215 Va. 756

CLERK
SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

740513

BOARD OF SUPERVISORS OF
ALBEMARLE COUNTY

V.

SHELBY J. MARSHALL

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY

APPENDIX

Submitted by:

FREDERICK W. PAYNE
DEPUTY COUNTY ATTORNEY
416 PARK STREET
CHARLOTTESVILLE, VIRGINIA 22901
Counsel for Appellant

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APPENDIX A

PLAINTIFF'S MOTION FOR JUDGMENT
(Allegations are as follows)

1. That she is the duly elected Clerk of the Circuit Court of the County of Albemarle, Virginia, and that her term of office began on 1 January 1968, and that the Defendant, Board of County Supervisors of Albemarle County, hereinafter referred to as "Board", pays the Plaintiff a salary;

2. That prior to the adoption by Albemarle County of the county executive form of government in 1933 the Clerk of the Circuit Court received his compensation exclusively from the fees generated by his office as provided for in Section 14.1-112 et seq;

3. That in 1966 the General Assembly enacted Section 14.1-155.1 which states in part as follows:

> "...In any city or county, whether or not such county has adopted an optional form of government, and in which the Clerk of any Court of record is on a salary basis, the minimum salary payable to such Clerk shall not be less than the minimum salary provided under the general law..."

4. That the "minimum salary provided under general law" to which your Plaintiff is, and has been, entitled is that salary determined by the fees received by her office as provided for in Section 14.1-112 et seq, subject to a maximum salary limitation as provided for in Section 14.1-136 et seq;

5. That the "Board" has paid your Plaintiff less

than the minimum salary provided under the general law for the years 1968 - 1973 inclusive.

WHEREFORE, your Plaintiff respectfully asks for judgment against the Defendant in the amount of $39,264.36 with interest on portions thereof, which portions represent salaries earned, from the date said portions were due and payable for the reasons hereinabove stated.

Shelby J. Marshall

APPENDIX B

DEFENDANT'S GROUNDS OF DEFENSE

1. Each and every material allegation contained in the plaintiff's motion, and not specifically admitted herein, is expressly denied.

2. The conclusions of law stated by the plaintiff in numbered paragraphs 1, 2, 3, 4, and 5 of the plaintiff's motion are incorrect; under the County Executive form of government, the Board of Supervisors of Albemarle County is empowered and is solely responsible for establishing the amount and method of payment of the salaries of the Clerk and Deputy Clerks of the Circuit Court of Albemarle County.

BOARD OF COUNTY SUPERVISORS
OF ALBEMARLE COUNTY

By Counsel

GEORGE R. ST. JOHN
416 Park Street
Charlottesville, Virginia 22901
Counsel for Defendant

APPENDIX C

FINAL ORDER OF CIRCUIT COURT OF ALBEMARLE COUNTY

This matter came on to be heard upon the Plaintiff's Motion for Judgment, the Defendant's Answer thereto, upon the evidence presented before the Court sitting without jury and was argued by counsel; and

It appearing to the Court from the evidence and relevant statutes that the Plaintiff, Shelby J. Marshall, has not been paid the salary due her by the Defendant, Board of Supervisors of Albemarle County, it is ADJUDGED and ORDERED that final judgment is hereby entered for the Plaintiff against the Defendant in the amount of $39,264.36 representing the total of the following salary deficiencies for the noted years, to-wit:

$ 3,682.44	--	1968
$ 3,082.44	--	1969
$ 7,078.31	--	1970
$ 6,587.45	--	1971
$ 8,002.88	--	1972
$10,830.44	--	1973

with interest on each of the above noted annual deficiencies at the rate of 6% per annum from the end of the calendar year in which said deficiencies occurred, all pursuant to opinion attached.

ENTER: David F. Berry

DATE: April 24, 1974

APPENDIX D

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR

The defendant assigns as error the following:

1. The judgment of the Court was erroneous in that it was contrary to the law and the evidence in the said cause.

BOARD OF SUPERVISORS OF
ALBEMARLE COUNTY, VIRGINIA

By Counsel

GEORGE R. ST. JOHN
416 Park Street
Charlottesville, Virginia 22901
Counsel for Defendant

APPENDIX E

OPINION OF THE CIRCUIT COURT OF ALBEMARLE COUNTY

April 16, 1974

COURT convened at 9:30 A.M.

COURT: Now gentlemen, I have asked that counsel in the case of Shelby J. Marshall, Clerk against the Board of Supervisors attend this proceeding this morning in order that we might dispose of the case on the question of the Clerk's compensation. I took this case under advisement in order that the statutes and cases pertaining to this question might be further analyzed. I believe this case was heard approximately a month ago on March 1st and it apparently involved no conflict in the evidence but rather an interpretation of the law, and particularly statutory interpretation. To that extent the Court has analyzed certain pertinent Code sections which relate to the office of the Clerk and to the operation of the County generally or of County Government generally and also certain cases which bear on this question. In addition to those items there are a number of legislative projects which have been undertaken relating to County Government generally and then to the fee system as a method of compensation for County officers and that takes us through a long period of legislative history. One of the principal studies which, if it's not the principal study, gave rise to the optional form of Government that the County of Albemarle operates under dates back to the Virginia Commission on County Government which filed its report in 1931 and recommended to the General

1 Assembly and to the Counties three alternate forms of Government,
2 those being the County Executive Form, the County Manager Form
3 and the form then in existence, which was the traditional form with,
4 certain improvements. Then through the years the legislature
5 has considered generally the matter of the fee system of
6 compensation through the Page Commission and the West Commission
7 which were involved with that question. It appears that the
8 principal objective was to gradually phase out the fee system
9 as a method of compensation for all constitutional officers,
10 which is the basis on which they were originally compensated, or
11 most of them, including the Clerk and the Sheriff. Now that
12 has largely been accomplished by the establishment of what was
13 originally known as the State Fee Board and is now the State
14 Compensation Board and operates to set salaries for those officers
15 who were formerly under the fee system as a method of compensa-
16 tion. And the County Executive Form of Government incorporated
17 the same principal to the extent that one of the specific provisions
18 was that the method of compensation for the Clerk would be changed
19 and that the fee system as a method of compensation would be
20 abolished. In addition to the abolition of the fee system as
21 a method of compensation the County Executive Form of Government
22 further provided for the abolition of two constitutional offices,
23 that of the Commissioner of Revenue and the Treasurer. The thing
24 that has become apparent through, at least in this Court's
25 study of the legislative history and statutes is that there

1 has never been any intention on the part of the legislature,
2 and certainly no provision under the Constitution, which would
3 act to abolish the office of the Clerk. Now the office of the
4 Clerk has occupied a dual role apparently from the very be-
5 ginning of the institution of the County Government in this
6 State. Historically, the County Clerk was one of the Chief
7 if not the chief administrative and constitutional officer in
8 each County and acted as Clerk of what was then known as the
9 County Court, which was the Court of Record, and is now the Cir-
10 cuit Court. So the County Clerk designation involves the duties
11 of the Clerk with regard to both County functions and the
12 functions of the Clerk of the Circuit Court, and in a large
13 measure the confusion which has resulted in the interpretation
14 of these statutes arises out of this dual function. It may well
15 be that the interpretation which has been placed upon the
16 statute relating to County Clerks is proper as far as the
17 position taken by the County of Albemarle. But I find no basis
18 upon which that position could be taken with regard to the Clerk
19 of the Circuit Court. Many of the statutes which relate to
20 this salary schedule relate to the duties or the functions of the
21 County Clerk and they have been carried through the statutes in
22 a separate category apparently. And the fact remains that the
23 office of Clerk is a constitutional office. It has the peculiar
24 distinction of being the office with the longest term and is
25 exactly double the term of any other local official. In other

1 words every other elected official is elected for a four year
2 term, and the office of Clerk occupies, or the Clerk, occupies
3 a term of eight years. Now, that ought to tell us something
4 as far as the question that we are dealing with in this case. Is
5 the office of Clerk subordinate to the office of some other County
6 official or the Board of Supervisors, or is it, in fact, a se-
7 parate and distinct constitutional office in every sense of the
8 word. Now if it is, and if being elected for eight years and
9 means what it would seem to mean, then the Court would have to
10 determine that the office of Clerk is not subordinate to that
11 of any other official in the County. And that seems to me to be
12 the rational basis upon which this case has to be decided. If,
13 in fact, the position of the County of Albemarle is upheld it
14 would mean that the office of the Clerk of the Circuit Court
15 is subordinate to the Board of Supervisors and through them to
16 the County Executive. It would certainly be strange to this
17 Court to reason that an eight year constitutional officer would
18 be subordinate to the Board of Supervisors who are elected for
19 four years and each of those supervisors elected from a separate
20 district and not from the County at large. Now, that generally
21 is the basis upon which the common sense reasoning in this case
22 seems to take us. Now, the Supreme Court of Virginia has com-
23 mented on this point, and that is that the Clerk holds office
24 by virtue of the constitution and nothing else, and that has
25 not been changed. If in fact the Clerk is the constitutional

officer that the constitution says he or she is, then it means that it is not subordinate to any other office. And I want to refer specifically to a case in which this question was presented and this had to do, of course, with the role of the Clerk as County Clerk but it's the same office as the constitution says, and the statutes. The office of the County Clerk is also the office of the Clerk of the Circuit Court or the person holding that office occupies both positions. And in the case of the County of Culpeper, the Board of Supervisors v. Coons, 121, Va., 783, The Court of Appeals had this to say, "Sheriffs, Clerks of Courts, Treasurers, Commonwealth's Attorneys and Commissioners of the Revenue do not hold their office by virtue of the General Assembly or by virtue of authority of a Municipality or County. The Sheriff and the other officers named hold their office by virtue of Section 110 of the Constitution which provides that all the officers named shall be elected by the qualified voters of the County and that their duties and compensation shall be prescribed by general law." Now, this is certainly true today. This principal is announced in the case of Hilton v. Amburgey 198 Va. 727 and the quote that I just read is taken from page 729. In the Coons case the Court said on this question, "a Board of Supervisors cannot place conditions upon the payment of the salary or compensation allowed by general law to an officer whose office or position is not the creature of the Board of Supervisors." The court held in that case that the Board of

1 Supervisors of Culpeper County could not require the Clerk to
2 perform duties other than those by imposed general law as a
3 condition precedent to the payment of part of his salary. And
4 in that case the Court granted mandamus compelling the Board
5 to pay the Clerk's salary without the condition attached. And
6 the Court, in disposing of that case, had this to say "By law
7 therefore, and not by the Board of Supervisors except as they
8 may act in accordance with the law, must the salary or the
9 compensation of such office or position be fixed." Now, there
10 have been many changes with regard to County Government since
11 that decision was announced. For instance, two of the positions
12 that the Court was speaking about, have been abolished under the
13 County Executive Form of Government, namely, the Commissioner of
14 Revenue and the Treasurer. And the office of the Clerk not
15 having been abolished, it seems that all principles related to
16 constitutional officers still remain in effect as far as it
17 involves the Clerk. There is certainly some confusion on this
18 point and one of the witnesses, who had occupied the position
19 of Clerk for many years and who had been sought and followed
20 in his experience by the various committees of the General
21 Assembly who dealt with Clerk's salaries, expressed himself on
22 this point by saying that this is a "legislative thicket" that
23 has to be construed. And I find that the more you read the
24 statutes the more difficult it becomes to reconcile some of the
25 apparent inconsistencies. You can certainly read certain of them to

1 substantiate the position of the Board of Supervisors in this
2 case, but taking the law generally and from the principles of
3 constitutional law, this Court can't escape the conclusion that
4 the Board of Supervisors cannot diminish the office of the Clerk.
5 They cannot subordinate it to their own position. And if the
6 salary of the Clerk is to be controlled other than by general
7 law, then it must be done through the State Compensation Board
8 or you would effectively subordinate an office which is not
9 intended to be subordinated. Now, if the General Assembly
10 intends to do this then, of course, it ought to be more specific,
11 at least in this Court's judgment, with regard to the office of
12 the Clerk in a County where the County Executive Form of Govern-
13 ment prevails. Albemarle County occupies a rather distinct
14 position in this regard. There aren't many counties in this state
15 which have the County Executive Form of Government. But I find
16 nothing to indicate that because Albemarle County does have a
17 County Executive Form of Government the duties of the Clerk are
18 in any way changed. And the peculiar thing that should be
19 noted in this case is that no other statute which prescribes
20 the duties of a Clerk have been changed. There is no other
21 method by which the Clerk can be removed except the method pre-
22 scribed for all Clerks. They can be removed only by the Judge of the
23 Circuit Court, not by a Judge but by the Judge of the court in
24 which they perform their duties. It's a common sense principal of
25 law that if you are a County employee, the County would have the

1 right to fire you. I can't escape that. And to construe the
2 Clerk as being a County employee is stretching the point too
3 far. The Court cannot concede that the County Board of Super-
4 visors can diminish the position of the Clerk anymore than they
5 can fire the Clerk. The Clerk is elected by the people of the
6 County for eight years and can be removed only by the Judge of the
7 Circuit Court. The duties of the Clerk are separate and apart.
8 There are provisions in the law which allow the Clerk to go to
9 Court to force the local Board to provide the facilities that
10 are necessary to operate the Clerk's Office, by mandamus. It would
11 be a strange point indeed if an employee had the right to sue
12 the employer to require the employer to carry out the duties
13 which are prescribed by law. And the fact is that the Clerk
14 occupies the unique function of serving both the County generally
15 and the Court. It may well be that this Court has placed an
16 undue emphasis on the importance of the Clerk's Office, but if
17 that is the case then it is rather strange that the Clerk still
18 is elected for a term of eight years. And it seems to me that
19 we would stretch common sense completely out of proportion and
20 constitutional law to the point of ridiculousness if the Court
21 held in this case that the County Board of Supervisors has the
22 right to set the salary of the Clerk independently of any other
23 agency such as the State Compensation Board, or general law.
24 I am very frank to say that in my opinion the General Assembly,
25 through an oversight or a failure to coordinate the various

1 statutes, failed to provide the setting of the salary of the
2 Clerk by the State Compensation Board as it did with every
3 other fee paid officer when the fee system of compensation was
4 abolished. It's the only office in which that method was not
5 applied, if that was intended. In other words as each constitu-
6 tional office was taken off the fee system of compensation, it
7 was placed under the State Compensation Board or formerly the
8 State Fee Board. And The State Fee Board and then the Compensa-
9 tion Board became the substitute for the old system. And in
10 this case if the Court held that the statute not having provided
11 for the Clerk's salary to be fixed by the State Compensation
12 Board left the Clerk's salary completely to the discretion of the
13 Board of Supervisors would in effect be holding that the office
14 of Clerk is subordinate to that of the County Board of Super-
15 visors, and the Court cannot find any reason for such a finding.
16 Therefore the Court awards judgment to the Clerk to the extent,
17 subject to the proper calculation of the amount, of the salary
18 which has been deficient and which has been presented in the
19 form of exhibits from the State Compensation Board or the forms
20 filed with the State Compensation Board and is readily reduced
21 to a liquidated amount. And in addition to that, of course,
22 the effect of this ruling is to find as a matter of future
23 reference, unless it's reversed, that the Clerk's salary is that
24 which is prescribed for all clerks and construing the statute
25 which was one of the principal issues in this case, the Court

1 holds that the minimum salary to the Clerk is the maximum
2 salary prescribed under the statute. That's the only way I can
3 construe it. There being no other salary prescribed and there
4 being no means by which the salary can be adjudicated by any
5 independent agency, the Court finds that the amount which
6 the Clerk would be entitled to under the general law is the
7 same in Albemarle County as any other County. And that being
8 the case, the amount is not something that can be set by the
9 Board of Supervisors but is set by general law of the State of
10 Virginia.
11 Now gentlemen, I have undertaken to review rather
12 informally the basis of the Court's ruling. I have done a lot
13 of reading on this subject and had intended to write a rather
14 formal opinion as a result of it, but it's too long and too
15 complex and I leave it to you gentlemen to thrash it out in your
16 briefs on appeal if it gets that far, because I have pointed out to
17 you some of the areas that the Court has read. Specifically,
18 several of these cases, the statutes generally and the legisla-
19 tive history of the old West Fee Bill and the Page Commission,
20 the Virginia Commission on County Government I referred to,
21 the latter of which really is the forerunner of the County
22 Executive and other optional forms of Government from which
23 Albemarle County obtained its initial information, I'm sure.
24 This probably originated all of the activities in this field.
25 This was Chapter 268 of the Acts of The General Assembly of 1930

which created the Commission and its report was filed in a bound volume on December 1, 1931, under the style Virginia Commission on County Government and, of course, has been brought up to date by other studies and other legislative changes. Mr. Bains, if you will prepare an order then incorporating the findings of the Court it will be entered as of this date.

ST. JOHN: If Your Honor please I think this is an extremely well reasoned opinion and I would like to have your opinion typed and I would like to have the record typed whether it's appealed or not because this explanation should be presented to everybody concerned - whether it's appealed or not and also if it is appealed under the new rules, it saves both counsel the trouble of tendering the record to each other and so forth and getting a date to tender it to you. If you will order the Reporter at this time to type the transcript and make it a part of the record - I don't have the rules with me but as I understand from memory, if you do that, then counsel don't have to bother about any deadline in getting this transcript. And I request Your Honor, that you do that at this time.

COURT: All right, sir, and I know the record would not be very long. The evidence introduced was relatively short. The Court will order that the transcript and the opinion of the Court be typed as part of the record in this case and made available to counsel.

COURT ADJOURNED.

1 STATE OF VIRGINIA AT LARGE:

2 I, Jean D. Easton, Notary Public in and for the
3 State of Virginia at Large having been so duly commissioned and
4 qualified do certify that the foregoing hearing was duly taken
5 by me at the time and place specified in the caption hereof,
6 said witnesses having been first duly sworn.

7 I do further certify that said hearing was correctly
8 taken by me by mechanical methods and the same was accurately
9 written out in full and transcribed into the English language
10 and that said hearing is a true, accurate and correct record of
11 the testimony by said witnesses.

12 I further certify that I am neither attorney nor
13 counsel for or related to or employed by any of the parties to
14 the action in which this hearing was taken and further that I
15 am not a relative or employee of any attorney or counsel employed
16 by the parties hereto or financially interested in this action.

17 My commission expires

18 Given under my hand and seal this 24th day of May,
19 1974.

20

21 _____
Notary Public

22

23

24

25

APPENDIX F

TRANSCRIPT OF TESTIMONY

JOHN M. RASSNICK, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Bain

Q Mr. Rassnick, would you state your name and occupation please for the Court?

A My name is John M. Rassnick, Jr. and I'm the Executive Secretary of the Compensation Board.

Q How long have you been employed in this position Mr. Rassnick?

1 A Since January, 1965.

2 Q Now Mr. Rassnick, what I want you to explain really
3 in your own words - I'm not asking you to interpret statutes
4 or anything of that nature, I simply want you to tell the Court
5 under the Clerk's Compensation Statutes, how you arrived at a
6 Clerk's Compensation, under the normal fee schedules setup,
7 under the State Law?

8 A Well, I will have to quote some statutes...

9 Q Yes sir, if you don't have them I've got the
10 statutes here...

11 COURT: I expect Mr. Rassnick has them there anyway,
12 don't you Mr. Rassnick?

13 A Yes sir. Under the current year, 1973...

14 Q Yes sir.

15 A Under Section 14.1-143, the base salary is $9,500.
16 Also under section 14.1-143, it says for each additional Judge
17 she shall get $1,000. Because of the Court reorganization in
18 July 1, 1973, she would get, as I understand it, two additional
19 judges effective July 1 so she would get, in effect, $1,000 for
20 a half year, $500. for each judge. You add the $9,500 and the
21 $1,000. and get $10,500. Under Section 14.1-145, she would get
22 an additional $500., which would make a total of $11,000. Under
23 the provisions of Section 14.1-148 an additional ten percent
24 which would be $1,100 or a total of $12,100. Under.....

25 COURT: Ten percent of what, Mr. Rassnick?

1 A Ten percent of...

2 COURT: Of the base?

3 A No, of $11,000.

4 COURT: In otherwords, ten percent of everything up

5 to that point?

6 A Yes sir. So, it would be $11,000. plus $1,100.

7 which is $12,100. Under the 14.1-152, she gets an additional

8 twenty percent of the $12,100, which is $2,420., which is a

9 total of $14,520.

10 COURT: Each time you are referring to those, you

11 are taking the percentage of the previous total?

12 A Yes sir.

13 COURT: All right, I see.

14 A Then Under 14.1-155, she would get an additional

15 ten percent or $1,452., which would total $15,972. Then, under

16 14.1-155.1 she would get an additional twenty-six point six

17 percent or $4,248.00, which would be a grand total of $20,220.

18 from fees.

19 COURT: In otherwords, there are four statutory

20 percentages added onto the other salary?

21 A Yes sir.

22 COURT: I see.

23 Q Now, Mr. Rassnick, is there additional compen-

24 sation that a clerk can get from a separate statute, on

25 collection of local taxes?

1 A She can...from commission on local taxes, she
2 can retain that in addition to the $20,000.
3 Q Depending on the amount of local taxes that are
4 collected as a result of the fees generated by her office?
5 A I am not familiar with it but I think that she
6 gets a certain percentage of the total fee, like five percent
7 for a certain amount and so on and so on.
8 Q Now, Mr. Rassnick, this would be for compensation
9 for the year 1973, that is how it is setup?
10 A That's correct.
11 Q All right, is there a limit on a clerk's salary?
12 Under the present statutes?
13 A She would be limited to $25,000. from all sources.
14 Q From all sources. This would include the
15 collection of local taxes, if applicable?
16 A Yes sir, that's correct. May I add that the
17 statute provides that those clerk's who are making more than
18 $25,000. for the calendar of 1969 are under the Grandfather.
19 All others are limited to $25,000.
20 Q Mr. Rassnick, I am going to show you copies from
21 the audit reports, Clerk of Albemarle County for the years
22 1968 through 1971.
23 COURT: 1968 through 1971?
24 BAIN: Yes sir and I have 1972 and 1973 also. Now,
25 this is from the State Audit Office. Now, on the fee system

for those years, what would the Clerk of the Circuit Court of Albemarle County be entitled to, based on your computations there and the state office.

A In 1968, $12,632.40; for 1969, $12,632.40; for 1970, $17,424. plus $154.25 or a total of $17,578.25; for 1971, $17,424. plus $493.37 or a total of $17,917.37.

Q Is this a copy of a letter from you to the State Compensation Board for 1972's compensation for the Clerk of the Circuit Court of Albemarle County?

A That's correct.

Q What do those figures show?

A $19,817.84.

Q Then for 1973, here is the report filed by the Clerk based on the fees and so forth, what does that show?

A A total of $25,188.20 but she is entitled only to $25,000.

Q Which would mean she had reached her maximum?

A Right.

Q I would like these submitted into evidence Your Honor.

COURT: Any objections to these being admitted into evidence as exhibits Mr. St. John?

ST. JOHN: No sir.

COURT: All right, they will be admitted as Plaintiff's exhibits 1-6.

1 PLAINTIFF'S EXHIBITS 1-6 so marked at this time by
2 the Court Reporter.
3 Q Now, Mr. Rassnick, the figure of $20,220.00 I
4 believe you said for the 1973 year would be....what exactly
5 does that figure represent?
6 COURT: Which year now?
7 Q Just a total, he went through all of the
8 statutes, additions and so forth.
9 COURT: Which year are you referring to?
10 Q The year 1973, $20,200. What exactly does that
11 figure represent?
12 A That means that she can retain, for fees of
13 office providing she earns it.
14 COURT: In otherwords, you are saying that figure
15 first depends on her fees measuring up to that amount.
16 A Your Honor, for example if the total fees for
17 Her office are $20,000. and the Compensation Board had
18 allowed her expenses of $50,000., that means that her net
19 income of office is $50,000.00. She can retain that $20,000.
20 out of the $50,000. and the $30,000. odd dollars would be
21 excess fees which the State would get one-third.
22 COURT: I was trying to reconcile the figure with
23 the other figure of $25,188.20, which is reduced to $25,000.
24 That was also for 1973, wasn't it?
25 BAIN: Yes sir. Mr. Rassnick, would you explain

1 what those figures represent?

2 A Do you have that exhibit? I am sure you do. I

3 have a copy.

4 Q You have the 1973 sheet?

5 A Yes. About halfway down the first page it says,

6 Annual allowance authorized by law, $20,220.00 and right be-

7 low that it says commissions on collections of local taxes,

8 $4,967.65, those two added together is $25,187.65 but because

9 of the limitations of $25,000.00 and in determining excess

10 fees all she could retain would be $25,000.000.

11 COURT: The extra amount above the $20,200 is based

12 on commission from local taxes?

13 A Yes sir. That, of course, is subject to audit.

14 COURT: I understand. All right Mr. Bain, go

15 ahead.

16 Q Would you give the court a hypothetical where

17 you are entitled to this $20,220. but your fees generated by

18 the office would not entitle you to that amount. For example,

19 if the Clerk's Office generated $35,000.00 in fees and the

20 Clerk had expenses approved by the Compensation Board of

21 $20,000.00 then what would the Clerk get.

22 A $15,000.00.

23 Q Even though the Clerk would be entitled, if he

24 earned it to the $20,220.00?

25 A That's correct.

1 Q But only if the office generates the fees?

2 A That's correct.

3 COURT: You are saying then Mr. Rassnick, that the

4 Clerk's expenses come first.

5 A That's correct, yes sir.

6 COURT: And then he gets the salary within the limits

7 of his fee collection and within the limits of his maximum.

8 A That's correct. The Compensation Board tells

9 the Clerk that from fees she can pay certain expenses, no

10 more.

11 Q All right now, Mr. Rassnick, are you familiar

12 with Section 14.1-140.1?

13 A I am sure I am familiar with it.

14 Q Would you read the parts of that that deal with

15 the Clerk, referring specifically to the annual allowance?

16 A It says, Each of the officers mentioned in

17 Section 14.1-136, at the time of filing the annual report

18 required by Section 14.1-136, shall pay into the State

19 Treasury the amount in excess of the annual allowance to which

20 he is entitled by this article and the expenses incurred

a 21 authorized by the Compensation Board.

22 Q Now, Mr. Rassnick, what does that figure, the

23 annual allowance refer to, is that the figure of $20,220.00,

24 would that be what that figure represents if the Clerks'

25 fees were generated in such a nature that she would be

entitled to it?

A That's correct, yes.

COURT: That's also the same law...the annual allowance based on compensation and allowances?

A That's correct, yes sir. That same language also appears in the County Executive Form of Government, which we shall use.

Q Mr. Rassnick, giving this situation, that you explained a minute ago, a hypothetical $100,000.00 for a Clerk's Office with expenses of $50,000.00, is the figure you gave of $20,220.00 the figure that any Clerk would be entitled to?

A No sir, it depends on the number of Judges and the number of Courts. It could go from $18,000.00 on up.

Q All right. That exception only, dealing with the Judges, would that be the amount to which a Clerk of a Circuit Court would be entitled?

A No sir. $18,000.00.

Q I have no further questions. Witness with you Mr. St. John.

CROSS EXAMINATION

By: Mr. St. John

Q Mr. Rassnick, as Mr. Bain has stated in prefacing his questions to you, all of your answers are predicated on

1 the fact that the Clerk in question would be under the fee
2 system?
3 A That's correct.
4 Q As you are aware, in your position with the
5 State Compensation Board, Albemarle County is not under the
6 fee system?
7 A That's my understanding, yes sir.
8 Q Well, is it a correct statement that assuming
9 Albemarle County had adopted the County Executive Form of
10 Government, it is not under the fee system.
11 BAIN: Your Honor, we object to that. He is
12 interpreting statute here.
13 COURT: If the question is handled in his office he
14 has a right to comment on it. The construction of it as
15 represented in the manner in which his office has acted, if it
16 has in fact acted under certain instructions...Mr. Rassnick
17 is the Secretary of the Compensation Board and may be routinely
18 aware of the matter by the filing of annual reports or what-
19 ever.
20 WOOD: I would like to supplement Mr. Bain's
21 objection if I may. This question goes outside the scope of
22 direct examination. If Mr. St. John wants to ask this type of
23 question let him call him as his own witness.
24 COURT: I am not sure that this....
25 WOOD: He has been asked his opinion as to the

1 County Executive Form of Government and I think this is outside
2 of the scope of the questions of counsel directed to him on
3 direct examination.
4 COURT: Well, Mr. Rassnick is here as an officer
5 of a division of the State and the Court is interested in the
6 official manner in which this has been handled whether he has
7 been called as witness for one party or the other. The Court
8 will be interested in the manner in which his office has
9 handled it so I am going to permit the question. I don't
10 suppose it makes too much difference as to whether you make
11 him your witness.
12 ST. JOHN: I don't mind a bit making him a county
13 witness Your Honor. If opposing counsel would rather I not
14 go outside the scope of their examination then I will ask
15 Mr. Rassnick questions related to their questions.
16 WOOD: Your Honor, we have no objection but I
17 believe he will be confined to not asking leading questions
18 of the witness.
19 COURT: All right, go ahead.
20 Q Mr. Rassnick, for a county under the County
21 Executive Form of Government is it still necessary for that
22 county to report to you and receive or make a report to you
23 of the fees, allowances, commissions and so forth?
24 A Yes sir.
25 Q It is still necessary, in otherwords, whether the

1 officer in question is on the fee system or not, the officer
2 still must make this kind of report to your office, is that
3 correct?
4 A Yes sir.
5 Q Why is this true, if the officer in question is
6 not under the fee schedule, could you clarify that?
7 A Yes sir. Under the County Executive Form of
8 Government the county retains all fees, as I understand it.
9 It pays all salaries. At the end of the year when she files
10 this fee report I write back to the county and say that
11 according to the fee report filed by your clerk, and I think
12 he has got copies of letters I have written, I say the total
13 receipts were so much, the total expenses were so much, the
14 amount allowed the clerk, if on a fee basis, so much and the
15 excess fees are so much. Now, he has got all of the fees for
16 Albemarle County, the County Executive has and I ask him to
17 return to the State one-third of the excess fees, which he
18 sends me a check payable to the Treasurer of Virginia for one-
19 third of the excess, like under the present calendar year
20 1973, I will write him and ask him to send me a check for one-
21 third of forty-four thousand and some odd dollars.
22 Q All right, that forty-four thousand and some
23 odd dollars appears down here as the last line before the
24 bottom paragraph, to determine net compensation and so forth.
25 In otherwords, to arrive at that figure you use computations

1 as if they were under the old fee schedule, is that correct?

2 A Right, because the law directs us to do that.

3 Q So, that all other monies, regardless of whether

4 they are paid to the Clerk or the Clerk's Deputies, or not,

5 all monies except for this $44,163.47 remain in the locality.

6 A That's right.

7 Q That $44,163.47 is required to be paid to the

8 State?

9 A As excess, yes sir.

10 Q In order to determine how much the state is

11 entitled to...

12 A I have to have that report.

13 Q Whether you are under the Executive Form of

14 Government or Fee Form of Government, you have to have the

15 same information to determine how much the state is entitled

16 to.

17 A The only difference, if she were on a fee basis

18 she would send me a check for $44,000.00. I would retain one-

19 third and send two-thirds back, but they already have it so

20 I just get the one-third.

21 COURT: Mr. Rassnick, you are saying that the fee

22 compensation, you know the salary compensation, you don't

23 have the salary compensation in here do you?

24 A No sir.

25 COURT: Is there any reason placed on it as to why

1 you don't use that figure rather than the fee compensation?

2 A I think Section 15.1-619 says that if in deter-

3 mining excess fees we would use what she would be entitled to

4 under general law.

5 COURT: Rather than what she actually gets as

6 salary?

7 A Right.

8 COURT: All right, go ahead Mr. St. John.

9 Q I would like to have you refer to the phraseology

10 exactly as it is Mr. Rassnick. Here is 619. This is Section

11 15.1-619 of the Virginia Code Mr. Rassnick and I see paragraph...

12 A The second paragraph A.

13 Q Allowance to what such officer would be entitled

14 by general law but by provisions of this section.

15 A Right.

16 Q This is what you use to compute.

17 A The board has always interpreted that to mean

18 that we would use, in this case the $20,000. plus the $4,000.

19 or $25,000. as determined by what the excess fees would be.

20 Q Thank you.

21 A Because of the County Executive Form of Govern-

22 ment.

23 COURT: How many counties in the State under the

24 Executive Form?

25 A I don't know County Executive, like Henrico that

1 is under County Manager Form, the same, we work the fee bases
2 the same way.
3 COURT: The same way?
4 A Yes sir.
5 COURT: How many are generally dealt with in this
6 category?
7 A Henrico and Albemarle.
8 COURT: Go ahead Mr. St. John.
9 Q Your Honor, I have some other matters to ask Mr.
10 Rassnick to testify on but Mr. Bain and Mr. Wood have asked
11 that this be done in proper order so I have no further
12 questions now.
13 WOOD: I have been misunderstood Your Honor. My
14 feeling was that Mr. St. John, sometime ago, made this witness
15 his and I said I had no objection to it but I didn't wish him
16 to cross examine the witness so I think he might as well
17 complete his examination.
18 Q Mr. Rassnick, in the course of your day to day
19 functions as Secretary of the Compensation Board, I believe
20 that is your position isn't it?
21 A That's correct.
22 Q Have you been requested by, among other people,
23 Mrs. Marshall herself to state what the Compensation Boards
24 interpretation of the Clerk's rights under these sections is?
25 What her salary should be based on these various figures which

1 you have given the court?

2 A She has asked me and I think she has correspondence

3 from me that if she were on a fee bases what she would get,

4 yes sir.

5 Q In the ordinary course of the business of the

6 Compensation Board of Virginia has it been asked of the board

7 and of you as Secretary to state whether or not the fact that

8 we are not on the fee schedule makes a difference as to what

9 she is entitled to?

10 A I have talked to Mrs. Marshall on several

11 occasions and...in otherwords, she understands I am sure that

12 she is not on a fee bases. She has asked me questions, I

13 assume with the idea that if she were on a fee bases what

14 would she get. Is that what you have got in mind?

15 COURT: I think what he is asking, have you ever

16 construed the question in your office sufficient as to

17 whether she is or is not entitled to be on a fee bases.

18 A Your Honor, the Board since I have been there

19 and long before I came there has interpreted this as the

20 County Executive Form of Government and under the statute

21 15.1-619 and I think it's 15.1-600, that was brought out here

22 and it says that the fee system is abolished.

23 COURT: You construed that to mean to abolish the

24 fee system of compensation for a Clerk.

25 A Yes sir, the board did, not me personally.

1 COURT: That's what I am getting at.

2 A Yes sir.

3 COURT: All right Mr. St. John, does that answer

4 your question? How long has that been construed that way,

5 Mr. Rassnick?

6 A Since I have been there, 1965.

7 COURT: I see. Of course, this predates that by a

8 considerable time. This county executive form in Albemarle

9 County?

10 A Yes sir.

11 Q Let me ask you this and don't answer if there

12 is any objection, wait until the court rules on it. Have

13 you....has the Board, I should say, any opinion or position

14 as to whether or not it is within the exclusive jurisdiction

15 and discretion of the local government about what the clerk

16 gets paid under the Executive Form of Government. Has that

17 question been put to the Board and if so, what is their

18 answer?

19 WOOD: Your Honor, I object to that question. There

20 has been no foundation laid here with this witness to qualify

21 him to answer that question. Now, Mr. St. John is attempting

22 to enlist from this witness direct comments on the issue be-

23 fore this court. This man was called here as a witness to

24 testify about the procedures used to determine the figures

25 and all at arriving at compensation. This thing has gotten

so far afield that he is being asked his feeling on the exact issue before this Court, without any foundation being laid that he is qualified to answer it or that the Board's opinion is of any relevance whatsoever.

COURT: Now, gentlemen, this question has to do with the policy and interpretation upon which the agency has acted. If he was giving an opinion of something not connected with his agency then it would be intentional but if the Board has followed its own judgment and interpretation of the statute and has acted upon it then Mr. Rassnick may testify to it.

Q This is what I meant to ask of him...

COURT: It's not a question of rendering an opinion of somebody else but taking a position with regard to a statute and its position taken by the board, which is charged in someway with administration. Now, the Compensation Board hasn't in any way been connected with an interpretation of this statute and as far as its actions has acted upon that and I think Mr. Rassnick may speak on that.

Q This is what I meant to ask you Mr. Rassnick. If the board has taken a position on this and if so, what is it?

A The Board, as I explained before, has taken the position that the County Executive Form of Government under Section 15.1-600 and a certain section says that the fee system is abolished and soforth and so on and the County shall

pay the salary.

Q Who decides under that Boards position as to....

A Well, the statute, as I understand, as the Board understands, says that and that is the way we have operated. She files a budget request form with us for salaries, which we approve and send her.

Q Would this mean that she is or is not necessarily under the law entitled to be paid according to the fee schedule?

WOOD: Your Honor, I will object again. This goes outside the....

COURT: That does. The court will have to decide that eventually I think. Objection sustained.

Q I don't have anything more Your Honor.

COURT: Anything further from Mr. Rassnick on some of these other matters?

REDIRECT EXAMINATION

By: Mr. Bain

Q Mr. Rassnick, if the fee system is abolished then why does the Clerk of the Circuit Court have to file this form with the Compensation Board?

A I don't know what the section of the code is but it says each Clerk shall file a report each year.

Q Do you think that section is inconsistent with

1 the fee schedule at.

2 A No sir. How would we know what the excess fees were,

3 if any if she didn't file a report.

4 Q Mr. Rassnick, is the board...the State Compensat-

5 ion Board actually concerned with what happens to the excess

6 with what the Clerk gets under salary form and what she

7 would be entitled to under the fee system?

8 A No sir.

9 COURT: Let me ask Mr. Rassnick this. If it were

10 not for the fact that the state was entitled to one-third

11 of all amounts above what the Clerk is entitled to as an

12 allowance, would there be any other reason to have this report?

13 Other than to determine the one-third for the state.

14 A I think that would be the only reason Your

15 Honor. Also, for audit purposes.

16 Q Mr. Rassnick, you said the Board's interpretation

17 has been that the County Executive Form wipes out the fee

18 system. Has the board taken into consideration section 14.1-155.1

19 which was passed in 1966 in that regard?

20 A Not to my knowledge, no sir.

21 Q It has not?

22 A No sir.

23 COURT: This is Section 14.1-155.1. What was the

24 year?

25 BAIN: 1966, Your Honor.

1 A It was amended in 1970.....in 1973. Your Honor,
2 this is where the last percentage figure comes in, 26.6 and
3 I think what they are concerned....
4 COURT: Different paragraph in the same code
5 section is quoted. Next to the last paragraph.
6 A The last paragraph says, that any city or county
7 whether or not such county has adopted an optional form of
8 government, and in which the clerk of any court of record is
9 on a salary basis, the minimum salary payable to such clerk
10 shall not be less than the minimum salary provided under the
11 general law.
12 Q You are saying that the board has not taken that
13 into consideration whether or not the County Executive Form
14 of Government controls the fee system?
15 A I have not, no sir.
16 Q I have no further questions Your Honor.
17 COURT: Now, Mr. Rassnick in connection with that,
18 what would be the minimum salary payable to a Clerk under
19 general law?
20 A That's a good question Your Honor. I don't
21 mean that like I said it but for example the base figure is
22 $9,500.00 and you add on these precentages. Now, it has
23 been different all through the years as the exhibits show.
24 In 1968 I think is was twelve thousand something that she
25 could retain under general law, if she were on a fee basis.

1 COURT: Well, what is it? Is it the first figure
2 or that figure plus all the statutory allowances?
3 A I don't know how to answer that question Your
4 Honor.
5 COURT: In otherwords, you haven't construed that
6 either?
7 A No sir.
8 COURT: Would you have any legislative background
9 at all as far as your department is concerned about minimum
10 salary under general law?
11 A No sir.
12 COURT: Has it had any applications at all on
13 calculations that your office has made?
14 A No sir.
15 COURT: In otherwords, it would appear then from
16 the standpoint of what your office has done/has it no meaning?
17 A That's correct, yes.
18 COURT: That puts the court to the purpose of the
19 burden of determining what it's in there for then.
20 BAIN: Mr. Rassnick, I believe you testified as I
21 examined you that this figure of $18,000.00, not counting
22 the judges. As long as the Clerk's Fees generate to that,
23 that would be the minimum salary the clerk would get, is
24 that correct?
25 A Yes, if she collected her fees and expenses. In

1 otherwords, if the net income of office was $18,000.00 or more
2 she could get $18,000.00.
3 Q She couldn't get any less, is that correct?
4 A If she didn't collect it she couldn't get it.
5 Q But, if she collected it she couldn't get any
6 less?
7 A That's right. She has to collect it.
8 COURT: Mr. Rassnick, would you disagree or would
9 you take no position that the minimum salary for clerks on
10 fees is the maximum salary?
11 A I would say Your Honor....well, you could say
12 from reading 14.1-143, it says the salary shall be $9,500.
13 Then you would go on and read 145, 148, 152, 155 and 155.1
14 and add these precentages on to it and you could come up with
15 $20,000.00 or depending on how many clerks they have got, up
16 to $25,000.00, so to answer your question, I am not trying to
17 eade your question, I don't know the answer to your question.
18 Which is the minimum or which is the maximum.
19 COURT: You would have thought though that if they
20 meant the $9,500.00 they would have said so, wouldn't they?
21 A They would have stopped at $9,500.00.
22 COURT: In otherwords, it would have been a lot
23 easier to have said the clerk's salary shall not be less than
24 $9,500.00 if that's what they intended to refer to.
25 A The reason for the $9,500.00, before 1970 that

1 figure $9,500.00 varied anywhere from $2,000.00...in other-
2 words, it was based on population. They threw it all in and
3 put $9,500.00 and said you had to earn it to get it, so why
4 not put $9,500.00 in.
5 COURT: Go ahead Mr. Bain. Any other questions?
6 Q Mr. Rassnick, go back to your hypothetical
7 $100,000.00 fees generated by the office and expenses of
8 $50,000.00, what is the minimum salary that clerk is going to
9 receive?
10 A As I explained Mr. Bain, based on the section of
11 the code that says we shall take what's under general law under
12 the County Executive Form of Government, we would use the
13 $20,000.00, in this particular case, plus the commissions or
14 a net of $25,000.00.
15 Q I have no further questions Your Honor.
16 COURT: Any other questions Mr. St. John?
17 ST. JOHN: No sir.
18 COURT: Thank you very much Mr. Rassnick.
19 Witness stood aside
20
21 HARRY B. WRIGHT, having been duly sworn testified
22 as follows:
23 DIRECT EXAMINATION
24 By: Mr. Bain
25 Q Mr. Wright, would you tell the court who you are

1 and what your occupation is?

2 A Harry B. Wright, Clerk of the Circuit Court of

3 Rockbridge County.

4 Q How long have you been Clerk of the Circuit

5 Court of Rockbridge County?

6 A Twenty-five years.

7 Q Twenty-five years?

8 A That's correct.

9 Q Mr. Wright, have you been President of the Clerk's

10 Association at anytime during that period?

11 A I have.

12 Q When was that?

13 A 1965-1966 period.

14 Q Now, Mr. Wright, I refer you to the section of

15 the code 14.1-155.1, was that section passed by the General

16 Assembly in 1966?

17 A It was.

18 Q Now, Mr. Wright, were you on....

19 ST. JOHN: What section is that Mr. Bain?

20 BAIN: 14.1-155.1. Were you on the Clerk's drafting

21 committee for drafting legislation for...that the Clerk's

22 Association wanted passed at that time?

23 A I was one of many, yes sir.

24 Q Now, Mr. Wright, I will ask you to explain to

25 the court what the association and specifically the committee

1 which you were on intended by the passage of this statutue.

2 ST. JOHN: May it please Your Honor, I said I

3 wasn't going to object to this if presented in the proper

4 framework but I think the foundation should be laid here....

5 COURT: I think the law is intended, unless he had

6 some connection with the authorship of it Mr. Bain and that

7 hasn't been show. Now, maybe that's a fact that the Clerk's

8 Association prepared the preliminary draft, he would have the

9 right to discuss that but not on the final document unless he

10 was connected with the drafting of it.

11 Q I didn't mean to go into that. I just meant that

12 the Clerk's Association, when you all were working, the

13 committee, on drafting legislation, when you all were working

14 on a statute what did you all intend....

15 COURT: You haven't shown that they worked on a

16 statute, that's what Mr. St. John is talking about.

17 ST. JOHN: Your Honor, I think I am going to with-

18 draw this objection and let this in for what it is worth but

19 I think certainly this would go to the weight of Mr. Wright's

20 testimony and I would like to reserve the right to comment on

21 it later.

22 COURT: I am going to run into a problem. Mr.

23 Wright may have had some firsthand experience and if he did

24 I think it ought to be shown.

25 Q Mr. Wright, would you tell the court what your

1 committee did during the preparation for the General Assembly
2 in 1966. In otherwords, I am sure you probably considered
3 other legislation or amendments to other statutes, would you
4 just tell the Court then what your association worked on and
5 how you approached it?
6 A If I might be permitted, I would like to give
7 you a little history, if I could, of the Clerk's Fee System
8 in regards to this statute and other related statutes.
9 COURT: Did you all prepare some legislation arising
10 out of this legislative history and proposal of changes, Mr.
11 Wright?
12 A Yes sir. In our consideration of this statute
13 we went back and considered what had taken place in the past
14 in the history of the fee system we worked under, and we are
15 now working under. In order to arrive at our thoughts con-
16 cerning 14.1-155.....You see, I am a young clerk in the
17 clerk's office, twenty-five years, and the gentleman to my
18 rear is the father of our association, many years my senior
19 and I don't feel like speaking before he speaks but I will
20 try to give you the benefit of what I have learned and what
21 we have learned in regard to this particular section. Clerks
22 being paid by the fee system in the past have had a numerous
23 and a number of different fee scales, we call them scales. We
24 don't get a salary, we retain fees for our compensation and
25 I believe I started out as Clerk at $2,500, according to the

population of my county, that was changed to $5,500. plus the related increases given by the General Assembly and in considering the 14.1-155 and 14.1-143 together we drafted the we did not draft it, we were working with the committee that proposed the legislation, not drafted, we proposed it. We considered dropping all fee systems, all net retainable compensation according to population. We went to a flat compensation, net compensation of $9,500. plus the related increases for each clerk as given by the legislation. In drafting 14.1-155 we felt, in that particular section, that in reading 15.1-600 and 602, I believe, it pertains to counties with Executive Form of Government, the County Supervisors will set the salary of the clerk according to general law and therefore we proposed that particular section in here notwithstanding any law, the minimum shall be so much, it shall not be less than the minimum salary provided under the general law. Now, that wording, of course, has thrown a lot of people, the minimum part of it and the question all clerks have asked and I asked the same thing when I was elected to the job, what is the salary and I was advised that the minimum salary was so much money. Well, that's all I could make that year. The same thing applies today if I was to leave my job today a new clerk would come in tomorrow and he would receive $21,169.00, that's what I make a year, 1973. He would receive the same thing regardless of minimum salary.

1 The maximum is set by law at $25,000.00. So, when someone
2 ask me what my minimum is I say that because I can't say any-
3 thing else. That is what I am allowed to retain out of my
4 fees, after my expenses are paid. If there is any remainder
5 the excess goes, as Mr. Rassnick testified. Our thinking
6 of putting this in here was to provide for is to take care
7 of any clerk because we felt, I didn't know any difference
8 until recently, that they were not being salaried by the
9 general law.
10 COURT: Were you instrumental in your association
11 originating that legislation?
12 A Yes sir, I helped.
13 COURT: What was the purpose then of originating it?
14 A To raising the salary in a particular section,
15 you are talking about.
16 COURT: The particular paragraph as cited in the
17 Motion for Judgment, that any city or county, whether or not
18 such a county has adopted an optional form of government in
19 which any clerk of record is on salary basis, the minimum
20 salary payable to such clerk shall not be less than the
21 minimum salary provided under general law. What was the
22 purpose of proposing that?
23 A The minimum salary at that particular time was
24 $12,000.00, some twelve thousand and some odd dollars and we
25 felt that they should have the same salary as we were having...

1 we were receiving, that was the reason for it. I would say
2 this, that was...
3 COURT: Whose choice of words was the use of
4 minimum salary?
5 A Members of the legislature sir.
6 COURT: What did the clerk's propose?
7 A We didn't propose anything except.....we feel
8 that the annual salary set by the Compensation Board is the
9 minimum salary and it can also be a maximum salary.
10 COURT: When you proposed the legislation, did the
11 clerk's consider they got what they asked for or they got
12 something different?
13 A We felt we got what we asked for.
14 COURT: What was the purpose of asking for it again
15 then? To bring everybody up?
16 A On an even basis, yes sir. We took out the
17 section of the code where when you had so much population
18 your salary was one thing and if it was in another bracket
19 it was so much.
20 COURT: Well, this seems to be for the purpose
21 though of getting clerk's in a county where they had an
22 optional form of government and being in a position to at
23 least getting the same minimum as other clerks.
24 A Yes sir.
25 COURT: What was the interest in the clerks in the

counties where there was optional form of government.

A Fairfax County I believe is one, Arlington County is another, I believe they are on a salary basis up in that section. There were some courts in the City of Richmond that had to have special legislation. Mr. Miller, of course, can elaborate on that. They had to have special legislation to get their salary under the general law. One of them was making a straight salary, which was not commensurable with what he was doing and we felt that if a clerk fullfiled his obligation of office he was entitled to the same salary the other clerks were getting.

COURT: This was during the time you were president of the association that this was done?

A Yes sir.

COURT: Go ahead Mr. Bain.

Q I have no further questions.

CROSS EXAMINATION

By: Mr. St. John

Q Mr. Wright, are you still presently connected with the Clerk's Association?

A Yes sir.

Q You still take an active part?

A I am a member of the association. I did not take an active part this year, no sir.

1 Q Up until this year did you?

2 A Yes sir. I have been ill and I haven't been

3 able to.

4 Q Did, to your knowledge, the Clerk's Association

5 foster any other additional legislation with respect to the

6 clerk's salaries and soforth after the amendment of Section

7 14.1-155.1 and you said that was in 1966. That's remained

8 the same since 1966, has it not?

9 A With the exception of the amendment , I believe,

10 raised the 14.1-155 twenty-percent to twenty-six point one.

11 Q Yes sir. Each year or every now and then or

12 every so many years they raise the percentages and that's

13 what Mr. Rassnick testified about but with respect to that

14 paragraph in 155.1, that's been the same since 1966 when it

15 was enacted, hasn't it?

16 A Yes sir.

17 Q Are you familiar with code section 14.1-164.1,

18 let me let you look at this because the number probably

19 wouldn't mean anything. I will ask you to read that Mr.

20 Wright and see if your association has either opposed enact-

21 ment of that or fostered enactment of it or had anything to

22 do with the legislative history of that particular section?

23 A This section concerns the governing body of the

24 county as empowered to determine what annual allowances,

25 payable out of the county treasury, shall be made to the

county clerk of such county not to exceed five thousand dollars. Prior to the enactment of this in 1970, we received a $150.00 as being Clerk of the County. I was receiving this until they hired an Executive Secretary. Also, $300.00 for Secretary of the Road Board and numerous boards, like committees making the budget. They put that on a flat fee, it is not included in your fees out of Richmond. It is a retainable fee above the retainable compensation set by the compensation board.

COURT: You say that would not be included on the report to the Compensation Board?

A It would be included on there if you exceeded $25,000.00 and couldn't keep but if you made $18,000.00, you could keep the $5,000. for a total of $23,000.

Q Mr. Wright, let me ask you this. That section speaks in a different language from 155.1, that section speaks to Clerk's of Courts of Records, section 155 and 155.1, here they are talking about the governing....they are talking about county clerks of such counties. Now, are they talking about a different function here or are they talking about the same function. You mentioned that you served as Clerk of the County and you received so much for this, is that a different function you are talking about now from the clerk of the court of records?

A That is a different function, yes sir. Now, we

1 have clerks of the court of records, not county clerks.

2 Q They can be two different people in otherwords?

3 A Yes. There again, by being county clerk you are

4 ex officio Clerk of the Circuit Court and if you are elected

5 you are elected Clerk of the Circuit Court so...

6 COURT: They are recognized as distinct offices

7 operated by the same person?

8 A Yes sir.

9 COURT: Mr. Wright, how distinct are the two

10 functions. Are they recognized generally to be distinct

11 functions in reports you make?

12 A To the Compensation Board?

13 COURT: Clerk of the Circuit Court as opposed to

14 the County Clerk, what's the difference?

15 A None in our reports, no sir.

16 COURT: You say in some areas they are two different

17 people?

18 A Yes sir.

19 COURT: There would be certain cities.

20 A You take the Clerk of the Hustings Court, it is

21 now Circuit Court of the City of Richmond, you have two phases

22 of that. Judge, may I make one observation in regard to fees?

23 COURT: All right sir.

24 A I think that is a big question in everybody's

25 mind here, as to amount of fees retainable. All fees derived

in the Clerk's Office are clerk's fees and they are all retainable if allowed by law. If they are a hundred thousand dollars, they are the clerk's fees. His expenses could be $80,000.00 or his expenses could be $30,000.00 but everything taken into a clerk's office is clerk's fees, regardless of the amount or regardless of what. If the General Assembly says he can keep the whole $100,000.00 he would keep the whole $100,000.00.

COURT: How did the Clerk's Association construe that section on optional form of government that said the fee system was abolished?

A The fee system was abolished as to and that goes on, that's one section and there is another section that says they shall pay their county officers in conformity with the general law. I don't recall the exact wording, it's 603 and one of the sections say, the salary shall be set according to general law and they have prescribed guidelines to follow. The Sheriffs have guidelines to follow set by the Compensation Board.

ST. JOHN: What's that Mr. Wright, I couldn't hear you about the Sheriff's?

A I said they have a guideline to follow, the state sets guidelines on Sheriff's or I think they do, as to their compensation. I believe that is correct. I believe they have a minimum of so much money and a maximum of so much

1 money. I think the minimum of a deputy sheriff is $7,200.
2 They have those guidelines to follow and we felt they were
3 guidelines to follow under the general law.
4 COURT: Are you saying that prior to the adoption
5 of 14.1-155.1, which in the next to last paragraph prescribes
6 this thing we are debating right now and that is that the
7 clerk of any court of record was on a salary shall not receive
8 less than the minimum salary provided under general law. That
9 being adopted in 1966 and without that you are saying the
10 clerks under the optional form of government weren't getting
11 the benefit of the minimum salary as prescribed by general
12 law.
13 A That was our understanding, they were not.
14 COURT: And in whose instance was that clause in-
15 serted in the statute, was it the clerks association that
16 instigated it?
17 A It was eighteen of us on that committee sir and
18 I don't believe I could....
19 COURT: I am interested in knowing who originated
20 the concept including this proposition in legislation.
21 A I believe it was the clerks, I wouldn't like to
22 definitely say yes but I believe it was the clerks under the
23 supervision of associate with us on it.
24 COURT: It is certainly recognized that the Clerk's
25 Association has initiated considerable legislation and does

1 continue to exercise annually a lot of activity I suppose
2 in that direction. Do you all have a legislative drafting
3 committee in the Clerk's Association?
4 A No sir.
5 COURT: Do you have what is called a legislative
6 committee?
7 A We have help in Richmond. We have a legislative
8 committee and I can't say who was on it this year or the past
9 year. I have doctors orders not to participate and I haven't
10 participated in it.
11 COURT: All right, go ahead Mr. St. John.
12 Q Mr. Wright, do you recall whether or not that
13 prior to the enactment of this section on the payment of
14 the clerk's, 164.1, there existed a section 164, not 164.1,
15 that new but there existed an old section 164, didn't it?
16 A Yes sir.
17 Q Are you familiar with what that was?
18 A That was a scale section of allowances up to
19 $2,500.00 for different localities and they wiped it out
20 and made it a lump sum...
21 Q That was a rock bottom minimum fee schedule for
22 all clerks in the state, was it not?
23 A Not a fee schedule, no sir. That was the
24 compensation to be paid by the county. It could be paid by
25 the county and excludable from the fees.

Q Right, it was a schedule or a table or whatever you want to call it of compensations which could be paid by the county itself to various officers and that included the clerks of circuit courts of record, did it not?

A County Clerk.

Q Didn't it also include other officers?

A I don't remember that sir, I believe it said county clerk, just like the present statute I read.

Q All right. I have no further questions.

REDIRECT EXAMINATION

By: Mr. Bain

Q Mr. Wright, these two sections Mr. St. John questioned you about, these are supplements that the county can pay if it wants to, is that correct?

A "Yes sir.

Q It has nothing to do with the fees generated by the office or anything of that nature?

A That's right.

Q That has nothing to do with the minimum salary payable to a clerk?

A No sir.

Q I have no further questions.

COURT: All right Mr. Wright, you may stand aside.

Witness stood aside

1 THOMAS R. MILLER, having been duly sworn testified
2 as follows:
3 DIRECT EXAMINATION
4 By: Mr. Bain
5 Q Mr. Miller, would you state your name and
6 occupation for the court please?
7 A I am Thomas R. Miller, retired Clerk of the
8 Hustings Court for the City of Richmond. Having retired from
9 the position of Clerk in 1970, the end of 1970 and having
10 been employed from then through a part of 1973 as deputy
11 clerk.
12 Q Mr. Miller, how long were you a clerk in Richmond?
13 A I got into the court as a Deputy Clerk on October
14 the first, ninehundred and twenty-eight. On the retirement
15 of the old clerk I was made the Clerk on October 1, 1942. I
16 obtained a leave of absence and served two and a half years in
17 the navy and came back and took over again as Clerk in March
18 of 1945 and I remained the Clerk until I retired as such at
19 the end of 1970.
20 Q Mr. Miller, have you been involved, and if you
21 will tell the court at what times in the drafting of
22 legislation, not the drafting but the proposal of certain
23 legislation for the clerks in the State of Virginia?
24 A I have been involved a great deal more than I
25 had wanted to be sir. Being in Richmond, right across the

1 street from the State Capitol the idea of appearing before a
2 committee and things in regard to all of the legislation re-
3 flecting the Clerk's whether it was proposed by the Clerk's
4 Association or otherwise, whether it was for the Clerk's or
5 against them I was invariably called on to go over and appear
6 before the committee until I became so I felt like I belonged
7 over there as much as I did in the Clerk's Office. Now, I
8 served on the Executive Committee of the Clerk's Association
9 for a number of years, a legislative committee for a good many
10 years but as to what those years were I could not state them
11 from memory.
12 Q Now, Mr. Miller, I refer you to the, basically
13 the sections dealing with the Clerk's compensation but
14 specifically Section 14.1-155.1. Now, did you. . .were you
15 involved in anyway in the proposing or did you testify before
16 any committee in regards to this legislation?
17 A Not in regards to that section itself, I don't think,
18 Mr. Bain. At the same time, if I remember correctly we had a
19 general legislation in that provided for an increase in the
20 amount of fees that we could retain if we earned them. As to
21 this particular section involving a certain population group
22 I do not remember whether I had anything to do with that or
23 not but I did not as a rule take part in any of the legislation
24 that was confied to a certain area or locality of the state.
25 I took part chiefly in the legislation effecting the Court

1 clerks of the state as a whole. The special legislation that
2 would be put in by an area we will say or a representative
3 from that area I was not called on generally because that was
4 a specific thing involving that area.
5 Q Mr. Miller, I will have you read, if you don't
6 mind, section 14.1-155 and tell the Court if you were involved
7 in the appearing of that legislation.
8 A Yes sir I was.
9 Q Would you explain to the court please....read
10 the statute to the Court please and then explain to the court
11 what the Clerk's Association intended for it to do?
12 A 14.1-155, Further ten percent increase in
13 maximum compensation of clerks of courts of record.-----Not-
14 withstanding any other provisions contained in this article
15 the maximum compensation authorized for the clerks of courts
16 of record is hereby increased by ten percentum. Nothing here-
17 in shall be construed to alter or affect in any manner
18 increases heretofore provided. This section shall apply
19 notwithstanding the provisions of any other law which places
20 any such clerk on a salary basis. That was enacted in 1964,
21 as it now stands. It was enacted first in the code of 1950,
22 enacted again in Section 14.155 in 1960 on page 485, In 1964
23 on page 386, the acts of 1964.
24 Q Mr. Miller, were you involved in the proposal of
25 that section to the General Assembly?

A Yes, all of the court clerks were because it was a general increase allowed in the limitations on the amount that a court clerk could retain. If I may go into the history of that a little while Mr. Bain. Before the old fee act went in, known as the West Fee Bill of 1916.

Q In 1916?

A Yes. A court clerk could retain all of the fees collected by him. They, then put the limitation on the fees he could obtain, set up in regard to the amount of the population of various areas that they were in. That came on down and was enacted again and revised and brought down until up until 1966 I think the base figure was $7,500. for those who were in an area of population above a certain bracket and that gave other basis and so forth on down into other brackets. In 1970, I think it was, they had gotten into such a figget on this business of population brackets that it was entirley inequitable throughout the state so they cut out all of the population bracket stuff in that section, 14.1-143 and put a base fee of $9,500. in place of the old base fee of $7,500. That, in effect, because of the increases that had been given that being an increase of about $2,000. from $7,500. to $9,500. acted to be an increase of about $3,400. somewhere in that area and if you will note on the, I think it's 14.143...let me get to it a moment...In the last paragraph of 14.1-143 which we have always been very careful to have put in there...

1 Nothing herein shall be construed to alter or affect in any
2 manner the increases heretofore provided and now in effect;...
3 because, I caught a bill over there once, we had gotten three
4 increases and somebody unauthorized by the association had
5 put in a revision of that section and they had not put in it
6 that clause there to preserve the increases they had been
7 given and had that section been passed as it was written, it
8 would have cut out all three of the increases we had already
9 gotten.
10 Q By increases, you are referring to the ten percent
11 twenty....
12 A Twenty percent, ten percent and so forth. Each
13 year we have had to be very careful because someone in the
14 General Assembly of their own volition very often will send
15 a revision of these sections or some of them and if they left
16 out the phrase that it shall not be construed to any way
17 alter or cutout, it would throw us back on the $9,500 basis
18 alone.
19 COURT: What is significance of the $9,500., is that
20 the base salary?
21 A Well sir, it is a fee base on which all of the
22 others are now computed. It used to be $7,500. We moved it
23 up in 1968 or 70 to $9,500. Until they put through that on
24 $9,500. that section of the general fees 143, contained a
25 provision that the locality could pay the clerk an additional

1 sum not to exceed $5,000., which should not be considered in
2 his total compensation as reported to the board. In otherwords,
3 I was under a limitation I think of about $17,000. at that
4 time and the City of Richmond was paying me a supplement of
5 $3,000., therefore I was allowed to keep the $17,000. as
6 provided for in general law and in addition the $3,000 I was
7 paid by the City of Richmond as a supplement and that way I
8 had a total compensation of about $20,000. When they enacted
9 that, putting it up in 1970, I believe, they cut out that
10 paragraph allowing the payment of a supplement by the locality
11 which isn't in there now.
12 Q Mr. Miller, go back now to this 14.1-155 section
13 which you had there before you and you read to us. You said
14 you were involved in the proposal and preparation of that
15 piece of legislation?
16 A Yes sir, that was a general increase.
17 Q Since it was a general increase would you
18 explain to the court then, specifically under that statute,
19 other than just the increase that was allowed, the second
20 paragraph there, what the Clerk's Association intended in
21 that?
22 A The intention of the Clerk's Association on all
23 of these things was to attempt to equalize, to pay the
24 clerks for doing the same amount of work. That was the basic
25 thought of cutting out the population brackets. I was very

1 instrumental in getting that done because it was my feeling
2 that if a clerk was in an area that had a population, we will
3 say of 50,000, if they did enough work to earn the fees, to
4 enable them to retain $18,000. I thought they ought to be
5 allowed to retain it even though their population bracket
6 did not enable them to retain it. It was our theory that
7 a clerk is paid just like a garage, he is paid so much for
8 each thing that he does, those fees are prescribed by code.
9 It used to be that he may collect, they are now, he shall
10 collect, therefore he is charged with the collection of those
11 fees. If he does the work to collect total fees of $50,000.
12 and he has expenses in his office of $30,000. even though
13 he was in an area that only had a 15,000 population I felt
14 that he should be able to retain exactly the same amount as
15 a man in an area of a population of 100,000 only collected
16 the same amount of fees because he was only doing the same
17 amount of work and I didn't feel that a court clerk who did
18 the work should be denied his fees because he happened to be
19 involved with a small population and that was the feeling of
20 the association as a whole and that was the reason that we
21 asked for the doing away with all of the areas of various
22 population brackets.
23 Q In this second paragraph of 155, it says, this
24 section shall apply notwithstanding the provisions of any
25 other law which places any such clerk on a salary basis. Now,

1 was that intended....did you all intend by that to include
2 clerks across the state no matter what form of government
3 they were under.
4 A We intended to include them...that would enable
5 them to earn ten percent more.
6 Q Whether they were on a salary basis or fee basis?
7 A That was up to the localities as we thought and
8 regard to the salary, we didn't know whether they could
9 collect it or whether they couldn't but if they could we
10 felt that they should.
11 Q I refer you to 155.1, the third paragraph under
12 that Mr. Miller, dealing in any city or county. The court has
13 had that paragraph read several times, what is your under-
14 standing of that particular paragraph?
15 A My understanding of that is that the minimum,
16 they use the word here salary instead of compensation, the
17 provided under general law is this. The code provides that
18 you shall get so much for recording a deed, so much for
19 issuing a license and the minimum salary that provided under
20 the general law would be the amount that you had collected
21 on those fees for the work you did. If you collected $10,000.
22 over and above your expenses then it would be $10,000. If
23 you collected $18,000., it would be $18,000.00 up to the
24 limit of $25,000. at which you are stopped. Now, it's
25 entirely possible in the fee system for the Clerk of the

1 Husting Court for the City of Richmond, as it was before it
2 was changed, to have been in debt being court clerk. I saw
3 one year down there the old clerk there and his expense
4 allowance was extremely low but the total fees taken in in
5 that office were $4,200. Therefore, after paying his two
6 deputies, the old clerk had exactly $400.00 left for being
7 Clerk of the Hustings Court. That was his minimum salary.
8 As I understand this, later on the fees increased and in my
9 last years there I was paying back to the state and city
10 excess fees from anywhere around twenty-two to thirty-five
11 thousand as Mr. Rassnick will tell you and I construed the
12 minimum that I could get as the amount of fees I took in up
13 to what I was restricted to under general law.
14 COURT: Are you saying that by usage and custom
15 that term has been construed as being the same as maximum
16 as long as you didn't get out side of a upper limit.
17 A That's right. I think it was intended to be
18 the same thing sir because I don't see any other reason.
19 There is no minimum salary to a clerk of court of record.
20 COURT: As far as you know in the legislative
21 history, whose language do you feel....
22 A That was the language of the drafting bureau I
23 guess sir because we have sent things in to them and they
24 would come back in such a way that we didn't know what we
25 sent in very often.

1 COURT: Well, now as far as the pattern behind it
2 can you agree or disagree with Mr. Wright as to what the
3 purpose of that statute was when it was initiated?
4 A I would say the purpose of the statute was, as
5 far as we could equalize the compensation of the court clerks
6 throughout the state doing the same amount of work.
7 COURT: And to do away with any distinctions or
8 classifications of population or anything other than the
9 amount of fees collected?
10 A Exactly sir. I was called over there the other
11 day before a group in the Senate, in fact the Senator from
12 up here, Mr. Michael called me at home and asked me if I
13 would come down there and to use his language he said, we
14 have got a bill down here and we have gotten completely lost
15 in the thicket of the court clerk's compensation and if you
16 could come down here and show us a path out of it, I said
17 I would do the best I can and so I went down there and we
18 consulted for about an hour and a half or two hours and I
19 don't know what they have done with it or what they expect to
20 do with it but that is the way it is looked on.
21 COURT: Not to jump ahead of the examination here,
22 how much experience or familiarity would you say you have
23 had in drafting legislation or proposing legislation or
24 considering legislation with regard to clerks and their
25 compensation?

1 A I would say that I appeared before a committee
2 on every bill involving the compensation of clerk's throughout
3 this state, not the special localities sir as I stated earlier,
4 from around 1938 to around 1968, except for the time I was in
5 the navy.
6 COURT: And you say you still maintain contact with
7 that aspect of legislature and you are called over there?
8 A No sir I do not and the court clerk's do not
9 send me over there but I receive phone calls from people in
10 the assembly themselves.
11 COURT: I see. All right, Mr. Bain.
12 Q Mr. Miller, have you infact been contacted by
13 the staff over the years from the Attorney General's Office
14 for your interpretation of some of these questions concerning
15 the compensation of court clerk's?
16 A If Your Honor please sir...
17 COURT: You may go ahead and answer.
18 A I receive numerous calls from over there, par-
19 ticularly when there was one older assistant attorney general
20 and knew me very well and he would say I have got an inquiry
21 about the fees on such and such a thing, what do you think of
22 it, what do they want, do you have any idea what the fee ought
23 to be. If I had an idea or thought I knew I told him, if I
24 didn't I also told him but I have received quite a number of
25 them. I have not received any in the past eight or ten years.

1 COURT: I take it that was because of your familiarity
2 with the legislative history of these sections?
3 A Exactly sir.
4 COURT: That's the basis, of course, on which we
5 are hearing you here today.
6 A I was in there and appeared before the committee
7 and so forth in regards to legislation and I should know
8 what was intended by it.
9 Q I have no further questions.
10 COURT: Mr. St. John.
11 ST. JOHN: Thank you Mr. Miller, I don't have any
12 questions.
13 COURT: Thank you very much sir. You may stand
14 aside.
15 Witness stood aside.
16
17 BAIN: Your Honor, I think counsel has stipulated
18 what, in fact, the Clerk received for the years 68 through
19 1973 and what amounts under the fee system also have been
20 stipulated and they are shown on the exhibits of the Plaintiff
21 which have been presented. Your Honor, we would like to move
22 for a five or ten minute recess.
23 COURT: All right.
24 BAIN: We conclude our evidence at this time.
25 COURT: We will take a recess for five minutes then

1 we will hear your evidence or other matters on the county
2 side. Mr. Bain, was there something else the plaintiff...
3 BAIN: Your Honor, I have talked with Mr. St. John
4 and so these gentlemen won't have to stay here forever but I
5 will propose at this point to put Mr. Rassnick on in reference
6 to the deputies case. He will be our main witness in that
7 case.
8 COURT: That's fine.
9 COURT RECESSED FOR FIVE MINUTES
10
11 COURT: We are hearing both cases together Mr.
12 Rassnick so you have already been sworn.
13
14 JOHN M. RASSNICK, Having been previously sworn
15 testified as follows:
16 DIRECT EXAMINATION
17 By: Mr. Bain
18 RASSNICK: May I say what I talked with you all
19 about.
20 BAIN: Yes sir.
21 RASSNICK: There seems to be some confusion about
22 the part the county can pay and so forth. Under the provisions
23 of the code for being clerk of the county, being elected
24 clerk of the county, if....let's take the county of Accomack,
25 the county can give up to but not exceeding the clerk could

from the county be paid strictly by the county up to, but not exceeding $5,000 for being county clerk. If he was clerk of the Board of Supervisors he could get up to but not exceeding $2,500. If he was clerk in road matters, he could get up to but not exceeding $300.00, but from all sources including fees, plus the amount he gets from the locality not to exceed $25,000.00.

COURT: $25,000.00 then applies to every source.

A From all sources. It is spelled out in 14.1-143, from all sources.

Q Mr. Rassnick, the second matter involves the deputy clerk's of court and the expenses of the office of the Circuit Court. Now, would you explain please to the court the sections that apply and what the compensation board does in reference to it?

A I have copies of budget request forms that we send to each clerk and I think I can explain it better by going this way. Now, each year the clerk files this form and, as you can see in column B, it says the annual rate approved by the Compensation Board for the calendar year, 1973 or 1974, whatever the case may be and the request, the annual request from the clerk in the next column, what she has requested for the next year, for the next calendar year and the increase in salary she has requested. Each year each clerk files with this board an annual expense request

1 or budget request and the board sends back to the clerk what
2 they have set for salaries for the next calendar year. When
3 she files her fee report at the end of the year, the fee
4 report is checked by the Compensation Board and also by the
5 auditors office to see that if we have set a salary of $6,000.
6 that employee can be paid up to but not exceeding $6,000.,
7 she pays her from fees. If she goes over $6,000. it comes
8 out of her pocket. We determine $6,000. as the amount of
9 salary. For example, if an employee was making in 1973,
10 $6,000. and she requested $6,600. for 1974 and the Compensation
11 Board approved $6,500. she could pay that employee up to but
12 not exceeding $6,500. for 1974.
13 COURT: You say she, you mean the clerk?
14 A The clerk, yes, from fees. If she were on the
15 fee basis.
16 Q You all make that determination at the Compen-
17 sation Board. Now, how is that usually worked out? Do you
18 have a specific increase that you permit the clerks, depending
19 on their experience, how do you work that?
20 A What they normally do is come up with a percentage
21 rate based on what the state employees got and I think for
22 1973, if they requested a ten percent increase....I will have
23 to look and see....if they requested ten percent the board
24 would in most instances give them the ten percent they
25 requested. If they requested fifteen they would probably get

1 ten and if they requested five they would give them five.
2 The clerk knows what she can pay from fees and what she feels
3 her fees will be, he or she, excuse me.
4 COURT: There again, as I understand Mr. Rassnick
5 and what Mr. Miller said, theoretically, under the fee
6 system that could come out of the clerk's own pocket.
7 A That's correct, yes sir. That's why I said if
8 we approve the salary for $6,000 the clerk might pay $5,000.
9 and that's all we are going to determine....all we are going
10 to allow on the fee report.
11 COURT: Even if the clerk didn't exceed the amount
12 allowed that may still in respect come out of his or her
13 pocket if the fees aren't high enough to pay them their
14 salary.
15 A That's correct, yes sir.
16 Q Now, Mr. Rassnick, the State Compensation Board
17 makes the decision as to what the deputies shall be paid,
18 is that correct?
19 A The Compensation Board determines what the salary
20 shall be paid from fees. In otherwords, they set a salary
21 and they are telling the clerk, you can pay up to but not
22 exceeding this amount from fees.
23 Q Now, if the Board of Supervisors of a county has
24 an objection to this amount, how do they go about making
25 their objection known? To the Compensation Board?

1 A If the Board of Supervisors object.

2 Q Yes, of a governing county. In otherwords, I

3 will let you read here the last sentence of Section 14.1-142

4 if you would to the court.

5 A The board of supervisors or other governing

6 body of a county or the council of a city may by resolution

7 adopted and certified lay before the State Compensation Board

8 any recommendation it may desire to make with respect to the

9 expense account of any officer mentioned as to increase or

10 decrease of expense.

11 COURT: Do you send notice of your scale or the set

12 amount to the governing body?

13 A Not of clerks, no sir.

14 Q Of deputy clerks?

15 A No sir. On all other constitutional officers

16 we do because they participate in their salary, example

17 Sheriff's, Commonwealth Attorney, the Treasurer or

18 Commissioner of Revenue.

19 COURT: How would the board know whether to object

20 to the salary you set, if you don't send a notice?

21 A I think what he is referring to and what you

22 are referring to, we get letters from boards of supervisors

23 saying that the salary of John Doe, we recommend that the

24 salaries for all county employees be increased by ten percent

25 or increased by fifteen percent.

1 COURT: Let suppose though you say the salary of a
2 certain deputy clerk is $7,000. but the board doesn't par-
3 ticularly like that now what notice would they have that you
4 have set it at $7,000?
5 A None unless they request us to send them a copy.
6 COURT: But the statute provides that they can
7 question or object to the amount set by you.
8 A That's correct. A clerk is a fee officer and
9 we don't set his salary. In otherwords, the statute says he
10 can earn so much.
11 COURT: Getting back to the deputies though. The
12 board does in affect set the salary of the deputy clerks.
13 A The compensation Board yes. In otherwords, they
14 authorize the clerk to pay that salary from the fees he
15 collects, the clerk collects. 141 says the Compensation
16 Board shall determine how many deputies and assistants are
17 necessary to the performance of the duties of the office and
18 so forth, (2) what should be the compensation of such
19 deputies and assistants, (3) what allowance, if any, should
20 be made for office expenses and premiums on official bonds,
21 and (4) the manner in which such compensation should be paid
22 or such allowance made.
23 COURT: Now are you saying this is just a bookkeeping
24 transaction by the county executive form of government or
25 this applies equally to every deputy no matter what type of

1 government there is?

2 A That's correct.

3 COURT: The County Executive Form of Government

4 makes no distinction in this particular section of the code.

5 A No sir. As I understand it, in the County

6 Executive Form of Government, the Board of Supervisors sets

7 the salary.

8 COURT: What is the purpose in your office setting

9 it?

10 A I don't know the answer to that question Your

11 Honor.

12 COURT: I see, but you do it for every other clerks

13 office.

14 A All clerks, yes sir.

15 COURT: What distinction does your office recognize

16 then, from that standpoint from one type of clerk's office?

17 A I don't think I follow your question Your Honor.

18 COURT: Have you ever construed it....

19 A In otherwords, when the clerk files the pink

20 form with us and the salary we have approved is in that first

21 column and the next column she is requesting an increase, he

22 or she as the clerk may be, and that's the figure we work

23 from. Now, if the board sets the salaries and says we can

24 go for a maximum of ten percent and if the clerk request ten

25 percent for each employee, we will give them ten. If they

1 request fifteen we give them ten, if they request five we
2 give them five and the reason we give them five, they feel
3 that the clerk knows that's all she can afford or he can
4 afford.
5 COURT: I think the suit, from what I can gather,
6 is that you authorize salaries to the deputies that the Board
7 of Supervisors won't pay.
8 A I am not familiar with the suit.
9 COURT: The question I have is why do you authorize
10 their salary at all if it is a County Executive Form of
11 Government? Is there anything that says you have to go
12 that route in determining your one-third...
13 ST. JOHN: Your Honor, may I ask....I don't know
14 whether you are though or not Mr. Bain....
15 BAIN: Go ahead.
16 CROSS EXAMINATION
17 By: Mr. St. John
18 Q Is it not a fact Mr. Rassnick, that you need
19 this information, you need to have the board determine the
20 amount that Mrs. Marshall can pay her clerks out of fees in
21 order to arrive at a figure on this report here for authorized
22 expenses. You have got a figure for clerk's expenses, which
23 are deductible from the total fees and you wouldn't know how
24 much to allow here unless you knew how much she had actually
25 paid the clerks, would you?

1 A In order to determine excess fees we have to
2 know what has been paid.
3 Q The reason you must, in advance, prove the
4 maximum amount to be paid is because, although Mrs. Marshall
5 can pay the clerk's less than you authorize her to pay if
6 she wants to, and you only give her credit on her expenses
7 for the amount she actually pays.
8 A That's right.
9 Q She can also pay them more than the amount you
10 authorize but you will not let her take that out of the fees
11 she collects and returns to the state, would you?
12 A That is correct.
13 Q She has to pay the amount you authorized her
14 to pay out of her own resources in otherwords?
15 A I would assume that is where it would come from.
16 Q That is why you have to authorize before hand
17 the maximum amount that she can pay these clerks and she will
18 get credit for it from her fees. Let's go into this step by
19 step Mr. Rassnick. Let me ask you some questions here, if I
20 may. Let's assume that for a given deputy clerk has been
21 authorized by the Compensation Board a salary of $7,000.00 a
22 year, okay?
23 A All right.
24 Q Let's assume that Mrs. Marshall pays that clerk
25 $8,000. a year, can she do this if she wants to?

1 A She can do this if she wants to but it would
2 determine excess fees and what would be her annual salary, we
3 would use $7,000.
4 Q And also, in addition to that you would not
5 allow her to take more than $7,000.00 as an authorized expense
6 to be deducted from the fees she has to send to Richmond?
7 A That is correct.
8 Q So, that's where that authorization for the
9 salaries are very significant from the outset, right?
10 A Right.
11 Q That winds up being an important determination
12 in the amount of money she has to send to Richmond.
13 A That's correct.
14 Q The whole thing turns on what you have authorized
15 and not what she actually paid.
16 A For example Your Honor, for the calendar year
17 1973 we originally authorized a total expenses involved of
18 this office of $27,339.00. Now, during the year we increase
19 those expenses. This report shows for the calendar year 1973
20 her expenses were $25,000.00.
21 Q So, she only got credit for $25,000.00 as
22 expenses.
23 A In determining her fees of which you have a copy/
24 Q Now, is it a fact Mr. Rassnick that actually as
25 far as what the deputy clerk's actually receive a clerk is

1 completely at liberty to pay them any amount of money that
2 they will accept and she is willing to pay.
3 A That's right. We have cases where we approve
4 the salary for $6,000 for example, and at the end of the year
5 the clerk is only paid $4,000.00, the deputy is paid $4,000.
6 and the reason being is we don't know what the clerk has told
7 this deputy, whether she will pay six, four or what but I
8 think he or she might have in mind if I have a good year I
9 will pay him six and save from paying excess fees.
10 COURT: The real question here is what construction
11 or policy has ever appeared that the right to determine the
12 amount of a deputies pay has ever been transferred to a
13 county board of supervisors?
14 ST. JOHN: That's the question I was going to ask
15 Your Honor. In the boards treatment of these cases it has
16 been the boards experience and is it the boards position now
17 that the amount of the deputy clerk's salary is within the
18 scope of the decision making policy of the board of supervisors
19 under the executive form of government?
20 A Well, I don't know. I would assume that the
21 board takes the position that the clerk has gotten with the
22 county people and this is what all other county people are
23 getting because the county sets all the salaries. I could
24 be wrong, I don't know. In otherwords, the county board of
25 supervisors sets the salaries of all county employees.

1 Q Does this include the Clerk of the Circuit Court?
2 Under the executive form of government?
3 A It is my understanding....
4 COURT: I think now you might construe that with
5 the clerk. What section of the code does it say that the
6 deputies are under the same thing? That the county executive
7 form of government affects the disposition of a deputy clerks
8 salary?
9 A I think it is section 619...15.1-616.
10 COURT: You are saying that a deputy clerk is an
11 employee of the county.
12 A Yes sir.
13 COURT: Well, that may be the real question which
14 is the issue in this case. That is the position that
15 apparently has been taken but Mr. Rassnick, as I understand
16 it the only interest that the Compensation Board has is the
17 final division by one-third and that portion which represents
18 excess fees?
19 A That's correct.
20 COURT: And to the extent that the deputy clerks
21 actual salary enters into it then your board is involved?
22 A Right.
23 COURT: Even though your board may authorize a
24 higher salary, you use the figure which represents actual
25 salary?

1 A That is correct.

2 COURT: I understand now.

3 Q If Your Honor please I don't have any more

4 questions.

5 COURT: Any further questions Mr. Bain?

6 REDIRECT EXAMINATION

7 By: Mr. Bain

8 Q Mr. Rassnick, when the State Compensation Board

9 makes the determination under 141 of what the salary shall be

10 for the deputy, when do they authorize the expenses to be

11 incurred.

12 A The calendar year.

13 Q The calendar year beginning January 1st and

14 ending December 31st?

15 A Right.

16 Q Now, under 141, it says, you shall determine

17 what the salary shall be and it's my understanding that you

18 are saying that the board of supervisors can object to that

19 but you all set the determination of the salary, salaries of

20 the deputy clerks.

21 A Yes. For example, if Mrs. Marshall asked for

22 a fifteen percent increase across the board and we got a

23 letter from the board of supervisors and they said they con-

24 curred in her request and the board had made a determination

25 that they were going to give ten percent, I am sure they would

instruct me to write the board of supervisors and tell them the employees will get ten percent and if she asked for fifteen percent and the board of supervisors say five they would instruct me to write the board and ask, on what basis should they get five percent, we have determined that all employees will get, all clerk's deputies will get ten percent, if requested.

Q What if the clerk request ten percent and the board of supervisors makes no provision, sends no letter?

A If the Compensation Board had determined that she would get ten percent then she would get ten percent, if she requested five, she would get five.

COURT: Mr. Rassnick, let's suppose that in the circumstances she needed an extra deputy and you approve it. Now, do you say the board of supervisors has the right to reject that?

A In otherwords, what I am saying is that if Mrs. Marshall wrote and requested an additional deputy and the Compensation Board approved it...

COURT: Right, who would have the right to veto it?

A I don't think anybody would. If she wants it, fine...

COURT: The board of supervisors wouldn't veto that, what you said?

A They could take us to court.

1 COURT: Yes, that's what I am getting at. How is
2 that different than setting the salary?
3 A Sir.
4 COURT: Why is it any different then than setting
5 the salary for the deputy than determining whether an
6 additional deputy shall be allowed, what's the difference?
7 Why shouldn't they take you to court on that?
8 A What I am saying Your Honor. Maybe I am mis-
9 understanding your question but we set the salary for Mrs.
10 Marshall on the first of January and if she is not satisified
11 with that she can also go to court. Under the 14.1-151, as
12 well as the board of supervisors.
13 COURT: Well, 14.1-141 says that the Compensation
14 Board shall determine (1) How many deputies and assistants
15 if any, are necessary to the efficient performance of the
16 duties of the office of the officer filing a report required
17 by 14.1-136.
18 A Right.
19 COURT: And you say that Mrs. Marshall has to file
20 that report?
21 A Yes sir.
22 COURT: Can you determine how many deputies she
23 needs for the efficient performance of her office?
24 A Right.
25 COURT: And number two, what shall be the

1 compensation of such deputies and assistants.

2 A That's right.

3 COURT: And you acknowledge that no one has the

4 right to veto you on number one but they do on number two.

5 A What I am saying Your Honor, if this board sets

6 the salaries of the deputies....

7 COURT: That's the Compensation Board?

8 A The Compensation Board sets the salaries of the

9 deputies, either the Clerk or the board of supervisors under

10 this new section that was enacted in 1971 or 1972, through

11 Mr. Miller, they can appeal to a three judge court.

12 COURT: I can understand that. But let's suppose

13 we want to appeal, what's suppose to be paid?

14 A The salary we approve in otherwords, up to the

15 amount we approve.

16 COURT: It doesn't say that, it doesn't say up to

17 the amount, it says the compensation shall be paid. It doesn't

18 say the maximum, it says what shall be the compensation.

19 A Are you reading 141?

20 COURT: Yes sir.

21 A The Compensation Board shall determine how many

22 deputies and assistants , if any, are necessary to the efficient

23 performance of the duties of the office of the officer filing

24 a report required by 136, what should be the compensation of

25 such deputies and assistants.....

1 COURT: Yes sir.

2 A What allowance, it says what should be, what
3 should be, what amount, if any, should be made for office
4 expenses and premiums on official bonds, and (4) the manner
5 in which such compensation should be paid or such allowance
6 made. In otherwords, I don't think that the Compensation
7 Board takes the position that a clerk, who is on a fee basis,
8 and we set the salary at $6,000. and if she doesn't have the
9 fees, she doesn't get the $6,000.

10 COURT: Let's suppose she has got the fees and it's
11 just a question of whether the county board decides it isn't
12 going to pay it. What is the purpose in your setting a salary?

13 A I don't know the answer to that question.

14 COURT: In otherwords, it's an exercise of futility
15 if they don't do it. If they haven't appealed they have by-
16 passed

17 A That's right.

18 COURT: They have arbitrarily decided on their own
19 not to follow what you have said or follow the amount set by
20 you.

21 ST. JOHN: Your Honor, may I point out that the
22 article we are talking about now, as Mr. Bain presented to Mr.
23 Rassnick is on maximum compensation of certain fee officers.
24 But, we are not talking about a fee system here, this whole
25 discussion is predicated on the fact that if you are using

1 these sections you are under the fee system.

2 COURT: In the county executive form of government

3 this section does not apply at all, Section 14.1-141.

4 RASSNICK: May I see title 15 a minute?

5 ST. JOHN: Here is the section I am talking about.

6 BAIN: I take you back to Section 15.1-600, again

7 it says office employees subject to limitations made by

8 general law. 15.1-600 under the county executive form which

9 says they shall pay all officers and employees subject to

10 such limitations as may be made by general law.

11 A Your Honor, Section 15.1-619...

12 COURT: All right.

13 A Officers and employees to receive regular

14 compensation; fee system abolished; collection and disposition

15 of fees. As I read before, under the second paragraph,

16 paragraph A where it sets out how we are to determine the

17 fees, the allowance to which such ...to which such officer

18 would be entitled by general law but for the provisions of

19 this section...

20 ST. JOHN: On the clerk's you see, for any fee

21 system to be reported to the compensation board when you are

22 under the executive system is to determine what part of the

23 whole pie the state is entitled to. Is that your opinion

24 in effect of all of these sections Mr. Rassnick?

25 A That's my opinion, yes sir.

1 Q All right.

2 WOOD: I am a bit confused about all of this.
3 I was going to object to Mr. St. John's question. Mr. St.
4 John has apparently made this man his witness and asked him
5 what all the sections before the court mean. I object to
6 that...

7 COURT: The court has asked questions of Mr.
8 Rassnick. The question is how it has been construed, what
9 the circumstances are, the way they carry them out. I realize
10 that Mr. St. John picked up a question asked by the court but
11 Mr. St. John took to bring it into prespective with other
12 questions of the code. Your objection is noted Mr. Wood.

13 WOOD: Yes sir.

14 COURT: All right, any other questions Mr. Bain?

15 REDIRECT EXAMINATION

16 By: Mr. Bain

17 Q Yes, Mr. Rassnick, those sections under the
18 county form of government, particularly 619, the one you
19 mentioned. Now you go back to Section 15.1-600 and that
20 section says that the county board of supervisors shall,
21 subject to such limitations as may be made by general law
22 fix the compensation of all officers and employees of the
23 county. Now, is not Section 14.1-141, and 142, is that not
24 general law dealing with the Clerks and their deputies and
25 the compensation of them?

A That is correct, yes sir.

Q Now, what is your opinion then, you have construed what 619 means as to section 600, does not the general law go beyond what the county executive form of government provides?

A My understanding is in the county executive form of government and the boards understanding, not my understanding, my understanding is what the boards understanding is, that in the county executive form of government the board of supervisors shall set the salaries of the employees. Now, as far as clerks are concerned, to bring in something similar, a special legislation in cities, like the city of Newport News, that says a clerk shall be on a salary basis and the clerk shall retain all fees, I mean the city shall retain all fees and pay all salaries but the Compensation Board shall determine what the salary should be. Now, here again, why should the Compensation Board set the salaries when they keep all fees and retain all fees, we don't get it. Now, this case, you keep the fees until the end of the year and we determine what the excess is and we get one-third.

COURT: But there is another aspect in fee setting, as I understand it. I believe you can answer this Mr. Rassnick. There is, wherever there is a dispute about what is to be paid a constitutional officer your board is the author of that account and finally a three judge court makes

1 the ultimate decision, doesn't it?

2 A That's correct.

3 COURT: In every instance of a constitutional

4 officer and the expenses of his office?

5 A That's comect. Including clerk's of court.

6 COURT: That's a continental process as I understand

7 it. In otherwords, constitutional officers are governed in

8 their expenses of office and their allowances?

9 A That's correct, yes.

10 COURT: Has there ever been any intrepretation

11 that you know of that says a clerk is not a constitutional

12 officer in the county executive form of government?

13 A None that I know of, no sir. She is elected by

14 the people.

15 COURT: A sworn constitutional officer.

16 A Yes sir.

17 COURT: But yet, the construction that has been

18 placed under the county form of government is that salary

19 setting is advised around them, in a sense?

20 A That's right.

21 COURT: In the sense, that is the effect of it?

22 A That's the effect of it.

23 COURT: All right, any other questions of Mr.

24 Rassnick?

25 Q Salary setting by whom?

A The board sets the salary and it appears to have come out today that the board of supervisors also sets the salaries.

Q But what you are saying, if the board of supervisors disagrees then they can appeal?

A Yes sir. Under 14.1-52.1

WOOD: Your Honor, may I ask a question of this witness?

COURT: No sir.

A 52 and then this section came in that said the clerks of the court, any clerk of a court of record whose expenses or other allowances or when the salary and the number of his deputies are affected by the annual decision of the board, talking about the Compensation Board, or as to such expenses or other allowances and so forth and so on. The same is provided in 14.1-52, this says that the board of supervisors may, shall...appeal.

Q They appeal in the same way?

A Right.

Q Mr. Rassnick, if the county board of supervisors set the deputies salaries under the County Executive Form of government then why to they have to appeal their disputes as to what's granted by the Compensation Board?

A Repeat the question again. If the board of supervisors set the salary?

Q If what you are saying interpretation of the Compensation Board is that, under County Executive Form, the board of supervisors can set the deputies salaries.

A Right.

Q. Then why is this provision made in 14.1-52.1 that the board of supervisors can appeal to the Compensation Board?

COURT: I don't know that that's really appropriate to ask Mr. Rassnick. That is not a matter of determination in the court and I think unless it involves a manner in which they construe something in his office it doesn't affect the way they have been handling the office, I think that it is irrelevant as far as this case is concerned.

Q I will withdraw the question Your Honor.

COURT: Yes sir.

Q I have no further questions of this witness.

COURT: Any other questions of Mr. Rassnick?

ST. JOHN: No sir.

COURT: Any objection to Mr. Rassnick being excused.

BAIN: No Your Honor.

Witness stood aside.

BAIN: Now, Your Honor, I put Mr. Rassnick on and I want to put Shelby on in the deputies case but I will wait until Mr. St. John is concluded the first case.