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Record No. 6375

PETITION FOR WRIT OF MANDAMUS

In The

Supreme Court of Appeals of Virginia

at Richmond

FAIRFAX COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

v.

LEWIS M. COYNER, DIRECTOR, ETC.

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.

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Record No. 6375

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Bulding in the City of Richmond on Thursday the 3rd day of March, 1966.

FAIRFAX COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, Petitioner,

against

LEWIS M. COYNER, DIRECTOR OF FINANCE OF FAIRFAX COUNTY, VIRGINIA, Respondent.

Upon a Petition for a Peremptory Writ of Mandamus

On the first day of the session came the Fairfax County Industrial Development Authority, a political subdivision of the Commonwealth of Virginia, by counsel, and presented to the court its petition praying that a peremptory writ of *mandamus* do forthwith issue, to be directed to Lewis M. Coyner, Director of Finance of Fairfax County, respondent, requiring and commanding him to pay to the said petitioner the sum of ten thousand dollars, pursuant to the provisions of Chapter

643, Acts of Assembly, 1964, for the reasons and purposes set out in said petition, and for other relief.

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

Whereupon came the respondent, by counsel, and obtained leave to file his answer, and said answer is accordingly filed.

And it is further ordered that the petitioner file with the clerk twenty-five printed copies of his brief on or before April 15, 1966; that the respondent file with the clerk twenty-five printed copies of his brief on or before May 1, 1966; and that the petitioner file with the clerk twenty-five printed copies of his reply thereto, if any, on or before May 16, 1966, and the cause is continued.

RECORD

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FAIRFAX COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia, 8411 Arlington Boulevard Fairfax County, Virginia, Petitioner,

versus

LEWIS M. COYNER Director of Finance Fairfax County, Virginia, Respondent.

NOTICE OF APPLICATION FOR WRIT OF MANDAMUS

To the Honorable Louis M. Coyner, Director of Finance, Fairfax County:

Please take notice that on the 28th day of February, 1966, at 9:00 A.M., the undersigned will make application to The Supreme Court of Appeals of Virginia at the Supreme Court of Appeals Building, in the City of Richmond, Virginia, for a writ of *mandamus,* a copy of the petition for said writ being attached hereto.

THOMAS O. LAWSON, Counsel for Fairfax County Industrial Development Authority

Service of the foregoing notice of application for a writ of *mandamus* with attached copy of the petition for said writ is accepted this 26th day of February, 1966.

LEWIS M. COYNER, Director of Finance

page 1] APPLICATION FOR WRIT OF MANDAMUS

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To: The Honorable Judges of the Supreme Court of Appeals of Virginia:

Comes now the petitioner, Fairfax County Industrial De-

velopment Authority, hereinafter referred to as Authority, and in and for its Application for Writ of *Mandamus,* pursuant to Section 17-96 of the 1950 Code of Virginia, as amended, respectfully represents as follows:

1. That this application is filed as an original proceedings, pursuant to Section 17-96 of the 1950 Code of Virginia, as amended, and that this Court has jurisdiction to hear this matter.

2. That the Authority is a political subdivision of the Commonwealth of Virginia, created by the General Assembly of Virginia pursuant to Chapter 643, *Acts of Assembly* (1964), effective June 26, 1964, and exists by virtue of Chapter 643, *Acts of Assembly* (1964), and is located at 8411 Arlington Boulevard, Fairfax County, Virginia. A copy of the said act is hereby attached and made a part hereof.

3. That pursuant to the requirements of the aforementioned act, the Board of County Supervisors, Fairfax County, Virginia, at a duly constituted meeting, appointed seven (7) commissioners to serve on the said authority on July 1, 1964, the said appointments being as follows:

page 2]

Edgar Brenner	314 Martha's Road Alexandria, Virginia
Homer D. Childers	2727 Jerome Street Springfield, Virginia
A. Frank Krause, Jr.	Ford Building Fairfax, Virginia
H. Wise Kelly, Jr.	4101 Chain Bridge Road Fairfax, Virginia
John W. Koons	421 Shady Lane Falls Church, Virginia
Royce Spence	1920 Sycamore Drive Falls Church, Virginia
John P. Parrish	300 Belle Haven Road Alexandria, Virginia

That on July 15, 1964, the following terms were set:

Edgar Brenner	1-year term, expiring 7/1/65
Homer D. Childers	1-year term, expiring 7/1/65
A. Frank Krause, Jr.	2-year term, expiring 7/1/66
H. Wise Kelly, Jr.	2-year term, expiring 7/1/66
John W. Koons	3-year term, expiring 7/1/67
Royce Spence	3-year term, expiring 7/1/67
John P. Parrish	4-year term, expiring 7/1/68

That on July 14, 1965, Homer D. Childers and Edgar Brenner were reappointed to four-year terms, respectively, said terms expiring July 1, 1969.

That on July 22, 1965, H. Wise Kelly submitted his resignation, which vacancy was filled by the appointment of Walter Boone on February 23, 1966 for the unexpired period, and that on February 23, 1966, Robert H. Zaloker was appointed to fill the unexpired term of John W. Koons, who had resigned on November 30, 1965.

4. That the Authority's purpose is to foster and stimulate the development of industry within Fairfax County, Virginia, and it may contract and be contracted with, may
page 3] sue and be sued, to acquire and dispose of real and personal property, to construct for sale or lease on such terms as it may deem proper, warehouses, factories, or manufacturing facilities of any kind, and that these aforementioned powers are done for the purpose of fostering and stimulating the development of industry within Fairfax County, Virginia.

5. That in furtherance of the aforementioned purpose and powers, the Authority shall also have the power to issue bonds pursuant to Section 11 of Chapter 643, *Acts of Assembly* (1964):

"The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment or retirement of bonds previously issued by it. The Authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (a) from its revenues generally; (b) exclusively from the income and revenues of a particular 'facility'; which term shall mean a particular building or structure or particular building or structures including all equipment, appurtenances, and accessories necessary or appropriate for the operation of such facility; or (c) exclusively from the income and revenues of certain designated facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government, Commonwealth of Virginia, or any political subdivision which is a part of the Authority, or a pledge of any income or revenues of the Authority, or a mortgage of any particular facility or facilities or other property of the Authority."

6. That Karloid Corporation is a corporation incorporated under the laws of the Commonwealth of Virginia, that Hazleton Laboratories, Incorporated, is a corporation incorporated under the laws of the Commonwealth of Virginia, and both are presently doing business within Fairfax County, Virginia. That the said Hazleton Laboratories, Incorporated, is a research and development industry and intends to expand its facilities and activities within Fairfax County, Virginia.

page 4] 7. That pursuant to the aforementioned powers and purposes, the Authority has entered into two agreements, dated the 21st day of January, 1966, with Karloid Corporation and Hazleton Laboratories, Incorporated, for the sale and purchase of a certain parcel of land, described in the said Agreements, for the purpose of constructing thereon, certain facilities and leasing same to Hazleton Laboratories, Incorporated, within Fairfax County, Virginia; said Agreements dated January 21, 1966 are attached hereto and made a part hereof.

8. That pursuant to the aforementioned Agreements, in order to finance the construction of the proposed facilities for Hazleton Laboratories, Incorporated, the Authority will issue certain revenue bonds, which will cover the cost of purchasing the land mentioned in paragraph 7., the cost of constructing the said facilities, and including all expenses incidental thereto such as additional engineering and legal fees.

9. That pursuant to the terms of the aforementioned Agreements, the revenue bonds will be paid for solely from the rentals received from the leasing of the said facilities to Hazleton Laboratories, Incorporated, and pursuant to the requirement of the said act, the said bonds shall state on their face that such bonds are not to be construed as a debt or obligation of the Commonwealth or any political subdivision thereof other than the Authority, nor shall such bonds be payable out of any funds or properties other than those of the Authority.

10. That on the 2nd day of February, 1966, the Board of County Supervisors, Fairfax County, Virginia, by resolution duly adopted, authorized the appropriation of ten thousand dollars ($10,000) to the said Authority to be used as a deposit on the purchase of the aforementioned land in Paragraph No. 7, and for the purpose of covering the cost of completing certain preliminary engineering studies and sur-

page 5] veys deemed necessary to construct the aforementioned facility, prior to the sale of the afore-

said revenue bonds; attached hereto and made a part hereof is the said resolution.

11. That on the 24th day of February, 1966, Lewis M. Coyner, Director of Finance, Fairfax County, Virginia, did refuse to pay the said ten thousand dollars ($10,000) to the Authority, by letter dated the 24th day of February, 1966, attached hereto and made a part hereof is the said letter, for the reason that he questions the constitutionality of Chapter 643, *Acts of Assembly,* 1964, and therefore the validity of the resolution heretofore adopted by the Board of County Supervisors, Fairfax County, Virginia, directing the said payment.

12. That your petitioner avers that the aforementioned appropriation does not violate the State Constitution, more particularly Sections 185 and 188 of the Virginia Constitution, and further, your petitioner avers that Chapter 643, *Acts of Assembly,* 1964, is constitutional and that the duty of the Director of Finance, Fairfax County, to pay the said ten thousand dollars ($10,000) is purely an administrative and ministerial duty and is not discretionary.

WHEREFORE AND FORASMUCH AS the Authority is otherwise without sufficient and adequate remedy, they pray that the Court will adjudge and decree that Chapter 643, *Acts of Assembly,* 1964, is a valid enactment of the General Assembly of Virginia and is not in violation of Sections 185 and 188 or any other section of the Virginia Constitution, and further prays that the said Lewis M. Coyner, Director of Finance, Fairfax County, Virginia, be made a party to this petition and be required to answer same; that a Writ of *Mandamus* be issued by this Honorable Court directed to the said defendant, Lewis M. Coyner, Director of Finance, Fairfax County, Virginia, requiring him to pay the said sum of ten thousand dollars ($10,000) to the Fairfax
page 6] County Industrial Development Authority pursuant to the provisions of Chapter 643, *Acts of Assembly,* 1964, for the aforesaid reasons and purposes, and that all such other, further and general relief be granted the Authority as the nature of this case may require.

FAIRFAX COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY
Edgar H. Brenner
Chairman

This is to certify that on the 26th day of February, 1966,

I personally served a copy of the foregoing Application for Writ of *Mandamus,* with attached exhibits, upon the Honorable Lewis M. Coyner, Director of Finance, Fairfax County, Virginia, together with notice that the application would be filed in the Clerk's office of the Supreme Court of Appeals of Virginia, at 9:00 A.M. on February 28, 1966.

THOMAS O. LAWSON

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

This day personally appeared before me a Notary Public in and for the City and County aforesaid, Edgar Brenner, Chairman, Fairfax County Industrial Development Authority, who stated upon oath that he is Chairman of the said Authority and that the matters and things stated in the petition for writ of *mandamus* in the above styled matter are true to the best of his knowledge, information and belief.

Given under my hand this 26th day of February, 1966. My commission expires on the 1st day of February, 1970.

GERTRUDE E. W. McCLURE
Notary Public

KELLY, FARLEY & LAWSON
4101 Chain Bridge Road
Fairfax, Virginia

By: THOMAS O. LAWSON
Counsel for Petitioner

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Recd. 2-28-66 A.L.L.

In answer to the petition of the Fairfax County Industrial Development Authority for a Writ of *Mandamus,* the Respondent, Lewis M. Coyner, Director of Finance of Fairfax County, Virginia, respectfully states as follows:

1. Respondent admits the jurisdiction of the Court as alleged in Paragraph 1 of the petition.

2. Respondent admits the factual allegations of the petition as alleged in Paragraphs 2 through 11, inclusive.

3. The allegations of Paragraph 12 are denied. Your Respondent avers that the statute in question violates Sections

185 and 188 of the Constitution of Virginia and for that reason he has refused to issue the payment referred to in the petition.

IN CONSIDERATION WHEREOF Respondent prays that the petition may be denied and that Respondent may be hence dismissed with his own proper costs in this behalf expended.

LEWIS M. COYNER

JOHN T. HAZEL, JR.
P.O. Box 547, Fairfax, Va.
Attorney for Respondent

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, to-wit:

This day personally appeared before the undersigned Notary Public, in and for the State and County aforesaid, LEWIS M. COYNER, Director of Finance, Fairfax County, Virginia, who made oath that according to his information and belief the matters stated in the foregoing answer are true and correct.

GIVEN under my hand this 26th day of February, 1966.

M. CHARLOTTE GARNER
Notary Public

My commission expires October 16, 1966.

I hereby certify that I have this 26th day of February, 1966, served the foregoing answer by delievering a true copy thereof to Thomas O. Lawson, Attorney for Fairfax County Industrial Development Authority.

JOHN T. HAZEL, JR.

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CHAPTER 643

An Act to create political subdivisions within the cities of Virginia Beach and Danville, and within the County of Fair-

fax; to provide for the composition, powers, duties and liabilities thereof and other matters pertaining thereto, to provide for the issuance of certain bonds; and to prescribe the terms and conditions governing the issuance of such bonds.

[S 372]

Approved April 1, 1964

Be it enacted by the General Assembly of Virginia:

§ 1. There is hereby created within each of the cities of Virginia Beach and Danville, and within the county of Fairfax, a political subdivision of the Commonwealth with such public and corporate powers as are granted in this act to be known, respectively, as the City of Virginia Beach Industrial Development Authority, the Danville Industrial Development Authority, and the Fairfax County Industrial Development Authority, each hereinafter called the Authority.

§ 2. As used in this act the word "City" means the City of Virginia Beach, the City of Danville, or the County of Fairfax, as the case may be, and the governing body of each as requisite.

§ 3. The Authority shall be governed by a commission composed of seven commissioners, appointed by the governing body of the City. All powers and duties of the Authority shall be exercised and performed by the commission.

§ 4. The seven commissioners shall be appointed initially for terms of one, two, three and four years; two being appointed for one year terms; two for two year terms; two for three year terms and one for four year terms; subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. Each commissioner shall before entering on his duties take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia.

§ 5. The commissioners shall elect from their membership a chairman and vice-chairman, and from their membership, or not, as they desire, a secretary and a treasurer, or secretary-treasurer. The commission shall meet at least monthly and at such other times as may be required. The commissioners shall receive no salary but shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties. The commission shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of all its financial trans-

actions and shall arrange to have the same audited annually. Copies of each such audit shall be furnished to the governing body of the City and shall be open to public inspection.

§ 6. The Authority shall have the following powers:

(a) To contract and be contracted with; to sue and to be sued; and to adopt and use a corporate seal, and to alter the same at pleasure;

(b) To acquire, hold and dispose of personal property necessary for its purposes.

(c) To acquire by purchase or lease, real property, or rights, easements or estates therein necessary for its purposes; all to sell, lease and dispose of the same, or any portion thereof of interest therein;

(d) To construct for sale or lease, on such terms and conditions as it may deem proper, warehouses, factories or manufacturing facilities of any kind and description and approaches to and appurtenances thereto appertaining.

(e) To employ a director and such other agents and employees as may be necessary, to serve at the pleasure of the commission, and to fix their compensation and prescribe their duties.

(f) To do all other acts and things which may be reasonably necessary and convenient to carry out its purposes and powers.

§ 7. The Authority may foster and stimulate the development of industry in the area within its jurisdiction. To this end, the Authority may appoint an Industrial Advisory Committee to advise it, consisting of such number of persons as it may deem advisable; such persons shall not receive any compensation for their services, but may be reimbursed their necesssary traveling and other expenses incurred while on business of the Authority. The Authority may accept, and expend for the purposes stated above, money from any public or private source, and may accept, maintain, operate and use, or sell or lease any property conveyed to it for such purposes.

§ 8. No property or other facilities owned by the Authority shall be leased or disposed of in any manner without the majority vote of the members of the Authority.

§ 9. The governing body of the City is authorized and empowered to transfer to the Authority the operation and maintenance of such suitable facilities as are now or may be hereafter owned by the City, on such terms and conditions which it may prescribe; but this section shall not be construed as authorizing the Authority to maintain and operate such facili-

ties unless and until the operation therof has been transferred by the governing body of the City.

§ 10. The City is authorized and empowered to make appropriations and to provide funds for the operation of the Authority and to further its purposes.

§ 11. The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment or retirement of bonds previously issued by it. The authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (a) from its revenues generally; (b) exclusively from the income and revenues of a particular "facility;" which term shall mean a particular building or structure or particular building or structures including all equipment, appurtenances, and accessories necessary or appropriate for the operation of such facility; or (c) exclusively from the income and revenues of certain designated facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contributions from the federal government, Commonwealth of Virginia, or any political subdivision which is a part of the Authority, or a pledge of any income or revenues of the Authority, or a mortgage of any particular facility or facilities or other property of the Authority.

§ 12. Neither the commissioners of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the Authority (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political subdivision thereof and neither the Commonwealth nor any political subdivision thereof other than the Authority shall be liable thereon, nor, shall such bonds or obligations be payable out of any funds or properties other than those of the Authority. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction. Bonds of the Authority are declared to be issued for an essential public and governmental purpose.

§ 13. Bonds of the Authority shall be authorized by resolution adopted by the commission and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six per centum per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms

of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide. The bonds may be sold at public or private sale.

§ 14. In case any of the commissioners or officers of the Authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable within the meaning and for all the purposes of Chapter 10 of Title 6 of the Code of Virginia.

§ 15. In order to secure the payment of such bonds, the Authority shall have power by provision or provisions included in any resolution authorizing such bonds or in any indenture made to secure their payment:

(a) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exist or may thereafter come into existence.

(b) To mortgage all or any part of its real or personal property, then owned or thereafter acquired.

(c) To covenant against pledging all or any part of its rents, fees, and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any facility or any part therof; and to covenant as to what others, or additional debts or obligations may be incurred by it.

(d) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(e) To covenant as to the rents and fees to be charged in the operation of a facility or facilities, the amount to be raised each year or other period of time by rents, fees other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of a special fund for moneys held

for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds.

(f) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

(g) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenant securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by the Authority, to take possession and use, operate and manage any facility or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the Authority with said trustee; to provide for the powers and duties of a trustee or trustees or the holders of bonds or any proportion of them who may enforce any covenant or rights securing or relating to the bonds.

(j) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in absolute discretion of said Authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

§ 16. An obligee of the Authority shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) By mandamus, suit, action or proceeding at law or in

equity to compel the Authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the Authority with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of the Authority and the fulfillment of all duties imposed upon the Authority by this chapter.

(b) By suit, action or proceedings, in equity, to enjoin any act or things which may be unlawful, or the violation of any of the rights of such obligee of the Authority.

§ 17. The Authority shall fix and revise from time to time the rents, fees and other charges to be paid by persons for the use of the various facilities of the Authority and for any other service furnished or provided by the Authority. Such rents, fees and charges shall be fixed so as to provide at least sufficient funds to pay the cost of maintaining, repairing, and operating such facilities and the principal and interest of any bonds issued by the Authority or other debts contracted as the same shall become due and payable. Included in the rental payments to be made by any lessee to the Authority shall be an amount in lieu of and equal to local property taxes and assessments upon property of the Authority so leased; provided, however, that all such taxes and assessment shall be remitted by the Authority to the city at the same time and into the same fund or funds as are local property taxes. A reserve may be accumulated and maintained out of the revenues of such Authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing such bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations issued hereunder, the Authority shall have exclusive control of the revenues derived from any facility or facilities operated and controlled by it and the right to use such revenues in the exercise of its powers and duties set forth in this section. No individual, firm, association or corporation shall receive any profit or dividend from the revenues, earnings, or other funds or assets of such authority other than for debts contracted, for services rendered, for materials and supplies furnished and for other value actually received by the Authority.

§ 18. In addition to the other powers conferred by this act, the Authority shall have the power to borrow money and to accept contributions, grants and other financial assistance

from the federal government and agencies or instrumentalities thereof for or in aid of the construction and equipment of its facilities or the retirement or refunding of its bonds. To these ends the Authority shall have the power to comply with such conditions and to execute such mortgages, trust indentures and agreements as may be necessary, convenient or desirable.

§ 19. Nothing contained in this act shall be deemed to authorize the Authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

§ 20. The City is authorized, in the discretion of its governing body, to purchase bonds, debentures or other obligations of the Authority.

§ 21. The powers granted and the duties imposed in this act shall be construed to be independent and severable. If any one or more sections, subdivisions, sentences, or parts of any of this act shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

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1* *THIS AGREEMENT, made this 21st day of January, 1966, by and between the FAIRFAX COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, a body politic of the Commonwealth of Virginia, hereinafter referred to as the "Authority," and KARLOID CORPORATION, a corporation incorporated under the laws of the Commonwealth of Virginia, hereinafter referred to as "Karloid;"

WITNESSETH

WHEREAS, under certain enabling legislation, being Chapter 643, Acts of Assembly (1964), effective June 26, 1964, the Authority has been established as a body politic with certain powers and duties therein defined; and

WHEREAS, the Authority is authorized and empowered under the said enabling act to foster and stimulate the development of industry within Fairfax County, Virginia, and may contract and be contracted with, may sue and be sued, acquire and dispose of real and personal property, construct for sale or lease on such terms as it may deem proper, warehouses, factories, or manufacturing facilities of any kind and that

these aforementioned powers are done for the purpose of fostering and stimulating the development of industry within Fairfax County, Virginia, and

WHEREAS, in order to effectuate the purposes of the enabling act, the Authority deems it desirable and in the public interest to purchase from Karloid and Karloid is willing to sell to the Authority certain property more particularly hereinafter described located at the intersection of Route 7 and Towlston Road in Fairfax County, Virginia, on such terms as hereinafter provided, and

WHEREAS, the Authority and Karloid deem it desirable to enter into this contract to effectuate the aforegoing purposes and proposals, and

2* *WHEREAS, the Authority has determined that the execution of this contract will be in all respects for the benefit of the inhabitants of Fairfax County, Virginia, for the increase of their commerce, and for the promotion of their welfare and prosperity; and

NOW, THEREFORE, in consideration of the covenants and promises made, and other good and valuable consideration paid, by each of the parties hereto to the other, recipt of which is hereby severally acknowledged, the Authority and Karloid for themselves, their successors and assigns, hereby covenant and agree as follows:

ARTICLE I

Purchase of Property

SECTION 1. Karloid hereby agrees to sell and convey to the Authority, and the Authority agrees to purchase solely from the sale of revenue bonds from Karloid, certain property located at the intersection of Route 7 and Towlston Road in Fairfax County, Virginia, as shown on plat hereto attached and made a part hereof and containing approximately 2.5 acres of land, the said property to be more specifically determined by an accurate survey by a certified land surveyor.

SECTION 2. The purchase price of the aforementioned property shall be at the rate of Fifteen Thousand Dollars ($15,000) per acre, which a deposit of Five Thousand Dollars ($5,000) is hereby acknowledged to be a part thereof.

SECTION 3. Karloid covenants and agrees to deliver or cause to be delivered to the Authority, upon receipt of said purchase price, good and sufficient deeds of general warranty, duly executed and acknowledged, with the requisite Federal documentary revenue stamps thereto attached, conveying to the

Authority a good, marketable fee simple title to the aforementioned property, free and clear of all liens and encumbrances whatsover, save only any covenants, easements, reser-
3* vations, *restrictions or conditions which, at the time of settlement hereunder shall exist against the aforementioned property, and which will not impair, impede or obstruct the attainment of the purposes for which the aforementioned property is to be acquired by the Authority.

ARTICLE II

SECTION 1. It is understood that the Authority intends to construct on the said property certain improvements for the purpose of leasing the same, together with the said property, in the furtherance of its public purposes as hereinabove stated, and to issue its revenue bonds in order to obtain the funds necessary to purchase the said property and to construct thereon the said improvements.

SECTION 2. All contracts for the construction of the said improvements or any part thereof shall be made and performance and payment bonds in connection therewith shall be required by the Authority in conformity with all applicable Virginia statutes, and, particularly, Sections 11-17 through 11-23.1 inclusive, and Section 49-15 of the 195 *Code of Virginia,* as amended.

ARTICLE III

Sale of Authority's Revenue Bonds

SECTION 1. When and if the Authority determines that the revenue bonds can be sold and issued upon fair and reasonable terms, the Authority shall sell and issue the revenue bonds in amounts sufficient to pay the cost of acquiring the aforementioned property, constructing the said facility and any and all engineering and architectural costs that may be incurred in the construction of the said facility and shall include, but shall not be limited to, architectural fees, engineering fees, test bor-
ings, payment of legal fees, financing charges, cost of
4* audits *and of preparing and issuing the bonds, and all other items of expense not elsewhere specifically stated in this Section incident to the acquisition and construction of the said facilities, the financing thereof, and the acquisition of lands, property, rights of way, easements, franchises and interest thereof, including abstracts of title, title insurance, cost of surveys and other expenses in connection with such acquisition and other investigations to determine foundation and ex-

penses necessary or incident to determine the feasibility and practicability of constructing the said facility and that the said Authority shall advance all such expenses incidental thereto and being a part thereof, all of which shall be covered by the revenue bonds to be issued by the Authority.

SECTION 2. The principal and interest due on the revenue bonds shall be made payable from the revenue derived by the Authority from the leasing of the said facility and aforesaid property, and the said revenue bonds shall be secured by a Trust Agreement, to be executed by the Authority and the trustee to be designated therein.

SECTION 3. It is hereby agreed that the Authority will request an appropriation from the Board of County Supervisors of Fairfax County, Virginia, in a sufficient amount to cover the initial costs incurred in obtaining the aforementioned property pending the sale of said revenue bonds, but that such appropriation shall not be construed as a debt or obligation of the Commonwealth of Virginia or the County of Fairfax, and that such appropriation shall be voluntary and shall not be construed as obligatory, and that the said costs and expenses shall covered entirely by the revenue bonds and shall be reimbursed to the Board of County Supervisors of Fairfax County, Virginia, upon the sale of the said revenue bonds.

5* *ARTICLE IV

Repurchase Option

At any time within one(1) year after the retirement of the said bonds which are issued by the Authority to pay the purchase price of the said land and to construct the contemplated improvements thereon, Karloid may, at its option, repurchase the said land, together with all improvements then thereon, for the sum of Fifty Thousand Dollars ($50,000) cash. Written notice of intention to exercise this option shall be given to the Authority and closing will be within thirty (30) days after such notice.

ARTICLE V

Contingencies

This contract shall be contingent upon the following:

(a) The validation by a court of competent jurisdiction of the Authority's powers to enter into this contract and to lease the said property and improvements and to issue its bonds for

the purposes of acquiring the said property and constructing the said improvements thereon.

(b) The sale of the Authority's revenue bonds as hereinabove described.

ARTICLE VI

Insurance

The Authority hereby agrees that in the event the said property is leased with certain improvements thereon, that the Authority will require of the prospective lessee that it keep in full force and effect at all times insurance policies to insure against fire and the usual extended coverage hazards to at least the full insurable value.

ARTICLE VII

Defeasance of Bonds

The Trust Agreement or other instruments under which the Authority's revenue bonds are issued, the proceeds there-
6* of *applied, the revenues accounted for and the duties and obligations of the Authority prescribed, shall contain appropriate provisions which shall, in the event of default by the Authority, provide Karloid a means of avoiding the foreclosure and sale of the said property, including the improvements to be constructed thereon, by paying off the then balance of principal and accrued interest of the said bonds. Should such Trust Agreement contain a provision which might prohibit the paying off of such bonds at any given time, it shall also contain a provision which shall permit the Authority or Karloid to pay to the Trustee or paying agent sufficient moneys to service the bonds until such time as they are redeemable, and to then redeem them, and upon payment of such moneys and the making of provision for paying all other sums payable under the Trust Agreement by the Authority, then and in that case, the right, title and interest of the Trustee shall cease.

ARTICLE VIII

Settlement

Settlement hereunder shall be held within thirty (30) days after the meeting of all contingencies provided in Article V hereof. Possession shall be given upon closing. Real estate taxes shall be adjusted as of the date of closing.

ARTICLE IX

Notices

Notices required or given hereunder shall be deemed duly given if they are given in writing and mailed to the respective addresses shown opposite the signatures of the parties hereto or to such changed addresses as the other party may be notified of in writing.

ARTICLE X

Successors in Interest

This Agreement shall be binding upon the successors in interest of the parties hereto.

7* *IN WITNESS WHEREOF, the Fairfax County Industrial Development Authority has caused this Agreement to be executed in its behalf by its Chairman and its official seal to be impressed hereon and attested by the Secretary, and Karloid Corporation has caused this Agreement to be executed in its behalf by its President and its corporate seal to be hereunto affixed and duly attested by its Secretary, all pursuant to resolution of its Board of Directors heretofore duly adopted.

FAIRFAX COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY
By: EDGAR H. BRENNER
Chairman
KARLOID CORPORATION
By: L. W. HAZLETON

8411 Arlington Boulevard
Fairfax, Virginia
(Seal)
ATTEST:
ROYCE A. EASE
Secretary
P. O. Box 30
Falls Church, Virginia
(Seal)
ATTEST:
MAXINE M. WALKER
Secretary

1* *THIS AGREEMENT, made this 21st day of January, 1966, by and between FAIRFAX COUNTY INDUS-

TRIAL DEVELOPMENT AUTHORITY, a body politic of the Commonwealth of Virginia, hereafter referred to as the "Authority," and HAZLETON LABORATORIES, INCORPORATED, a corporation incorporated under the laws of the Commonwealth of Virginia, hereinafter referred to as "Hazleton;"

WITNESSETH

WHEREAS, under certain enabling legislation, being Chapter 643, *Acts of Assembly* (1964), effective June 26, 1964, the Authority has been established as a body politic with certain powers and duties therein defined; and

WHEREAS, the Authority is authorized and empowered under the said enabling act to foster and stimulate the development of industry within Fairfax County, Virginia, and may contract and be contracted with, may sue and be sued, acquire and dispose of real and personal property, construct for sale or lease on such terms as it may deem proper, warehouses, factories, or manufacturing facilities of any kind and that these aforementioned powers are done for the purpose of fostering and stimulating the development of industry within Fairfax County, Virginia; and

WHEREAS, in order to effectuate the purposes of the enabling act, the Authority deems it desirable and in the public interest to construct certain improvements hereinafter described on property purchased by the Authority located at the intersection of Route 7 and Towlston Road in Fairfax County, Virginia, and more particularly hereafter described, on such terms as hereinafter provided, and

WHEREAS, Hazleton desires to lease from the Authority the said property and improvements on such terms, and

WHEREAS, the Authority has determined that the execution of this contract will be in all respects for the benefit
2* of the *inhabitants of Fairfax County, Virginia, for the increase of their commerce, and for the promotion of their welfare and prosperity; and

NOW, THEREFORE, in consideration of the covenants and promises made, and other good and valuable consideration paid, by each of the parties hereto to the other, receipt of which is hereby severally acknowledged, the Authority and Hazleton for themselves, their successors and assigns, hereby covenant and agree as follows:

ARTICLE I

Purchase of Property by the Authority

The Authority has entered into an Agreement whereby it

will purchase a certain parcel of land located at the intersection of Route 7 and Towlston Road in Fairfax County, Virginia, as shown on plat attached hereto and made a part of this agreement, containing approximately 2.5 acres of land.

ARTICLE II

Construction of Improvements

SECTION 1. The Authority agrees to construct on the said land solely from the proceeds received from the sale of the heretofore mentioned revenue bonds, a building or buildings for the use of Hazleton (the said land and such building or buildings are hereafter called the "leased premises").

SECTION 2. The Authority agrees that it will improve the said property as required for the obtaining of site plan approval under applicable Fairfax County ordinances.

SECTION 3. Hazleton shall furnish at its own cost and expense, but subject to reimbursement as hereinafter provided, complete plans and specifications of the improvements to be erected hereunder. Such plans shall cover the building and all permanent facilities and fixtures to be installed thereon,

but shall not include removable equipment. The cost of
3* such plans * and specifications shall be reimbursed to
Hazleton at the time of the receipt by the Authority of the proceeds of the revenue bonds which are hereinafter mentioned. Upon approval of the plans and specifications by the Authority, and by all governmental authorities having jurisdiction thereof, the Authority and Hazleton will develop the contract documents and will approve a list of general contractors who will be invited to submit bids to the Authority for the construction of the said improvements. The Authority and Hazleton shall review all bids received and agree upon the award of the contract to the lowest responsible bidder. The general contract shall provide that the Authority and Hazleton shall have the right to approval of the subcontractors who will be awarded subcontracts by the general contractor.

SECTION 4. The construction work under the contract or any subcontract shall be subject, at the option of Hazleton, to the supervison of its duly authorized representative. Such representative shall have the right to approve any change orders relating to ordinary plans and specifications found necessary as work progresses, including any emergency matters which cannot be reasonably foreseen, but any substantial change in plans or specifications must have the written approval of Hazleton before any expenditures or commitments therefor

are made. All contracts for the construction of the said facilities, or any part thereof, shall be made and performance and payment bonds in connection therewith shall be required by the Authority in conformity with all applicable Virginia Statutes, and particularly Section 11-17 through 11-23.1 inclusive, and Section 49-15 of the 1950 *Code of Virginia,* as amended.

SECTION 5. Hazleton shall fully cooperate with the Authority with a view to the completion of the said facility with all reasonable promptness but no delay in the undertaking or completion of said facility, howsoever caused, shall alter, affect, diminish or impair any of Hazleton's obligations under this contract.

4* *ARTICLE III

Delivery of Improvements

Upon the completion of the construction of the improvements, the Authority shall deliver possession thereof to Hazleton and will submit to Hazleton a certified statement in reasonable detail setting forth the expenditures of the Authority with respect to the items making up the total "Cost of Construction" as hereinafter defined.

ARTICLE IV

Cost of Construction

For the purposes of this agreement, the Cost of Construction shall be the sum of the following items:

(a) All amounts paid or payable under the said general construction contract;

(b) All amounts paid or payable to perform all other on-site and off-site improvements required to be made incidental to the development of the property and which have been approved in writing by Hazleton;

(c) Fees for designers, architects, legal or other services not in excess of an amount to be approved by Hazleton prior to the incurring thereof.

(d) Fees for permits and other related costs directly applicable to the construction of the project;

(e) Builders Risk or other hazard and liability insurance premiums;

(f) Fees and costs incident to the connection of public utilities.

(g) It is hereby specifically agreed between the parties that any and all legal fees incurred in the validation suit herein-

after referred to in Article IX, Sub-paragraph 5, should not be included in the Cost of Construction.

(h) Fees and costs for services rendered by the independent engineer and/or architect and accountants retained by
5* by the *Authority for the purposes of checking the progress of the construction and the amounts paid pursuant thereto.

ARTICLE V

Lease of Demised Premises

SECTION 1. The Authority agrees to lease to Hazleton and Hazleton agrees to lease from the Authority the demised premises upon the terms and conditions hereinafter contained.

SECTION 2. The term of the said lease shall be for a period of time which will facilitate the sale of the bonds, commencing on the first day of the month following the final completion and delivery of the improvements to be constructed as above provided, and for a period of time to be recommended by bond counsel.

SECTION 3. As rental during the term of the said lease, Hazleton shall pay to the Authority the following amount to be payable monthly in advance:

An amount equal to the monthly payment which would be necessary to pay the principal and interest and to provide required reserves therefore of revenue bonds to be issued by the Authority for the purpose of obtaining funds with which to construct the improvements to be included in the demised premises. The principal of such bonds shall be the sum of the following items:

(a) The Cost of Construction as defined in Article IV above;

(b) The ordinary and reasonable expenses of the sale and issuance of such bonds, including legal and accounting fees, and trustees' fees;

(c) The cost of acquiring the said property as described in the plat attached hereto, including all engineering and architectural costs that may be incurred in the construction of the said facility, and shall include, but shall not be limited to, archi-
tectural fees, engineering fees, test borings, payment
6* *of legal fees, financing charges, cost of audits and of preparing and issuing the bonds, and all other items of expense not elsewhere specifically stated in this Section incident to the acquisition and construction of the said facilities, the

financing thereof, and the acquisition of lands, property, rights of way, easements, franchises and interests thereof, including abstracts of title, title insurance, cost of surveys and other expenses in connection with such acquisition and other investigations to determine foundation and expenses necessary or incident to determine the feasibility and practicability of constructing the said facility.

(d) Interest on such bonds during construction and prior to the beginning of the lease term;

(e) An amount equal to the sum levied in lieu of and equal to local property taxes and assessments which will be assessed upon the leased premises during the term of this lease, which said sum shall be, from time to time, adjusted to conform to the applicable rates and assessments upon the said property, which shall be levied during the term of the said lease.

SECTION 5. Hazleton shall pay all bills and costs for utility service and shall maintain the leased premises in good order and condition to the end that upon termination of this lease, they may be delievered over in at least as good a condition as they were in at the beginning of the lease, ordinary wear and tear excepted.

ARTICLE VI

Insurance

Hazleton shall, at its expense, keep the leased premises insured against such losses and to such limits of liability as may be required by the Trust Agreement or other instruments securing the said revenue bonds, and shall save the Authority free from any and all claims of liability that may arise hereunder.

7* *Hazleton shall also, at its own expense, keep the leased premises insured against fire and the usual extended coverage hazards to at least the full insurable value.

ARTICLE VII

Debt Service Reserves

In the event that the said Trust Agreement provides for a revenue reserve in excess of the actual principal and interest requirements, at the time the bonds are fully paid, any amounts remaining in such reserves shall be repaid to Hazleton.

There shall also be paid to Hazleton after the revenue bonds have been satisfied, any and all sums received by the Authority as the result of a sale of the said premises. However, it is specifically agreed that this sum shall not be due and payable if

the sale is caused by any default whatsoever on Hazleton's part.

ARTICLE VIII

Excess Bond Proceeds

In the event that the proceeds of the bond issue exceed the amounts required for the construction of the premises and the expenses of the bond issue, such excess amounts shall be deposited in the bond sinking fund and appropriate adjustment will be made in the rental reserved hereunder.

ARTICLE IX

Contingencies

This agreement is contingent upon the following:

(a) The successful completion of a test case validating the Authority's powers to purchase the said land and to enter into this lease, and to sell and issue its bonds;

(b) The sale of the Authority's revenue bonds as hereinabove described.

8* *(c) The determination of, and approval by Hazleton, of the various items upon which the rent reserved is based. Such determination is to be prior to the award of any construction contracts and prior to the entering into of any commitment by the Authority for the sale of its bonds. Should Hazleton then determine not to proceed with this agreement, the cost of architects' and engineering services and its own legal costs shall be borne by Hazleton, which shall be entitled to retain ownership and possession of such plans and study. In such event, Hazleton shall also bear the reasonable and ordinary costs incurred by the Authority in developing the information necessary as the basis for such determination. It is understood, however, that any costs of the Authority, including, but not limited to, legal expenses, incurred in the prosecution of the test case to validate its powers, shall not be included in such costs to be borne by Hazleton.

(d) The commencement of construction of the said improvements within two (2) years after the entry of the final decree in the validation suit.

IN WITNESS WHEREOF, Fairfax County Industrial Development Authority has caused this agreement to be executed in its behalf by its Chairman and its official seal to be impressed

hereon and attested by the Secretary, and Hazleton Laboratories, Incorporated, has caused this agreement to be executed in its behalf by its President and its corporate seal to be hereunto affixed and duly attested by its Secretary, all pursuant to resolution of its Board of Directors heretofore duly adopted.

FAIRFAX COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY
By: EDGAR H. BRENNER
Chairman

8411 Arlington Boulevard
Fairfax, Virginia
(Seal)
ATTEST:
ROYCE A. EASE
Secretary

9* *P. O. Box 30
Falls Church, Virginia
(Seal)
ATTEST:
R. A. HENNINGER
Secretary

HAZLETON LABORATORIES,
By L. W. HAZLETON
President

At a regular meeting of the Board of County Supervisors of Fairfax County, Virginia, held in the Board Room in the County Office Building at Fairfax, Virginia, on Wednesday, February 2, 1966, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, the Fairfax County Industrial Development Authority has entered into an agreement with Karloid Corporation and Hazleton Laboratories, Inc. of Falls Church, Virginia, to purchase certain land located in Fairfax County for the purpose of constructing thereon a facility and building, to be subsequently leased to Hazleton Laboratories, Inc.; and

WHEREAS, it appears to the Fairfax County Board of Supervisors that the said facility and building will be financed solely by the sale of revenue bonds by the said Authority; and

WHEREAS, it appears that the said Authority needs an appropriation of Ten Thousand Dollars ($10,000), for the purpose of paying the down payment on purchase of the aforementioned land and also to cover certain architectual, engineering and other fees incidental to the construction of the said building and facility; and

WHEREAS, it appears that all of the aforesaid is being done pursuant to the enabling act of Chapter 643, of the 1964 *Acts of Assembly* and that it is in the public interest that the said land be purchased and that the said building and facility be constructed and leased to Hazleton Laboratories, Inc.; now, therefore,

BE IT RESOLVED that the Fairfax County Board of Supervisors hereby grants the request for an appropriation of Ten Thousand Dollars ($10,000) and hereby directs the Director of Finance for Fairfax County to pay the said sum, the said sum to be payable to the Fairfax County Industrial Development Authority.

A Copy—Teste:

EDNA A. BICKSLER
Clerk of said Board.

Law Offices of
MITCHELL, PERSHING, SHETTERLY & MITCHELL
39th Floor
30 Broad Street
New York, N. Y. 10004
February 18, 1966

RECEIVED
Feb. 21, 1965
Office of
Commonwealth's Attorney
Fairfax County, Va.

Ralph G. Louk, Esq.
Commonwealth's Attorney
4000 Chain Bridge Road
Courthouse
Fairfax, Virginia 22030

Re: Fairfax County Industrial Development Authority

Dear Mr. Louk:

I have received your letter of February 9, 1966, concerning the Fairfax County Industrial Development Authority and the enclosures of the two agreements, dated January 21, 1966, by and between said Authority and Karloid Corporation and Hazleton Laboratories, Inc. and the resolution adopted by

the Board of County Supervisors on Wednesday, February 2, 1966.

In response to your letter, I have examined the various documents in the context of the enabling legislation, Chapter 643, *Acts of Assembly,* 1964 and the State of Virginia Constitution. There are serious legal questions raised by the two agreements, particularly the financing arrangements providing for the issuance of revenue bonds.

These questions may be phrased as follows:

1. Does the title of Chapter 643, *Acts of Assembly,* 1964. sufficiently express the object of the Act so as to comply with Section 52 of the Virginia Constitution?
2. Does the Act violate Section 185 and 188 of the Virginia Constitution in that it authorizes the State or county to grant its credit to or in aid of a person, association or corporation?
3. Is the Act unconstitutional in that it authorizes the Authority to undertake the financing and construction of facilities which will not serve primarily a public purpose?

Therefore, it is my recommendation to you that you advise the Director of Finance for Fairfax County that he not honor the resolution directing the appropriation of $10,000 to the Authority until these and any other questions that may be raised concerning the Fairfax County Industrial Development Authority have been first adjudicated. This would have to be done in any event before we, as bond counsel, could approve the issuance of revenue bonds by the Authority.

If you have any comments on the above please do not hesitate to contact us.

Very truly yours,
ROBERT L. MITCHELL

COMMONWEALTH OF VIRGINIA
County of Fairfax
Fairfax, Virginia 22030

Office of
DIRECTOR OF FINANCE
February 21, 1966

RECEIVED
Feb. 23, 1965
Office of
Commonwealth's Attorney
Fairfax County, Va.

Mr. Ralph G. Louk
Commonwealth Attorney
Fairfax County
Fairfax, Virginia

Re: Fairfax County Industrial Development Authority

Dear Mr. Louk:

I have received a copy of the resolution directing me to pay to the Fairfax County Industrial Development Authority the sum of $10,000. The resolution having been adopted by the Board of Supervisors on Wednesday, February 2, 1966.

This raises, in my judgment, a question that I have not encountered in the past, and I would therefore appreciate your advice.

Very truly yours,
L. M. COYNER,
Director of Finance.

CC: Mr. Tom Lawson

COMMONWEALTH OF VIRGINIA
County of Fairfax
Fairfax, Virginia

RALPH G. LOUK
Commonwealth's Attorney

February 23, 1966

Mr. Lewis M. Coyner
Director of Finance
Fairfax Courthouse
Fairfax, Virginia

In re: Fairfax County Industrial Development Authority

Dear Mr. Coyner:

I have considered your request for an opinion as to the legality of the appropriation approved by the Board of Supervisors on February 2, 1966, directing the payment of $10,000.00 to the Fairfax County Industrial Development Authority.

In my opinion this raises the question of appropriating bond

money for a possible private purpose. Whether or not these revenue bonds will be approved for sale by bond counsel has been raised by the attorneys representing prospective purchasers. Therefore, until these questions are adjudicated by the Court, I would advise you not to pay the appropriation.

Very truly yours,
RALPH G. LOUK

RGL/eo
Rec'd 2-23-66 RG

COMMONWEALTH OF VIRGINIA
County of Fairfax
Fairfax, Virginia 22030

Office of
DIRECTOR OF FINANCE

RECEIVED
Feb. 24, 1966
Office of
COUNTY EXECUTIVE

February 24, 1966

Board of Fairfax County Supervisors
Fairfax, Virginia

Re: Fairfax County Industrial Development Authority

Gentlemen:

Please be advised that after due consideration, I feel that I cannot honor the appropriation of $10,000, payable to the Fairfax County Industrial Authority, which was directed by the Board of Supervisors on Wednesday, February 2, 1966. There appears to be a possibility that this may be in violation of the Virginia State constitution, particularly Sections 185 and 188. I have been so advised by the Commonwealth Attorney, Ralph G. Louk, on this matter and I feel that I must act accordingly.

Very truly yours,
LEWIS M. COYNER,
Director of Finance

cc: Fairfax County Industrial Development Authority
Tom Lawson

* * * * *

Recd 3-2-66 HGT

STIPULATION AS TO RECORD

It is hereby stipulated:

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

a. Notice of Application for Writ of *Mandamus*.
b. Application for Writ of *Mandamus*.
c. Answer of Respondent.
d. Chapter 643, *Acts of Assembly*, 1964.
e. The agreement dated January 21, 1966, between the Fairfax County Industrial Development Authority and Karloid Corporation.
f. The agreement dated January 21, 1966, between Fairfax County Industrial Development Authority and Hazleton Laboratories, Incorporated.
g. Resolution adopted by the Board of County Supervisors of Fairfax County, Virginia, on Wednesday, February 2, 1966.
h. Letter dated February 18, 1966, from Robert L. Mitchell to Ralph G. Louk, Commonwealth Attorney, Fairfax County, Virginia.
i. Letter dated February 21, 1966, from Lewis M. Coyner, Director of Finance, to Ralph G. Louk, Commonwealth Attorney.
j. Letter dated February 23, 1966, from Ralph G. Louk, Commonwealth Attorney, to Lewis M. Coyner, Director of Finance.
k. Letter dated February 24, 1966, from Lewis M. Coyner, Director of Finance, to the Board of Fairfax County Supervisors.
l. This Stipulation.
m. Order filing This Stipulation.

2. a. That the petitioner's Opening Brief shall be filed not later than April 15, 1966.

b. That Respondent's Brief shall be filed not later than May 1, 1966; and

c. That Petitioner's Reply Brief, if any, shall be filed not later than May 16, 1966.

IN WITNESS WHEREOF, the parties have signed this stipulation on the 1st day of March, 1966.

FAIRFAX COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY
By THOMAS O. LAWSON
Kelly, Farley & Lawson
4101 Chain Bridge Road
Fairfax, Virginia
Counsel for Petitioner

LEWIS M. COYNER,
DIRECTOR OF FINANCE
By JOHN T. HAZEL, JR.
1049 Main Street
Fairfax, Virginia
Counsel for the Respondent

★ ★ ★ ★ ★

A Copy—Teste:

H. G. Turner, Clerk.

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