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214 Va. 171

IN THE

Supreme Court of Virginia

RECORD NOS. 8221, 8222

ANDREW P. MILLER, ATTORNEY GENERAL OF VIRGINIA,
Petitioner,

v.

DAVID B. AYRES, JR., COMPTROLLER OF VIRGINIA,
Respondent.

APPENDIX

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Respondent.

APPENDIX

ORDER OF THE COURT DOCKETING RECORD NO. 8221

Upon a Petition for a Peremptory Writ of Mandamus

On April 9, 1973, came Andrew P. Miller, Attorney General of Virginia, and filed his petition praying that a peremptory writ of mandamus do forthwith issue, to be directed to David B. Ayres, Jr., Comptroller of Virginia, requiring and commanding him to issue warrants upon the State Treasury for payment of such amounts as may be authorized by vouchers of the State Council of Higher Education for development and administration of the program of financial aid authorized under the provisions of Chapter 106 of the Acts of Assembly of 1973, as more fully set out in said petition, and for other relief. And the petitioner further prays that the said David B. Ayres, Jr., Comptroller of Virginia, be made a party defendant to the said petition and be required to answer the same.

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

And it is further ordered that Francis C. Lee, Esquire, be, and he is hereby, appointed to represent the said respondent in this proceeding; that the petitioner file with the clerk twenty-five copies of his brief on or before May 9, 1973, and that the respondent file with the clerk twenty-five copies of his brief on or before May 23, 1973, and that the petitioner file with the clerk twenty-five copies of his reply brief, if any, on or before May 30, 1973, and the cause is continued.

A Copy,

Teste:

H. G. TURNER
Clerk

ORDER OF THE COURT DOCKETING RECORD NO. 8222

Upon a Petition for a Peremptory Writ of Mandamus

On April 9, 1973, came Andrew P. Miller, Attorney General of Virginia, and filed his petition praying that a peremptory writ of mandamus do forthwith issue, to be directed to David B. Ayres, Jr., Comptroller of Virginia, requiring and commanding him to issue warrants upon the State Treasury for payment of such amounts as may be authorized by vouchers of the State Council of Higher Education for administration of the tuition loan assistance program under the provisions of Chapter 4.1 of Title 23 of the Code of Virginia, as amended by Chapter 2 of the Acts of Assembly of 1973, as more fully set out in said petition, and for other relief. And the petitioner further prays that the said David B. Ayres, Jr., Comptroller of Virginia, be made a party defendant to the said petition and be required to answer the same.

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

And it is further ordered that Francis C. Lee, Esquire, be, and he is hereby, appointed to represent the said respondent in this proceeding; that the petitioner file with the clerk twenty-five copies of his brief on or before May 9, 1973, and that the respondent file with the clerk twenty-five copies of his brief on or before May 23, 1973, and that the

petitioner file with the clerk twenty-five copies of his reply brief, if any, on or before May 30, 1973, and the cause is continued.

A Copy,

Teste:

H. G. TURNER
Clerk

NOTICE OF PETITION FOR WRIT OF MANDAMUS

(Record No. 8221)

To: DAVID B. AYRES, JR., Comptroller of Virginia

Please take notice that on Monday, April 9, 1973, the undersigned will make application to the Supreme Court of Virginia for a writ of mandamus against you in your official capacity, a copy of the petition for said writ being attached hereto.

ANDREW P. MILLER
Attorney General of Virginia

ANDREW P. MILLER
Attorney General

WILLIAM G. BROADDUS
D. PATRICK LACY, JR.
KATHERINE L. GOOLSBY
Assistant Attorneys General

Supreme Court–Library Building
1101 East Broad Street
Richmond, Virginia 23219

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Petition for Writ of Mandamus with copy of the petition for mandamus is hereby accepted this 9th day of April, 1973.

DAVID B. AYRES, JR.
Comptroller of Virginia

* * *

PETITION FOR WRIT OF MANDAMUS

(Record No. 8221)

Now comes Andrew P. Miller, Attorney General of Virginia, by this petition for a writ of mandamus and respectfully represents to the Court as follows:

1. Chapter 106 of the Acts of Assembly of 1973 (House Bill No. 1453) creates a scholarship assistance program to be administered by the State Council of Higher Education. The scholarship assistance shall be "in the form of grants, or loans to students who wish to enroll, or are enrolled, at any accredited, degree-granting public institution of higher education in Virginia, and in the form of loans for students who wish to enroll, or are enrolled, in any accredited, degree-granting, private, nonprofit, institution of higher education in Virginia, excepting those institutions whose primary purpose is to provide religious training or theological education."

A copy of Chapter 106 of the Acts of Assembly of 1973 is attached to this petition as "Exhibit A."

2. Subsection (b) of § 23-38.49 of Chapter 106 provides that "[l]oans made to students attending eligible private institutions shall be repayable in money or by actions beneficial to or by service to the Commonwealth." Subsection (d) of § 23-38.49 sets forth the actions which will constitute actions beneficial to, or of service to, the Commonwealth.

3. Item 513.1 of Chapter 464 of the Acts of Assembly of 1973 (being the amendments to the Appropriation Act for the biennium ending June 30, 1974) appropriated from the General Fund of the State Treasury the sum of $10,000 for the first year of the biennium and $740,000 for the second year of the biennium for "Tuition loan assistance program to Virginia residents attending private or public institutions of higher education in Virginia . . .", 10% of which shall be allocated to Chapter 106 (House Bill No. 1453).

4. Your petitioner has been notified in writing by David B. Ayres, Jr., Comptroller of Virginia, that he entertains doubt respecting the constitutionality of that portion of Chapter 106 which permits loans to students who may be attending sectarian institutions of higher education to be repayable by actions beneficial to or by service to the

Commonwealth. Mr. Ayres states that he will not honor vouchers from the State Council of Higher Education and will not issue warrants for payment under the provisions of Chapter 106 until there has been a final adjudication by the Supreme Court of Virginia pursuant to § 8-714 of the Code of Virginia (1950), as amended, determining all legal issues involved.

A copy of Mr. Ayres' letter is attached as "Exhibit B."

5. The specific question raised by the Comptroller of Virginia is as follows:

"Do the provisions of Chapter 106 of the Acts of Assembly of 1973 authorizing loans to students who may be attending sectarian institutions, which loans may be repayable by actions beneficial to or by service to the Commonwealth, contravene the limitations placed upon the power of the General Assembly by Sections 10 and 11 of Article VIII of the Constitution of Virginia?"

6. The letter from the Comptroller of Virginia to your petitioner constitutes sufficient grounds for this Court to exercise jurisdiction in this case and to consider and determine all questions raised in such letter or in this petition or in Respondent's answer to this petition, such jurisdiction being expressly conferred by § 8-714 of the Code of Virginia (1950), as amended.

7. Your petitioner believes and so avers that Chapter 106 of the Acts of Assembly of 1973 is a valid enactment in all respects.

8. Your petitioner is of the opinion that the taking of evidence is necessary for the proper disposition of this petition.

Wherefore, your petitioner prays:

A. That David B. Ayres, Jr., Comptroller of Virginia, be made a party defendant to this petition and required to answer the same;

B. That this matter be placed upon the Court's docket for its June, 1973, session and set for oral argument at that time;

C. That this Court consider and determine all questions raised or to be raised in this proceeding;

D. That this Court adjudge that Chapter 106 of the Acts of

Assembly of 1973 is not in violation of any provision of the Constitution of Virginia; and

E. That a writ of mandamus be issued by this Court directed to the said David B. Ayres, Jr., Comtproller of Virginia, requiring him to issue warrants upon the State Treasury for payment of such amounts as may be authorized by vouchers of the State Council of Higher Education for development and administration of the program of financial aid authorized under the provisions of Chapter 106 of the Acts of Assembly of 1973.

ANDREW P. MILLER
Attorney General of Virginia

ANDREW P. MILLER
Attorney General

WILLIAM G. BROADDUS
D. PATRICK LACY, JR.
KATHERINE L. GOOLSBY
Assistant Attorneys General

Supreme Court–Library Building
1101 East Broad Street
Richmond, Virginia 23219

AFFIDAVIT

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

I, MARY W. LLEWELLYN, a Notary Public in and for the city aforesaid do hereby certify that Andrew P. Miller stated on oath that he is Attorney General of Virginia, and that the matters and things stated in the foregoing petition are true to the best of his knowledge, information and belief.

Given under my hand this 9th day of April, 1973.

My commission expires: April 28, 1975.

MARY W. LLEWELLYN
Notary Public

EXHIBIT A

CHAPTER 106

An Act to repeal Chapter 4.2 of Title 23 of the Code of Virginia containing sections numbered 23-38.20 through 23-38.29 and to amend the Code of Virginia by adding in Title 23 a chapter numbered 4.4, containing sections numbered 23-38.45 through 23-38.53, the repealed and added sections creating a college scholarship assistance program for certain Virginia college students; and to appropriate funds.

[H 1453]

Approved MAR 9 1973

Be it enacted by the General Assembly of Virginia:

1. Chapter 4.2 of Title 23 of the Code of Virginia containing sections 23-38.20 through 23-38.29 is repealed.
2. That the Code of Virginia be amended by adding in Title 23 a chapter numbered 4.4, containing §§ 23-38.45 through 23-38.53, as follows:

CHAPTER 4.4

College Scholarship Assistance Act

§ 23-38.45. There is hereby created a scholarship assistance program to be administered by the State Council of Higher Education. The program shall consist of grants and loans to certain students attending public colleges in Virginia and of loans to certain students attending certain private colleges in Virginia.

§ 23-38.46. (a) The State Council of Higher Education shall develop and administer a Statewide program of financial aid to eligible undergraduate students at eligible institutions of higher education in Virginia. Such aid shall be made in the form of grants, or loans to students who wish to enroll, or are enrolled, at any accredited, degree-granting public institution of higher education in Virginia, and in the form of loans for students who wish to enroll, or are enrolled, in any accredited, degree-granting, private, nonprofit, institution of higher education in Virginia. excepting those institutions whose primary purpose is to provide religious training or theological education.

(b) Only students who are bona fide domiciliaries of Virginia as defined by § 23-7 of the Code of Virginia and who are full-time, undergraduate students shall be eligible to receive such grants or loans.

(c) Grants or loans shall be made for one year, but may be renewed annually by the State Council of Higher Education for no more than three subsequent years of study in an undergraduate degree program.

§ 23-38.47. All grants and loans made pursuant to this chapter shall be based on such criteria as shall be established by the State Council of Higher Education, which criteria shall include the student's financial need. Need is defined as the difference between (i) the amount required to meet the student's actual cost of attendance at the institution of his choice, and (ii) the amount computed by the State Council of Higher Education to be available to such student from his own resources and those of his family for meeting such expenses. In determining the amount a student and his family can contribute to his education, the State Council of Higher Education shall take into consideration factors such as family income; any unusual circumstances or extraordinary expenses of the student or his family, including family size and number of students attending college; any assets which may be available to the student or his family to help defray the cost of his attendance; and any other nationally accepted criteria for determination of financial need.

§ 23-38.48. The State Council of Higher Education shall determine the amount of the grant or loan to be awarded each qualified applicant based on criteria established pursuant to § 23-38.47, but no grant or loan shall exceed one thousand dollars for each full-time academic year.

§ 23-38.49 (a). The State Council of Higher Education shall make grants and loans to eligible students attending public institutions in Virginia on the basis of such terms and conditions, not inconsistent with the provisions of this chapter, as the State Council of Higher Education deems appropriate.

(b) Loans made to eligible students attending eligible private institutions shall be repayable in money or by actions beneficial to or by service to the Commonwealth as provided hereafter.

(c) Where repayment is made in money pursuant to § 23-38.49 (b), it shall be in accordance with a schedule established by the State Council of Higher Education, such schedule to provide that full payment will be made in an orderly fashion over a period of time commencing on the date the recipient ceases to be a full-time, undergraduate student in the institution or becomes ineligible to repay in accordance with § 23-38.49 (d) and extending over a period of years equal to twice the number of years for which the loan was received, provided, however, that such period of time shall be extended by such number of years as the recipient may spend in additional full-time, undergraduate or graduate study in a regionally accredited institution of higher education, such time of extension not to exceed six years.

(d) Where repayment is made by actions beneficial to, or of service to, the Commonwealth pursuant to § 23-38.49 (b), the recipient may make repayment for each successfully completed academic year in which a loan was received by complying with any one of, or combination of, the following actions:

(1) Reside and be domiciled in Virginia and be employed by the Commonwealth of Virginia or any of its political subdivisions including all State and local agencies and authorities for a period of one year for each year a loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

(2) Reside and be domiciled in Virginia and be employed by an organization or activity, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation and which does not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office for a period of one year for each year a tuition assistance loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

(3) Reside and be domiciled in Virginia and be gainfully employed in or out of State other than as enumerated in § 23-38.49 (d) (1) and (2) hereof for a period of one and one-half years for each year a tuition assistance loan was received, provided that for teachers and those similarly situated an academic year constitutes a full year;

(4) Reside and be domiciled in Virginia for a period of two years for each year a tuition assistance loan was received;

(5) Serve on active duty anywhere as a member of the armed services of the United States for a period of one year for each year a tuition loan was received.

(e) When the recipient leaves the Commonwealth of Virginia to reside elsewhere, except for that reason for which extensions of time

for a maximum period of six years are authorized in § 23-38.49(c), the balance of the loan or loans not previously repaid as authorized in § 23-38.49(d) above shall become due forthwith and repayable in money in accordance with the schedule authorized in § 23-38.49 (c) hereof.

(f) Should a recipient of a loan leave the institution for other than meritorious reasons during the academic year for which the loan was granted, said loan for said year shall be due forthwith and repayable in money as required in § 23-38.49 (c) hereof.

(g) Whether a recipient, who is compelled to withdraw from an institution during the academic year, in order to perform military service, or for other meritorious reasons, shall be obligated to repay the loan for said year in full or in part and whether by the method set forth in § 23-38.49 (c) or (d) hereof shall be determined by the State Council of Higher Education on a basis consistent with the principles applied by the public institutions of higher education of the Commonwealth in making tuition refunds on comparable cases of withdrawal.

(h) Simple interest at three per centum per annum shall accrue on the unpaid balance of each loan from the date on which the recipient ceases to be a full-time, undergraduate student in the institution, provided, however, that no interest shall accrue during periods when the recipient is pursuing full-time, undergraduate or graduate studies in a regionally accredited institution of higher education.

§ 23-38.50. The full amount of each grant or loan awarded to each applicant shall be used only for payment of charges for tuition, fees, room, board or other educational expenditures approved by the State Council of Higher Education which the applicant is obligated to pay for the academic year for which the grant or loan is awarded.

§ 23-38.51. The State Council of Higher Education shall promulgate such rules and regulations as it deems necessary to effectuate the program established by this act.

§ 23-38.52. The State Council of Higher Education is authorized, subject to the provisions of Chapter 10 of Title 2.1 of the Code of Virginia, to employ such staff members as it may deem necessary to supervise and administer this program and is further authorized to accept and expend gifts and donations from public and private sources to enable it better to carry out this program and its objectives.

§ 23-38.53. The provisions of this chapter shall be severable and, if any of its provisions shall be held unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or impair any of the remaining provisions.

3. The appropriations made for the purpose of Chapter 4.2 of Title 23 by the 1972 General Assembly shall be available for the purposes hereof and are reappropriated therefor.

EXHIBIT B

March 27, 1973

The Honorable Andrew P. Miller
Attorney General of Virginia
Supreme Court Building
Richmond, Virginia 23219

Dear Mr. Miller:

Chapter 106 of the Acts of Assembly of 1973 creates a scholarship assistance program to be administered by the State Council of Higher Education. The assistance shall be in the form of grants or loans to students who wish to enroll or are enrolled at any accredited degree-granting public institution of higher education in Virginia, and in the form of loans for students who wish to enroll or are enrolled in any accredited, degree-granting, private, non-profit institution of higher education in Virginia, except in those institutions whose primary purpose is religious or theological education. The program has been funded by appropriations contained in Chapter 106 and in Chapter 464 of the Acts of Assembly of 1973.

Section 23-38.49 (b) of the Act provides that loans shall be repayable in money or by actions beneficial to, or by service to, the Commonwealth. Section 23-38.49 (d) states that:

> "(d) Where repayment as made by actions beneficial to, or of service to, the Commonwealth pursuant to § 23-38.49 (b), the recipient may make repayment for each successfully completed academic year in which a loan was received by complying with any one of, or combination of, the following actions:
>
> "(1) Reside and be domiciled in Virginia and be employed by the Commonwealth of Virginia or any of its political subdivisions including all State and local agencies and authorities for a period of one year for each year a loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;
>
> "(2) Reside and be domiciled in Virginia and be employed by an organization or activity, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or

educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation and which does not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office for a period of one year for each year a tuition assistance loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

"(3) Reside and be domiciled in Virginia and be gainfully employed in or out of State other than as enumerated in § 23-38.49 (d) (1) and (2) hereof for a period of one and one-half years for each year a tuition assistance loan was received, provided that for teachers and those similarly situated an academic year constitutes a full year;

"(4) Reside and be domiciled in Virginia for a period of two years for each year a tuition assistance loan was received;

"(5) Serve on active duty anywhere as a member of the armed services of the United States for a period of one year for each year a tuition loan was received."

Although no demand has been made for disbursement of money, I entertain doubt respecting the constitutionality of that portion of the Act which permits loans to students who may be attending sectarian institutions to be repayable by actions beenficial to, or by service to, the Commonwealth. Accordingly, I do not believe that this office should issue warrants authorizing payment from appropriations made pursuant to Chapter 106 or Chapter 464 of the Acts of Assembly of 1973. Therefore, you are notified that I shall refuse to honor vouchers from the State Council of Higher Education and will not issue warrants for payment under the Act until there has been final adjudication by the Supreme Court of Virginia pursuant to § 8-714 of the Code of Virginia (1950), as amended, determining all legal issues involved.

The question which concerns me is as follows:

Do the provisions of Chapter 106 of the Acts of Assembly of 1973 authorizing loans to students who may be attending sectarian institutions, which loans may be repayable by actions beneficial to, or by service to, the Commonwealth, contravene the limitations placed upon

the power of the General Assembly by the Sections 10 and 11 of Article VIII of the Constitutions of Virginia?

Very truly Yours,

DAVID B. AYRES, JR.
Comptroller

DBA: ns

NOTICE OF PETITION FOR WRIT OF MANDAMUS

(Record No. 8222)

To: DAVID B. AYRES, JR., Comptroller of Virginia

Please take notice that on Monday, April 9, 1973, the undersigned will make application to the Supreme Court of Virginia for a writ of mandamus against you in your official capacity, a copy of the petition for said writ being attached hereto.

ANDREW P. MILLER
Attorney General of Virginia

ANDREW P. MILLER
Attorney General

WILLIAM G. BROADDUS
D. PATRICK LACY, JR.
KATHERINE L. GOOLSBY
Assistant Attorneys General

Supreme Court–Library Building
1101 East Broad Street
Richmond, Virginia 23219

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Petition for Writ of Mandamus with copy of the petition for mandamus is hereby accepted this 9th day of April, 1973.

DAVID B. AYRES, JR.
Comptroller of Virginia

PETITION FOR A WRIT OF MANDAMUS

(Record No. 8222)

Now comes Andrew P. Miller, Attorney General of Virginia, by this petition for a writ of mandamus and respectfully represents to the Court as follows:

1. Chapter 18 of the Acts of Assembly of 1972, codified as Chapter 4.1 of Title 23 of the Code of Virginia (§§ 23-38.11 through 23-38.19) established "a program of tuition assistance in the form of loans to bona fide residents of Virginia who attend private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education." The State Council of Higher Education was designated to administer the program.

2. This Court in *Miller* v. *Ayres,* 213 Va. 251 (1972), held this Act unconstitutional because it violated the provisions of Sections 10 and 11 of Article VIII of the Constitution of Virginia.

3. At its 1973 session the General Assembly amended and reenacted §§ 23-38.12, 23-38.13, 23-38.15, 23-28.16, 23-38.17 and 23-38.18 of the Code of Virginia (Senate Bill No. 640, Chapter 2 of the Acts of Assembly of 1973).

A copy of Chapter 2 of the Acts of Assembly of 1973 is attached to this petition as "Exhibit A."

4. The effect of the amendments to § 23-38.15 is to provide that the loans "shall be repayable in money or by actions beneficial to, or of service to, the Commonwealth. . . ." Subsection (c2) of § 23-38.15 sets forth the actions which will constitute repayment by actions beneficial to, or of service to, the Commonwealth.

5. Item 513.1 of Chapter 464 of the Acts of Assembly of 1973 (being the amendments to the Appropriation Act for the biennium ending June 30, 1974) appropriated from the General Fund of the State Treasury the sum of $10,000 for the first year of the biennium and $740,000 for the second year of the biennium for "Tuition loan assistance program to Virginia residents attending private or public institutions of higher education in Virginia . . .", 90% of which shall be allocated to Chapter 2 of the Acts of Assembly of 1973 (Senate Bill No. 640).

6. Your petitioner has been notified in writing by David B. Ayres, Jr., Comptroller of Virginia, that he entertains doubt respecting the constitutionality of that portion of Chapter 4.1 of Title 23 of the Code of Virginia (§§ 23-38.11 through 23-38.19), as amended by Chapter 2 of the Acts of Assembly of 1973, which permits loans to be repayable by actions beneficial to, or of service to, the Commonwealth. Mr. Ayres states that he will not honor vouchers from the State Council of Higher Education and will not issue warrants for payment under the provisions of said Chapter 4.1, as amended, until there has been a final adjudication by the Supreme Court of Virginia pursuant to § 8-714 of the Code of Virginia (1950), as amended, determining all legal issues involved.

A copy of Mr. Ayres' letter is attached as "Exhibit B."

7. The specific question raised by the Comptroller of Virginia is as follows:

"Do the provisions of Chapter 4.1 of Title 23 of the Code of Virginia (§§ 23-38.11 through 23-38.19), as amended by Chapter 2 of the Acts of Assembly of 1973, authorizing loans to students who may be attending sectarian institutions, which loans may be repayable by actions beneficial to, or of service to, the Commonwealth, contravene limitations placed upon the power of the General Assembly by Sections 10 and 11 of Article VIII of the Constitution of Virginia?"

8. The letter from the Comptroller of Virginia to your petitioner constitutes sufficient grounds for this Court to exercise jurisdiction in this case and to consider and determine all questions raised in such letter or in this petition or in Respondent's answer to this petition, such jurisdiction being expressly conferred by § 8-714 of the Code of Virginia (1950), as amended.

9. Your petitioner believes and so avers that Chapter 4.1 of Title 23 of the Code of Virginia, as amended by Chapter 2 of the Acts of Assembly of 1973, is a valid enactment in all respects.

10. Your petitioner is of the opinion that the taking of evidence is necessary for the proper disposition of this petition.

Wherefore, your petitioner prays:

A. That David B. Ayres, Jr., Comptroller of Virginia, be made a party defendant to this petition and required to answer the same;

B. That this matter be placed upon the Court's docket for its June, 1973, session and set for oral argument at that time;

C. That this Court consider and determine all questions raised or to be raised in this proceeding;

D. That this Court adjudge that Chapter 4.1 of Title 23 of the Code of Virginia, as amended by Chapter 2 of the Acts of Assembly of 1973, is not in violation of any provisions of the Constitution of Virginia; and

E. That a writ of mandamus be issued by this Court directed to the said David B. Ayres, Jr., Comptroller of Virginia, requiring him to issue warrants upon the State Treasury for payment of such amounts as may be authorized by vouchers of the State Council of Higher Education for administration of the tuition loan assistance program under the provisions of Chapter 4.1 of Title 23 of the Code of Virginia, as amended by Chapter 2 of the Acts of Assembly of 1973.

ANDREW P. MILLER
Attorney General of Virginia

ANDREW P. MILLER
Attorney General

WILLIAM G. BROADDUS
D. PATRICK LACY, JR.
KATHERINE L. GOOLSBY
Assistant Attorneys General

Supreme Court–Library Building
1101 East Broad Street
Richmond, Virginia 23219

AFFIDAVIT

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

I, MARY W. LLEWELLYN, a Notary Public in and for the city aforesaid do hereby certify that Andrew P. Miller stated on oath that he is Attorney General of Virginia, and that the matters and things stated in the foregoing petition are true to the best of his knowledge, information and belief.

Given under my hand this 9th day of April, 1973.

My commission expires: April 28, 1975.

MARY W. LLEWELLYN
Notary Public

EXHIBIT A

CHAPTER 2

An Act to amend and reenact §§ 23-38.12, 23-38.13, 23-38.15, 23-38.16, 23-38.17 and 23-38.18 of the Code of Virginia relating to tuition assistance loans for undergraduate tuition fees at private institutions of higher education.

[S 640]

Approved FEB 12 1973

Whereas, the General Assembly finds it to be in the public interest and essential to the welfare and well-being of the residents of the Commonwealth and to the proper growth and development thereof for the Commonwealth to foster and provide financial assistance to its bona fide residents who are properly qualified for and who desire to pursue their education beyond the high school level at private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education; and

Whereas, the General Assembly finds it to be in the public interest and essential to the welfare and well-being of the residents of the Commonwealth to raise the level of education of its citizens and thus improve and benefit the total well-being of the State; and

Whereas, the Commonwealth, by appropriations from the general fund of the State treasury, assumes a major part of the expense of educating bona fide residents of Virginia attending public colleges therein; and

Whereas, bona fide residents of the Commonwealth who elect to bear a major portion of the cost of their education and evidence the same by attendance at one of the aforesaid private institutions thereby relieve the Commonwealth of the costs which would otherwise be entailed by the attendance of such residents at public colleges therein; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.12, 23-38.13, 23-38.15, 23-38.16, 23-38.17 and 23-38.18 of the Code of Virginia be amended and reenacted as follows:

§ 23-38.12. Program of tuition assistance established.—There is hereby established, from funds provided by law, a program of tuition assistance in the form of loans, as hereinafter provided, to bona fide residents of Virginia who attend private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education. *Unless otherwise indicated, as used in this chapter accredited means any institution approved to confer degrees pursuant to § 23-9 of the Code of Virginia.*

§ 23-38.13. State Council of Higher Education designated as administering agency.—The State Council of Higher Education is hereby designated as the administering agency for the program established by this chapter, and authorized to promulgate regulations consistent therewith and appropriate to the administration of the program. *The administering agency shall have the power to define by regulation such terms as, but not limited to, "full-time undergraduate student," "successful academic year," "financial aid," "meritorious extenuating circumstances," and "incapacity" as used in this chapter.*

§ 23-38.15. (a) Under this program, loans shall be made to eligible Virginia residents for the academic ~~term~~ *year* for which they enroll and *are obligated to* pay tuition *as full-time undergraduate students* at a qualified private institution, as described in § 23-38.12, and shall be

repayable in ~~academic work, or in~~ money, *or by actions beneficial to, or of service to, the Commonwealth as provided hereafter.*

(b) ~~Repayment in academic work shall be satisfied if at the end of the academic term for which the loan is made the student shall have made satisfactory academic progress in his prescribed course.~~

(c) ~~The loan of any recipient who has not made satisfactory academic progress during the academic term for which the loan is made, shall be due forthwith at the end of said term and shall be repayable in money and collectible as with any other monetary obligation due the Commonwealth.~~

(c1) Where repayment is made in money it shall be in accordance with a schedule established by the administering agency, such schedule to provide that full payment will be made in an orderly fashion over a period of time commencing on the date the recipient ceases to be a full-time undergraduate student in the institution or becomes ineligible to repay in accordance with § 23-38.15 (c2) and extending over a period of years equal to twice the number of years for which tuition assistance was received, provided, however, that such period of time shall be extended by such number of years as the recipient may spend in additional full-time undergraduate or graduate study in a regionally accredited institution of higher education, such time of extension not to exceed six years.

(c2) Where repayment is made by actions beneficial to, or of service to, the Commonwealth, the recipient may make repayment for each successfully completed academic year in which a tuition loan was received by complying with any one of, or combination of, the following actions:

(1) Reside and be domiciled in Virginia and be employed by the Commonwealth of Virginia or any of its political subdivisions including all State and local agencies and authorities for a period of one year for each year a tuition assistance loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

(2) Reside and be domiciled in Virginia and be employed by an organization or activity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office for a period of one year for each year a tuition assistance loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

(3) Reside and be domiciled in Virginia and be gainfully employed in or out of State other than as enumerated in § 23-38.15 (c1) (1) and (2) hereof for a period of one and one-half years for each year a tuition assistance loan was received, provided that for teachers and those similarly situated an academic year constitutes a full year;

(4) Reside and be domiciled in Virginia for a period of two years for each year a tuition assistance loan was received.

(5) Serve on active duty anywhere as a member of the armed services of the United States for a period of one year for each year a tuition loan was received.

(c3) When the recipient leaves the Commonwealth of Virginia to reside elsewhere, except for that reason for which extensions of time for a maximum period of six years is authorized in § 23-38.15 (c1), the balance of the loan or loans not previously repayed as authorized in § 23-38.15 (c2) above shall become due forthwith and repaid in money in accordance with the schedule authorized in § 23-38.15 (c1) hereof.

(c4) Should a recipient of a tuition loan leave the institution for other than meritorious reasons during the academic year for which the loan was granted, said loan for said year shall be due forthwith and repayable in money as required in § 23-38.15 (c1) hereof.

(d) Whether a recipient, who is compelled to withdraw from an institution during the academic year, in order to perform military service, or for ~~emergency or~~ other meritorious reasons, shall be obligated to repay the loan ~~in money~~ *for said year in full or in part and whether by the method set forth in § 23-38.15 (c1) or (c2) hereof* shall be determined by the administering agency on a basis consistent with the principles applied by the public institutions described in § 23-38.14 in making tuition refunds on comparable cases of withdrawal.

(e) Simple interest at three per centum per annum shall accrue on the unpaid balance of each tuition assistance loan from the date on which the recipient ceases to be a full-time, undergraduate student in the institution, provided, however, that no interest shall accrue during periods when the recipient is pursuing full-time undergraduate or graduate studies in a regionally accredited institution of higher education or is on active duty with the armed services of the United States as set forth in § 23-38.15 (c1) hereof.

§ 23-38.16. Duration of eligibility; assistance to be used only for undergraduate work.—A student's eligibility for tuition assistance under this program shall be limited to a total of four academic years. Tuition ~~assistance~~ *loans* under this program shall be used only for undergraduate collegiate work *in educational programs other than those providing religious training or theological education of an indoctrinating nature.*

§ 23-38.17. Receipt by student of other assistance.—Tuition assistance received by a student under this program shall not be reduced by the receipt by such student of other ~~assistance~~ *financial aid* from any source, *provided, however, that in no case shall a student receive a loan pursuant to this chapter which when added to said other financial aid, would enable the student to receive total assistance in excess of the estimated cost to the student of attending the institution in which he is enrolled.*

§ 23-38.18. ~~The meaning of the italicized words appearing in this section shall be determined in accordance with the stated method or definition:~~

~~(a)~~ For the purposes of this chapter, whether a student is a *"bona fide resident of Virginia"* shall be determined by the administering agency on a basis consistent with the principles ~~applied by the public institutions described in § 23-38.14 in determining whether a student is a bona fide resident of Virginia so as to qualify for the Virginia resident tuition fee~~ *set forth in § 23-7 of the Code of Virginia.*

~~(b) The term "satisfactory academic progress" as used in this chapter shall be evidenced by (1) the completion of a prescribed course of undergraduate study and the award of the appropriate undergraduate degree in recognition of the completion of such course of study; or, (2) the eligibility of the student to continue his prescribed course of study in a succeeding term at the same institution in accord with the academic and administrative rules which said institution applies generally in determining whether a student's performance entitles him to return for a succeeding term.~~

EXHIBIT B

March 27, 1973

The Honorable Andrew P. Miller
Attorney General of Virginia
Supreme Court Building
Richmond, Virginia 23219

Dear Mr. Miller:

Chapter 18 of the Acts of Assembly of 1972, codified as Chapter 4.1 of Title 23 of the Code of Virginia (§ § 23-28.11 through 23-38.19) established "a program of tuition assistance in the form of loans . . . to bona fide residents of Virginia who attend private, accredited and non-profit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education." The State Council of Higher Education was designated to administer the program. The program has been funded by an appropriation contained in Chapter 464 of the Acts of Assembly of 1973.

The Supreme Court of Virginia in *Miller* v. *Ayres,* 213 Va. 251 (1972), held this Act unconstitutional because it provided for gifts or grants to students in sectarian institutions in violation of Sections 10 and 11 of the Article VIII of the Constitution of Virginia.

The General Assembly amended this Act at its last session (Chapter 2 of the Acts of Assembly of 1973).

Section 23-38.15 (a) of the Act, as amended, provides that loans shall be repayable in money or by actions beneficial to, or by service to, the Commonwealth. Section 23-38.15 (c2) states that:

> "(c2) Where repayment is made by actions beneficial to, or of service to, the Commonwealth, the recipient may make repayment for each successfully completed academic year in which a tuition loan was received by complying with any one of, or combination of, the following actions:
>
> "(1) Reside and be domiciled in Virginia and be employed by the Commonwealth of Virginia or any of its political subdivisions including all State and local agencies and authorities for a period of one year for each year a tuition assistance loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

"(2) Reside and be domiciled in Virginia and be employed by an organization or activity organized and operated, exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office for a period of one year for each year a tuition assistance loan was received, provided that for teachers and those similarly situated employment for an academic year constitutes a full year;

"(3) Reside and be domiciled in Virginia and be gainfully employed in or out of State other than as enumerated in § 23-38.15 (c1) (1) and (2) hereof for a period of one and one-half years for each year a tuition assistance loan was received, provided that for teachers and those similarly situated an academic year constitutes a full year;

"(4) Reside and be domiciled in Virginia for a period, of two years for each year a tuition assistance loan was received;

"(5) Serve on active duty anywhere as a member of the armed services of the United States for a period of one year for each year a tuition loan was received."

Although no demand has been made for disbursement of money, I entertain doubt respecting the constitutionality of that portion of the Act which permits loans to be repayable by actions beneficial to, or of service to, the Commonwealth. Accordingly, I do not believe that this office should issue warrants authorizing payment for appropriations made pursuant to the Tuition Assistance Loan Act. Therefore, you are notified that I shall refuse to honor vouchers from the State Council of Higher Education and will not issue warrants for payment under the Act until there has been a final adjudication by the Supreme Court of Virginia pursuant to § 8-714 of the Code of Virginia (1950), as amended, determining all legal issues involved.

The question which concerns me is the following:

Do the provisions of Chapter 4.1 of Title 23 of the Code of Virginia (§§ 23-38.11 through 23-38.19) as amended by Chapter 2 of the Acts of Assembly of 1973 authorizing loans to students who may

be attending sectarian institutions, which loans may be repayable by actions beneficial to, or of service to, the Commonwealth, contravene limitations placed upon the power of the General Assembly by Sections 10 and 11 of Article VIII of the Constitution of Virginia?

Very truly yours,

DAVID B. AYERS, JR.
Comptroller

DBA:ns

ANSWER OF DAVID B. AYRES, JR., COMPTROLLER OF VIRGINIA

(Record No. 8221)

Now comes David B. Ayres, Jr., Comptroller of Virginia, by counsel, and answers the petition for writ of mandamus heretofore filed as follows:

1. The averments in paragraphs #1 through #6 are admitted.

2. The averment in paragraph #7 is denied.

3. The defendant believes and so avers that "loans" repayable by actions beneficial to, or by service to, the Commonwealth are gifts, rather than loans as contemplated by Section 11, Article VIII, of the Constitution of Virginia.

4. The defendant believes and so avers that this Court has previously held the type aid here contemplated constitutes a gift; hence, the provision for aid to students attending sectarian institutions contravenes limitations placed upon the power of General Assembly by Sections 10 and 11, Article VIII, of the Constitution of Virginia.

5. The defendant further avers that the Act is repugnant to both the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution of the United States.

Now having fully answered, the defendant prays that Chapter 106 of the Acts of Assembly of 1973, as well as the provisions of the Appropriation Act which implement the provisions of Chapter 106, be held invalid and of no effect, and that the petition of the Attorney General of Virginia be denied.

Respectfully submitted,

DAVID B. AYRES, JR.
Comptroller of Virginia

By: FRANCIS C. LEE
Of Counsel

FRANCIS C. LEE
McCAUL, GRISBY and PEARSALL
1005 United Virginia Bank Building
Richmond, Virginia 23219

AFFIDAVIT

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

I, GWEN H. PALMER, a Notary Public in and for the City aforesaid, do hereby certify that Francis C. Lee stated on oath that he is counsel for David B. Ayres, Jr., Comptroller of Virginia, and that the allegations and averments in the foregoing answer are true to the best of his knowledge, information and belief.

Given under my hand this 27th day of April, 1973.

My commission expires: 3-14-76.

GWEN H. PALMER
Notary Public

CERTIFICATE

This is to certify that the foregoing Answer was this day served on the petitioner by serving copies on Andrew P. Miller, William G. Broaddus, D. Patrick Lacy, Jr., and Katherine L. Goolsby at their office in the Supreme Court Building, Richmond, Virginia.

FRANCIS C. LEE

April 27, 1973

ANSWER OF DAVID B. AYRES, JR., COMPTROLLER OF VIRGINIA

(Record No. 8222)

Now comes David B. Ayres, Jr., Comptroller of Virginia, by counsel, and answers the petition for writ of mandamus heretofore filed as follows:

1. The averments in paragraphs #1 through #8 are admitted.

2. The defendant denies the allegations in paragraph #9 of the petition, and avers the 1973 amendments to Section 23-38.15 of the Code provides for grants and gifts, in contravention of Sections 10 and 11, Article VIII of the Virginia Constitution, in that Section 10 permits grants to students only in nonsectarian institutions and Section 11 permits only loans—not grants or gifts.

3. The defendant believes and therefore avers that this Court has previously held the type of aid here contemplated constitutes a gift; hence, the legislative provisions for aid to students attending sectarian institutions is repugnant to Section 10, Article VIII of the Constitution of Virginia.

4. The defendant further suggests and in addition to the contravention of the limitations place upon the power of the General Assembly by Sections 10 and 11 of Article VIII of the Constitution of Virginia, the Act is repugnant to both the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution of the United States.

Now having fully answered, the defendant prays that Chapter 2 of the Acts of Assembly of 1973, as well as the provisions of the Appropriation Act which implement the provisions of Chapter 2, be held invalid and of no effect, and that the petition of the Attorney General of Virginia be denied.

Respectfully submitted,

DAVID B. AYRES, JR.
Comptroller of Virginia

By: FRANCIS C. LEE
Of Counsel

FRANCIS C. LEE
McCAUL, GRISBY and PEARSALL
1005 United Virginia Bank Building
Richmond, Virginia 23219

AFFIDAVIT

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

I, GWEN H. PALMER, a Notary in and for the City aforesaid, do hereby certify that Francis C. Lee stated on oath that he is counsel for David B. Ayres, Jr., Comptroller of Virginia, and that the allegations and averments in the foregoing answer are true to the best of his knowledge, information and belief.

Given under my hand this 27th day of April, 1973.

My commission expires: 3-14-76.

GWEN H. PALMER
Notary Public

CERTIFICATE

This is to certify that the foregoing Answer was this day served on the petitioner by serving copies on Andrew P. Miller, William G. Broaddus, D. Patrick Lacy, Jr., and Katherine L. Goolsby, at their office in the Supreme Court Building, Richmond, Virginia.

FRANCIS C. LEE

April 27, 1973

STIPULATIONS

(Record Nos. 8221, 8222)

The respondent, David B. Ayres, Jr., Comptroller of Virginia, hereby stipulates and agrees with the petitioner, Andrew P. Miller, Attorney General of Virginia, by counsel, as follows:

1. The copies of Chapter 106, Acts of Assembly of 1973, appended to the petition in Record No. 8221, and Chapter 2, Acts of Assembly of 1973, appended to the petition in Record No. 8222, are true and accurate copies of the Acts in question in these cases.

2. If called to testify in these cases, Edwin E. Holm would testify to the facts and opinions contained in his affidavit which is attached hereto as Exhibit C.

3. If called to testify in these cases, Jay L. Chronister would testify to the facts and opinions contained in his letter to Mr. A. E. Howard which is attached hereto as Exhibit D.

4. The parties may refer to such other sources for facts and opinions as they deem appropriate and such facts and opinions shall not be excluded merely because they were not introduced into the record of this case. In receiving these facts and opinions, the Court shall attach to them such weight and probative value as the Court deems appropriate, taking into consideration any objections counsel may have as to materiality or relevance.

5. By joining in these stipulations, counsel do not waive any objections that each may have to the materiality or relevance of any evidence referred to in these stipulations.

DAVID B. AYRES, JR.
Comptroller of Virginia

By FRANCIS C. LEE
Counsel

FRANCIS C. LEE, Esquire
McCAUL, GRISBY & PEARSALL
Suite 1005
United Virginia Bank Bld.
Richmond, Virginia

ANDREW P. MILLER
Attorney General of Virginia

By WILLIAM G. BROADDUS
Counsel

ANDREW P. MILLER
Attorney General

WILLIAM B. BROADDUS
D. PATRICK LACY, JR.
KATHERINE L. GOOLSBY
Assistant Attorneys General

Supreme Court Building
Richmond, Virginia

EXHIBIT C

AFFIDAVIT

I, Edwin E. Holm, am Director of Research, Division of Industrial Development, Commonwealth of Virginia. As Director of Research, I am responsible for determining the impact of certain actions affecting the economic development of Virginia.

The purpose of this affidavit is to demonstrate that as one's education increases, so will his personal income and, as a result, so will the tax revenues he pays to the State and localities. The basic data is taken from Table A and Table F, *Consumer Income,* Series P-60, No. 74, an October 30, 1970, publication of the Bureau of the Census, United States Department of Commerce. While these are national figures, they closely approximate the Virginia figures as shown in Table 197, Detailed Characteristics, Virginia, a 1972 publication of the Bureau of the Census, United States Department of Commerce. A copy of each table is attached. Table A and Table F reveal the following information:

	Mean Annual Income Males—25 yrs. old & over	*Mean Lifetime Income From Age 25 to Death*
College—4 years	$12,418	$561,631
High School—4 years	$ 8,148	$350,228
Excess Earning of College—4 years	$ 4,270	$211,403

Using these income figures, one can make a rough approximation of the increase in local real estate taxes, the State personal income taxes and the local retail sales taxes that will be paid on an annual basis and over a lifetime.

LOCAL REAL ESTATE TAXES

It is an accepted economic indicator that a home owner purchases a home costing approximately two and one-half times his annual income. The current average city and county tax on real estate is $1.09 per $100 of true value. The male with a 4-year college education will spend approximately $10,675 more on his home than a male with a 4-year high school education. The male with a 4-year college educa-

tion will annualy pay approximately $117 more in real estate tax than his high school counterpart. Utilizing the 47 year period used by the Bureau of the Census to calculate lifetime incomes, the male with a 4-year college education will pay, over his lifetime, approximately $5,499 more in real estate taxes than his high school counterpart.

INCOME TAXES

Using the State's 5¾% personal income tax rate, the man with a 4-year college education will annually pay $246 more in personal income taxes than the man with a 4-year high school education. Over his lifetime, a college graduate will pay $12,133 more in personal income taxes than the high school graduate.

SALES TAXES

It is an accepted economic indicator that one spends 40% of his income for retail sales and services. Applying this factor and the 4% local sales tax, a male with a 4-year college education will annually pay approximately $78 more in local sales taxes than his high school counterpart. Over his lifetime, a college graduate will pay approximately $3,376 more in local sales taxes than the high school graduate.

SUMMARY OF ADDITIONAL TAXES PAID BY MALES WITH A 4-YEAR COLLEGE EDUCATION

	Annual	*Lifetime*
REAL ESTATE TAXES	$117.00	$ 5,499
INCOME TAXES	247.00	12,133
LOCAL SALES TAXES	78.00	3,376
TOTAL TAXES	$442.00	$21,008

EDWIN E. HOLM

City of Richmond, To-Wit:

I, PEGGY MAXWELL WARE, a Notary Public in and for the City aforesaid, do hereby certify that Edwin E. Holm, whose name is signed

to the foregoing writing, this day personally appeared before me in my City aforesaid and made oath that the statements contained therein, are, to the best of his knowledge, information and belief, true.

Given under my hand this 30th day of April, 1973.

My commission expires June 18, 1974.

PEGGY MAXWELL WARE
Notary Public

Table A. Mean Income in 1956 to 1968 of Men 25 Years Old and Over, by Years of School Completed and Age

(In 1968 dollars)

Years of school completed and age	1968		1967		1966[2]	1964[2]	1963[2]	1961[2]	1958[2]	1956[2]
	Computed from ungrouped data[1]	Computed from grouped data[2]	Computed from ungrouped data[1]	Computed from grouped data[2]						
25 YEARS OLD AND OVER										
Total	$7,705	$7,889	$7,418	$7,695	$7,404	$6,845	$6,633	$6,363	$5,580	$5,663
Elementary: Less than 8 years	3,981	4,093	3,756	3,870	3,773	3,697	3,498	3,486	3,043	3,296
8 years	5,467	5,624	5,405	5,500	5,217	5,067	5,011	4,891	4,425	4,649
High school: 1 to 3 years	6,769	6,983	6,399	6,801	6,746	6,337	6,077	6,001	5,357	5,592
4 years	8,148	8,430	7,947	8,236	8,032	7,554	7,451	6,914	6,326	6,636
College: 1 to 3 years	9,397	9,692	9,211	9,614	9,414	8,864	8,674	8,544	7,548	7,679
4 years or more	12,938	12,888	12,421	13,054	12,582	11,529	11,149	11,415	10,401	10,086
4 years	12,418	12,236	11,700	12,209	11,935	10,938	10,673	10,863	9,103	(NA)
5 years or more	13,555	13,672	13,295	14,073	13,465	12,336	11,765	11,613	11,045	(NA)
25 TO 34 YEARS OLD										
Total	7,617	7,873	7,403	7,611	7,433	6,845	6,50[illegible]	6,269	5,651	5,796
Elementary: Less than 8 years	4,474	4,603	4,294	4,450	4,393	3,632	3,649	3,550	3,207	3,397
8 years	5,611	5,819	5,329	5,516	5,312	5,221	5,058	4,688	4,378	4,700
High school: 1 to 3 years	6,357	6,563	6,136	6,322	6,314	5,873	5,665	5,445	5,134	5,624
4 years	7,533	7,812	7,333	7,541	7,374	6,923	6,608	6,229	5,738	6,113
College: 1 to 3 years	8,102	8,434	8,084	8,203	8,087	7,593	7,406	6,722	6,466	6,823
4 years or more	9,817	10,035	9,721	10,042	9,760	9,068	8,375	8,699	8,084	7,534
4 years	9,974	10,121	9,786	10,054	9,916	8,794	8,295	8,683	7,584	(NA)
5 years or more	9,628	9,924	9,631	10,011	9,542	9,487	8,487	8,777	8,568	(NA)
35 TO 44 YEARS OLD										
Total	9,115	9,439	8,795	9,164	8,850	8,136	7,867	7,481	6,532	6,740
Elementary: Less than 8 years	5,153	5,344	4,756	4,923	4,805	4,893	4,361	4,299	3,619	4,010
8 years	6,717	6,914	6,215	6,503	6,386	5,918	5,874	5,572	5,106	5,408
High school: 1 to 3 years	7,429	7,719	7,192	7,426	7,337	6,890	6,711	6,233	5,836	6,097
4 years	8,802	9,185	8,539	8,812	8,617	8,029	8,093	7,455	6,817	7,237
College: 1 to 3 years	10,585	10,984	10,219	10,726	10,572	9,584	9,255	9,397	8,653	8,576
4 years or more	14,044	14,391	13,912	14,694	13,947	12,664	12,216	12,008	10,742	11,535
4 years	13,246	13,629	13,148	13,829	13,155	11,898	11,960	11,647	9,671	(NA)
5 years or more	15,001	15,289	14,849	15,774	15,070	13,651	12,523	12,734	12,260	(NA)
45 TO 54 YEARS OLD										
Total	8,967	9,101	8,690	9,061	8,680	7,788	7,677	7,250	6,242	6,431
Elementary: Less than 8 years	4,973	5,121	4,740	4,921	4,731	4,615	4,445	4,141	3,552	3,889
8 years	6,566	6,768	6,689	6,823	6,394	5,726	5,897	5,829	5,066	5,337
High school: 1 to 3 years	7,601	7,828	7,397	7,674	7,685	7,021	6,701	6,503	5,619	6,054
4 years	9,106	9,405	9,027	9,425	8,986	8,320	8,244	7,702	6,982	7,357
College: 1 to 3 years	11,072	11,207	10,473	11,066	11,256	10,709	10,456	9,880	8,893	9,161
4 years or more	15,645	15,125	14,985	15,725	15,453	14,037	13,955	13,645	13,475	13,443
4 years	14,282	14,191	13,799	14,345	14,418	13,177	12,559	12,740	12,755	(NA)
5 years or more	17,223	16,155	16,283	17,176	16,920	15,289	15,632	15,192	14,686	(NA)
55 TO 64 YEARS OLD										
Total	7,828	7,935	7,296	7,649	7,315	6,599	6,632	6,444	5,508	5,378
Elementary: Less than 8 years	4,569	4,698	4,236	4,370	4,228	3,948	3,918	4,007	3,554	3,684
8 years	6,087	6,305	6,069	6,162	5,911	5,554	5,347	5,574	4,662	4,967
High school: 1 to 3 years	7,140	7,356	8,827	7,007	7,049	6,285	6,203	6,637	5,765	5,399
4 years	8,414	8,663	8,044	8,486	8,429	7,955	7,843	7,412	7,141	7,246
College: 1 to 3 years	9,568	10,122	9,833	10,510	9,444	8,895	9,150	9,112	8,233	7,973
4 years or more	16,915	15,828	14,276	15,528	14,491	12,952	14,306	12,064	12,800	11,187
4 years	16,959	14,307	12,439	13,433	13,558	12,478	14,051	12,038	10,177	(NA)
5 years or more	16,866	17,590	16,333	18,079	15,542	13,489	14,631	(B)	(B)	(NA)
65 YEARS OLD AND OVER										
Total	3,988	4,026	3,820	3,885	3,574	3,775	3,470	3,434	2,750	2,935
Elementary: Less than 8 years	2,482	2,530	2,420	2,465	2,385	2,541	2,308	2,308	1,988	2,138
8 years	3,510	3,536	3,483	3,445	3,089	3,457	3,331	3,043	2,799	2,854
High school: 1 to 3 years	4,070	4,178	4,223	4,287	3,721	4,017	3,614	3,963	3,058	3,218
4 years	4,952	4,926	4,681	4,818	4,644	5,285	5,078	4,343	3,452	4,138
College: 1 to 3 years	6,236	6,067	5,789	6,043	5,860	5,909	5,707	6,817	4,332	5,146
4 years or more	9,266	9,404	8,680	9,019	8,558	8,674	7,292	10,058	6,535	6,907
4 years	8,548	8,304	8,217	8,402	6,887	8,452	6,901	(B)	(B)	(NA)
5 years or more	10,173	10,745	9,179	9,699	10,793	(B)	(B)	(B)	(B)	(NA)

B Base less than 200,000. NA Not available.

[1]Improved methodology introduced in 1967 permits the computation of data based on actual reported amounts.

[2]Estimates based on a series of estimated mean values for specific income class intervals.

SOURCE: U. S. Department of Commerce/Bureau of the Census; Consumer Income, October 30, 1970, Series P-60, No. 74.

Table F. Lifetime Income in 1956 to 1968 Based on Arithmetic Means for Men in Selected Age Groups, by Years of School Completed

(In 1968 dollars)

Years of school completed and selected age group	1968		1967		1966[2]	1964[2]	1963[2]	1961[2]	1958[2]	1956[2]
	Computed from ungrouped data[1]	Computed from grouped data[2]	Computed from ungrouped data[1]	Computed from grouped data[2]						
INCOME FROM AGE 18 TO DEATH										
Total	$357,552	$366,343	$343,486	$356,599	$343,728	$318,176	$308,123	$296,755	$259,668	$267,621
Elementary: Less than 8 years	213,505	219,996	201,851	209,112	202,207	190,746	181,221	176,606	155,067	168,287
8 years	276,755	285,344	267,533	274,429	264,228	251,061	245,705	238,648	214,212	228,872
High school: 1 to 3 years	308,305	318,475	300,264	309,690	304,092	286,660	275,564	274,262	245,368	258,419
4 years	371,094	382,678	359,967	373,655	364,973	319,173	342,920	318,156	291,793	312,622
College: 1 to 3 years	424,280	436,000	412,367	431,887	422,260	398,261	390,209	389,651	345,734	356,245
4 years or more	607,921	602,864	571,359	602,355	580,826	536,655	522,095	528,758	483,537	477,137
4 years	584,062	567,396	537,634	562,258	544,285	515,114	501,144	503,043	438,010	(NA)
5 years or more	636,119	643,515	607,727	646,980	629,051	561,257	548,353	552,460	529,969	(NA)
INCOME FROM AGE 25 TO DEATH										
Total	339,831	347,859	325,836	338,104	325,278	301,040	291,808	280,393	243,451	250,129
Elementary: Less than 8 years	196,014	201,888	184,747	190,954	186,165	177,859	169,155	165,674	144,466	156,178
8 years	257,500	265,198	249,977	256,210	244,721	234,009	230,900	223,203	200,058	212,382
High school: 1 to 3 years	294,160	303,663	286,020	294,567	289,811	272,143	261,417	259,536	230,584	241,691
4 years	350,228	361,082	338,926	351,806	343,150	329,341	323,616	299,342	272,753	292,175
College: 1 to 3 years	411,003	422,156	398,977	417,814	408,049	385,372	378,419	377,685	333,166	343,198
4 years or more	586,047	579,653	550,776	580,743	557,714	515,507	502,182	508,060	464,561	459,076
4 years	561,631	543,308	515,166	538,586	520,496	491,993	480,880	481,452	417,147	(NA)
5 years or more	615,242	621,906	590,814	629,508	607,239	547,213	528,966	533,770	516,961	(NA)
INCOME FROM AGE 18 TO 64										
Total	323,035	331,497	310,972	323,525	313,010	285,492	278,173	266,953	236,076	241,849
Elementary: Less than 8 years	192,023	198,099	181,253	188,133	181,713	168,739	161,306	156,573	138,011	149,508
8 years	246,375	254,740	237,882	245,106	237,684	221,123	216,960	212,238	190,196	203,808
High school: 1 to 3 years	273,079	282,313	264,317	273,193	272,113	251,879	244,377	239,870	219,132	229,892
4 years	328,233	340,043	320,119	332,645	325,063	303,411	299,093	280,464	262,171	276,280
College: 1 to 3 years	370,306	383,489	363,093	380,450	371,906	347,092	340,958	330,485	306,851	311,054
4 years or more	527,722	521,471	497,470	525,584	507,280	461,549	459,165	441,467	427,462	416,487
4 years	510,077	495,523	467,692	490,736	485,098	441,929	441,587	430,264	386,779	(NA)
5 years or more	548,070	550,515	529,592	564,420	536,300	483,647	480,508	461,547	468,176	(NA)
INCOME FROM AGE 25 TO 64										
Total	304,845	312,541	292,884	304,585	294,175	267,951	261,503	250,231	219,580	224,046
Elementary: Less than 8 years	174,240	179,693	163,872	169,693	165,415	155,580	149,001	145,400	127,207	137,173
8 years	226,708	234,177	219,927	226,492	217,844	203,702	201,816	196,473	175,757	187,015
High school: 1 to 3 years	258,455	267,011	249,590	257,578	257,432	236,930	229,861	224,727	204,036	212,619
4 years	306,786	317,868	298,541	310,245	302,740	283,012	279,269	261,193	242,780	255,394
College: 1 to 3 years	356,297	368,933	349,041	365,683	357,064	333,568	328,586	317,801	293,822	297,461
4 years or more	504,760	497,155	475,893	502,940	483,245	439,469	438,507	419,710	407,822	397,691
4 years	486,643	470,460	444,281	466,102	460,567	417,900	420,617	407,790	365,307	(NA)
5 years or more	525,997	527,644	511,626	545,836	513,325	468,640	460,319	441,753	454,434	(NA)

NA Not available.
[1]Improved methodology introduced in 1967 permits the computation of data based on actual reported amounts.
[2]Estimates based on a series of estimated mean values for specific income class intervals.

SOURCE: U. S. Department of Commerce/Bureau of the Census; Consumer Income, October 30, 1970, Series P-60, No. 74.

Table 197. Income in 1969 of Persons 18 Years Old and Over by Years of School Completed, Age, Race, and Sex: 1970

[Data based on sample; see text. For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

The State Urban and Rural Standard Metropolitan Statistical Areas of 250,000 or More	Total	Years of school completed: Elementary school: Less than 5 years	Elementary school: 5 to 7 years	Elementary school: 8 years	High school: 1 to 3 years	High school: 4 years	College: 1 to 3 years	College: 4 years	College: 5 years or more	Median school years completed
THE STATE										
Total										
Male, 18 years old and over	1 484 548	116 487	229 764	181 492	284 661	378 576	168 741	107 154	97 663	12.0
Without income	59 519	9 587	9 688	4 181	17 333	10 871	5 825	1 259	775	10.1
With income	1 425 029	106 900	220 076	97 311	267 328	367 705	162 916	105 905	96 888	12.1
$1 to $999 or loss	109 235	21 942	20 572	6 499	23 118	19 686	13 256	2 520	1 642	9.7
$1,000 to $1,999	137 292	22 464	27 313	9 119	22 101	30 042	18 697	4 824	2 732	10.3
$2,000 to $2,999	117 368	15 025	24 548	8 498	19 368	28 707	13 948	4 494	2 780	10.6
$3,000 to $3,999	119 630	13 653	28 236	10 806	21 789	26 550	11 905	3 964	2 727	10.0
$4,000 to $4,999	109 942	9 862	25 841	10 889	23 719	25 907	7 838	3 534	2 352	10.1
$5,000 to $5,999	121 739	7 824	25 337	11 461	27 647	33 855	9 194	3 829	2 592	10.8
$6,000 to $6,999	114 512	5 367	19 224	9 730	26 870	35 857	9 985	4 669	2 810	11.6
$7,000 to $7,999	107 833	3 487	16 005	8 736	24 228	34 973	10 825	5 627	3 952	12.0
$8,000 to $9,999	162 014	3 982	18 398	11 362	36 854	53 362	18 159	11 841	8 056	12.2
$10,000 to $14,999	190 013	2 458	11 287	7 931	31 516	56 397	28 328	27 614	24 482	12.7
$15,000 to $24,999	102 285	637	2 482	1 742	7 919	17 914	16 087	25 772	29 732	16.2
$25,000 or more	33 166	199	833	538	2 199	4 455	4 694	7 217	13 031	16.5
Median income	$5 978	$2 602	$4 363	$5 248	$5 852	$6 533	$6 663	$11 385	$13 840	...
Mean income	$7 276	$3 293	$4 799	$5 666	$6 270	$7 073	$7 947	$12 533	$15 586	...
Index of income concentration	0.462	0.449	0.375	0.357	0.371	0.371	0.479	0.341	0.285	...
Male, 18 to 24 years old:										
With income	285 543	4 340	14 324	10 975	60 280	115 559	58 270	16 787	5 008	12.5
Mean income	$3 186	$2 287	$3 163	$3 376	$2 782	$3 401	$2 811	$4 277	$4 218	...
Male, 25 to 34 years old:										
With income	299 135	7 413	25 253	17 419	54 348	98 314	34 742	31 659	29 987	12.5
Mean income	$7 646	$4 433	$4 956	$5 693	$6 362	$7 534	$8 262	$10 510	$10 776	...
Male, 35 to 44 years old:										
With income	265 899	12 723	38 593	18 346	54 009	66 620	25 068	24 374	26 166	12.1
Mean income	$9 667	$4 372	$5 876	$6 762	$7 730	$9 302	$11 590	$15 191	$17 813	...
Male, 45 to 54 years old:										
With income	253 015	21 401	49 452	19 377	51 309	50 007	23 013	18 202	20 254	11.1
Mean income	$10 007	$4 226	$5 732	$6 844	$8 277	$10 620	$13 941	$18 208	$20 607	...
Male, 55 to 64 years old:										
With income	176 512	25 145	48 309	15 728	30 056	24 560	13 137	9 389	10 188	8.9
Mean income	$8 245	$3 658	$5 108	$6 432	$7 781	$9 811	$12 575	$17 229	$20 968	...
Male, 65 years old and over:										
With income	144 925	35 878	44 145	15 466	17 326	12 645	8 686	5 494	5 285	7.5
Mean income	$4 241	$1 983	$2 915	$3 707	$5 008	$5 957	$7 747	$10 788	$13 014	...
Female, 18 years old and over	1 567 356	80 914	213 975	106 124	340 762	484 356	203 288	104 274	33 663	12.1
Without income	504 921	26 464	74 775	37 556	124 241	156 903	55 471	24 564	4 947	11.7
With income	1 062 435	54 450	139 200	68 568	216 521	327 453	147 817	79 710	28 716	12.2
$1 to $999 or loss	282 033	30 112	57 157	22 202	55 742	64 361	37 220	12 370	2 869	10.7
$1,000 to $1,999	180 592	12 941	34 032	16 066	39 618	46 106	21 965	7 918	1 946	11.1
$2,000 to $2,999	127 519	4 956	18 004	9 957	31 381	38 864	15 361	7 281	1 715	11.9
$3,000 to $3,999	129 835	3 261	14 848	9 248	32 710	47 566	14 499	5 946	1 757	12.1
$4,000 to $4,999	99 809	1 346	7 490	5 037	22 785	42 364	14 173	5 089	1 525	12.3
$5,000 to $5,999	73 979	860	3 767	2 983	13 921	32 026	12 955	5 884	1 583	12.5
$6,000 to $6,999	55 048	327	1 649	1 174	8 078	21 184	10 358	10 208	2 070	12.8
$7,000 to $7,999	38 027	183	954	624	4 832	13 245	7 213	8 261	2 715	12.9
$8,000 to $9,999	39 493	261	650	694	4 260	12 315	7 337	9 192	4 784	13.6
$10,000 to $14,999	27 060	137	414	420	2 305	7 497	5 018	5 690	5 579	14.6
$15,000 to $24,999	6 894	44	177	118	640	1 394	1 228	1 425	1 868	15.6
$25,000 or more	2 146	22	58	45	249	531	490	446	305	14.0
Median income	$2 538	$904	$1 366	$1 752	$2 411	$3 303	$2 958	$5 213	$7 329	...
Mean income	$3 267	$1 411	$1 853	$2 246	$2 837	$3 593	$3 719	$5 342	$7 524	...
Index of income concentration	0.474	0.468	0.458	0.447	0.438	0.412	0.470	0.413	0.391	...
Female, 18 to 24 years old:										
With income	211 362	2 200	5 538	5 412	36 025	96 320	48 140	15 967	1 760	12.6
Mean income	$2 556	$1 593	$1 656	$1 932	$1 798	$2 774	$2 360	$4 004	$4 364	...
Female, 25 to 34 years old:										
With income	187 851	2 563	9 024	8 521	39 875	73 438	24 554	22 263	7 613	12.5
Mean income	$3 711	$2 162	$2 210	$2 417	$2 781	$3 698	$4 194	$5 309	$6 214	...
Female, 35 to 44 years old:										
With income	171 161	3 876	17 114	9 912	45 497	56 704	19 557	12 681	5 820	12.2
Mean income	$3 791	$1 988	$2 432	$2 758	$3 276	$3 981	$4 276	$5 361	$7 864	...
Female, 45 to 54 years old:										
With income	171 031	7 536	25 294	11 097	39 600	49 084	20 924	11 373	6 123	12.0
Mean income	$4 135	$1 934	$2 463	$2 796	$3 544	$4 530	$5 243	$6 475	$8 707	...
Female, 55 to 64 years old:										
With income	133 340	9 738	29 996	11 281	26 848	26 366	15 325	9 210	4 576	10.7
Mean income	$3 729	$1 496	$2 033	$2 532	$3 336	$4 443	$4 903	$7 260	$9 681	...
Female, 65 years old and over:										
With income	187 690	28 537	52 234	22 345	28 676	25 541	19 317	8 216	3 024	8.6
Mean income	$2 027	$1 085	$1 223	$1 614	$2 075	$2 839	$3 350	$4 282	$6 762	...

SOURCE: U. S. Department of Commerce, Social and Economic Statistics Administration, Bureau of the Census, "Detailed Characteristics - Virginia." (1970).

EXHIBIT D

April 27, 1973

Mr. A. E. Howard
Professor of Law
Clark Hall
University of Virginia
Charlottesville, Va. 22903

Dear Mr. Howard:

In response to your request I am herein providing an estimate of the cost of providing new instructional facilities to accommodate the 5,000 full time equivalent undergraduate students (primarily liberal arts oriented) that the private colleges of Virginia indicated they could accommodate in 1972. In addition, I have also made an estimate of what it would cost to accommodate 4,500 FTE undergraduates which I estimate the available space to be in these institutions as of Fall 1972 based upon enrollment figures for the private institutions for that semester.

The cost figures do not include land acquisition, site preparation, roads, dormitories, student union facilities, etc.

The state space planning guides for institutions in Virginia were utilized in this project. These guides are set forth on pages 63 through 70 of the publication, "Physical Facilities at Virginia's Colleges and Universities 1970-71," State Council of Higher Education for Virginia.

Estimated Enrollment Full Time Equivalent Undergraduates	*Estimated Assizuable Square feet of instructional and instructionally related space necessary*	*Estimated Construction Cost per Square Foot*	*Total Estimated Cost*
5000	450,100	$30	$13,500,000
4500	405,090	$30	$12,152,000

I would like to emphasize that these estimated cost figures are conservative since planning involved only gross assumptions about curricular needs and did not include the architectural fees and items included in paragraph two.

I have also attempted to provide an estimate of the cost of operating an institution with enrollments of either 4,500 or 5,000 full-time equivalent students. I suggest that figures from the report entitled, "Financing Virginia's Colleges: 1970-71," published by the State Council of Higher Education for Virginia are the best source of data for estimating the cost of operating our hypothetical institution. The cost for Educational and General Expenditures per full-time equivalent student for Madison College (Table 8, page 24) is utilized for the estimates since that institution most closely approximates the hypothetical college.

FTE Enrollment	*E&G Cost Per FTE Student*	*Total Estimated Cost of Educational Aid General Operations*
5000	$1358.82	$6,794,100
4500	$1358.82	$6,114,600

Please recognize that these are gross figures for both construction and operation of the college. I do feel that they typify the magnitude of the cost of providing additional educational opportunities for the number of students for whom I have made projections. I hope this data meets your needs.

Sincerely,

J. L. CHRONISTER
Director

JLC/nb