consent to deeding all of that property to the state. Whether it has gone through or not I don't know. That was after my time.

But for a long time there, the foundation owned those pieces of property. And the foundation would buy a residence, for example; and the WPA, the federal government, would provide the labor and some of the materials, and this foundation would provide the other materials to remodel these pieces of property so that they could use them for residential purposes for students to live in.

And in that way, they ran the dormitory enrollment up to around, I guess, maybe four or five hundred.

Q. Describe whether there has been a need for dormitories at RPI, and, if so, why?

A. Describe what?

Q. Describe whether there is any need for dormitories at RPI?

A. Any need?

Q. Yes. Or was at the beginning. And, if so, why?

A. Well, the Richmond Professional Institute

page 30] from the very first has had about half its daytime full-time students from Richmond and the other half from outside the city. That has been true from the very first. And these older students could find accommodations around Richmond; if they were people twenty-five or thirty years old, they could find places and go there and live. But it was mighty soon found out that parents would not allow their daughters to come to Richmond and go to college like they wanted to do unless the college would assume some kind of responsibility for their physical and social welfare.

And the college, therefore, had to have dormitories. And when we were starting in in 1925, it was agreed by everybody that there were two things we vitally needed—one was a school

building, and the other was a place for these students to live, especially women students. Consequently, they got those things just as soon as they possibly could.

And it gradually turned out that the main function of this foundation was to provide living opportunities for students. There wasn't any other way in which these opportunities could be provided.

Q. How important were dormitories to the continuation of the school?

A. The Continuation of the school?

page 31] Q. Yes.

A. Absolutely essential. I don't see how the matter could even be questioned. Students that go to college are younger now than they were in 1917, it looks like. And they just have to have dormitories. Colleges all have dormitories almost. Almost all of them have dormitories. And if they offer a vital curriculum—if a college is offering a vital curriculum like RPI was doing, offering things that were not offered elsewhere, why, there is no power under Heaven that can keep people in *Matthews* County and Rockbridge County and various other rural sections from coming into the city to get the advantages of that. You can't stop them from that.

For example, if a student wants to study art and music where they study all day long in those subjects, and no other college in the state will let them study music all day long, and if they want to do that that are determined to do it, they are going to come to the city for that purpose. And then it is a question of whether or not they are going to live anywhere they can find or whether the college will provide them with some decent place to live.

Well, the college couldn't provide any place to live. The College of William and Mary and the State couldn't provide any. This foundation had to step in and do it.

Q. Did you ever attempt to secure funds from

page 32] the state or from William and Mary for dormitories?

A. No. No, we never did.

Q. Did you ever try to get funds from them?

A. We get money from William and Mary for dormitories?

Q. Yes, sir.

A. I don't suppose I ever tried it.

Q. Did you ever ask the General Assembly to appropriate funds for dormitories for RPI?

A. Yes, we asked them to do it.

Q. And did they ever do it?

A. No, they never did it.

It is the tendency of colleges nowadays to put dormitories and eating facilities and laundry facilities and things like that in a separate class from the actual teaching. They call it auxiliary activities. The tendency is to have those auxiliary activities paid for by the parents.

Q. How important are those auxiliary activities to the mission of the school?

A. I think they are extremely important. And in practically all colleges—I can't think of any—it is right hard to think of any exceptions of four-year colleges—it is right hard to think of any that don't provide it.

Q. Have any of the dormitories now at RPI
page 33] been purchased with state funds?

A. No.

Q. Whose funds purchase them?

A. Sir?

Q. Whose funds purchased them?

A. They were purchased by this foundation.

Q. And does the foundation still own property for dormitories?

A. They still own some, yes. They own three. The main thing that they own, they own what we call Shearer Hall, which is on the corner of Franklin Street and—isn't it Harrison Street?

Q. Is that 923 West Franklin?

A. Yes.

Q. That is one of the parcels in litigation?

A. Yes. Of course, it is Harrison Street. Excuse me. That is five stories high. They own that. And they own some residences scattered around that are occupied by students. And then lately they bought this twelve-story Monroe Terrace. And they own that. They own it, but still there is a big mortgage on it.

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page 34] CROSS-EXAMINATION

By Mr. Eichner:

Q. Dr. Hibbs, hasn't it been suggested some time in the past that another private corporation take over the construction of

dormitories and operate them as a business enterprise?

A. How is that?

Q. Wasn't it suggested a few years ago that another corporation come in as a business venture and construct dormitories on state-owned land and provide the dormitory facilities in that manner?

A. Well, I heard something about that, yes. You get lots of suggestions from profit-making organizations—well, there are groups in this country that I think they do build dormitories.

Q. I think, for example, in Texas is one place?

A. Yes, I think so. I think there are some. But the college has to provide the land.

Q. And there was this corporation that was in this dormitory business in some kind of Texas colleges that made this proposition to RPI; isn't that true?

page 35] A. Well, I think they made a proposition, yes, sir. But, as I said, it was necessary that the college or somebody locally—well, they never made that proposition to the State. That proposition was made, as I think, to this foundation. But the foundation didn't have enough land. That would require a good deal of land to build such a dormitory. And they had a committee that investigated that right carefully. And that committee concluded that that land could not be obtained except some distance from RPI and it was not a very good neighborhood.

Q. Yes, sir.

Now, the RPI Foundation as it is now known—I believe the original name was The Richmond School of Social Economy, was it, not, back in 1917?

A. Yes. But very soon it was changed to Richmond School of Social Work and Public Health. That was about a month or two after it started.

Q. In 1925, I believe you stated, the College of William and Mary took over the teaching that was done by the Richmond School of Public Health?

A. That is right.

Q. And it became the Richmond Division of William and Mary, did it?

page 36] A. Well, for a while it was called that. Then it was later called Richmond Professional Institute of the College of William and Mary.

Q. Yes, sir.

And it was just last year, wasn't it, that RPI became a separate corporation?

A. Well, two or three years ago.

Q. Something like that?

A. Yes, sir.

Q. Now, since 1925 when William and Mary took over the school as one of its branches or divisions, or whatever you want to call it, the foundation has not operated a school of any sort, has it?

A. No, they haven't operated a school. Not since 1925.

Q. And I believe the charter was amended so that it doesn't even provide that it may establish a school any more; isn't that correct? Do you recall that?

A. At the present time the charter does not provide — I don't think the charter provides for operating a school.

Q. Originally, of course, it did, didn't it, back when you started?

A. Yes.

Q. And that change was made in 1944? Does
page 37] that sound about right to you, Dr. Hibbs?

Mr. Booker: If your Honor please, I think that is a matter of record. And I object to the questioning of the witness along those lines.

The Court: Well, if he doesn't remember, it is perfectly all right. But I expect he is really leading up to some other question.

Mr. Eichner: Well, I think that is one of the latest requests for admissions which was objected to as not being relevant — the charter amendment of 1944.

The Court: Well, as of today I rule it is relevant. I would like to know about it. He has answered it, though, I believe.

Mr. Eichner: I believe he has.

The Court: As to whether or not the exact date of the change of the certificate of incorporation — I expect we could check that just by going to the record.

Mr. Eichner: If Your Honor will look at the latest request for admissions.

The Court: What specific question did you ask?

Mr. Eichner: This is paragraph 2 of the latest request for admissions; it had to do with the amendment of the charter in 1944 to eliminate the power to establish and
page 38] operate a school. That was the point I was trying to make. That was objected to as not relevant.

Henry H. Hibbs

The Court: You know it was amended then? Does the record know it was?

Mr. Eichner: It is set out in paragraph 2.

The Court: Of your request, is it?

Mr. Eichner: Yes, sir.

Mr. Booker: If your Honor please, our position, briefly stated, is that the 1944 amendment was amended again in 1956 to put back in this expression and that the tax years in controversy here are subsequent to the 1956 amendments.

The Court: That may be true. But I want to know the history of this organization. It tells me something of its nature, I think.

Mr. Eichner: Again we went into the 1956 and the 1964 amendments. And we submitted there was some relevant matter about the history of the 1956 one which Mr. Booker relies on.

The Court: All right.

Well, let me see if I have it correct. The charter was changed when to take out the power to establish and operate a school?

Mr. Eichner: 1944, if your Honor please. And then it was changed again in 1956 and again in 1964. And
page 39] there are some minor changes I have not described there.

The Court: Was the 1944 change the one that took out the power to operate a school?

Mr. Eichner: Yes, sir.

The Court: Is that right, Dr. Hibbs?

Ask Dr. Hibbs if that is right according to his recollection?

Q. (By Mr. Eichner) Do you think it was 1944 when the power to operate a school was taken out of the foundation's charter?

A. I can't remember exactly. It was in 1930 that the agreement was entered into that they wouldn't operate any school after that.

The Court: Was it 1930 or 1925?

The Witness: But it might have been put in the charter about 1944 maybe.

Q. (By Mr. Eichner) Was it 1925 or 1930, Dr. Hibbs, that the foundation agreed not to continue operating a school and William and Mary agreed to operate it? You just said

1930, I believe. Didn't you earlier say 1925?

page 40] A. In 1925 the College of William and Mary agreed that it would take over the operation and maintenance of the school in the City of Richmond. And it guaranteed that it would be in the City of Richmond. I recall that. And it was also agreed that this corporation now called the RPI Foundation, that had been operating the school prior to that time, would not only cease to do so but would also give up its charter and quit and go out of business, as I explained.

But it was later determined that there were certain activities that the College of William and Mary could not itself carry on and that this corporation, this endowment association, could carry on better. And at the request of the College of William and Mary, this foundation was kept in existence.

The Court: But as a school?

The Witness: There is one other point that is right pertinent to this matter that I could explain if you would care to have me do so at this moment.

Q. (By Mr. Eichner) Well, let me just ask you this further question, Dr. Hibbs: It was 1925 when the foundation or the Richmond School of Social Work and Public Health, as it was then known, stopped teaching school; isn't that correct — stopped maintaining the school? In 1925?

page 41] A. Yes, sir. That is correct.

Q. And since then I think you have referred to it as an endowment association. In fact, I think that was one of its names at one time?

A. It did have that name at one time, yes, sir.

Q. And subsequently it has supported RPI in various ways financially, including the acquisition of these dormitories? But that has been its only function, has it not?

A. Well, it has also bought and acquired property that it gave to the State, and the State later built buildings on it.

Q. Yes, sir.

A. But for a number of years that was very important. The State wouldn't give any money to buy any more real estate.

Q. The General Assembly has been more generous in recent years, haven't they, Dr. Hibbs?

A. Well, they have since I retired. Maybe there was a connection between those two things.

Q. Well, I hardly think so.

You say the original connection between the foundation and William and Mary was in connection with the education of teachers; isn't that correct?

A. Well, that was the reason for William and
page 42] Mary's chief interest — I mean William and Mary's original interest.

Q. And that has been for a good many years one of the main functions of William and Mary, hasn't it — educating teachers?

A. Well, I think the college at Williamsburg, the education of teachers has been a main function, yes, sir.

Mr. Eichner: That is all I have. Thank you, sir.

The Witness: There is one other point in connection with this matter that I think should be explained if I could have the opportunity.

The Court: Go ahead, sir.

The Witness: The Constitution of Virginia and all these men who were interested in this enterprise originally considered that the State of Virginia had a right to and did own property in two ways: One was what might be called directly, and the other one would be called indirectly.

Mr. Eichner: I have to object to legal conclusions of other people related by the witness.

The Court: Well, we will see whether I can attach any weight to it. Let's see what it is.

Go ahead, sir.

page 43] The Witness: I didn't hear what you said.

The Court: He objected, and I said I would rule later whether I could attach any weight.

But, anyway, I would like to hear what you have to say; if you have a definition of "indirectly," I would like to hear it.

Mr. Eichner: We except.

The Witness: As I said, the Constitution of Virginia, I believe, makes this reference to the fact that a college may own a property directly or indirectly. And it was thought—and there was never anything in the minds—the idea was never in the minds of any of these people that I know about, and it was certainly never in my mind that anything but the College of William and Mary owned this corporate body known as the RPI Foundation—now known as the RPI Foundation.

When we went and bought a piece of real estate and turned

it into a dormitory, we would send word to the tax collector's office, and he would take it off the tax rolls. And no one ever brought up any question about it at all, as to whether or not the property was to be used for running a school and having actual classes, you see. That point didn't come up.

Now, in the case of a non-state institution, the point might come up as to what you are going to use this building for that you buy. But this never came up in connection page 44] with this purchase of real estate, because it was always regarded by everyone at least that I ever talked to—or at least they seemed to so regard it—I always regarded it myself as being owned by the Commonwealth of Virginia indirectly. Consequently, they take it right off the tax rolls not on the grounds that it was a college but on the grounds that the state owns it. And if the state owns it, it, therefore, is not subject to taxation no matter what they do with it, if I might use that expression.

Now, this point came up soon after the depression. I think you might say around 1930. In 1933, somewhere along there, in the depression, the point came up. And the federal government started this work relief program known through most of the time as the Work Progress Administration, or WPA, in which they would take any state or city-owned property and would work on it and remodel it and spend relief labor on it. And they would provide not only the labor but would also provide some of the material—not all, but some.

Now, that question came up. I think somebody caused the federal government to make an inquiry as to this—as to some particular house.

Mr. Eichner: I have to object to that as to the federal government.

page 45] The Court: I will let him go ahead.

Mr. Eichner: Exception.

The Court: Go ahead.

The Witness:—as to whether that was owned by the state or the city, a public body. And they sent an inquiry to me to find out whether it was or was not. And I went to the Attorney General's office to find out what kind of a reply I should make to that. And the reply that I made—that I was instructed to make, and was advised informally by the attorneys— was that the Commonwealth of Virginia indirectly owned that property, and, therefore, it was proper for federal funds to be

expended on it as publicly owned property.

And we explained that to the WPA and their attorneys. And they let us go on and continue that up until the time that it was discontinued.

Well, the Attorney General at that time thought—it was one of the lawyers in the office that I talked to, not the Attorney General himself—he thought that it would be well to have some kind of a record made of that and have it recorded in the Chancery Court so that everybody would know what the ownership of that property was, and that that property, therefore, was not owned by this corporation as a private corporation but was owned by this corporation as an indirect—so that the Commonwealth indirectly owned it.

page 46] So, they drew up an agreement, a contract, which was signed by everybody concerned—the president of the College and the Chairman of the Board of Directors; the Director of the Board of Visitors and the officers here in Richmond all signed it—clinching this matter that this was a publicly owned property, and that it could not be sold or in any way used by this RPI Foundation for any other purpose than educational. The federal government got that. And they filed it away. And that is the last they ever heard of it.

They accepted it, in other words, and continued—as long as that organization existed, they continued to do that. I don't know—it was up to about World War II.

Now, I think the City of Richmond accepted that view also. I never heard any objection from anybody about it. We did not make any effort to distinguish between that property to which the College of William and Mary had a fee simple deed and that to which this corporation had a deed subject to this provision I am talking about.

REDIRECT EXAMINATION

By Mr. Booker:

Q. Is that agreement which you have just re-

page 47] ferred to this document which I show you here?

A. Yes, that is it.

Let me see the bottom here.

Yes, that is it.

Mr. Booker: If your Honor please, I offer this in evidence as Defendant's Exhibit No. 1.

The Court: All right.

Note: Defendant's Exhibit No. 1 was marked for identification and received in evidence.

Q. (By Mr. Booker) Are you at present a member of the Board of the RPI Foundation?
A. Yes, sir.
Q. Have you been ever since its inception?
A. Yes, sir, that is right.
Q. Tell us what you understand your duty is as a member of the Board if a request is made by the state or by RPI to convey any property owned by the Foundation to either the State or RPI?
A. Well, you mean assuming that the RPI Foundation didn't want to turn it over to the college, would
page 48] they have to anyway?
Q. Yes.
A. Yes, they would.
Q. Is there any question in your mind—

Mr. Eichner: That is objected to as a legal question.
The Court: I think that is covered by the charter, isn't it?
The Witness: The Foundation doesn't own this property — doesn't own any property in the same way that I own my residence. I can sell my residence to anybody I want to and do whatever I please with it, but this Foundation can't do that with that property, because the Foundation is subject to the fact that the State indirectly owns it.

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JOHN KENNETH ROACH
being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Booker:
Q. Dr. Roach, what is your employment?
A. I am the Dean of the College of the Richmond Professional Institute.

John Kenneth Roach

Q. What are your duties generally as Dean?

A. Well, my duties basically would be comparable to Dean of Faculties. I am involved in the academic

page 50] aspects of the college.

Q. As such, are you familiar with the curriculum?

A. Yes, sir.

Q. Can you describe briefly the curriculum at RPI?

A. Well, I don't know whether I can do it briefly.

RPI is a multi-purpose institution. Its best description would be that it is an urban university. And as a university, it has many programs. Now, Dean Hibbs was pointing out that throughout RPI's history, half of the students have come from beyond the commuting area. And this is true right now. And the reason for this is that RPI offers programs that cannot be found in other parts of the state or in other contiguous states.

Q. Can you give us some examples of that?

A. Yes. The School of Art draws heavily from beyond the commuting area. Now, this would be either from the State of Virginia or from other states. It offers commercial art. The program in commercial art is the only program east of Chicago and south of Rhode Island. The Rhode Island Institute of Designs is the only institution offering collegiate work in this field.

page 51] Interior Design: The nearest schools are the Parson School and Pratt in New York.

Fashion Illustration: The nearest school is the Parson School of Design in New York.

The School of Distribution is the only school of its kind in the South. The University of Pittsburgh and New York University offer similar programs.

Occupational Therapy, both undergraduate and graduate: The only program offered by a Southern college, the nearest one being the University of Pennsylvania.

The School of Social Work, which is a graduate school: Washington, D. C., and then the University of Tennessee.

The School of Rehabilitation Counselling, when it was established in 1955, it was the only school in Region 3, which is by and large the southern section. There are other schools in Region 3 that have just recently been established. I believe West Virginia University now has a School of Rehabilitation

Counselling. And North Carolina and Maryland are considering the establishment.

Up until the last year Puerto Rico was the nearest school for rehabilitation counselling.

Q. (By Mr. Booker) Where do your students come from? Do you have any standards or figures with you
page 52] which would indicate the geographical distribution of your students?

A. Well, our students tend to come from about thirty to forty states. And it will vary from one year to the other. I believe this year we have students from thirty states, plus Washington, D. C.

Now, they will come from Hawaii, California, Texas. We have seven foreign students. But by and large we draw on the Eastern Seaboard, because, as I mentioned, our curricula being restricted and serving the nation on the East Coast, we would then expect to draw upon the students who wouldn't be able to go to Chicago or to New York. So, we draw heavily from North Carolina. This is probably our largest state. And then Maryland. Those are the two contiguous states. But we will have ten students from Georgia and we will have about six from Florida. We will draw heavily from Pennsylvania. The Eastern Seaboard is our main concentration.

Q. What problems, if any, does the school have with housing these City and out-of-state students?

A. Well, of course, we have considerable problems. Our enrollment is predicated upon giving all girls under 22 housing.

We cannot accept a girl under 22 — as Dean Hibbs has pointed out, the parents would be most reluctant to have their daughters especially come here. This same thing
page 53] we find evident with the boys. But with the girls, our whole admissions is limited to our dormitory facilities.

Some time the latter part of April we had already accepted approximately two hundred more girls than we could accommodate. But as all schools do, you accept more, feeling that there will be a mortality, or an attrition. We returned unprocessed all applications from girl students after the end of April on the basis that we could not accommodate them. These are qualified students, now.

Q. Is dormitory life a part of the academic regimen and discipline at RPI?

A. Yes. This would be true in any college. The classroom is an important part of a college student's education. But I think everyone recognizes that the whole social aspect — dormitory living is an integral part of anyone's formal education.

Q. What policy, if any, has the Board of Visitors adopted relating to dormitory students?

A. Well, the Board of Visitors have gone on record as advising the administration to insist that all students coming from beyond the commuting area be housed in dormitories as soon as such space becomes available.

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page 55]

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ERNEST V. WOODALL

being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Booker:

Q. Are you connected with RPI?

A. Yes, sir.

Q. What is your capacity there?

A. Burser.

Q. Are you also connected with the RPI Foundation?

A. Yes.

Q. What is your capacity with the Foundation?

page 56] A. Secretary Treasurer.

Q. What are your duties as burser of RPI somewhat equivalent to?

A. Business Manager-Treasurer.

Q. As such, are you familiar with the property which is owned by RPI?

A. Yes.

Q. Are you familiar with the three parcels which are involved in the litigation here — 921 and 923 West Franklin and 327 North Harrison?

A. Yes.

Q. What use is being made of the 921 and 923 West Franklin?

A. A girls' dormitory.
Q. What use is being made of 327 North Harrison?

The Court: Excuse me. 921 and 923 West Franklin?
Mr. Booker: Yes, sir.
The Court: Both girls' dormitories?
The Witness: That is right.

Q. (By Mr. Booker) Do those two buildings connect with each other?
page 57] A. That is right, they connect, and are under the supervision of one hostess, you know — one house group.
Q. Have they been used as dormitories in all the tax years in question in this litigation, from 1960 to the present?
A. Yes, sir.
Q. What use is now being made of the residence at 327 North Harrison Street?
A. Miss Louise Bernard, I think, is head of one of the state departments — she lives there. And she was previously on the staff at the college. And Miss Nedra Tyre, who is also connected with them, as I understand it. And Miss Kneeland. And she was a writer and lecturer.

The Court: Excuse me. But if your first position is correct, does the use play any part the way you look at the law?
Mr. Booker: No, sir, not a bit. But the city has raised that in its interrogatories. And I thought I would explore it.
The Court: All right.

Q. (By Mr. Booker) As Business Manager of the college, are you familiar with the prospective plans for expansion of RPI?
page 58] A. Yes.
Q. I hand you a drawing, and I ask you what that drawing represents?

Mr. Eichner: I wish to state an objection to any possible future use of any property, if your Honor please. I submit we are interested only in the use that is being made during the tax years in question here. And what might be done in the future —
The Court: Well, it might throw some light on what this foundation is which will enable me to say whether the Com-

monwealth owns the land indirectly. I take it that it being a college is out the window pretty much. After all, they are not in the teaching business now.

Mr. Booker: If your Honor please, we don't agree to that.

The Court: Well, that isn't your strong point, is it?

Mr. Booker: We think it is our second strongest point.

Mr. Eichner: We except to the ruling, of course.

The Court: I will let him answer the question.

page 59] Q. (By Mr. Booker) Mr. Woodall, describe what that is.

A. This was prepared in 1960 together with the officers of the college projecting a proposed campus development for the years 1962 to 1968.

Q. What does that plan show is the projected use of the property at 327 North Harrison Street?

A. That is a future classroom building.

Q. Has any request been made for funds for that as a classroom building recently?

A. We submitted this request for a campus development and improvement. And it was included in the overall projection.

The Court: When you say "we," if you would help me, because you seem to occupy dual jobs. Do you mean that the RPI —

Mr. Booker: If your Honor please, maybe I can rephrase the question.

The Court: All right.

Q. (By Mr. Booker) In the most recent budget estimate which has just been prepared by RPI, what reference, if any, is made to that property?

page 60] A. This one that I have in my hand was set up as Project No. 17 to be used in 1964 to 1966 as a classroom building.

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Q. (By Mr. Booker) What revenue does the foundation derive, Mr. Woodall?

A. The foundation gets their revenue — their revenue is derived from tuition — or rather from room rent paid by the

students and payment from the Commonwealth of
page 61] Virginia for the use of other properties.

Q. What is the payment from the Commonwealth of Virginia?

A. Fifteen thousand dollars a year.

Q. And what properties of the foundation does the Commonwealth use?

A. The Commonwealth uses 902 and 904 Park Avenue; 826 and 828 Park Avenue; and there may be other buildings that the foundation owned that have been demolished and razed and state-owned buildings have been erected on this property.

Q. Can you give us an example of that?

A. The Hibbs Building.

Q. Which is what kind of building?

A. Educational building on Shafer Street. Classrooms.

Q. Who pays for the upkeep of the dormitories which are owned by the foundation?

A. The Commonwealth pays the expenses, or most of the expenses. And then the Foundation reimburses the Commonwealth for direct expenses.

Q. What does the foundation do with the money it receives from the state and from these rents?

A. Of course, from the State and the rents, they pay the operating expenses that are later charged to it by
page 62] the Commonwealth; and to invest in some securities. And then, of course, to buy additional property if and when it is available.

Q. Has the Board of Visitors recently made a request of the foundation that it purchase property?

A. Yes.

Q. And what is that property?

A. That was the Monroe Terrace.

Q. And approximately how much is the purchase price of that?

A. $300,000.

Q. What will that do to your surplus?

A. Well, all of our entire worth, I think, is around $300,000. And we are now endeavoring or trying to find some way to get enough students in that building to derive enough rent to probably liquidate a loan that we hope to get to cover it.

Q. What will be the purpose of the loan on the property?

A. It would be for renovations.

Q. How much is that estimated to cost?

A. That could go around $800,000, depending on just how far we would like to go.

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page 63] The Court: Do you want this thing in evidence that you referred to, this plat?

Mr. Booker: Excuse me. Yes, your Honor. I meant to introduce it in evidence. I offer it as Defendant's Exhibit Number 2.

Note: Defendant's Exhibit No. 2 was marked for identification and received in evidence.

CROSS-EXAMINATION

By Mr. Eichner:

Q. Who owns all the property that is shown for future development on Defendant's Exhibit No. 2?

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Q. (By Mr. Eichner) What is the ownership of the property that is in color there on Exhibit 2 and indicated for future development of RPI?

page 64] A. Well, the colors are supposed to designate the years in which we hope to have the project approved and erected during that particular period.

Q. I understand that. Do you know who owns the various parcels that are involved?

A. I think so.

Of course, these are not owned at all (indicating).

Q. Somebody owns them, don't they?

A. Well, I wouldn't know who owns 905 and 907 West Grace Street.

Q. Do you know that RPI does not own them?

A. That is right.

Q. You know that the Foundation doesn't own them?

A. That is right.

Q. All right. Go ahead.

A. Now, this property here (indicating) is owned by the State.

Mr. Booker: Could you identify it by number, Mr. Woodall?

The Witness: Yes, sir. Number 3 is owned by — well, now, 3 is a project to include some other construction.

page 65] But 712 West Franklin Street and 710 West Franklin Street are owned by the Commonwealth.

The School of Social Work — Now, we have a list, I think — I, we have property titles and about nine grantees.

Q. (By Mr. Eichner) Some of that property is in ownership other than RPI and of the Foundation — several parcels that are shown in color on Exhibit 2?

A. That is right.

Q. You answered some interrogatories earlier about the rent received for the three parcels that are involved here. And that information is accurate that is on those interrogatories, isn't it?

A. Yes.

Q. I want to hand you now, Mr. Woodall, some bulletins of RPI dated 1959, 1960, 1961 and 1962. And I want to refer you to the pages dealing with the faculty and the visiting lecturers there, starting at page 8 in each volume, I believe.

Can you tell me if you find the names of Dr. Kneeland or Miss Tyre or Miss Bernard either on the staff or as visiting lecturer or in any sort of teaching capacity at all?

Mr. Booker: Your Honor, I don't want to interrupt the witness; but haven't we agreed that they were not attached to the school during this time?

page 66]

Mr. Eichner: I understood Mr. Woodall to say on direct examination that Miss Tyre was a lecturer there.

The Court: It is true we exchanged some information about it. But since it was covered in the direct, I think it is a perfectly proper question. These ladies are not connected with your faculty in a formal way at the present time, are they?

The Witness: No, sir.

The Court: All right.

Q. (By Mr. Eichner) Now, we have had a lot of talk about women's dormitories here. There are some men's dormitories too, aren't there?

A. That is right.

Q. Where are they located?

A. 312 North Shafer Street and 712 West Franklin and 808 West Franklin and 928 Park Avenue.

Q. I want to hand you a deed here that says 312 North Shafer Street.

Mr. Eichner: I offer that as City Exhibit No. 1.
The Court: That will be Plaintiff's Number 1.

page 67] Note: Plaintiff's Exhibit Number 1 was marked for identification and received in evidence.

Q. (By Mr. Eichner) Tell us who the grantor and grantee is. Read the introductory clause.
A. "This deed, made this 24th day of August 1950, by and between LaFayette Apartment Corporation, a corporation chartered by and existing under the laws of the Commonwealth of Virginia, with its principal office in the City of Richmond, Virginia, party of the first part, and Commonwealth of Virginia, the College of William and Mary in Virginia, party of the second part."
Q. What is 810 Park Avenue used for, Mr. Woodall? Do you know?
A. 810 Park Avenue was originally a residence and then — I believe that is the address that was used at one time in our chemistry building. And now it has been razed and is part of our east wing of the science building.
Q. I hand you another deed and ask you if that is how RPI acquired that property?
A. "This deed, made this 31st day of July, 1959, between Thomas B. Scott, Jr. and Carrie T. Scott, his wife, of the City of Richmond, Virginia, parties of the first
page 68] part, and Commonwealth of Virginia, Richmond Professional Institute of the College of William and Mary in Virginia, party of the second part."

Mr. Eichner: I offer that as Exhibit 2, if your Honor please.
The Court: All right.

Note: Plaintiff's Exhibit Number 2 was marked for identification and received in evidence.

Mr. Eichner: That is the deed to that property.

Q. (By Mr. Eichner) What is the 906 Park Avenue property?

Ernest V. Woodall

A. 906 Park Avenue is a building that we just acquired recently and used it temporarily for housing a few men students. And right now we are ready to raze that building for a new one.

Q. I hand you this deed and ask you the same question.

A. "This deed, made this 12th day of May, 1964 by and between Ruth Folsom, unmarried, party of the
page 69] first part, and Commonwealth of Virginia, Richmond Profesional Institute, party of the second part."

Mr. Eichner: I offer that as Plaintiff's Exhibit Number 3, if your Honor please.

The Court: All right.

Note: Plaintiff's Exhibit Number 3 was marked for identification and received in evidence.

Q. (By Mr. Eichner) Most of the property of RPI here is held in the names such as in those deeds, isn't it — Commonwealth of Virginia, Richmond Professional Institute, Commonwealth of Virginia, College of William and Mary, and so on; isn't that correct?

A. No.

Well, in the various —

Q. Well, I mean that is a fairly common way the property is held, isn't it?

A. I think that is right, yes.

The Court: You mean the grantees in these deeds from private owners conveyed it to Richmond Profes-
page 70] sional Institute, College of William and Mary, or whatever the name of it happened to be at the time of the deed?

Mr. Eichner: Yes, sir, according to the statute.

The Court: According to the statute fixing the official name of the school?

Mr. Eichner: The way RPI property should be held.

The Court: Do we have any examples of the deeds from this foundation? Because there were some transfers, weren't there?

Mr. Eichner: Well, the foundation has transferred property to RPI from time to time, hasn't it, Mr. Woodall?

The Witness: Not on the records, to my knowledge.

Q. (By Mr. Eichner) You mean there are some unrecorded deeds?

A. No. The deeds that are recorded — they are recorded in about eight or nine different names — the Richmond School of Social Work and Public Health, the endowment association, the College of William and Mary in Virginia, the Richmond Professional Institute, the College of William and Mary.

As I say, also the endowment association and the RPI Foundation. I think we will find deeds recorded in the names of all of those various grantees.

page 71] Q. What I was asking, I think, is this: has the RPI Foundation, under whatever name it happened to be at the time, conveyed any property to RPI, or William and Mary, or to the Commonwealth?

Mr. Booker: That ought to be limited to the period of his knowledge.

The Court: Well, nobody expects him to answer from the examination of the record books.

Do you know of any transfers of this property from the foundation, the corporation, the defendant in this action, to the Commonwealth, by whatever name the school was being operated at the time of the transfer? The original plan was that they would get some of these properties free and clear, and they would transfer them to the college. Have they ever done that as far as you know?

The Witness: As far as I know, they have not.

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page 73] JOHN KENNETH ROACH
being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Booker:

Q. Dr. Roach, can you tell us what plans, if any, are made for the property at 327 North Harrison Street in the new budget?

A. Yes, sir. We have just submitted to the Commonwealth a three biennia schedule for capital outlay. This would cover the years 1966 through 1972. In the middle biennium, the

college is proposing a School of Art which will be constructed on the land on North Harrison Street.

Have I answered your question?

Q. Yes.

Does that include the land now occupied by 327 North Harrison, the residence?

A. Yes, sir.

Q. Thank you. That is all.

A. May I make a observation that you might want to object to? But from an academic point of view my office and the faculty are really not aware of the existence of
page 74] any organization or agencies. We think of the foundation as integral part of the college. And when we project our enrollment we advise the administration that we need dormitories, such as the need for dormitories in Monroe Terrace.

And when we decide where a building is to be located — when we say we own this property — now, this may not be legal — I am just showing you the attitude — if we own it, we don't say do we own it through the foundation or through the state itself.

You might object to that; but I think we are not aware of a sharp cleavage or a sharp division in the jurisdiction of the two organizations.

* * * * *

CROSS-EXAMINATION

By Mr. Eichner:

Q. By "we," whom do you mean?

A. Well, I think that the only people who are knowledgeable about the foundation would be Mr. Woodall and the president.

page 75] Q. You heard Dr. Hibbs' testimony, didn't you?

A. Well, he was Dr. Oliver's predecessor.

Q. You heard his testimony?

A. Yes, sir.

Q. You didn't find any inaccuracies in it, did you?

A. I am not in a position to determine whether it is accurate or inaccurate, because I am not that well advised about it. This was my point.

Q. All right.

What kind of capital outlay investment are you asking the Commonwealth to make in this — I mean for what exact purposes would this money be spent? For land acquisition, for construction?

A. This is capital outlays, yes, sir.

Q. Including land acquisition, for example?

A. Yes, sir.

Q. And for construction?

A. Yes, sir.

Q. How about dormitories? Do you have anything in there for that?

A. No, sir.

page 76] There is a test case now, I believe, to determine whether the act of the Legislature which set up a housing — whether the educational housing facilities bill by the State is constitutional. But when we ask for a purchase of property, we are asking for purchase of property that we do not now own, whether it is the foundation or whether it is the college itself. We are asking for just property that does not belong to us from one of those two sources.

Q. And the RPI administration does have under consideration using a dormitory authority if it should be found a valid method of financing dormitories?

A. No, sir, I don't know this. Our needs are so many that if we can restrict and work on — well, we have a pressing need for classroom buildings; we have tremendous needs. And we are trying to single out the needs that we can probably get help on first.

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page 79] RICHARD A. CHANDLER
being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. Mr. Chandler, would you take a look at the request for admissions filed September 24th which I believe is up on the bench.

I call your attention to Exhibits A, B and C attached to that paper, and I ask if you recognize those papers?

A. Yes, sir.
Q. Are those copies of official records of your department?
A. Yes, sir.
Do you want me to name them?
Q. Yes.

Mr. Eichner: If your Honor please, if I could have those detached?
The Court: Yes, I would like to.
Mr. Eichner: I would like to offer them.
The Court: You don't have extra copies, do you?
page 80] Mr. Eichner: I am afraid I don't right now.
The Court: There are three of them.
Mr. Eichner: Well, I will tender my file copies, your Honor. That will be simpler.
The Court: All right.
Mr. Booker: If your Honor please, we object to the City Attorney's Opinion and to the letter from Mr. Rountree to the Attorney for the Foundation, which are, I believe B and C, on the grounds that they are self-serving.
Mr. Eichner: I would like to return that to his Honor, if you would Mr. Chandler.
The Court: I may not be able to attach any weight to them, gentlemen. It depends on several things. But I will receive them in evidence. You want them in this order?
Mr. Eichner: Yes, sir, A, B and C as Exhibits 4, 5 and 6 respectively, if your Honor please.
The Court: All right.
Mr. Booker: We except to the ruling of the Court in admitting them.

Note: Plaintiff's Exhibits No. 4, 5 and 6 were marked for identification and received in evidence.

page 81] Q. (By Mr. Eichner) Since those, have you had any further contact with Mr. Dunkum, the attorney for the RPI Foundation, since that correspondence?
A. Yes, sir.
Q. When?
A. I think we have had several letters. He apparently is the attorney, or the closing attorney, for the RPI. And he occasionally writes us when some property is put to record asking us for exemption. This year we had some correspondence with him when he requested two properties.

Q. What are those properties?

A. He requested one at 1014 West Franklin Street and one at 807 West Franklin Street.

Q. Who were the grantees in those two transactions?

A. 1014, the Citizens Foundation of RPI Incorporated, which is now the RPI Foundation as I understand. And 807 West Franklin, Commonwealth of Virginia was the grantee.

Q. What was the ground of exemption Mr. Dunkum was suggesting to you?

Mr. Booker: If your Honor please, I object to his because this relates to a tax year not in controversy. I sought to amend my bill to include these parcels and the City

page 82] objected. It seems to me they can't rise now and raise it here.

The Court: Well, it has apparently no value whatsoever unless it shows a course of conduct.

Mr. Eichner: Well, sir, Dr. Hibbs testified that City officials over the years had always taken a position that this property of the RPI Foundation is owned by the Commonwealth.

The Court: I am going to let it in.

Mr. Eichner: This is strictly in rebuttal to what Dr. Hibbs testified, which had nothing to do with these years in controversy either.

The Court: I might find myself in a position where I couldn't consider either their testimony on the subject or yours either. But in the meantime I am going to let it in.

Mr. Eichner: That is agreeable.

Q. (By Mr. Eichner) What was the ground of exemption urged in this 1964 pair of transactions?

A. By Mr. Dunkum?

Q. Yes.

A. Well, previously he had requested exemption for parcels of this nature as properties owned by the Commonwealth under Section 183(A) of the Constitution of Virginia. And this is just about what he did in this case through correspondence and conversations with my office.

page 83] Q. What did you tell him about the parcel that was actually deeded to the Commonwealth that was brought to your attention?

A. 807 West Franklin we agreed was deeded in the name of

the Commonwealth. And that was clearly exempt under 183-(A) of the Constitution.

1014 West Franklin, the Citizens Foundation of RPI, Incorporated, known now as the RPI Foundation, we said it was not exempt because it wasn't owned by the Commonwealth under 183(A).

Q. Have you made any investigation into the records of your office held by your predecessor to see if any of them have ever taken the position that property owned by the RPI Foundation was owned directly or indirectly by the Commonwealth?

A. Yes, sir, I have.

Q. Have you ever found any indication that any of your predecessors had taken that position?

A. No, sir, none of my predecessors ever concluded that the RPI Foundation was indirectly owned by the Commonwealth.

The Court: Well, they didn't charge them any taxes, did they?

page 84] If what these gentlemen say is true, the minute they acquired a piece of land, it went off the tax rolls.

The Witness: I can't find that to be the — well, we made a discovery yesterday that some did. But I think it first came up during my predecessor's administration, Mr. Rountrey, when the Citizens Foundation of RPI, or the endowment Fund of RPI, or somebody, acquired a piece of property. And he immediately went into the problem and concluded that these properties were not exempt under the provisions of the Constitution.

The Court: Did they pay the tax?

The Witness: I do not know if they paid the tax. I know there was some controversy between the collector's office and RPI about the payment of taxes.

The Court: Well, just somebody's view wouldn't help me very much.

The Witness: He kept them on the tax rolls. I mean he put what he knew to be owned by RPI Foundation on the tax rolls. We discovered that there are also parcels that perhaps are owned by RPI Foundation that we have not put on the tax rolls. That is because we didn't know they were owned by RPI Foundation.

The Court: And you didn't make any survey over the past

years to see whether this corporation or its predecessor corporations paid taxes on land that they acquired?

page 85] The Witness: Paid taxes?

The Court: Yes.

The Witness: No, sir, I did not. We didn't search that far to see if the taxes had actually been paid or not. We tried to make the determination to see if we should include them on the tax rolls or the non-tax rolls.

The Court: If some of these had been on so long and they hadn't paid their taxes —

The Witness: These three, your Honor?

The Court: Not necessarily these three, but any parcels owned by the corporation.

— they would have been sold for non-payment of taxes if the City was insisting upon their paying them, wouldn't they?

The Witness: As I understand it, yes, sir. We thought we had them all on the tax rolls, like I say, until we made a discovery yesterday that the Richmond School of Social Welfare and Public Health, Incorporated, which previously had been thought to be part of RPI, was actually RPI Foundation. But we didn't know that until yesterday. My office didn't know it, at any rate.

So, if they are the ones that have not been taxed, they have not been taxed because it was thought they were owned by the Commonwealth and not by RPI Foundation.

page 86] There has been no exclusion to my knowledge at any rate by my predecessor or myself of any RPI Foundation properties from the tax rolls.

As you may well remember, back in 1956 or 1957 we started a general purging of the non-tax rolls because we found many properties on there that had actually no claim to being on the exempt roll. For some reason or other they were exempted or had gotten on the non-tax rolls. And we found no basis for it.

Q. (By Mr. Eichner) Is that survey completed yet?

A. No, sir, it is not. That is a continuing process, And we are in the middle of it right now.

Mr. Eichner: No further questions.

Richard A. Chandler

CROSS-EXAMINATION

By Mr. Booker:

Q. Mr. Chandler, at the time of your correspondence with Mr. Dunkum this year, the lawsuit that we are now involved in had long since been filed and was pending, had

page 87] it not?

A. I suspect so. This is a suit, as I understand it, for collection of taxes; and I didn't follow the initiation of this suit.

Q. You don't know how long ago it was initiated?

A. No, sir.

Q. In your search of your records and the records in the City Assessor's Office, do you find any evidence that the Citizens Foundation paid any taxes to the City for real estate prior to November 21, 1955?

A. The records in my office do not show whether taxes have been paid or not. That is a function of the City Collector's Office, which is under the Director of Finance. We have no responsibility for the collection of City taxes. We don't keep track of that.

Q. Do you find any record that the Citizens Foundation property was on the taxable rolls prior to 1955?

A. Any of the properties owned by the Citizens Foundation?

Q. Yes. Prior to 1955?

A. No, sir, I do not. Because I think that was just about when my predecessor began this examination of the non-tax rolls. And I didn't look to see which ones had been on and which ones had been off.

page 88] Q. But so far as you know, no property of the Citizens Foundation was on the tax rolls prior to 1955?

A. I just don't know.

Mr. Booker: I have nothing further.

The Court: Well, is somebody going to tell me in this suit whether they ever paid taxes or not?

Mr. Booker: Yes, sir. We have one witness who testified to that. If I may put on some surrebuttal evidence I have another witness who will testify.

Mr. Eichner: If your Honor please, I don't think it is relevant.

The Court: Well, it is not determinative of the question, of course.

Maybe somebody in the Tax Department just wasn't on the job and they were getting away with something

Mr. Eichner: Mr. Chandler has already stated there have been some omissions he just noticed yesterday for the first time. And we are perfectly willing to stipulate that they have had certain parcels that have escaped taxation that was not discovered until yesterday.

The Court: Well, have you any proof that they ever paid any taxes on anything?

page 89] Mr. Eichner: Well, the property that is involved in this controversy, it is stipulated in the pleadings that they paid taxes on it for several years, or at least a couple of years.

The Court: They paid real estate taxes for a couple of years on these three parcels?

Mr. Eichner: At least two of them. I am not quite sure of the third. It is in the pleadings.

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A Copy—Teste:

H. G. TURNER, Clerk.

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