

1957

An analysis of sovereignty and its application to segregation in public schools

Patricia Minor Murphy

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AN ANALYSIS OF SOVEREIGNTY AND ITS APPLICATION TO
SEGREGATION IN PUBLIC SCHOOLS

A Thesis

Presented to

the Faculty of the Department of History and Political Science
University of Richmond

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by

Patricia Minor Murphy

June 1957

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PREFACE

The purpose of this paper is to present an analysis of the relationship between the national government and the state governments of the United States, especially in the field of civil rights and more particularly as it concerns segregation in the public schools. I am indebted to Dr. Albright and the Department of Political Science and History for unflagging guidance and help.

TABLE OF CONTENTS

CHAPTER	PAGE
I. INTRODUCTION TO THE PROBLEM	5
II. BACKGROUND AS PROVIDED BY SIX MEN	8
Alexis De Tocqueville	8
John Calhoun	18
Robert Hayne	21
Daniel Webster	22
Alexander Stephens	23
Gunnar Myrdal	26
III. DISCUSSION OF PERTINENT PARTS OF THE CONSTITUTION . . .	30
Preamble	30
Article I Section 8	32
Article IV Section 2	34
First Amendment	35
Fifth Amendment	37
Ninth Amendment	38
Tenth Amendment	39
Fourteenth Amendment	40
IV. BACKGROUND AS PROVIDED BY SUPREME COURT CASES WHICH INTERPRET THE CONSTITUTION	
Chisholm v. Georgia	47
McCulloch v. Maryland	48
Dred Scott v. Sanford	49

CHAPTER	PAGE
	4
Texas v. White	50
Civil Rights Cases	50
Sweatt v. Painter	52
Brown v. Board of Education of Topeka	52
V. THE PROBLEM AS FOUND IN VIRGINIA	56
The problem in the South	56
Reaction to the Brown decision	58
Appointment of the Gray Commission	59
Almond v. Day	60
Special Session of the Legislature - November 30, 1955	63
Referendum - January 9, 1956	67
Interposition Resolution	68
Thompson v. County School Board of Arlington County .	71
Allen v. School Board of Charlottesville	72
Special Session of the Legislature - August 27, 1956	72
Pupil Placement Board	76
Adkins v. School Board of Newport News	77
Beckett v. School Board of Norfolk	79
VI. CONCLUSION AND SUMMARY	80
BIBLIOGRAPHY	83
APPENDICES	87
Appendix A. - Section 111 of the Virginia State Constitution	
Appendix B. - Comparative statistics on white and negro schools in Virginia	
Appendix C. - Report of the Commission on Public Education	
Appendix D. - Acts of the General Assembly relating to education	

CHAPTER I

Division of authority between the national government and the state governments has been a problem since the origin of the United States, and this problem is especially prominent today in so far as it concerns the public schools. In the present situation, both constitutional and emotional difficulties are concerned; for this reason, history, constitutional analysis, and recent developments in trends of thought are all essential parts of a discussion concerning the present problem of segregation in public schools.

Almost three years ago, the Supreme Court rendered its decision in the Segregation Cases, 347 U.S. 483 (1954), in which it held that segregation could not be enforced on the basis of race. This was but the most recent important case dealing with the subject; many preceded it. But a beginning cannot be made with the first of these cases because a fundamental constitutional question is involved, and an analysis of this question is necessary before the present situation can be properly understood. The next chapter will therefore be devoted to an historical analysis of the question of sovereignty, presenting the views of prominent men from different periods in the growth of the United States. Some of these men such as John C. Calhoun and Daniel Webster were natives of this country, others such as Alexis DeTocqueville were not, but all made important contributions in analyzing this problem.

Because these opinions do not give enough constitutional detail, they will but serve as background for the next chapter which will analyze pertinent parts of the Constitution. Many people express views based on only one part of the Constitution, but the parts are related, so those per-

taining to this question will be examined, weighed and balanced against each other in one chapter.

There is only one body with the ultimate authority to interpret the Constitution; that body is the Supreme Court. The fourth chapter, therefore, will discuss relevant important decisions of the court. The first ones will deal with sovereignty alone, but the latter ones will deal more specifically with the relationship of sovereignty to the segregation question.

This will be followed by a chapter devoted to the question of segregation only as it has concerned the state of Virginia since the Supreme Court decision of 1954. Virginia, of course, has not been the only state vitally affected, but it did have the opportunity for tremendous influence in the South following this decision, and it is now exercising much leadership in so far as it is setting an example for others to follow.

This division has been chosen because it seemed that a separation of kind, that is historical opinion, constitutional analysis, Supreme Court Cases, and recent developments in Virginia, would be more clear and would emphasize changing trends of thought more than a separation by topic, for instance including in one chapter, historical opinion of one part of the Constitution and the Supreme Court cases concerned with it. None of the chapters can really be considered as a separate division because, like the parts of the Constitution, they are dependent upon each other.

Much use has been made of the word "sovereignty." It has many definitions; few people can agree on one. The different men discussed in the next chapter use it in different ways and one man may use it to mean

several things.

Funk and Wagnall's Dictionary defines the word as, "the state of being sovereign; supreme authority. The ultimate, supreme power in a state." Another definition suggests that "sovereignty is internal supremacy subject to no external control."¹ Keeping both these definitions in mind, yet another definition can be considered. Funk and Wagnall's Dictionary defines the term "popular sovereignty" as "the theory that the right to legislate and choose a government belongs to the body of the people."

The word almost defies definition, but it is nevertheless, essential to the question of division of authority between the national and the state governments. It is mentioned here as an introduction to its use in the following chapters. If it can be determined that sovereignty, meaning final authority, can be placed with any one group, the question is solved, theoretically at least.

1. Dr. Spencer Albright, professor at the University of Richmond.

CHAPTER II

In attempting to analyze the relative positions of the governments in the United States, the views of six prominent men will be examined.

First will come a discussion based on the ideas of Alexis De Tocqueville that will enter many phases of government. This long section will be followed by shorter ones, the next of which concerns itself with debates and speeches of John Calhoun, Robert Hayne, and Daniel Webster; Alexander Stephens will then be prominent. The last part of this chapter will be concerned with the ideas of Gunnar Myrdal, a well-known Swedish social-economist who will be a means of bringing closer the practical problem at hand. This will be even more evident in the fourth chapter in the discussion following the Segregation cases.

Alexis De Tocqueville, born of noble French family in 1805, wrote his Democracy In America in the first half of the nineteenth century. He was very interested in this country and managed to spend several years here collecting material for his book in the introduction of which he wrote:

It is evident to all alike that a great democratic revolution is going on among us; but there are two opinions as to its nature and consequences. To some it appears to be a novel accident, which as such may still be checked; to others it seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency which is to be found in history.¹

The French Revolution of 1830 left a lasting impression upon him and John Bigelow said that though De Tocqueville greatly admired the accomplishments of popular sovereignty in the United States, he still was not

1. Alexis De Tocqueville, Democracy In America (Vol. I of 2 vols.), p. xxx.

satisfied that it would last and felt that it would be very impractical for his own country, France. At the time, he was not alone in this view, for there were very few European statesmen who differed with him.²

To De Tocqueville, democracy was a very definite historical trend that could be seen especially in the previous seven hundred years. He pointed out that at the beginning of this period the land owners were the most important people, passing their wealth, the land, from generation to generation. Soon the church became the main power, its doors to a career open to all, and democracy began to appear on the horizon. As living became more complicated and civil law more important, judges grew in importance and the prestige of money was not far behind. Democracy appeared closer as the poor child had more opportunity of becoming rich and influential; nobility could be bought. Expansion in the knowledge of science cleared the way for prestige to be gained by intellectual achievement. These events were followed by three more very important ones, the crusades, which diminished the number of nobles, printing, which spread information to all, and "the discovery of America offered a thousand new paths to fortune, and placed riches and power within the reach of the adventurous and the obscure."³

He said:

The principle of the sovereignty of the people, which is to found, more or less, at the bottom of almost all human institutions, generally remains concealed from view....In America the principle of the sovereignty of the people is not either barron or concealed, as it is with some other nations; it is recognized by the customs and proclaimed by the laws.⁴

2. Ibid., p. xvii. 3. Ibid., pp. xxx-xxxii. 4. Ibid., p. 43.

The development of this country was traced by De Tocqueville because he was very interested in this phenomenon and wanted to know how this happened. He found his first reason in the ties that kept the many different kinds of people who settled here, close. The first settlers came mainly from the same country, England, and therefore spoke the same language. England had been full of factions for many years and because there were so many differences, the people had relied on the law for unity; they therefore were politically educated. They had common principles of right and freedom. The parish system was deeply rooted in England at the time of the first migrations, and in it was the germ of popular sovereignty. Religious quarrels had increased debate and therefore general knowledge. Those settlers of all countries still had in common certain elements of democracy. There was little superiority, the powerful didn't migrate; poverty and misfortune led to equality. Besides this, the land was not good enough to support both a master and farmer so it was broken up into small individual lots.⁵

Yet all was not harmony, and perhaps the main differences could be found in the different locations settled, North and South in particular. Those in the North were mostly an independent people with good education who left social position and security for an idea, bringing their families with them. There were no nobles among this group called Puritans.⁶

Those who settled in the South were mainly adventurers, restless and seeking gold, bringing no families. These were followed by artisans

5. Ibid., pp. 13-14. 6. Ibid., p. 15.

and agriculturists who, though more orderly, were still inferior material. Soon slavery was introduced; with it came idleness, ignorance, and pride.⁷

"Puritanism was not merely a religious doctrine, but it corresponded in many points with the most absolute democratic and republican theories." From these people came the American principles, these one hundred and fifty middle-class men, women, and children.⁸

Their laws were often taken from the Old Testament, so the death penalty was often found on the statute books but rarely enforced. They were very strict with morals, drinking, and church attendance, which was compulsory. As time went by, it seems as though they forgot the reason for which they had come, religious freedom, but even so, many of these laws were voted on by the people themselves.⁹

The groundwork for democracy can be found even in these strict laws. The people took part in public affairs; they voted freely on taxes; the authorities recognized their responsibilities; there was personal liberty and trial by jury. The poor were provided for; roads were strictly maintained. These and many other things showed the development of this groundwork. But among the most important was their public education. There were schools in every township by law, with compulsory attendance; the inhabitants were fined if they didn't support them.¹⁰ "Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it."¹¹

7. Ibid., pp. 16-17 8. Ibid., p.17. 9. Ibid., pp. 17-24
10. Ibid., pp. 24-26. 11. Ibid., p. 49.

The development in the South offered a contrast to these strict and stern people. Southwest of the Hudson there were soon many landed proprietors. People were spread out and the township was not in evidence. Many Southern people brought with them ideas of aristocracy, many a younger son of noble birth came to seek his fortune, and the English law of descent, but still they possessed no special privileges. A new nobility was not established mainly because slaves replaced tenants so there could be no patronage upon which the English nobility built itself.¹²

These people formed the superior class and were the center of politics, but they concerned themselves with the body of the people. Though they were weak and short lived as a class because of the Civil War, they supplied most of the great leaders of the Revolution.¹³

There was another reason besides the Civil War for the breakdown of this class:

The law of descent was the last step to equality. I am surprised that ancient and modern jurists have not attributed to this law a greater influence on human affairs. . . . When the legislator has regulated the law of inheritance, he may rest from his labor. The machine once put in motion will go on for ages, and advance, as if self-guided, toward a given point. When framed in a particular manner, this law unites, draws together, and vests property and power in a few hands; its tendency is clearly aristocratic. On opposite principles its action is still more rapid; it divides, distributes, and disperses both property and power.¹⁴

This was most important in the development of a democracy, but De Tocqueville did not think it a good thing. Inheritance laws left few families to enjoy wealth from generation to generation, thus few could live without working. He said that most of the rich in this country were formerly

12. Ibid., p. 34. 13. Ibid. 14. Ibid., pp. 34-35.

poor; that when they were young, all their study and work was done for one purpose and there was little time for varied intellectual pursuits. When these people grew old and gained the wealth, they had no inclination for it.¹⁵

There is no class, then, in America in which the tastes for intellectual pleasures is transmitted with hereditary fortune and leisure, and by which the labors of the intellect are held in honor. Accordingly, there is an equal want of the desire and the power of application to these objects.¹⁶

He felt that this was one of two main things wrong in a democracy. So long as people were forced to earn a living, the national intellect could only be raised so high. Opinions were made upon hasty observation and often a man who could stimulate led rather than the person who had their interests at heart. He admitted that during times of emergency usually good men were chosen but added that this was not the case during normal periods.¹⁷

The second fault he found in democracy was that it resulted in envy. Though anyone could rise to heights, few did, so the desire and inclination to do so were deadened.¹⁸

He was especially interested in the principle of sovereignty of the people. "Sovereignty may be defined to be the right of making laws," so De Tocqueville said.¹⁹ The principle of sovereignty of the people was brought to this country by most of the British colonists but two factors diminished its importance at the time he wrote this book. The first was that the laws of the colonies had to obey the mother country, so this principle had to spread secretly and gain ground in the townships and provisional assemblies. The second factor was that the intelligence of New

15. Ibid., p. 40. 16. Ibid. 17. Ibid., p. 209.

18. Ibid., p. 210. 19. Ibid., p. 117.

England and the wealth of the South presented a kind of aristocracy which kept the social authority in the hands of a few. Not all public officials were elected and not all the people were allowed to vote.²⁰

Then came the Revolution and this principle took possession of the country; people from every class fought for it, and the battle was won. As a result, the superior classes submitted without a struggle and, in fact, from it came many of the new laws. Maryland, for instance, was founded by men of rank, yet it was the first to declare universal manhood suffrage and some of the most democratic forms of government.²¹

The remarks I have made will suffice to display the character of Anglo-American civilization in its true light. It is the result (and this should be constantly present to the mind) of two distinct elements, which in other places have been in frequent hostility, but which in America have been admirably incorporated and combined with one another. I allude to the spirit of religion and the spirit of Liberty.²²

From this study of the development of democracy in this country, De Tocqueville proceeded to an examination of its government. It must be remembered that at the time he wrote, there were only twenty-four states.

The first difficulty which presents itself arises from the complex nature of the Constitution of the United States, which consists of two distinct social structures, connected and, as it were, incased one within the other; two governments, completely separate and almost independent, the one fulfilling the ordinary duties and responding to the daily and indefinite calls of a community, the other circumscribed within certain limits, and only exercising an exceptional authority over the general interests of the country.²³

During the revolution, the colonies wanted union because in it was

20. Ibid., p. 44. 21. Ibid., p. 45. 22. Ibid., p. 28.
23. Ibid., p. 47.

strength, but after the war was over, they were afraid they would lose their identity. They had little trouble determining the powers of the national government because they knew they were creating it to take care of general things common to all. The duties of the states were much harder to define because they were so closely connected with local affairs. The result was that they enumerated the powers of the national government and left all others to the states. "Thus the government of the States remained the rule, and that of the Confederation became the exception."²⁴

In this battle to decide the strength of the states, Congress entered the picture and a compromise was reached in the organization of its two houses. The states prevailed in the Senate while the sovereignty of the people dominated the House of Representatives. His conclusion was that if a minority dominated control of the Senate, it could thwart the will of the majority as expressed in the House.²⁵ His opinion of the Senate was high. He felt that it was very distinguished and filled with men of high repute. He thought the House vulgar, filled with tradesmen whose names were unknown. He thought that there would have to be more election by representation than by the people directly if we were to escape perishing "miserably among the shoals of democracy." At the time he wrote, Senators were elected by the legislatures and his worst fears would probably have been realized if he had lived to see this system changed to that of direct election by the people.²⁶

Neither did he like the direct election of the President by the people;

24. Ibid., p. 109. 25. Ibid., pp. 112-113. 26. Ibid., p. 214.

it gave them too much control over him. If the President were not eligible for re-election, then he wouldn't have to cater to the people. Checks would prevent him from usurping his power, yet he would be much freer.²⁷

De Tocqueville felt that the national government stood in greater need of judicial support than other governments because it was so much weaker. He did not feel the state courts could supply this support because whatever the national government lost in power, the state governments gained and therefore the state courts could not be completely impartial. This was the reason for the Supreme Court.²⁸

Because there were established two sets of courts, naturally conflict arose, so the matter of jurisdiction had to be decided. When it was left to the discretion of the Supreme Court to decide this matter, it was a bitter blow to the states.²⁹

Another blow to the independence of the states was that the states were prohibited from impairing the obligation of contract. A citizen had only to refuse to obey such a law and take the case to the Supreme Court. This was the most serious attack upon the states.³⁰

Judicial review became a strong weapon and protected the rights of the individual from the state legislatures. "I am inclined to believe this practise of the American courts to be at once the most favorable to liberty as well as to public order."³¹

He sums up his analysis of the Court in the following way;

27. Ibid., pp. 128-133. 28. Ibid., pp. 135-136.

29. Ibid., p. 137. 30. Ibid., p. 141. 31. Ibid., p. 95.

The President, who exercises a limited power, may err without causing a great mischief in the State. Congress may decide amiss without destroying the union, because the electoral body in which Congress originates may cause it to retract its decisions by changing its membership. But if the Supreme Court is ever composed of imprudent men, or bad citizens, the Union may be plunged into anarchy or civil war.³²

After this discussion of the mechanics of government, it is only proper to discuss the relationship of the states to this government. De Tocqueville felt that the people were the basis of government; they appointed the legislatures and the executive and provided the jurors in trials.

The people is therefore the real directing power; and although the form of government is representative, it is evident that the opinions, the prejudices, the interests, and even the passions of the community are hindered by no durable obstacles from exercising a perpetual influence on society. In the United States the majority governs in the name of the people, as is the case in all the countries in which the people is supreme.³³

He did not mean to say that the state governments lacked power but he did not feel that they should be without check. "The object of the Federal Constitution was not to destroy the independence of the States, but to restrain it." He did feel that a strong central government was needed, indeed he did not see how a nation could prosper without it, but he was wary of its strength. If this, too, went unchecked, then it would "gradually relax the sinews of strength."³⁴

In essence, he favored a strong central government as necessary for its operation but he did not want the state governments to be too weak because they should act as a brake on the national government.

If he did not want this, neither could he sanction the doctrines of

32. Ibid., p. 146. 33. Ibid., pp. 175-176. 34. Ibid., p. 73.

mullification and secession. The Constitution was not established with the idea of future separation, but was to be perpetual. He admitted, though, that if states decided that they wanted to secede, the national government could do little about it; it was too weak. He felt that because the situation was as it was, practically speaking, that it would be up to the states to decide. He did not believe that secession was either right or legal but because he was a practical man, he felt that the question was not whether they "are capable of separating, but whether they will choose to remain united."³⁵

His personal opinion of democracy and the purpose of his book can be found in the following words:

I wished to show what in our days a democratic people really was, and by a vigorously accurate picture to produce a double effect on the men of my day. To those who have fancied an ideal democracy a brilliant and easily realized dream, I endeavor to show that they had clothed the picture in false colors; that the republican government which they extol, even though it may bestow substantial benefits upon a people that can bear it, has none of the elevated features with which their imagination would endow it.... To those for whom the word democracy is synonymous with destruction, anarchy, spoliation, and murder, I have tried to show that under a democratic government the fortunes and rights of society may be respected, liberty preserved, and religion honoured; that though a republic may develop less than other governments some of the noblest powers of the human mind, it yet has a nobility of its own...³⁶

With this statement of De Tocqueville's overall opinion, let us continue to pursue a subject his discussion introduced, nullification as expounded by John C. Calhoun who said in 1828, "the sovereignty resides in the people of the states respectively." By this he meant the people in

35. Ibid., (Vol. II), pp. 425-427. 36. Ibid., (Vol. II), p. xiii.

their respective state governmental units. Calhoun felt that because the states could change the Constitution, modifying their "original right as a sovereign", and because this power was put into the hands of three-quarters of the states, that no sovereignty rested in Congress or any other governmental department because they were only "creatures of the Constitution."³⁷

He agreed that there was supposed to be a division of powers between the state and the national government, but said that to give the national government the power to decide the limits of this division was no division and that it converted the national government "into a great consolidated government, with unlimited powers, and to divest the States, in reality, of all their rights."³⁸

He went on to say:

But the existance of the right of judging of their powers, so clearly established from the sovereignty of the States, as clearly implies a veto or control, within its limits, on the action of the General Government, on contested points of authority; and this very control is the remedy which the Constitution has provided to prevent the encroachments of the General Government on the reserved rights of the States.³⁹

There was a question as to whether a state legislature represented the sovereignty of the people of that state, but he did not feel that the question was important because whether it did or not, a convention certainly did represent the sovereignty of the people of the state. A convention, then, was to decide "whether they [the national acts] constitute a violation so deliberate, palpable, and dangerous, as to justify the interposition

37. Constitutional Doctrines of Webster, Hayne and Calhoun, American History Leaflets, No. 30., p. 3.

38. Ibid., p. 4.

39. Ibid.

of the State to protect its rights."⁴⁰

If the convention was wrong, this could easily be remedied by three-fourths of the states in the form of a constitutional amendment with which no state could disagree. This would be the safeguard. The state legislature could not encroach on the national government because the Supreme Court acted as a check. The national government could not encroach on the powers reserved to the states because the states had the power of veto, "or right of interposition."⁴¹

In 1830, Senator Foote of Connecticut introduced a resolution to the Congress of the United States to investigate the possibility of limiting the sale of public lands to those already on the market. This developed into a two-week debate. John C. Calhoun presided over the Senate as Vice-President, Senator Hayne of South Carolina presented the side of state sovereignty and nullification while Daniel Webster answered him with the classic Northern stand.⁴²

On January 20, 1830, Webster spoke for the first time in reply to Hayne and his theory of nullification.

The Union is to be preserved, while it suits local and temporary expediency; nothing more than a mere matter of profit and loss.... Union, of itself, is considered by the disciples of this school as hardly a good. It is only regarded as a possible means of good; or, on the other hand, as a possible means of evil. They cherish no deep and fixed regard for it, flowing from a thorough conviction of its absolute and vital necessity to our welfare. I deem far otherwise of the union of the States; and so did the framers of the Constitution themselves.⁴³

40. Ibid., p. 5. 41. Ibid., P. 6.

42. Allen P. Grimes, American Political Thought, p. 227.

43. Constitutional Doctrines, op. cit., p. 8.

In reply to this, on January 26, Senator Hayne said that there was no doubt that the states were sovereign before the formation of the Constitution "nor can it be denied that, after the constitution was formed, they remained equally sovereign and independent, as to all powers not expressly delegated to the Federal Government." The Tenth Amendment removed all doubt of this.⁴⁴

The Constitution was a compact of sovereign states who held all residual powers. The national government had no right to exceed its delegated powers, but if this is done, remedy can be found in "that, where resort can be had to no common superior. the parties to the compact must, themselves, be the rightful judges whether the bargain has been pursued or violated."⁴⁵

He contested the point that the people are the source of power and that since the federal government was created by the people, it is supreme. This argument rested on state inferiority.⁴⁶

When in the preamble of the Constitution, we find the words, 'We the people of the United States,' it is clear they can only relate to the people as citizens of the several states, because the Federal Government was not then in existence.⁴⁷

Another argument with which he disagreed was that the Supreme Court was the tribunal appointed by the Constitution to deal with the question of division of authority. He asked where in the Constitution was the Supreme Court given jurisdiction "over the questions of sovereignty between the States and the United States." He said that if this had been intended, that it would have been declared by the states and written down.⁴⁸

44. Ibid., p. 9. 25. Ibid. 46. Ibid., p. 11.

47. Ibid. 48. Ibid., pp. 11.12.

A third argument he contested was that Congress was the body to decide this question of sovereignty because all the states are represented in it and nothing could be passed unless it was the majority will.

Now will any one contend that it is the true spirit of this Government that the will of a majority of Congress, should, in all cases, be the supreme law?... [if this is so] it is clear the constitution is a dead letter, and has utterly failed of the very object for which it was designed - the protection of the rights of the minority.⁴⁹

Webster replied to Hayne on the same day saying:

If the gentleman had intended no more than to assert the right of revolution for justiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution or rebellion, on the other.⁵⁰

He went on to say that he believed the people to be the source of power but that the states were sovereign so far as they were not limited by the constitution. The state legislature was not the sovereign of the people. His main point was that he did not want to further limit state sovereignty, only to put into effect the limits already imposed. The idea that the states should have all ultimate control was based on a false idea of the origin of power which was not the state, but the people. Both the state and national governments depend upon the people for life and length of service, the people as the source of power, can change either at will.⁵¹

He closed by saying that the states should not decide whether an act of Congress was null because the Constitution says that acts of Congress "in pursuance" shall be "supreme law." The Supreme Court was the only one that could decide this question because "judicial power shall extend

49. Ibid., p. 12, 50. Ibid., p. 16. 51. Ibid., pp. 17-20.

to all cases arising under the Constitution and laws of the United States."⁵²

To this point, four men who could have been considered contemporaries have offered a contrast of thought. Alexis De Tocqueville, even though he feared democracy, still saw much good in the sovereignty of the people. The people were the ultimate authority. He showed how the principle developed in this country.

Calhoun, Webster and Hayne did not disagree on the principle of sovereignty of the people, but only on how it should be considered and exercised. Calhoun and Hayne believed that this ultimate authority could only be expressed by the people through their state units. They were convinced that this ultimate authority could be expressed in as many different ways as there were states.

Webster, on the other hand, was firmly convinced that the union was the product of the unified effort of all the people. For this reason he felt that the state governments did not have powers of discretion. All the people of the states had set up a national government; all the people of the states had not set up the state governments. Ergo, the national government was the stronger.

Leaving these men, let us examine the opinions of Alexander H. Stephens, the Vice-President of the Confederacy. He, naturally, would not stand with Webster. Stephens was asked how he could go with his state against the Union and the Constitution which was the supreme law of the land. He answered that "Allegiance, as we understand that term, is due to no Govern-

52. Ibid., p. 21.

ment. It is due the power that can rightfully make or change Governments.⁵³

As a party to secession, it is doubly interesting to attempt to define his conception of sovereignty. It follows that of Calhoun and Hayne, but a major difference was that he did not favor secession. He said that the states never parted with their sovereignty in any compact they joined, meaning the Constitution. He felt that the Constitution was not of one people but of a number of separate people in political bodies called states. "Georgia was one of these states. My allegiance therefore was, as I considered it, not due to the United States, or to the people of the United States, but to Georgia in her sovereign capacity."⁵⁴

Yet at the same time, he did not feel that the legislatures of the states held this power, but that it was to be found in the people of the States. "It had never been delegated either to the States authorities, or the authorities created by the Articles of Union." This is a point that must be clear in order to understand him.⁵⁵

He seemed to feel that the people, as one body, of the United States as a country did not possess sovereign power but that the people of the individual states, each state voicing its own opinion, did hold this power. The legislature of Georgia, for instance, did not possess sovereign power, but the people of Georgia did, as did the people of Virginia and Maine. This sovereign power could only be expressed state by state, not by the people as a whole disregarding state boundaries.

53. Alexander H. Stephens, A Constitutional View of the Late War Between The States (Vol. I of 2 vols.), pp. 24-25.

54. Ibid., p. 19. 55. Ibid., p. 20.

Stephens allegiance was due to his state government, expressing the will of the citizens of Georgia, that protected the person and property of the citizens of Georgia. He emphasized the fact that this was only so when the state government did properly express the will of the people of that state.⁵⁶

The word citizen interested him because he felt that there was only one kind of citizenship in this country, that of state citizenship. He quoted Rawle On The Constitution, p. 85 as saying "It cannot escape notice that no definition of the nature and rights of citizens appears in the Constitution." He followed this with a quote from the Dred Scott Case, 19 Howard's Reports, 393, (1857) "It appears, then, that the only power Congress has concerning citizenship is confined to the removal of disabilities of foreign birth."⁵⁷

He used this as an argument to strengthen the position of the states. He did not feel that the national government had power over the states because they had not surrendered their sovereignty. He went so far as to say that the Constitution created a government of states, in principle, just as did the old Confederation.⁵⁸

He was opposed to secession⁵⁹ but he tried to defend the right of secession. He felt that the cause of the Civil War was opposing views regarding this very question of sovereignty.⁶⁰ In commenting on his writings about the Civil War he said:

56. Ibid., pp. 492-494. 57. Ibid., pp. 35-36.

58. Ibid., p. 126. 59. Ibid., p. 20. 60. Ibid., p. 29.

There is nothing in the book which treats Secession as a right derived from the Constitution. It is, on the contrary, a right derived, from that Sovereign Power which made the Constitution.⁶¹

The last man to be examined is quite contemporary. He was chosen to analyze the status of the Negro in the United States by the Carnegie Institute. Though there were many men in this country who were qualified for the job, these had all been exposed to the accumulation of one hundred years of emotionalism, and a fresh approach was desired. The choice was limited to countries of high intellectual and scholarly standards with no tradition of imperialism. The choice was Sweden and Gunnar Myrdal. He had an international reputation as a social economist, was a professor at the University of Stockholm, an economic advisor to the Swedish government, and a member of the Swedish Senate. He had already spent a year in this country and in addition to extensive travel and research of his own, he had the help of a battery of assistants in this country.⁶²

Parts of this book were devoted to analyzing the Constitution and the United States as a country as part of the process of determining the status of the Negro. This is the book that many have said had such a profound effect on the Supreme Court and on their decision in the Segregation Cases of May 17, 1954.

One of the main points of this phase of his book was that there was a unity in this country and a stability of values. He felt that this was caused by a "social ethos, a political creed" that was not very satisfactory

61. Alexander H. Stephens, The Reviewers Reviewed, p. 111.

62. Gunnar Myrdal, An American Dilemma, pp. vi-vii.

when applied to actual social life."⁶³

"The 'American Dilemma' . . . is the ever-raging conflict between, on the one hand, the valuations preserved on the general plane which we shall call the 'American Creed,' where the American thinks, talks, and acts under the influence of high national and Christian precepts, and, on the other hand, the valuations or specific planes of individual and group living...."⁶⁴

He then connects this American Creed with the Negro and education by saying that in unsegregated schools, all children, regardless of race, are taught this creed together with the traditions of "efficiency, thrift, and ambition." This happens because almost all educational facilities are available to the Negro.⁶⁵

But a problem remains; the student finds that this teaching does not apply in his every day life; therefore, protest rises. Myrdal goes so far as to say that the rising level of education in the Negro community nourishes the Negro protest. Education is so important to them that it is the main factor dividing them into social classes.⁶⁶

Comparing the Negro and white schools, he said that the White children were taken to fine consolidated schools while Negro children more often received only a sham education in delapidated one-room school buildings or old churches. Yet, at the same time, he recognized gradual improvement. Outside help is accepted in the South, he said, so long as it observes the proper Southern forms. Often this action is encouraged and even "matched" with local funds to better Negro education. "This is not said

63. Ibid., p. 3. 64. Ibid., p. XIVii. 65. Ibid., p. 879.

66. Ibid., pp. 880-81.

by way of excusing the bold and illegal discrimination in the rural school systems in the South, but only to stress the fact that the white caste interests are practically never driven to their logical end."⁶⁷

In his estimation, two things in particular were needed to improve Negro education. Educational facilities and transportation needed improvement and standards for Negro teachers needed to be raised. Many of the small Negro colleges were very inadequate for teacher training; this had to be remedied. His recommendations also included that teachers' salaries be raised and that they be given more job security. These problems would be solved with federal aid to education which, of course, would hinge on the stipulation of no segregation.⁶⁸

"Negroes are divided on the issues of segregated schools. In so far as segregation means discrimination and is a badge of Negro inferiority, they are against it, although many Southern Negroes would not take an open stand that would anger Southern whites. Some Negroes, however, prefer the segregated schools, even for the North, when the mixed school involves humiliation for Negro students and discrimination against Negro teachers."⁶⁹

Thomas Nelson Page, a liberal Southerner, said many years ago:

"If the South ever expects to compete with the North, she must educate and train her population, and, in my judgement, not merely her white population but her entire population."⁷⁰

This then is the American creed as differentiated from every-day life. Myrdal feels that the origins of the creed, religious precepts and English

67. Ibid., p. 895. 68. Ibid., pp. 904-05. 69. Ibid., p. 904.

70. Ibid., P. 896, quoting The Negro: The Southerner's Problem; p. 39.

law, explain why the ideals have been kept and why the United States has been "so conservative in keeping to liberalism as a national creed even if not as its actual way of life." This had gone so far as to be almost a "fetishistic" cult of the Constitution. He thought this an unfortunate situation because the constitution was impractical, in many respects, for modern conditions.⁷¹

From the 1830's to the present day, there has been controversy over this question of sovereignty. De Tocqueville dealt with the problem in general; Calhoun, Hayne and Webster were more specific on the question of state's rights before the civil war; Stephens discussed the problem after the Civil War; Myrdal was mainly interested in its results as found in segregation and Negro education. The progression of the opinion of these men follows, in general, the plan of this paper.

The last opinion given of Myrdal had to do with the Constitution and how it was regarded by the American people. Because it is the foundation on which the government of this country is built, an analysis and comparison of its different parts is important to a work such as this. The following chapter will do this.

71. Ibid., p. 12.

CHAPTER III

What is sovereignty and where does it lie? The previous chapter dealt with analysis of government by men who have been outstanding, in this field. In their explanations, the word sovereignty was used many times but it did not always mean the same thing. Can the word be used in reference to our own government? Only if it is limited in its meaning to that of source of power, that source having no external controls which it cannot change at will. In this case sovereignty would rest in the people.

If this is true, why has there been the never ending discussion over the question of sovereignty; why is there today such a large group that promotes the idea of state sovereignty and state's rights? The answer can be found in the point of disagreement between Webster and Calhoun; how this sovereignty is to be expressed. In order to answer this question, two methods will be employed, first a study of the Constitution itself, this to be followed by select court cases dealing with both the problem in general and in particular as it is applied to segregation in education. This writer takes the stand that sovereignty, if the word can be used at all, meaning only the source of power, cannot be applied to the national government, nor to the state government, but only to the people.

It is important to examine the different parts of the Constitution, to contrast the wording of different sections, in order to reach a logical conclusion. Parts of it cannot be used to prove a point unless these parts are considered in relation to the whole.

The Preamble to the Constitution states:

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessing of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Chief Justice Marshall might have been speaking of these exact words when he said, "The government of the Union is emphatically and truly, a government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *McCulloch v. Maryland*, 4 Wheaton 316 (1819).

He does not once mention the word sovereignty, but he does concentrate on the point that the people are the source of power. From this statement, let us go one step further.

"Moreover, the preamble bears witness to the fact that the Constitution emanated from the people, and was not the act of sovereign and independent states...."¹ This statement says in words what the first implies, that sovereignty does not rest in the states. But we have yet a final step to take.

Chief Justice Taney in the *Dred Scott* case 19 How. 393, (1857):

The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people', and every citizen is one of this people, and a constituent member of this sovereignty.

This last step actually recognizes the sovereignty of the people.

1. Edward S. Corwin, ed., The Constitution of the United States of America, Analysis and Interpretation, p. 59.

But in analyzing this question, one must not be hasty in judgment. It can be argued that the first phrase of the preamble speaks of "the people of the United States" while the last phrase only adds "United States of America." This would mean that the states, through the people, ordained and established the Constitution for the whole country.

At this point the wording of the Tenth Amendment is pertinent.

"The powers not delegated to the United States...are reserved to the States..." Here a definite distinction is made between the terms "United States" and "States" and it can be inferred that the term, as used in the preamble, meant the whole, not parts of the whole. Another distinction can be found in the first Section of the Fourteenth Amendment which states in part that certain people "are citizens of the United States and of the states wherein they reside." We therefore come to the conclusion that there are two kinds of citizenship.

This discussion may seem pedantic, but it becomes less so when one considers how important is this placement of sovereignty when it comes to matters of civil rights and education. How far does the police power of a state extend? The proponents of the state sovereignty theory naturally extend it much farther than those who believe that such is misplaced sovereignty.

Article I, Section 8 of the Constitution states,

The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; . . ."

This phrasing could be misconstrued if lifted from the rest of the Congressional powers and considered alone. This does not say that Congress may legislate for the general welfare; if the words meant this, there would

be no need for any other enumeration of power. The intent is clearer when extraneous words are removed. "The Congress shall have Power to lay and collect Taxes...to...provide for...general Welfare." Thus the clause does not confer sovereignty upon the national government.

"The clause, in short, is not an independent grant of power, but a qualification of the taxing power."² Congress may tax for three purposes alone, though it must be granted that one is very broad in definition. In addition to this, Congress may only lay taxes to provide for the betterment of the Union.

Hamilton and Madison argued over the meaning of these words, Hamilton taking a broad and literal view while Madison contended that the words were little more than the ability of self-support. Hamilton's opinion is the one most prevalent today. The Supreme Court has shown its change of thought in several cases but this was culminated in a decision concerning the Hatch Act. "While the United States is not concerned with, and has no power to regulate local political activities as such of State officials, it does have power to fix the terms upon which its money allotments to States shall be disbursed."³

Proponents of state sovereignty would not like these words, but it must be remembered that the Tenth Amendment must be put beside this clause and the two compared. The clause could have been worded in this way because of the failure of the Articles of Confederation. No state can therefore "hold out" when the public good is at stake, for instance, in social security.

2. Ibid., p. 113. 3. Ibid., p. 116.

Article IV, Section 2 states:

The Citizens of each state shall be entitled to all privileges and Immunities of Citizens in the several States."

This clause constitutes one of the most direct curbs upon the power of a state, and therefore refutes the contention of state sovereignty. There have been four different theories advanced as to the meaning of these few words, the first three of which have been rejected. The first of these was that the Amendment was a curb on Congressional action, that citizens of each state had to receive equal treatment by Congress. The second was that all citizens were entitled to all privileges and immunities of any state. This is a very logical view since it is exactly what the words say. It is to be noted that if this opinion had become prevalent, the Supreme Court would have had the reviewing power over restrictive state legislation as broad as that it now uses concerning the Fourteenth Amendment.⁴

The third theory was that individual state citizenship could be carried across state lines, that is, that one did not lose this citizenship by crossing state boundaries. The theory in use today is simply that a state may not discriminate against citizens of another state in favor of its own. This would seem much like the second, except that in practise it is not so broad.⁵

The last theory warrants discussion. The police power of a state often conflicts with these words because the health and welfare of the citizens of a state precede anything else. An example would be liquor laws that restrain dealers from other states. A state may also discriminate in

4. Ibid., p. 687. 5. Ibid.

matters such as insurance, selling only to residents. Yet a third exception can be found in state laws that deal with the disposal of land at the death of a husband. These are but three exceptions of personal rights.⁶

One might also consider those laws relating to voting within a state. A person must live in a state for a certain length of time before he can vote in the state. The argument could well be presented that this is not discrimination because it is required of those citizens of the state who move from county to county or to city, etc. Usually though, the length of time necessary to establish residence within a state, that is in a local subdivision of a state, is much shorter than the length of time required for the same of the state as a whole. A reason for this is easily seen, i. e. to give the prospective voter time to become familiar with issues and candidates, but it does seem a contradiction of this clause, even when it is considered in relation to the powers of the states.

The first Amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

These words are important in the discussion because of its relation to the Fourteenth Amendment which imposes similar restrictions upon the states, thus again curbing their supposed sovereignty. An examination, which includes two main points, of this amendment is therefore necessary for a clear understanding of the latter.

The first point is that the words cannot be taken at face value be-

6. Ibid., p. 691.

cause the good of the whole must be considered as well as that of the individual. For instance, a meeting though peaceable, probably could not be held on a main street at noon; it would interfere with the rights of others. Libel and slander are not permitted either.⁷

The second point is that this amendment is now interpreted by the Supreme Court in the light of a "clear and present danger." The members of Jehovah's Witnesses were at first restrained in their distribution of literature and because they would not salute the flag, *Minersville School District v. Gobitis*, 310 U.S. 586 (1940). But when the "clear and present danger" test was applied, it was decided that no one was being hurt and that their beliefs must be left free for expression, *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943).

Every free man has an undoubted right to lay what sentiments he pleases before the public; to forfeit this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous,⁸ or illegal, he must take the consequences of his own temerity.

In *Schenck v. United States*, 249 U.S. 47 (1919), where certain persons circulated material to obstruct recruiting and enlisting under the Military Act of 1917, Justice Holmes in the majority opinion said:

The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic.... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent.⁹

7. Edward S. Corwin and Jack W. Peltason, Understanding the Constitution, pp. 87-90.

8. Corwin, ed., op. cit., p. 769, quoting Blackstone.

9. Ibid., p. 774.

The question of the state police power again came to the fore when a Supreme Court decision of 1949 is considered, one that dealt with a Chicago ordinance which, as judicially interpreted, permitted punishment when peace was disturbed by speech which "stirs the public to anger, invites disputes, (or) brings about a condition of unrest." This was declared unlawful in *Terminiello v. Chicago* 337 U.S. 1 (1949). In this decision, Justice Douglass wrote:

A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, created dissatisfaction with things as they are, or even stirs people to anger.... It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."¹⁰

The Fifth Amendment states in part:

Nor be deprived of life, liberty, or property, without due process of law.

This clause is important because of the limitations it sets on the national government. Its corollary can be found in the Fourteenth Amendment, the latter being a denial of state power. In this clause, the writer will only be concerned with the meaning of the word liberty. Originally, liberty meant freedom from physical restraint, but now it has come to have a much broader interpretation.

Prior to 1937, its most important application was in relation to contract. The Supreme Court rejected Congressional legislation dealing with minimum wages and maximum hours worked because it was said that such laws

10. Ibid., pp. 777-778.

violated the sacred right of contract. Since that time, however, this meaning has changed and the main importance of the word is found in its relationship to civil rights.¹¹

Since the Fourteenth Amendment itself is quite similar in many respects, the main part of this discussion will be incorporated into that of the latter amendment to avoid repetition.

The Ninth Amendment states:

The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

This is a most interesting statement. It would almost seem that Rousseau had been one of those who drew the Constitution and insisted that this little used amendment be inserted.¹²

One discussion of this amendment says in part:

When by mutual consent, men created government, they granted it to their natural right of judging and executing the natural law, but retained the rest of their natural rights. In accordance with this theory, the Bill of Rights did not confer rights, but merely protected those already granted by the natural law. This Amendment made it clear that the enumeration of rights to be protected against federal power did not imply that the other natural rights not mentioned were abandoned. These supposed unenumerated rights have never been specified, and no law has ever been declared unconstitutional because of denial or disparagement of them.¹³

Perhaps the reason this Amendment has been forgotten is because the broader interpretation of the Fifth and the addition of the Fourteenth

11. Corwin, op. cit., pp. 98-99.

12. George H. Sabine, A History of Political Theory, p. 585 quoting from Rousseau's Social Contract.

13. Corwin, op. cit., p. 104.

Amendments decreased its vague importance. Yet at the same time, its words must not be forgotten for here is yet another reference to the power of the people. It says that the powers conferred upon government does not alter the fact that there are certain rights that cannot be given up by the people.

Compare these words to the Tenth Amendment, "The powers not delegated to the United States...are reserved to the States...or to the people." These two, following each other as they do, point out the fact even more strongly that such sovereignty as there is in our system of government, is held by no one but the people themselves.

The Tenth Amendment states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In addition to what was pointed out in the discussion of the Ninth Amendment, this sentence merely says that the States derive their power neither from the Constitution nor the federal government. It must also be remembered though that the limitations imposed by the Constitution are valid and now the federal government may invade a sphere of previous state activity, such as agriculture, so long as it follows its Constitutional limitations. Many years ago Marshall argued the point that this amendment did not hamper the national government, and today this philosophy is prevalent.¹⁴

Madison who was the sponsor of the amendment said, during the Congressional debate that followed its introduction, that:

14. Ibid., p. 105.

Interference with the power of the State was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitutions of the States.¹⁵

One example of this is the power of Congress to control and regulate interstate commerce. Commerce was formerly a field belonging to the states, and there was much dissension before Congress gained control over it.

Considering the discussions of these last two amendments together, we must contradict the opinion of those who use this Tenth amendment as the major support of their contention of state sovereignty.

The first Section of the Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside.

This first part of this amendment makes it clear that there are two distinct kinds of citizenship, national and state. One can be a citizen of the United States without being a citizen of a state. What is more, one is automatically a national citizen by blood, place of birth, or naturalization, but one must establish residence to become the citizen of a state. Slaughterhouse Cases, 16 Wall, 36 (1873). "National citizenship, although not created by this amendment was thereby made 'paramount and dominant'," Arver v. U.S. Selective Draft Law Cases, 245 US 366 (1918).

The second clause of this amendment states;

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

15. Corwin, ed., *op. cit.*, p. 915 quoting Madison in 1791 in the II Annals of Congress, 1897.

The primary purpose of this and the following sections was, originally, to confer upon the national government the power to protect the civil and political rights of the freed men. Had the amendment been carried out as intended, it would have produced a fundamental change in the nature of our federal system, for it would have given the national government jurisdiction over the entire realm of civil rights.¹⁶

Interpretation, though, rested in the hands of the Supreme Court who felt this would not be advantageous; therefore, in the first case that came before it involving this section, it stated that there were two kinds of citizenship. The "fundamental" rights which we enjoy as "privileges and immunities" stem from state, not federal citizenship. All that was done by this interpretation was to make "explicit a federal guarantee against state abridgement of already established rights," *Slaughterhouse Cases*, 16 Wallace 36 (1873).

In this same case, the Court went on to say that the Louisiana statute that conferred a monopoly of slaughtering upon one corporation did not interfere with any of the rights accorded a United States citizen; it merely terminated one of those rights which "belonged to the citizens of the States as such"; these had been "left to the State government for security and protection." This is good assurance indeed. This clause did not place these rights "under the special care of the Federal Government." The only privileges which were expressly protected by this clause were those of United States citizenship which were protected, in any case, without this amendment.¹⁷

The words of this clause are another direct limitation upon state authority, and, as such, can be contested. First, the broad definition

16. Corwin, op. cit. p. 117. 17. Corwin, ed., op. cit., p. 966.

of the word liberty now accorded to that word in the first amendment.

Liberty now means

not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.¹⁸

Is not this word liberty, logically, one of the "privileges and immunities" of federal citizenship as guaranteed under the First and Fifth Amendments? Why should not this then be included in prohibited state action? Applying this broader definition, the state could not confer such a monopoly unless it did not interfere with the rights of others, as in this case it did.

The second point that can be contested is that saying that the privileges of federal citizenship were already protected and that so far as they were concerned, this amendment is superfluous. It is true that these rights as stated particularly in the First and Fifth amendments are protected from Congress, but that is no guarantee of state protection.

The first amendment makes reference only to prohibited Congressional action, referring not once to the states. In fact, laying this First amendment beside the Tenth, one might take for granted that these powers of limiting free speech and press were expressly left to the states. This does not fit the overall character of the Constitution.

Though the Fourth amendment states certain prohibitions, not restricting them in any way, it has become the usual thing to apply these pro-

18. Corwin, op. cit. p. 98.

hibitions only to the federal government. Taken at face value, it could be applied to both state and federal governments, but it is not. State authorities may make unreasonable searches and seizures; a defendant cannot refuse to give self incriminatory evidence in state courts, etc.

In essence, this one phrase of the Fourteenth Amendment dealing with privileges and immunities should be a direct brake upon state action in all those matters or rights which are guaranteed to citizens of the United States by the First ten amendments.

The third clause of the Fourteenth amendment states:

Nor shall any state deprive any person of life, liberty, or property, without due process of law.

This is now the clause that succeeds in that which the author would have the "privileges and immunities" clause fulfill. "Hence all the rights which are protected by the first amendment against interference by the national government are now deemed by the court to be protected by the fourteenth amendment against interference by the states."¹⁹

Justices Black, Douglas, Murphy, and Rutledge all contended that this amendment "requires the states to follow precisely the same procedures in criminal cases that the federal government is required to follow by the Fourth, Fifth, Sixth, and Eighth Amendments." They used the "due process" clause as authority while this writer uses the "privileges and immunities" clause because it would seem that the latter made the former unnecessary repetition except in so far as corporations and aliens are

19. Ibid., p. 18.

concerned. But since the Supreme Court does not see the words in this light, let us examine further.²⁰

For some time after this amendment was passed, these words had little meaning except in their very narrow interpretation "that a legislature must provide due process for the enforcement of law."²¹ Thus this clause had no importance in the Slaughterhouse cases nor in *Munn v. Illinois*,⁹⁴ US 113 (1877). In this latter case the state legislature established rates for private grain elevators and Munn charged "deprivation of property" under this clause. Chief Justice Waite said in this case:

The great office of statutes is to remedy defects in the common law as they are developed....We know that this power [of rate regulation] may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls; not to the courts.²²

Before a change of opinion could be instituted, the Court would have to narrow the definition of the police power of the states. Up to this time they had been fearful of upsetting the balance of power between the state government and the federal government, but in the process they were forgetting the people, the basis of them both.

In 1887, in *Mugler v. Kansas*, 123 US 623, the definition of the police power in a majority opinion was narrowed for the first time to include only "the power to promote (not protect) public health, morals, and safety."²³

So having narrowed the scope of the State's police power in deference to the natural rights of liberty and property, the Court next proceeded to read into the latter currently accepted theories of

20. Ibid., p. 119. 21. Corwin, ed., op. cit., pp. 971-972.

22. Ibid., p. 972. 23. Ibid., pp. 974-75.

laissez-faire economics, reinforced by the doctrine of evolution as elaborated by Herbert Spencer, to the end that "liberty", in particular became synonymous with governmental hands off in the field of private economic relations.²⁴

But the Depression of the 1930's changed this theory to that of government help for those who could not help themselves. In order to do this, the definition of liberty had to be changed again to include this new concept.

By such modification of its views, liberty, in the constitutional sense of freedom resulting from restraint upon government, was replaced by the civil liberty which an individual enjoys by virtue of the restraints which government, in his behalf, imposes upon his neighbors.²⁵

The Fourth clause of the Fourteenth Amendment states:

Nor deny to any person within its jurisdiction the equal protection of the law.

This clause does not forbid states to make 'reasonable' classifications which affect alike all persons similarly situated, but it does rule out 'unreasonable' and 'arbitrary' classifications, and especially such as are the outgrowth of racial or religious animosities.²⁶

This has been most recently applied on a nation wide scale of importance in the Segregation Cases, 347 U.S. 483 (1954), where the Court said that the "due process" clause did not even need to be considered because school segregation was a direct violation of this "equal protection" clause. Again, a direct curb is found, though disputed, upon the theory of state sovereignty.

In considering the different parts of this amendment, one thing is common to all. They restrict state action, not private action. The difference and relation between the two can readily be seen in the following example. Private citizens may have restrictive covenants between them,

24. Ibid., p. 975. 25. Ibid., p. 980. 26. Corwin, op. cit., p. 120.

that is private action, but if a state court should uphold such a covenant, then it becomes state action and as such is prohibited, *Shelley v. Cramer*, 334 U.S. 1 (1948).

The consideration of this amendment has much importance in the Southern states where communities are looking for ways to prevent integration in their schools. It remains to be seen whether they can successfully differentiate between private and state action.

Though many parts of the Constitution have been mentioned in the chapter because they are so related to each other, they are not all of major importance. The first and fifth amendments are important because of the limitations they impose upon the national government. The Fourteenth Amendment is important because of the similar limitations imposed upon the states.

It must never be forgotten that the protection of the people is the only reason for any of them to exist. Because the problem of division of authority is so complex, it often happens that this basic purpose for them all is forgotten.

CHAPTER IV

With an analysis of the Constitution as a basis of understanding, we now proceed to court cases in an effort to reach a conclusion on the question of sovereignty and civil rights. Following this examination of cases, there will be presented the practical application of the question in Virginia as seen in the public educational problem.

The cases chosen for this discussion are given in chronological order so that developing opinion may more easily be seen. The cases presented are but a few of those that could have been used, but they form a representative group.

In *Chisholm v. Georgia*, 2 Dall. 419 (1793), the question before the Supreme Court was whether a state had sovereignty that excluded it from the jurisdiction of the Supreme Court. It decided that the state did not.

To the Constitution of the United States the term sovereign, is totally unknown. There is but one place where it could have been used with propriety.... They might have announced themselves "sovereign" people of the United States; But serenely conscious of the fact, they avoided the ostentatious declaration."¹

In this case, the court went on to say that the word sovereignty implied subjects and that under our constitution there were none. The word subjects appears but once in the Constitution and then with "foreign" as a prefix. "As to the purposes of the Union, therefore, Georgia is not a sovereign state." The people formed the Constitution, these people that were citizens of thirteen states. "The inference which necessarily results

1. *Chisholm v. Georgia*, 2 Dall. 419 (1793).

is that the constitution ordained and established by the people.... could vest jurisdiction or judicial power over those states, and over the state of Georgia in particular."

Chief Justice Jay added:

From the crown of Great Britain, the sovereignty of their country passed to the people of it....and then the people, in their collective and national capacity, established the present Constitution. It is remarkable that in establishing it, the people exercised their own rights, and their own proper sovereignty, and conscious of the plenitude of it, they declared with becoming dignity, "We the people of the United States....do ordain and establish this Constitution".

Thus as early as 1793, we find the court repudiating the theory of state sovereignty and upholding the theory of the sovereignty of the people. It must be remembered that in this case the state was claiming complete sovereignty with no limitations.

Twenty-six years later, John Marshall as Chief Justice of the Supreme Court declared that the states did not have sovereignty. At this point, the national government was still weak, the state governments strong, and Marshall fought to strengthen the national government.²

In this case, the Maryland legislature attempted to tax the Baltimore branch of the Bank of the United States while McCulloch, the cashier of the bank, refused to pay the tax. Maryland argued that it had a right to tax the federal instrument because the Constitution was not the act of the people but of "sovereign and independent states".

Marshall, emphatically denying this, went back to the origin and ratification of the Constitution to prove his point. He admitted that

2. McCulloch v. Maryland, 4 Wheat. 316 (1819).

the convention that framed the Constitution came from the states but said that at that time it was a mere proposal. He said:

it was reported to the then existing Congress of the United States, with a request that it might 'be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification.'

This was accordingly done and then "the instrument was submitted to the PEOPLE" He admitted that they assembled in conventions in their states but asked how else they would have done it. It would have been ridiculous for them to break down state lines for the people couldn't possibly vote in a mass. They did it in the way most practical to them, through representatives.³

The government proceeds directly from the people; is 'ordained and established' in the name of the people....It required not the affirmance, and could not be negated by the state governments. The constitution, when thus adopted, was of complete obligation, and bound the state sovereignties....The government of the Union, then....is emphatically and truly a government of the people. In form and in substance it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit.⁴

These were strong words at the time, but, nevertheless, it is the official interpretation of the Supreme Court of the United States that the states did not have unlimited sovereignty. The question is considered from another angle by Chief Justice Taney in *Dred Scott v. Sanford*, 19 How. 393 (1857), when he spoke of the:

peculiar character of the Government of the United States. For although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. Certain specified powers, enumerated in the Constitution, have been conferred upon it; and neither the legislature, executive, nor judicial departments of the Government can lawfully exercise any authority beyond the limits marked out by the Constitution.

3. Ibid.

4. Ibid.

This was the case that helped to precipitate the Civil War, the war that was fought over the question of sovereignty. At the time, it was not necessary for the court to go as far as it did in this case, but it chose to do so and therefore we have another statement from the Supreme Court concerning this subject.

In 1868 arose the case of *Texas v. White*, 7 Wall. 700. The facts are involved but a major question was the status of Texas during and after the Civil War. The court said that Texas was never out of the Union because it was indissoluble. "What can be indissoluble if a perpetual Union, made more perfect, is not?" The question involved was of course state sovereignty, whether it had the power to withdraw. The court went on to say:

Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the power of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people.

By this time it was clear that there was no unlimited state sovereignty. But the question that remained was how far to extend the powers of the states.

The Civil Rights Cases, 109 US 3 (1883), again brought this question to the fore. In these cases, the court emphasized the point that the Fourteenth Amendment applied only to state action, not to that of private individuals. It maintained that Congress might enact legislation to correct state action that violated this amendment, but that it could do nothing unless there was such a state violation. The court summed up this point by saying:

This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to.

Congress could not decide when it would interfere, for Congress itself was limited in its interference. But in *Plessy v. Ferguson*, 163 US 537 (1896), a Louisiana state law requiring separate accommodations for white and colored persons on railroad was brought up before review to the Supreme Court.

It was argued that the law violated both the Thirteenth and the Fourteenth Amendments. The Court said that it did neither. It did not violate the Thirteenth because in order to do so it was necessary to prove that "at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services." The court said that this "is too clear for argument."

So far as the Fourteenth Amendment was concerned, the Court said that it couldn't abolish social conditions based on color as opposed to political privileges guaranteed by the amendment. They said that social prejudices couldn't be overcome by legislation, and separation did not imply inferiority. It was said that if interstate transportation had been involved, there would have been a difference but since it was purely local, it was under the police power of the state.

Judge Harlan dissented from the majority opinion in this case saying in part, "The arbitrary separation of citizens, on the basis of race... is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution." As often happens,

this dissent later became the prevailing opinion. Precedent of 58 years.

Jumping fifty-four years, we come to the case of Sweatt v. Painter, 339 US 629 (1950). Sweatt was denied admission to the state supported University of Texas Law School solely because he was a Negro. During the time that it took the case to reach the Supreme Court, a Negro Law School was established by Texas so that the "separate but equal" doctrine of the Plessy case could be followed, but Texas was surprised.

The court held that this doctrine could not be followed because the Negro school was much inferior in both instructors and library. Besides these, the court said that prestige counted a great deal and this the Negro school did not have. Eighty-five per cent of the people with whom Sweatt as a young lawyer would have to deal, including other lawyers and judges, were excluded from the school. Adequate exchange of thought and ideas was denied to him and therefore he had to be admitted to the formerly all white school. No new doctrine was established, but because it would be almost impossible to meet the requirements established by the court, inroads were made on the Plessy doctrine.

In 1954 came the big departure from the "separate but equal" doctrine. It was rejected, in Brown v Board of Education of Topeka, 347 US 483 (1954). Because the next section deals exclusively with the problem in Virginia, this case will be examined as it first appeared in the Virginia courts.

Section 140 of the Virginia state Constitution states that "white and colored children shall not be taught in the same school." The Negroes plead that segregation implanted the idea of inferiority in both white

and colored children. They brought up constitutional questions, but the state court maintained that the regulation of education was part of the police power of a state. It added that the segregation was not the result of prejudice but simply mores.⁵

The court considered very important the testimony of former Governor Darden, then President of the University of Virginia. He states that to do away with segregation would lessen the public interest in schools, that financial support would be withheld and both races would be hurt. But the court in continuing with the "separate but equal" doctrine found that the two schools in question were not equal and so ordered that a new school be built for the Negroes and that transportation be improved.⁶

When the case reached the Supreme Court, this lower court decision was reversed. The Supreme Court said of the due process clause in the Constitution,

What is this but declaring that the law in the States shall be the same for the black as for the white,...in regard to the colored race, for whose protection the amendment was primarily designed,...but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race, the right to exemption from unfriendly legislation against them distinctively as colored, exemption from legal discriminations, implying inferiority in civil society.

The court felt that Sweatt could not be used as precedent because in the present case the schools were equal, as such. "We must look instead to the effect of segregation itself on public education. Most important is present society. In the Sweatt case the court had relied on "those

5. Davis v. County School Bd. of Prince Edward County, 103 Fed. Supp. 337. (1952).

6. Ibid.

7. Brown v. Board of Ed. of Topeka, 347 U.S. 483 (1954).

qualities which are incapable of objective measurement but which make for greatness in a law school." The court went on to say that feelings of inferiority were engendered by the separation and that this would be a permanent thing. Equal protection is denied by these state laws and therefore they are invalid.⁸

A rehearing of the case was held by the Supreme Court in 1955 on the question of relief. The court states that the cases should be remanded to the District Courts who should see that the parties were admitted with all deliberate speed to the public schools without discrimination. It was stated that the school authorities were primarily responsible for solving the local problems, and the courts that first heard the cases should decide whether the school authorities were acting in good faith.⁹

These cases all point in one direction, the direction taken in the Brown case. As a result of this case, the states have been told that their police power does not extend to limitations on civil rights as in segregated education. Most of the Southern states have not accepted this and are trying different plans to evade the question. The answer, satisfactory to all, has not yet been found.

A northern law review says:

Social scientists consider segregation to be a basic form of racial discrimination. Regulating the Multitude of daily contacts between the races, it has become the primary symbol of the Negro's inferiority. Because the school is society's chief agency for conserving and transmitting its culture, educational segregation has extra significance.

8. Ibid.

9. *Brown v. Bd. of Ed. of Topeka*, 349 U.S. 294 (1955).

A segregated educative system is likely to transmit to each succeeding generation the superiority-inferiority value attitude of a racially conscious society. Furthermore, it provides public approval and reinforcement of private prejudices.¹⁰

It says that until the Brown case the separate but equal doctrine was used so that a judge used this criterion in each case. Inroads were made on this doctrine on the graduate school level where intangibles make a difference. *Sweatt v. Painter*, 339 US 629 (1950). Now the emphasis has shifted to the grade schools where the challenge is squarely met for the first time by the Supreme Court. Intangibles are harder to prove in grade schools than professional schools because "the impact of grade school education must be measured in terms of general personality development, while the impact of graduate school training can also be evaluated in terms of preparation for professional work."¹¹

The author of this article felt that the Supreme Court may have continued the separate but equal doctrine as long as it did because it was afraid that violence might result if it did not. Agreeing with Gunnar Myrdal, he feels that the main resistance would take non-violent forms, gerrymandering or the abandonment of public schools. His answer to this is that tighter decrees and persistent enforcement would overcome even this type of resistance. Using Key's Southern Politics of 1949 as his authority, he says that the history of the white primary cases offer the best example of this in legal history.¹²

10. "Grade School Segregation: The Latest Attack on Racial Discrimination," The Yale Law Journal, LXI (1952), 731.

11. Ibid., p. 735. 12. Ibid.

CHAPTER V

In the Segregation Cases, 347 U.S. 483 (1954), the Supreme Court said: "In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal." Despite this, there are attempts to continue segregation in public schools.

One of the ways to do this would be to abolish public schools. In order to do this, either direct grants could be made by the state to private schools, or the state could abolish compulsory attendance, therefore, the public schools, and make grants to the individual students.¹

The question arises as to whether this maintenance of private school segregation would violate the Fourteenth Amendment. In restrictive covenant cases, the Court has held that private covenants excluding Negroes are not a violation, but if a state court should uphold such a covenant, this would be state action and, as such, violates the Amendment. Since no court action would be needed to enforce segregation in private schools, *Shelley v. Kraemer*, 334 U.S. 1 (1948), would be no obstacle.²

However, in *Kerr v. Enoch Pratt Free Library*, 326 U.S. 721 (1945), certiorari was denied by the Supreme Court when the lower court held that a private library partially supported by public funds, could not exclude Negroes. In *Lawrence v. Hancock*, a private swimming pool was

1. "Constitutional Law-Segregation In Public Schools, "Louisiana Law Review, XV (1954-1955), 206.

2. Ibid., p. 207.

built by and leased from the city. The private pool enforced segregation, and the court declared this invalid. Thus, private schools supported with public funds would not be considered legal nor would the use of public buildings by private schools. But in these cases, only certiorari was denied, no decision was made, so only assumptions can be drawn.³

In primary election cases, private clubs that handled the elections and enforced segregation were declared illegal because the delegation of this important government function to a private group made the private action state action. In the Brown case, the Court stated that "education is perhaps the most important function of state and local governments."⁴

A second attempt to continue segregation consists of the exercise of the police power of a state. An amendment to the state constitution of Louisiana provides for segregation on the basis of this police power, but this source believes that the Brown decision takes away this power found in the Tenth Amendment.⁵

A third attempt is found in gerrymandering, redrawing district, in this case school district, lines. In political rights cases that have come before the Supreme Court, it has maintained an attitude of "hands off" and has never ordered a lower court to redraw lines. This method would be effective in a densely populated area, but in a fringe area it would give the appearance of arbitrary districting.⁶

3. Ibid., pp. 208-10. 4. Ibid., p. 212.

5. Ibid., p. 212-15. 6. Ibid., p. 218.

What has happened in the state of Virginia? Reaction on May 18, 1954, the day after the Brown case decision was handed down, was varied according to the Richmond Times-Dispatch. Gov. Stanley remained calm and issued a statement, several hours after the decision was made public, that there would be a meeting of state leaders very soon, but, since there would be a rehearing of the case in the fall, he saw no need to call a special session of the General Assembly at that time.⁷

Senator Byrd is quoted as calling the decision a "crisis of first magnitude." Attorney-General Almond said that he did not agree with the decision, but "the highest court in the land has spoken and I trust Virginia will approach the question realistically and endeavor to work out some rational adjustment." He added that "he was convinced that integration of the races in the school system will set education back, and that the decision is a drastic blow at the right of the sovereign State to maintain its own public school system without interference from the Federal Government."⁸

State Senator Ted Dalton urged the Governor to appoint a "nonpartisan, biracial commission" to present a plan to the General Assembly. The counties of Chesterfield and Henrico and the City of Richmond all said that they would do nothing but would follow the lead of the state and see what came out of the General Assembly.⁹

A statement issued by the Virginia State Conference, NAACP said

7. News item, Richmond Times Dispatch, May 15, 1954.

8. Ibid. 9. Ibid.

in part, "The conference does not view this decision as the culmination of its activities, but as the most important and vital step of the last century toward realization of full citizenship rights for all Americans, irrespective of race, color, or creed."¹⁰

The editorial page of the same paper called it the most momentous decision since the Dred Scott case in 1857; "this is a time for calm and unhysterical appraisal of the situation by the officials and people of Virginia." The paper felt that the court did leave too much uncertainty by setting no time limits in gradual stages. It also felt there would be two major problems, the first in those areas where the Negro population was more than white, the second being the difficulties of integrating Negro teachers and principals into integrated schools.¹¹

The tone of the editorial is quite reasonable and one is left with the feeling that integration is expected, but not without problems. In another part of the same paper appeared a long statistical comparison which is reproduced in part in Appendix B. According to this, there were twenty-three counties whose school population had a majority of Negroes.

Over three months later, on August 30, Governor Stanley appointed the Commission on Public Education, known as the Gray Commission, to "examine the effect of the decision of the United States Supreme Court in the School Segregation Cases and to make recommendations".¹² The Commission published its report in November of the following year. But

10. Ibid.

11. Editorial in the Richmond Times Dispatch, May 15, 1954.

12. Vanderbilt University School of Law, I Race Relation's Law Reporter, 886.

before that is examined, it is necessary to examine a Virginia Court case which was decided four days before the Commission Report was published.

On November 7, 1955, a decision was rendered in the case of Almond v. Day, 197 Va. 419. Attorney-General Almond sued Day, the Comptroller of Virginia, to settle the question of education of war orphans. Section 141 of the Virginia Constitution was in contention. (See Appendix A)

It says in part, "No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State". Some of these orphans had been attending private schools, but Judge Eggleston in delivering the opinion of the court said that it made no difference whether the funds were paid to the schools or to the guardians. In either case, the public schools were the losers.

The fact that in the administration of the Act the funds may be paid to the parents or guardians of the children and not directly to the institutions does not alter their underlying purpose and effect. As a matter of fact the record shows that from July, 1950, through June, 1954, payments of these appropriations have usually been made directly to the institutions.

He said that the state constitution would have to be amended before this could be done.

Four days later the Gray Commission (Commission on Public Education) published its report. (See Appendix C) It stated that it felt that much discretion should be left to the local school boards because problems in different areas of the state differed. The heart

of the report is found in the following paragraph from page 8.¹³

To meet the problem thus created by the Supreme Court, the commission proposes a plan of assignment which will permit local school boards to assign their pupils in such a manner as will best serve the welfare of their communities and protect and foster the public schools under their jurisdiction. The Commission further proposes legislation to provide that no child be required to attend a school wherein both white and colored children are taught and that the parents of those children who object to integrated schools, or who live in communities wherein no public schools are operated, be given tuition grants for educational purposes.¹⁴

The report went on to say that because of the decision in *Almond v. Day*, Section 141 of the state Constitution would have to be amended to allow this program to be fulfilled. It recommended that a special session of the legislature be called to initiate a constitutional convention. On page 18 of Appendix C can be found the bill the Commission submitted to the Assembly for recommendation.¹⁵

Twelve points that the Commission considered essential parts of legislation needed to carry out their program were then listed. It did not feel that these points could be considered separately because they were so interrelated; it was suggested that they be considered as a unit.

In essence, the Gray Commission suggested that the local school officials be allowed to use their own discretion in solving local problems. that integration be permitted where feasible, but that no one be forced to attend an integrated school and, in order to avoid this, that

13. Commission of Public Education, Public Education, 1955.

14. Ibid.

15. Ibid.

a system of tuition grants be established.¹⁶

An editorial in the Richmond Times-Dispatch of November 13, 1955, the day the report was published, said that it:

stands about midway between the no-integration whatever position of several States of the Deep South and the pro-integration position of a border state like Kentucky. As such it would seem to meet the sentiment and needs of Virginia as well as can be done under all circumstances.

The editorial went on to predict that the Legislature would approve the report, including the plan to amend Section 141. It felt:

Operation of an effective system of public education is so important that tragedy would result if the effectiveness of the State's public school system were undermined as part of the process of coping with the court's segregation decision....The fact that the commission does not recommend tampering with Section 129 of the State Constitution, which provides that 'the General Assembly shall establish and maintain an efficient system of public free schools throughout the State, is reassuring."

On November 22, an editorial in the same paper said that Virginia was being watched by the whole South to see if we had found a workable solution to the problem of integration. Because of this, it felt that the Gray plan should be absolutely clear and that several points were not explained. The main one was why the tuition grants would be necessary when the local school boards were given the authority to assign pupils. The editor drew the conclusion that the Commission did not think that the latter would prevent integration; he did not like the fact that the Commission had not said so.¹⁷

16. Ibid.

17. Editorial in the Richmond Times Dispatch, November 22, 1954.

In contrast, the editor of the Richmond News Leader wanted the Gray Commission to say that the right of interposition existed if the Supreme Court acted in an unconstitutional way. He said: "Ours is a Union formed of Sovereign States;" the Union was a compact of individual states; "If one of the principals has no right to assent an infraction of this agreement, who then has the right?"¹⁸

History is used to illustrate this point. Jefferson and Madison acknowledged the right of interposition as a last resort. Madison said, in 1799, in his report to the General Assembly: "The conditions expressly required for such an interposition are that the offense must constitute a deliberate, palpable, and dangerous breach of the Constitution by the exercise of powers not granted by it."¹⁹

Three things were established concerning interposition, and the first was that the right exists and has been recognized by many great men from early days. Calhoun is used as an example. The second thing was that the states are sovereign; the "nature of the right lies in the inherent power of American states." The third was that the exercise of this right should be limited to very grave cases.²⁰

On May 17, 1954, not by action of three-fourths of the States but on the naked and arrogant declaration of nine men, the Supreme Court itself undertook to wipe out this long understanding / separate but equal doctrine and by its own act, in effect to amend the Constitution.²¹

The special session of the legislature, called by the Governor, met on November 30, 1955, to consider whether a referendum should be held

18. Reprints From The Richmond News Leader, Nov. 21-23, 1955, pp. 12-13.

19. Ibid., p. 14. 20. Ibid., p. 18-19. 21. Ibid., p. 21.

to decide the question of amending Section 141. There were evidently four main factions in the Assembly. The administration, following the Gray Commission suggestion, wanted the referendum while the NAACP was opposed to it; they wanted adherence to the ruling of the Supreme Court. Delegate John C. Webb of Fairfax led a group who felt that the referendum would destroy the public school system. He said that he was opposed to it only because he felt that public money should not go to private schools. A fourth group from Southside Virginia, defenders of state sovereignty and individual liberties. (this is now the title used by an organization mainly from the Southside) wanted interposition, something stronger than the referendum and the course of action that would probably follow it.²²

Identical bills were introduced in each house of the legislature, the only ones considered by the body. These bills stated that because of the decision of the Supreme Court of Appeals of Virginia public funds couldn't be used in private tuition (*Almond v. Day*) and because, among other things, the industrial rehabilitation program would be endangered, and "in order to insure educational opportunities for those children who may not otherwise receive a public school education due to the decision of the Supreme Court of the United States in the school segregation cases," Section 141 of the Virginia constitution should be amended.²³

22. Radio newscast by George Passage, WRVA, Nov. 30, 1955, and a news item in the Richmond Times Dispatch, Dec. 1, 1955.

23. House Bill No. 1, A bill to provide for submitting to the qualified electors the question of whether there shall be a convention to revise and amend Section 141 of the Constitution of Virginia. (Commonwealth of Virginia, Division of Purchase and Printing; Richmond, Va. Nov. 30, 1955.

Legislation does not usually become effective until ninety days after passage, so the referendum could not be held until ninety days after the bill passed the Assembly. Because many wanted the referendum to be held before that time so that the constitutional convention could finish its work before the new session of the legislature met, an emergency clause was added to the bill providing that if the bill passed, that the referendum should be held within sixty days. Four-fifths of each house of the legislature was necessary for the passage of this bill because of the emergency clause. The referendum was only to decide whether to call a constitutional convention which would itself decide whether to amend Section 111.²⁴

An editorial on this opening day of the legislature predicted a majority in both houses for the Gray Commission except for the emergency clause, the sixty-day provision. Opponents to the bill felt that in ninety days they could raise enough opposition to carry their side when the referendum was held. Many objected because they felt that this was the opening wedge in destroying the public school system.²⁵

The editor said that the plan was not completely satisfactory to anyone but that it tried to win support from the Southside and Tidewater where the Negro population was largest and also from Northern Virginia, the Shenandoah Valley and Southwest Virginia where the Negro population was small. As such, it was the best solution and the only compromise

24. Ibid.

25. Editorial in the Richmond Times Dispatch, Nov. 30, 1955.

possible. "It is intended to preserve public schools."²⁶

Governor Stanley, in a message to the legislature on its first day, said that the Gray plan would do two things. First, it would avoid enforced integration of the races in any public school and second it would maintain educational opportunities for children in the whole state. "I concur wholeheartedly in the recommendations from this able, conscientious and dedicated group of legislators."²⁷

One opponent to the Gray plan said:

Our Virginia free public schools have shown remarkable progress in recent years, yet much remains to be done. They are not strong enough - yet - to withstand such blows as the tuition grant plan would likely deal them - if indeed any public school system anywhere would be.²⁸

Details were given when it was said that a few days before, the State Board of Education had removed accreditation from fifteen high schools, nearly one hundred more were warned to improve or suffer the same fate, and this constituted one fifth of the state high schools. In 1953-54, Virginia ranked forty-first in the states in per pupil expenditure. In addition teacher turnover was high and that three thousand more qualified teachers were needed.²⁹

This was not opposition to the two hundred and eighty physically handicapped students whose grants for vocational training totaled sixty-five thousand dollars of which the Federal Government paid two thirds.

26. Ibid.

27. News item in the Richmond Times Dispatch, Dec. 1, 1955.

28. Speech by Delegate Kathryn H. Stone To the Virginia House of Delegates, Dec. 2, 1955.

29. Ibid.

Only ten percent of these students used the funds for non-public schooling. Only sixty-six of the thousand teacher scholarships were used in private schools. Only six of the twenty-seven war orphans were in private schools. There was no opposition to them for whom a workable plan could be found.³⁰

Almond v. Day was "plainly a handle to clear the way for this Special Session and begin the process of legalizing the way for private tuition grants." The Gray plan did not guarantee compulsory attendance, a nine month session, nor transportation. Its result would be "hastily erected private schools" and a lack of standards just because they would be impossible; high school graduates might not be accepted in many state colleges much less colleges outside the state.³¹

Despite opposition such as this, the bills passed, but more opposition was met in the form of Jordan v. Day, a case that was decided in the Virginia Circuit Court in Richmond on January 6, 1956. The plaintiff sought an injunction to prevent the state referendum saying that the underlying purpose of the legislation was to avoid the effect of the School Segregation Cases. The court dismissed the case holding that the motives of the legislature could not be questioned.³²

The referendum was held on January 9, 1956 and the voters decided that a constitutional convention should be held. Delegates were elected on February 21, 1956. On March 5-7, the convention met and amended

30. Ibid. 31. Ibid.

32. Vanderbilt, op. cit., p. 405.

Section 141 so that public funds could be used in private schooling.

It seemed that one course of action had begun, but a new one soon arose. On January 19, Lee's Birthday - in regular session, a resolution was introduced in both houses of the legislature which said in part:

That whenever the Federal Government attempts the deliberate, palpable, and dangerous exercise of powers not granted it, States who are parties to the compact have the right, and are duty-bound, to interpose for arresting the progress of the evil, for preserving the authorities, rights and liberties appertaining to them.³³

This was the Interposition Resolution in which the General Assembly said that the powers of the Federal government came only from a compact of the states and that this compact could only be amended by three-fourths of the states; the Supreme Court decision of May 17, 1954 was the same as an amendment. The Fourteenth Amendment did not mean that states could not operate racially separated schools; Virginia never surrendered her right to maintain racially separate schools.³⁴

Be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorable, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers.³⁵

Another editorial explained the difference between nullification and interposition,

Nullification is an act of interposition, but interposition is by no means confined to nullification....assertions of the right to interpose may range from temperate protest at the one extreme to flat nullification on the other.³⁶

33. Editorial in the Richmond News Leader, Jan. 19, 1956.

34. Ibid. 35. Ibid. 36. Ibid.

It went on to say that the resolution was midway between these two and that it was an appeal to all the states to join in settling the question of contested power. It was not as strongly worded as the editor might have wished, but he accepted it.³⁷

On February 2, 1956, the Interposition Resolution passed both houses of the General Assembly. The Richmond morning paper called this action the launching of a campaign mapped for the South by Governor Stanley and three other Southern governors the week before. Two voted against it in the Senate and five in the House of Representatives.³⁸

Senator E. B. Stuart, the chief Senate patron for the resolution, said that it was not a substitute for the Gray plan that had not yet been considered by the Assembly. Senator Ted Dalton opposed it calling the decision "illegal" and he charged James J. Kilpatrick, Richmond News Leader editor who campaigned two months for interposition, with having "magnified it out of all its true sense of importance." Senator Charles R. Fenwick said that the legislature had a right to say that a Supreme Court act was illegal, that this was not defiance. Senator S. Floyd Landreth said that perhaps it was an "empty gesture" but that "we can't tell." Senator H. F. Byrd, Jr. said "It is our duty to resist illegal encroachment."³⁹

37. Ibid.

38. News item in the Richmond Times Dispatch, Feb. 2, 1956.

39. Ibid.

Following this action by the legislature in the winter, on June 6, Governor Stanley asked the Gray Commission to review their previous recommendations and complete a final report for a special session of the legislature which would meet within ninety days. No doubt pending court cases influenced this decision.

The Davis Case, or Prince Edward case, 103 Fed. Supp. 337, one of the original Segregation Cases which had been remanded to the courts from which it came, had been put off until mid-fall. A case was pending in Charlottesville under Judge Paul, one in Arlington was to be heard in July, and one each in Norfolk and Newport News were set for November. ⁴⁰

An interesting case was decided June 18, 1956, the case of Shelton v. County School Board of Hanover County, 198 Va. 226, which was on appeal. The plaintiff, as a taxpayer, had filed a bill for an injunction to restrain the School Board from spending the proceeds of a bond issue claiming the bond election proceeds were authorized only for racially segregated schools. The election had been held before the decision in the School Segregation cases was announced and therefore, he said, the funds could not be used for integrated schools. The court held that the funds would be used for the purposes voted, i.e. "for the construction of school improvements in said County for white and negro school children" and that the decision in the School Segregation Cases had nothing to do with it.

Governor Stanley went one step further on July 24.

He announced that he would not recommend the plan of "pupil" assignment suggested by the Gray Commission last November. Why? Because

40. News item in the Richmond Times Dispatch, July 22, 1956.

the pupil assignment plan would be interpreted as a concession by Virginia that the Supreme Court had acted lawfully.⁴¹

The case of Thompson v. County School Board of Arlington County, 144 Fed. Supp. 239, was decided July 31, seven days later. In this case Negro students brought a class action seeking admission to the public schools regardless of race or color. The court found that all available state administrative remedies had been exhausted by the plaintiffs and their injunction was granted. The court ordered that integration in the elementary schools were to begin January 31, 1957 and in the Junior and Senior high schools by September of 1957.

This matter of exhausting all remedies is an interesting one because it appears in so many similar cases. A parallel is found in the comparatively early case of Eubank v. Boughton, 98 Va. 499 (1900). George Boughton had filed a petition in the Circuit Court of King and Queen County for a mandamus upon Eubank, Latane, and Deshazo, District School Trustees for the Stevensville District claiming that he, his wife, and two children were white. At that time, Section 49 of the state code stated that any person with over one-fourth Negro blood was to be considered a Negro. It was the duty of the school boards to assign children to schools and to determine their race.

The Circuit Court held that the children were white and awarded Boughton the mandamus but this opinion was reversed on appeal. The Court of Appeals said that the Circuit Court had overlooked two things. The first was the discretionary powers of the school board and the second was that

41. Editorial in the Richmond News Leader, July 24, 1956.

the petitioner could appeal to the County Superintendent. "Where a party aggrieved by the action of a board of school directors has an adequate remedy by appeal to the county superintendent, he is not entitled to a writ of mandamus." In other words, he had to exhaust all available remedies.

But to get back to more recent cases, *Allen v. School Board of the City of Charlottesville* was decided on August 6, 1956. It was a class action brought by Negro students in Charlottesville seeking admission to the city public schools without regard to race or color. The defendants raised the objection that the suit was one against the state to which the state had not consented, but this objection was ruled against by the court and the injunction was granted. Judge Paul ordered that integration was to begin the next month when school opened for the fall term, but he suspended this order upon appeal.⁴²

The special session of the legislature convened on August 27 before the ninety day deadline imposed on himself by the governor. This was the group to reach a decision on the definite course of action to be taken. But before any more detail is given, let us review some of the important events up to this point.

- May 17, 1954 - Supreme Court decision
- August 30, 1954 - Governor Stanley appointed the Gray Commission
- November 11, 1955 - Publication of the Commission report recommending amendment
- November 30, 1955 - special session of the legislature authorized a referendum to decide whether a constitutional convention should be called that would consider amending Section 141 of the State Constitution

⁴², Civ. No. 51, U.S. D.C. W. D. Va. , as reported in I Race Relations Law Reporter, 886.

- January 9, 1956 - referendum was approved by the voters to call a constitutional convention
- February 1, 1956 - the Interposition Resolution was passed by the regular session of the legislature
- March 5-7, 1956 - the convention amended Section 141 "authorizing use of public funds for tuition grants to students attending non-sectarian private schools"
- June 6, 1956 - Governor Stanley asked the Gray Commission to review its studies in the light of new developments
- July 17, 1956 - Prince Edward Case delayed until fall
- July 31, 1956 - Arlington case decided but appeal expected
- August 6, 1956 - Charlottesville case decided but appeal expected
Newport News and Norfolk cases still to be heard and pending

This then was the situation when Governor Stanley addressed the special session of the legislature in August and presented his plan, which allowed no integration.

The General Assembly declares, finds and establishes as a fact that the mixing of white and colored children in any elementary or secondary public school within any county, city, or town of the Commonwealth constitutes a clear and present danger...and that no efficient system of elementary and secondary public schools can be maintained in any county, city or town in which white and colored children are taught in any such school located therein.⁴³

In order to accomplish this:

The General Assembly, for the purpose of protecting the health and welfare of the people and in order to preserve and maintain an efficient system of public elementary and secondary schools hereby declares and establishes it to be the policy of this Commonwealth that no public elementary or secondary schools in which white and colored children are mixed and taught shall be entitled to or shall receive any funds from the State Treasury for their operation, and, forbids and prohibits the expenditures of any part of the funds appropriated for the establishment and maintenance of any system of public elementary or secondary schools, which is not efficient.⁴⁴

⁴³. Senate Document No. 1, Address of Thomas B. Stanley to the General Assembly, (Commonwealth of Virginia, Division of Purchase and Printing: Richmond, Va.) August 27, 1956.

⁴⁴. Ibid.

Governor Stanley's recommendations were in the form of bills that he hoped the legislature would pass. No integration was to be tolerated and if one pupil was put in the wrong school so that it began to integrate, state funds would immediately be withdrawn from the school. If a school was forced to close as an alternative to integration, grants to individual pupils would be available.⁴⁵

Stanley said of his recommendations:

There should be no reason to close any school in Virginia under this legislation. If any school is closed, it will be because a person, or persons, of one race seeks to force his way into a school in which the opposite race is taught.⁴⁶

He added

My recommendations to the General Assembly embrace all of the original recommendations of the (Gray) Commission on Public Education, with the exception of the pupil assignment plan. Such a plan would have recognized and accepted integration.⁴⁷

Other than the Gray plan and Stanley's bills, there was one other major choice, among all the others, open to the legislators. The McCue bill was described by its originator as the "acid test of the sovereignty of the states." It called for continuing segregation by several methods. The General Assembly would assume complete control of public school operation and local school and government officials would be freed of legal liability in integration cases. The General Assembly would assume all defense against desegregation suits and all persons working in the public school system would be employees of the General Assembly. McCue

45. Ibid. 46. Ibid.

47. News item in the Richmond Times Dispatch, Sept. 5, 1956.

said that his bill would be "interposition by deed rather than resolution."⁴⁸

Richburg, who drew the bill for McGue, said that this would not directly put the problem of pupil placement in the hands of the legislature, that this would be impossible for them to direct, but that the Assembly would assume responsibility for it. He thought this a workable plan because it was based on the Eleventh Amendment which states:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State.⁴⁹

An editorial in the Richmond Times Dispatch had this to say of the situation:

However, the sad truth with respect to the McGue bill and all the other pending bills seems to be that they probably won't be upheld by the United States Supreme Court, once they reach that tribunal, and that what we are engaged in at the current special session is an effort to delay as long as possible a decision by the people of Virginia as to whether they will bow to the orders of the Supreme Court and integrate - at least in certain areas - or whether they will refuse.

Five days later, it was thought that the Stanley measures did not have adequate support and that a change might be necessary. Many opposed his plan because it did away with all form of local option and because a whole area would be affected by integration in one school, not just the school that integrated. A "softener" was expected in the form of an amendment to deny state funds only to the school affected, not the whole area. Still it was not expected to pass because of the lack of local option.⁵⁰

48. News item in the Richmond News Leader, July 24, 1956.

49. News item in the Richmond Times Dispatch, Sept. 5, 1956.

50. Ibid., Sept. 10, 1956.

On September 29, 1956, the results were made known. The legislature, among other legislation, passed school bills that can be found in Appendix D. Special attention should be paid to page 1, pages 31-32, and pages 35-56, of this report. This is the plan under which the state is now operating.

The legislature made up its collective mind; it was not long before more court decisions were handed down. Appeals from the Charlottesville and Arlington decisions were made public on December 31, 1956. The Fourth Circuit Court of Appeals (US) held that the suits were against state officials attempting to apply unconstitutional measures, not suits against a state. The students did not have to exhaust all remedies when it was obvious that this would be futile; the injunctions were reasonable. These decisions have been refused a hearing by the Supreme Court.⁵¹

The Pupil Placement Board which was to have charge of all pupil assignment was an integral part of the education bills finally passed by the legislature. The new year began with a discussion of this three man board. It was said that Arlington and Charlottesville school authorities might be in a position to tell the courts that they no longer had the power to assign pupils to new schools. The Placement Board could say that their authority was limited to new starters and transfer pupils; none of the plaintiffs in these two cases fell into these categories. The result would be that the only state authority that could apply to them would be the General Assembly. "No known precedent exists for a federal judge

⁵¹. Vanderbilt University School of Law, II Race Relations Law Reporter, 59-60.

to try to punish an entire state legislature for contempt."⁵²

Motions to dismiss the cases of Adkins v. The School Board of the City of Newport News and Beckett v. The School Board of the City of Norfolk were decided by the court on January 11, 1957, 148 Fed. Supp. 430. In these cases, again, Negro students in similar class actions sought admission to the public schools regardless of race or color. The two were consolidated for hearing on these motions to dismiss. The court held that the Pupil Placement Board was unconstitutional because race was considered in placement. Besides, even if remedy afforded by the act was not unconstitutional, the board was not a remedy that the students would be required to exhaust. The motions to dismiss were overruled.

The final decision on the Newport News case was handed down on February 12. Judge Hutcheson declined to set a date for desegregation saying that it would be unwise but he did go on to say:

The Supreme Court did not order mass integration....It merely stated that the children could not be discriminated against solely by reason of race or color in matters affecting assignment of children in public schools.⁵³

Local school officials told him that they had looked to the state legislature for guidance and this body had passed laws which from a practical standpoint, prevented them from acting. Judge Hutcheson said:

any logical interpretation of those laws enacted by the extra session of the General Assembly of Virginia clearly shows that there has been no effort on the part of that body, certainly, to in good faith implement the governing constitutional principles which the

52. News item in the Richmond News Leader, Jan. 9, 1957.

53. Judge Hutchinson's opinion given in the Richmond News Leader, Feb. 12, 1957.

Supreme Court of the United States said is the proper test for the courts to consider....I appreciate the fact that the school boards and their division superintendants throughout the state of Virginia have been placed in a most unenviable position.⁵⁴

He went on to say that if good faith had been shown he would have allowed gradual desegregation beginning with the first grades of both elementary and high school levels. But no such good faith had been shown and though this was not the fault of the school officials, neither was it the fault of the court so he ordered all elementary schools to desegregate by September of 1957. In this oral opinion, he added that if his decision was appealed, that this order was not to be followed.⁵⁵

The next day Judge Hoffman delivered his opinion in the Norfolk case.

In a frank and honest statement, the division superintendent conceded that, but for the existence of the recently enacted laws of the state of Virginia, the city of Norfolk by a process of gradual desegregation could achieve good faith implementation and compliance with the Supreme Court decision without any insurmountable difficulties.⁵⁶

But Judge Hoffman said no good faith had been shown so there must be desegregation by September of 1957 unless there was new action by the legislature or an appeal of his decision.⁵⁷

On April 4 the Pupil Placement Board settled down to its job of assigning pupils to various schools. There were thousands of assignment applications from new starters, transfer pupils and graduates from elementary to high schools; these are the only groups over which the board has control. Local school officials were asked to send recommendations

54. Ibid. 55. Ibid.

56. Judge Hoffman's opinion given in the Richmond News Leader, Feb. 13, 1957.

57. Ibid.

with the applications. There are now three men, two secretaries and one room but there are plans for expansion. For an "unconstitutional group," it seems to be very active.⁵⁸

In Virginia, the general attitude has changed from that of acceptance of the inevitable to defiance. This is a waiting period. Two of the four major Virginia cases have been denied appeal by the Supreme Court, and the other two are expected to follow them. No one can say what will happen, but many watch for the outcome with intense interest.

58. News item in the Richmond News Leader April 4, 1957.

CHAPTER VI

From the time of Alexis De Tocqueville to present day Virginia, the battle still rages over the question of sovereignty. This is no new topic of discussion and most of the arguments presented are not new. One of the main purposes of this paper has been to show this.

James Wilson, in *Chisholm v. Georgia* (1793), referred to the sovereignty of the people and asserted specifically that sovereignty did not exist in the state of Georgia; the people of Georgia acted as part of the entire people of the United States in assenting to the enacting of the Preamble to the Constitution; "We the people...do ordain and establish this Constitution of the United States." Wilson had been a member of the Constitutional Convention of 1787. Chief Justice John Jay, in the same case, brought out similar ideas in quite as positive language as Wilson.

Chief Justice Marshall announced the power of the nation in *McCulloch v. Maryland* (1819) when he upheld national power over that of the states. Sovereignty did not rest in the states. Different circumstances were involved but there was the same reference to the Sixth Article of the Constitution which says in part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;...and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Madison and Jefferson are quoted in the Virginia and Kentucky Resolutions as asserting the sovereignty of the states. These bring about a tense opposition to national usurpation of arbitrary power and

an important development followed; the development of the doctrine of judicial review supplied a corrective to unconstitutional exercise of power.

Senator Robert Hayne and Senator John C. Calhoun (previously Vice President when the tariff became highly controversial in the 1830's) espoused the cause of sovereignty of the States. There was the theory that the Constitution was a Compact among the states as parties and that when it was violated in the judgement of the state or several states, the aggrieved members might raise the issue of "contested powers".

The essential difference between the Calhoun view of sovereignty and that of Webster and Lincoln (later) or Wilson and Jay (earlier) was that Calhoun found sovereignty in the people of each state and the Wilson-Jay-Marshall-Lincoln theory was that sovereignty lay with the people of the nation. Secession was thus in opposition to the existence of "an indestructible Union of indestructible States" (the theory written into the language of *Texas v. White*, 1869).

Views of Alexis de Tocqueville are important as an analysis of a foreign observer in the unfolding history of democratic institutions of our country, as seen in his reflections published in 1832. He described our democracy and realized the sovereignty aspect, but gave to the latter a more narrow definition than that usually thought of in the United States. Americans seemed to view sovereignty as ultimate temporal power, but the Frenchman spoke of sovereignty as "the power to make laws."

Recent developments in Virginia show the continuation of the controversy as epitomized by Marshall in contrast to Calhoun. The recent Interposition Resolution reminds one of the Virginia Resolution of Jeffer-

son's day. The actions of the State of Virginia have followed the words of Calhoun; the words of Madison have served as a rallying point for many who defend the position of state sovereignty. Could it be that this argument is forgetting the guarantee of "equal protection of the laws" as found in the Fourteenth Amendment?

Court cases in Virginia and other states will probably delay a solution in segregation for some time to come. How long this will continue cannot be determined, but both state and national governments seem to be standing firm. If the present trend continues, Virginia and other states will have to bow to national authority. If this happens, a course of action will have to be prepared, and there is no surface indication that any such plans are being prepared. This is a distressing thought to many.

Virginia seems to have forsaken her chance for true leadership in the solution of this problem. The turning point was the special session of the legislature called by the governor in August of 1956. At that time the governor repudiated the Gray Commission Plan that he had formerly applauded. If Lindsey Almond, now Attorney-General of Virginia, becomes the next governor of the state, as there is little doubt that he will, the trend begun in 1956 will continue until forced to change.

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APPENDICES

SECTION 11.1 OF THE VIRGINIA STATE CONSTITUTION

State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule.- No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the citizens of the several States joining in such agreement; second, that counties, cities, towns, and districts may make appropriations to nonsectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district.

May 18, 1954 - Richmond Times Dispatch

SOME STATISTICS ON WHITE AND NEGRO SCHOOLS

COUNTIES	TOTAL POPULATION IN 1950	PER CENT NEGRO	SCHOOL ENROLLMENT 1952-53		PER CENT NEGRO
			WHITE	NEGRO	
Accomack	33,832	34.2	3,465	2,461	41.5
Albemarle	26,662	18.6	3,837	1,073	21.8
Alleghany	23,139	8.3	4,825	432	8.2
Amelia	7,908	49.9	953	1,060	52.6
Amherst	20,332	27.9	2,390	1,442	37.1
Appomattox	8,764	24.7	1,540	665	30.2
Arlington	135,449	4.9	19,533	1,194	5.8
Augusta	34,154	5.1	7,412	402	5.1
Bath	6,296	10.5	1,240	55	4.2
Bedford	29,627	19.0	5,189	1,412	21.4
Bland	6,436	2.0	1,409	21	1.5
Botetourt	15,766	10.1	3,372	362	9.7
Brunswick	20,136	57.8	1,682	3,221	65.7
Buchanan	35,748	10,593	0	0
Buckingham	12,288	42.8	1,419	1,419	50.0
Campbell	28,877	23.7	4,652	1,885	28.8
Caroline	12,471	51.4	1,255	1,869	59.8
Carroll	26,695	1.5	5,326	17	.3
Charles City	4,676	81.0	280	947	77.2
Charlotte	14,057	40.9	1,812	1,582	46.6
Chesterfield	40,400	20.9	6,632	1,845	21.8
Clarke	7,074	17.2	1,263	294	18.9
Craig	33,452	.5	645	0	0
Culpepper	13,242	27.9	2,116	1,089	33.9
Cumberland	7,252	55.7	691	1,014	59.4
Dickenson	23,393	1.4	6,312	67	1.1
Dinwiddie	18,839	64.6	1,428	2,281	61.5
Essex	6,530	46.1	736	794	51.9
Fairfax	98,557	10.0	21,393	1,561	6.8
Fauquier	21,248	26.3	3,119	1,378	30.6
Floyd	11,351	4.3	2,639	148	5.3
Fluvanna	7,121	35.1	833	628	43.0
Franklin	24,560	14.6	4,795	948	16.5
Frederick	17,537	2.2	3,891	68	1.7
Giles	18,956	2.5	4,384	97	2.2
Gloucester	10,343	31.3	1,529	714	31.8
Goochland	8,934	50.0	779	930	54.4
Grayson	21,379	4.4	4,926	210	4.1
Greene	4,745	13.5	926	157	14.5
Greensville	16,319	59.3	1,395	2,522	64.4

SCHOOL ENROLLMENT 1952-53

COUNTIES	TOTAL POPULATION IN 1950	PER CENT NEGRO	SCHOOL ENROLLMENT 1952-53		PER CENT NEGRO
			WHITE	NEGRO	
Halifax	41,442	44.0	4,884	5,333	52.2
Hanover	21,985	30.8	3,177	1,610	33.6
Henrico	57,340	9.9	10,226	1,347	11.6
Henry	31,219	24.2	5,534	2,105	27.6
Highland	4,069	2.9	779	0	0
Isle of Wight	14,906	51.9	1,634	1,968	54.6
James City	6,317	46.5	326	243	42.7
King George	6,299	53.8	793	473	37.4
King and Queen	6,710	27.4	622	834	57.3
King William	7,589	46.1	886	806	47.6
Lancaster	8,640	41.2	906	719	44.2
Lee	36,107	1.1	8,324	86	1.0
Loudoun	21,147	18.8	3,643	1,105	23.3
Louisa	12,826	39.8	1,596	1,456	47.7
Lunenburg	14,116	43.9	1,809	1,726	48.8
Madison	8,273	23.1	1,252	463	27.0
Mathews	7,148	24.9	940	401	29.9
Mecklenburg	33,497	49.5	3,553	4,759	57.3
Middlesex	6,715	41.9	714	714	50.0
Montgomery	29,780	5.3	5,848	331	5.4
Nansemond	25,238	65.3	2,099	4,350	65.7
Nelson	14,042	27.0	2,143	1,007	32.0
New Kent	3,995	43.0	454	493	52.1
Norfolk	99,937	16.3	19,447	3,436	15.0
Northampton	17,300	53.5	1,222	2,013	62.2
Northumberland	10,012	40.8	1,001	1,125	52.9
Nottoway	15,479	43.9	2,064	1,734	45.6
Orange	12,755	26.7	1,887	873	31.6
Page	15,152	3.7	3,277	137	4.0
Patrick	15,642	8.4	3,469	380	10.0
Pittsylvania	66,096	30.9	8,155	5,735	41.3
Powhatan	2,794	43.6	642	569	47.0
Prince Edward	15,398	44.6	1,475	1,825	55.3
Prince George	19,679	30.3	617	977	61.3
Princess Anne	17,222	14.2	5,309	2,144	28.8
Prince William	42,277	23.5	3,718	624	14.4
Pulaski	27,758	7.5	6,201	477	7.14
Rappahannock	6,112	17.7	1,117	246	18.0
Richmond	6,189	34.4	949	694	42.2
Roanoke	41,486	8.5	8,351	727	8.0
Rockbridge	23,359	8.6	4,056	449	9.9
Rockingham	35,079	1.9	6,774	39	.6
Russell	28,818	1.5	6,544	157	3.3

SCHOOL ENROLLMENT 1952-53

COUNTIES	TOTAL POPULATION IN 1950	PER CENT NEGRO	SCHOOL ENROLLMENT 1952-53		PER CENT NEGRO
			WHITE	NEGRO	
Halifax	41,442	44.0	4,884	5,333	52.2
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Henrico	57,340	9.9	10,226	1,347	11.6
Henry	31,219	24.2	5,534	2,105	27.6
Highland	4,069	2.9	779	0	0
Isle of Wight	14,906	51.9	1,634	1,968	54.6
James City	6,317	46.5	326	243	42.7
King George	6,299	53.8	793	473	37.4
King and Queen	6,710	27.4	622	834	57.3
King William	7,589	46.1	886	806	47.6
Lancaster	8,640	41.2	906	719	44.2
Lee	36,107	1.1	8,324	86	1.0
Loudoun	21,147	18.8	3,643	1,105	23.3
Louisa	12,826	39.8	1,596	1,456	47.7
Lunenburg	14,116	43.9	1,809	1,726	48.8
Madison	8,273	23.1	1,252	463	27.0
Mathews	7,148	24.9	940	401	29.9
Mecklenburg	33,497	49.5	3,553	4,759	57.3
Middlesex	6,715	41.9	714	714	50.0
Montgomery	29,780	5.3	5,848	331	5.4
Nansemond	25,238	65.3	2,099	4,350	65.7
Nelson	14,042	27.0	2,143	1,007	32.0
New Kent	3,995	43.0	454	493	52.1
Norfolk	99,937	16.3	19,447	3,436	15.0
Northampton	17,300	53.5	1,222	2,013	62.2
Northumberland	10,012	40.8	1,001	1,125	52.9
Nottoway	15,479	43.9	2,064	1,734	45.6
Orange	12,755	26.7	1,887	873	31.6
Page	15,152	3.7	3,277	137	4.0
Patrick	15,642	8.4	3,469	380	10.0
Pittsylvania	66,096	30.9	8,155	5,735	41.3
Powhatan	2,794	43.6	642	569	47.0
Prince Edward	15,398	44.6	1,475	1,825	55.3
Prince George	19,679	30.3	617	977	61.3
Princess Anne	17,222	14.2	5,309	2,144	28.8
Prince William	42,277	23.5	3,718	624	14.4
Pulaski	27,758	7.5	6,201	477	7.14
Rappahannock	6,112	17.7	1,117	246	18.0
Richmond	6,189	34.4	949	694	42.2
Roanoke	41,486	8.5	8,351	727	8.0
Rockbridge	23,359	8.6	4,056	449	9.9
Rockingham	35,079	1.9	6,774	39	.6
Russell	28,818	11.5	6,544	157	3.3

SCHOOL ENROLLMENT 1952-53

COUNTIES	TOTAL POPULATION IN 1950	PER CENT NEGRO	SCHOOL ENROLLMENT 1952-53		PER CENT NEGRO
			WHITE	NEGRO	
Scott	27,640	1.0	6,412	39	.6
Shenandoah	21,169	1.8	4,451	67	1.5
Smyth	30,187	1.6	7,016	134	2.9
Southampton	26,522	60.9	2,008	3,934	66.2
Spotsylvania	11,920	23.9	1,979	806	28.9
Stafford	11,902	12.9	2,083	319	13.3
Surry	6,220	63.8	327	1,117	77.3
Sussex	12,785	65.6	1,017	2,118	67.6
Tazewell	47,512	6.1	11,226	598	5.0
Warren	14,801	8.0	3,000	285	8.7
Washington	37,536	3.2	8,694	147	1.7
Westmoreland	10,148	45.5	1,071	1,221	53.3
Wise	56,336	4.2	13,969	490	3.4
Wythe	23,327	4.7	5,192	300	5.5
York	11,750	26.2	1,836	539	22.7

CITIES

Alexandria	61,787	12.4	8,494	1,384	14.0
Bristol	15,954	7.1	3,180	321	9.2
Buena Vista	5,214	4.2	1,078	22	2.0
Charlottesville	25,969	18.2	3,230	885	21.5
Clifton Forge	5,795	18.1	786	273	25.8
Colonial Heights	6,077	.2	745	0	0
Danville	35,066	30.2	6,226	2,199	26.1
Falls Church	7,535	1.8	1,508	0	20.0
Fredericksburg	12,158	16.1	1,516	457	23.2
Hampton	60,994	22.1	9,731	2,527	20.7
Harrisonburg	10,810	6.3	1,647	226	12.1
Hopewell	10,219	14.8	2,961	669	18.4
Lynchburg	47,727	22.0	6,312	2,258	26.0
Martinsville	27,251	29.3	2,417	1,175	32.7
Newport News	42,358	43.2	4,228	4,124	49.4
Norfolk	213,513	29.7	18,613	11,129	37.4
Petersburg	35,054	42.2	3,537	2,843	44.6
Portsmouth	80,039	38.3	7,206	6,150	46.0
Radford	9,026	7.0	1,760	165	8.6
Richmond	230,310	31.7	21,465	14,680	40.6
Roanoke	91,921	15.9	12,172	2,686	18.0

SCHOOL ENROLLMENT 1952-53

CITIES	TOTAL POPULATION IN 1950	PER CENT NEGRO	SCHOOL ENROLLMENT 1952-53		PER CENT NEGRO
			WHITE	NEGRO	
South Norfolk	10,434	23.0	3,854	1,117	22.5
Staunton	19,927	10.9	1,791	425	19.2
Suffolk	12,339	36.7	1,440	807	35.9
Virginia Beach	5,390	4.5	1,501	0	0
Warwick	39,875	31.2	5,770	2,736	32.2
Waynesboro	12,357	8.2	2,013	229	10.2
Williamsburg	6,735	13.0	936	955	50.5
Winchester	13,841	8.3	2,158	264	10.9
GRAND TOTAL	3,318,680	22.0	494,710	165,465	25.06

PUBLIC EDUCATION
REPORT OF THE COMMISSION
To the
GOVERNOR OF VIRGINIA



COMMONWEALTH OF VIRGINIA
Division of Purchase and Printing
Richmond
1955

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REPORT OF COMMISSION ON PUBLIC EDUCATION

RICHMOND, VIRGINIA, NOVEMBER 11, 1955.

To:

THE HONORABLE THOS. B. STANLEY, *Governor of Virginia*

Your Commission was appointed on August 30, 1954, and instructed to examine the effect of the decision of the Supreme Court of the United States in the school segregation cases, decided May 17, 1954, and to make such recommendations as may be deemed proper. The real impact of the decision, however, could not be fully considered until the final decree of the Supreme Court was handed down and its mandate was before the Federal District Court for interpretation. This did not take place until July 18, 1955.

The Commission and its Executive Committee have held many meetings, including a lengthy public hearing, wherein many representatives of both races expressed their views, and the Commission has made two interim reports, one on January 19, 1955,¹ and the other on June 10, 1955.² It now submits its further recommendations for consideration by Your Excellency.

EFFECT OF THE DECISION OF THE UNITED STATES SUPREME COURT IN THE CASE OF DAVIS v. COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA

Until the decision in the *Davis* and companion cases, segregation of the races in the public schools had been recognized as coming within the valid exercise of the police powers of the several states. In the leading case of *Plessy v. Ferguson*, 163 U. S. 537 (decided in 1896), the Supreme Court of the United States, in upholding the validity of a Louisiana statute requiring the separation of the races in railway coaches, made this pertinent observation:

“* * The most common instance of this (segregation of the races) is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by the courts of states where the political rights of the colored race have been longest and most earnestly enforced.”

When the question of the constitutionality of a Mississippi statute requiring segregation of the races in the public schools came before the United States Supreme Court in 1927 in the case of *Gong Lum v. Rice*, 275 U. S. 78, Chief Justice Taft, speaking for a unanimous Court, upheld its constitutionality, and observed, “* * * we think that it is the same question which has been many times decided to be within the constitutional power of the State legislature to settle without intervention of the federal courts under the Federal Constitution,” citing many cases.

When the Fourteenth Amendment was adopted three generations ago, no one dreamed that it had any application to segregation in the public schools. Even the Congress which initiated the Fourteenth Amendment

¹ See, Appendix I

² See, Appendix II

provided for segregated schools in the District of Columbia. For nearly a century this interpretation was adopted by many state courts and by the Supreme Court of the United States, and accepted by the people of this country and their legislative representatives. It was the law of the land as firmly as anything can be the law of the land.

In the *Davis* and companion cases the present Court has uprooted the law long laid down and followed by eminent judges. In doing so, the present Court abandoned all legal precedent and based its conclusions upon the conflicting evidence of psychologists. It relied "generally" upon a lengthy treatise edited by Gunnar Myrdal, a European sociologist of slight experience in the United States, consisting of a number of overlapping contributions made by a number of writers, many of whom were given their golden opportunity to voice their own preconceptions and prejudices. This treatise seems, however, not to have been closely read by the justices of the Supreme Court; otherwise, they would have observed that the author suggests that the adoption of the Constitution was in its inception a fraud upon the common people and that in his opinion it is now an outworn document.

With this decision, based upon such authority, we are now faced. It is a matter of the gravest import, not only to those communities where problems of race are serious, but to every community in the land, because this decision transcends the matter of segregation in education. It means that irrespective of precedent, long acquiesced in, the Court can and will change its interpretation of the Constitution at its pleasure, disregarding the orderly processes for its amendment set forth in Article V thereof. It means that the most fundamental of the rights of the states and of their citizens exist by the Court's sufferance and that the law of the land is whatever the Court may determine it to be by the process of judicial legislation.

THE PROBLEM BEFORE US

The Commission, realizing that the problem before it is the gravest to confront the people of Virginia in this century, has not been willing to take hasty actions which might tend to add to the damage already done to the school system by judicial decree.

The public schools are not only educational institutions together with the churches they are the dominant social institutions of the people of Virginia, and of the two, the schools occupy the greater part of the thought and energy of our children.

The public schools have been built up slowly and painfully from the ashes of 1865. Within the memory of members of the Commission, public schools, especially in the rural areas, were pathetically inadequate for both races. Until recent years the people of Virginia struggled to establish primary schools in order to meet the minimum needs of our children. At the end of the century only a little more than 10,000 white and a little more than 1,000 Negro pupils were taking high school subjects in Virginia, which was only 4% of the white pupils and only .7% of the Negro pupils then in the schools. Since then our public schools have made enormous progress. In the high schools we now have 135,425 white and 38,740 Negro pupils enrolled. The pay of Negro and white teachers has been equalized and many millions of dollars have been expended in school construction. The number of Negro teachers—more than 6,000—employed in the public schools of Virginia today exceeds those in all of the non-segregated states combined at the time the Supreme Court had the school

segregation cases before it. Progress in recent years has been so rapid in improving the Negro schools that now in many of our counties and cities they are superior to the white schools.

Our modern public school system has been developed on a racially segregated basis and advancement of the Negro race has been a direct result of such a system. Without segregation, the white children would still be largely taught in private academies as they were in the early days in Virginia. Public schools would have made no progress and Negro children would have received little or no public education. Future judicial pronouncements and the attitudes of the Negroes themselves will largely determine whether in many parts of Virginia the clock will be turned back a century.

It is now judicially asserted that Negro children lose something by being compelled to attend separate schools. The Supreme Court of the United States, however, gave no consideration to the adverse effect of integration upon white children, although this was expressly called to the attention of the Court. This Commission believes that separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power.

The racial problem in Virginia varies radically in different localities; in thirty-one counties in the North, West, and Southwest the Negro school population is less than 10% of the whole; in twenty-four of the Southeastern, Piedmont, and Tidewater counties it exceeds 50%, and in one it is nearly 80%.

In some localities where there are few Negroes the problem of adjustment is not so serious as it is in localities with large Negro populations. In the latter, it is believed that the people will abandon public schools rather than accept any integration. Our school properties, representing an investment of nearly half a billion dollars, are owned by the localities, and the money for their operation is raised in great part from local taxes. Obviously, the schools cannot continue without the support of the people, and we must leave a large measure of autonomy to the localities even though that may result in the closing of public schools.

Thus the local school boards must be given wide discretion to meet their peculiar local problems. The employment of teachers; the assignment of pupils; the regulation or abandonment of transportation; the operation or abandonment of cafeterias; the continuation or abandonment of athletics, societies of various kinds, and other extra-curricular activities; the maintenance of existing social practices or the entire elimination from the schools of every activity but bare instruction; the maintenance of co-education or separation by sex;—all of these things must be in the hands of local people who know their own communities and whose children will profit or suffer by their decisions.

This will call for unselfish service on the part of the best people of each community. But this is not new in Virginia; in the years that preceded our Revolution, times of stress and danger, our best men contributed unselfishly and without compensation their thoughts and energies to local government, even while playing their parts on a larger stage. As county magistrates they legislated, adjudicated, and administered the laws of their people. George Mason, who wrote our Bill of Rights, was a magistrate of Fairfax County; Edmund Pendleton, who presided over the Virginia Revolutionary Convention and drafted the resolution calling upon Congress to declare Independence, was a magistrate of Caroline

County; Richard Henry Lee, who moved the resolution in Congress, was a magistrate of Westmoreland; Jefferson, who wrote the Declaration of Independence, was a magistrate of Albemarle; and Washington, on whose broad shoulders the Revolution rested, was a magistrate of both King George and Fairfax. The Commission is certain that the spirit that actuated our fathers during times of trial still lives in this Commonwealth, and that our best citizens will not fail to meet the challenge of their day.

SUMMARY OF LEGISLATION PROPOSED

The Commission has been confronted with the problem of continuing a public school system and at the same time making provision for localities wherein public schools are abandoned, and providing educational opportunities for children whose parents will not send them to integrated schools.

To meet the problem thus created by the Supreme Court, the Commission proposes a plan of assignment which will permit local school boards to assign their pupils in such manner as will best serve the welfare of their communities and protect and foster the public schools under their jurisdiction. The Commission further proposes legislation to provide that no child be required to attend a school wherein both white and colored children are taught and that the parents of those children who object to integrated schools, or who live in communities wherein no public schools are operated, be given tuition grants for educational purposes.

There has heretofore been pending before The Supreme Court of Appeals of Virginia the case of *Almond v. Day*, in which the court had before it for consideration the question of whether the Legislature could validly appropriate funds for the education of war orphans at public and private schools. On November 7, 1955, the Court rendered its decision and held, among other things, that § 141 of the Constitution of Virginia prohibited the appropriation of public funds for payments of tuition, institutional fees and other expenses of students who may desire to attend private schools.

If our children are to be educated and if enforced integration is to be avoided, it is now clear that § 141 must be amended. Moreover, unless this is done, the State's entire program, insofar as attendance at private schools is concerned, involving the industrial rehabilitation program for the physically and mentally handicapped, grants for the education of deserving war orphans, grants in aid of Negro graduate students, and scholarships for teaching and nursing, to remedy shortages in these fields, is in jeopardy.

Accordingly, it is recommended that a special session of the General Assembly be called forthwith for the purpose of initiating a limited constitutional convention so that § 141 may be amended in ample time to make tuition grants and other educational payments available in the current school year and the school year beginning in the fall of 1956. A suggested bill for consideration of the General Assembly is attached hereto as Appendix III.

Contingent upon the favorable action of the people relative to the amendment of the Constitution herein proposed, your Commission recommends the enactment of legislation in substance as follows:

1. *That school boards be authorized to assign pupils to particular schools and to provide for appeals in certain instances.*

Such legislation would be designed to give localities broad discretion in the assignment of pupils in the public schools.

Assignments would be based upon the welfare of the particular child as well as the welfare and best interests of all other pupils attending a particular school. The school board should be authorized to take into consideration such factors as availability of facilities, health, aptitude of the child and the availability of transportation.

Children who have heretofore attended a particular public school would not be reassigned to a different one except for good cause shown. A child who has not previously attended a public school or whose residence has changed, would be assigned as aforesaid.

Any parent, guardian or other person having custody of a child, who objects to the assignment of his child to a particular school under the provisions of the act should have the right to make application within fifteen days after the giving of the notice of the particular assignment to the local school board for a review of its action. The application should contain the specific reasons why the child should not attend the school assigned and the specific reasons why the child should be assigned to a different school named in the application. After the application is received by the local school board a hearing would be held within forty-five days and, after hearing evidence, the school board would determine to what school the child should be assigned.

An appeal if taken should be permitted from the final order of the school board within fifteen days. The appeal would be to the circuit or corporation court. The local school board would be made a defendant in this action and the case heard and determined *de novo* by the judge of the court, either in term or in vacation. If either party be aggrieved by the order of the court, an appeal should be permitted to the Supreme Court of Appeals of Virginia.

2. *That no child be required to attend an integrated school.*

3. *That the sections of the Code relating to the powers and duties of school boards relative to transportation of pupils be amended so as to provide that school boards may furnish transportation for pupils.*

In the opinion of the Commission, such is merely a restatement of existing law. However, it is felt that it should be made perfectly clear that no county school board be required to furnish transportation to school children.

4. *That changes be made in the law relating to the assignment of teachers.*

Local school boards should be vested with the authority to employ teachers and assign them to a particular school. The division superintendent should be permitted to assign a particular teacher to a particular position in the school, but not to assign the teacher to a school different from that to which such teacher was assigned by the local school board without the consent of such board.

5. *That localities be authorized to raise sums of money by a tax on property, subject to local taxation, to be expended by local school authorities for educational purposes including cost of transportation and to receive and expend State aid for the same purposes.*

Those localities wherein no public schools are operated should be authorized to provide for an educational levy or a cash appropriation in lieu of such levy. The maximum amount of the levy or cash appropriation, as the case may be, should be limited in the same manner as school levies or school appropriations are limited.

The procedure to be followed by school officials and local tax levying bodies for obtaining these educational funds would be the same as prescribed by law for the raising of funds for public school purposes. The educational funds so raised would be expended by the local school board for the payment of tuition grants for elementary or secondary school education and could, in the discretion of the board, be expended for transportation costs. Local school boards should be vested with the authority to pay out such grants and costs under their own rules and regulations.

Localities should be granted and allocated their share of State funds upon certifying that such funds would be expended for tuition grants. Any person who expends a tuition grant for any purpose other than the education of his child should be amenable to prosecution therefor.

6. That school budgets be required to include amounts sufficient for the payment of tuition grants and transportation costs under certain circumstances; that local governing bodies be authorized to raise money for such purposes; that provision be made for the expenditure of such funds; and that the State Board of Education be empowered to waive certain conditions in the distribution of State funds.

This would be companion legislation to that dealing with the assignment of pupils and compulsory education, respectively. It would be designed to further prevent enforced integration by providing for the payment of tuition grants for the education of those children whose parents object to their attendance at mixed schools. Without such a measure, enforced integration could not be effectively avoided since many parents would then be required to choose integrated schools as the only alternative to the illiteracy of their children.

The division superintendent of the schools of every county, city or town wherein public schools are operated should be required to include in his estimate of the school budget an amount of money to be expended as tuition grants for elementary and secondary school education. The locality would be authorized to include in its school levy or cash appropriation an amount necessary for such tuition grants.

The educational funds so raised would be expended in payment of tuition grants for elementary or secondary school education to the parents, guardians or other persons having custody of children who have been assigned to public schools wherein both white and colored children are enrolled, provided such parents, guardians or other persons having custody of such children certify that they object to such assignment.

Each grant should be in the amount necessary for the education of the child, provided, however, that in no event would such grant exceed the total cost of operation per pupil in average daily attendance in the public schools for the locality making such grant as determined for the preceding school year by the Superintendent of Public Instruction.

Provision should be made for the payment of transportation costs in the discretion of the board to those who qualify for tuition grants.

No locality that expends funds for tuition grants should be penalized in the distribution of State funds. Any person who expends tuition grants for any purpose other than for the education of his child should be amenable to prosecution.

7. That provision be made for the reimbursement by the State of one-half of any additional costs which may be incurred by certain localities in payment of tuition grants required by law.

The Commission realizes that the payment of tuition grants in localities wherein public schools are operated may necessitate some expenditures beyond the adopted school budgets. Since tuition grants are vital to the prevention of enforced integration, it should be provided that the State bear one-half of any excess costs to the locality.

8. *That local school boards be authorized to expend funds designed for public school purposes for such tuition grants as may be permitted by law without first obtaining authority therefor from the tax levying body.*

Local school boards should be authorized to transfer school funds, excluding those for capital outlay and debt service, within the total amount of their budget and to expend such funds for tuition grants, in order to give the local boards more flexibility to meet the requirements of the tuition grant program.

9. *That the employment of counsel by local school boards be authorized to defend the actions of their members and that the payment of costs, expenses and liabilities levied against them be made by the local governing bodies out of the county or city treasury as the case may be.*

Such a measure is necessary if we are to continue to have representative citizens as members of our local school boards.

10. *That the Virginia Supplemental Retirement Act be broadened to provide for the retirement of certain private school teachers.*

The Virginia Supplemental Retirement Act should be broadened to provide for the retirement of school teachers if such teachers be employed by a corporation organized for the purpose of operating a private school after the effective date of the enactment of legislation recommended by this report.

The purpose of this is to protect the retirement status of those public school teachers who may hereafter desire to teach in private schools that are established because of the decision in the school segregation cases. Corporate entity is deemed necessary for practical administration by the Retirement Board.

11. *That the office of the Attorney General should be authorized to render certain services to local school boards.*

The Attorney General should be authorized when requested to do so by a local school board, to give such advice and render such legal assistance as he deems necessary upon questions relating to the commingling of the races in the public schools.

The localities will have many problems confronting them in view of the school segregation cases and will also have many new responsibilities, including the promulgation of a vast number of detailed rules and regulations. Under such circumstances it is felt that the office of the Attorney General should be made available to them. The Commission realizes, of course, that in order for such a measure to operate effectively the office of the Attorney General must be expanded and the necessary funds appropriated by the General Assembly.

12. *That those sections of the Code relating to the minimum school term, appeals from actions of school boards, State funds which are paid for public schools in counties, school levies and use thereof, cash appropriations in lieu of school levies, and unexpended school funds, be amended; and that certain obsolete sections of the Code be repealed.*

Local school boards should be authorized, but not required to maintain public schools for a period of at least nine months. A locality may be confronted with an emergency situation.

The present procedure governing appeals from actions of school boards should be clarified so that it will not conflict with appeals in assignment cases.

The State Board of Education appears to have the authority to approve the operation of schools in a locality for a period of less than nine months with no loss in State funds. This should be made clear.

The requirement for minimum school levies or cash appropriations in lieu thereof should be eliminated and levies or cash appropriation for educational purposes authorized.

The procedure for the reversion of unexpended school funds should be broadened so as to make it apply to appropriations for educational purposes.

Those sections of the Code relating to distribution of school funds which are obsolete, being covered by the Appropriation Act, should be repealed.

The section of the Code requiring segregated schools has been rendered void by the Supreme Court of the United States and should be repealed.

The section of the Code requiring cities to maintain a system of public schools should be repealed since it duplicates another provision of the Code.

CONCLUSION

The Commission has set forth at length the bill the adoption of which is essential to the enactment of legislation to avoid enforced integration. It has discussed in detail the proposals which it believes the General Assembly should consider and adopt subsequent to the amendment of Section 141 of the Constitution. They are so interrelated that it is impractical to consider them except in their entirety and at the same time. To attempt to pass some of them without at the same time being able to consider and to act upon the others, would not be feasible. Finally, as this report has stressed, if those educational programs which have been endangered by the decision of the Supreme Court of Appeals of Virginia in the case of *Almond v. Day* are to be continued, and if our children are to escape enforced integration and yet be educated, it is necessary that Section 141 of the Constitution be amended through the calling of a limited Constitutional Convention.

The session of the General Assembly which considers that matter should not have before it other measures to becloud the issue and delay action on the most pressing problem confronting the State in this century. We therefore recommend that Your Excellency call a special session of the General Assembly for the sole purpose of considering the bill attached hereto.

Subsequent to the Constitutional Convention the Commission will be prepared to submit specific bills carrying out the proposals hereinabove set forth.

In conclusion, the Commission wishes to express its gratitude to Your Excellency; to the Honorable J. Lindsay Almond, Jr., Attorney General;

to the Superintendent of Public Instruction, Dowell J. Howard; to John G. Blount, Jr., Finance Director of the Department of Education; to Charles H. Smith, Director of the Virginia Supplemental Retirement System; to David J. Mays and Henry T. Wickham, counsel; and to John B. Boatwright, Jr., and G. M. Lapsley, Secretary and Recording Secretary, respectively, to the Commission, and their staff; and to many others who have given their counsel and made specific suggestions, all of which have been carefully considered.

Respectfully submitted,

GARLAND GRAY, Chairman
 HARRY B. DAVIS, Vice-Chairman
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APPENDIX I

HONORABLE THOMAS B. STANLEY, *Governor of Virginia*

On August 30, 1954, Your Excellency appointed the undersigned to a commission charged with the duty of examining the effect on this Commonwealth of the decision of the Supreme Court of the United States in the school segregation cases handed down on May 17, 1954, and of making such recommendations, based upon its examination, as they deemed proper.

Your Commission met on September 13, 1954, and elected the undersigned chairman and Harry B. Davis vice-chairman. An executive committee was provided for, consisting of the two named officers and nine other members of the Commission.

Immediately following the appointment of the Commission, its members began to receive a large volume of mail from the citizens of Virginia. In addition, a great many citizens talked with members of the Commission and stated their views on the question of integration, requesting that they be transmitted to the proper authorities.

The Commission held a public hearing on November 15, 1954, in the City of Richmond. The widest possible publicity was given to this hearing and all citizens and groups were invited to attend or send representatives to express their views on the question of what course Virginia should follow in the light of the decision of the Supreme Court of the United States in the school segregation cases. The hearing was held in the Mosque in order to accommodate the more than two thousand persons who attended. It began at 10:00 A. M. and extended late into the night. Opportunity was given everyone who had indicated a desire to do so, to express his opinion.

As the record of the public hearing shows, the great majority of those appearing there expressed opposition to integration and requested those in authority to afford them relief from the effects which they anticipated would result therefrom. Spokesmen for the Negro race and various Negro organizations, and a lesser number of white persons, urged immediate integration; in some instances conflicting viewpoints developed among members of the same organization.

The hearing was well attended, orderly, and apparently representative of the views of the people of the entire State, and it is presently the view of the Commission that further public hearings would result only in cumulative testimony, rather than fresh viewpoints.

The testimony at the hearing brought into sharp focus the nature and intensity of the feeling as to the effect that integration would have on the public school system. Not only did the majority of persons speaking at the hearing feel that integration would lead to the abolition or destruction of the public school system, but some groups indicated, through their spokesmen, that they *preferred* to see the public school system abandoned if the only alternative was integration.

It is noteworthy that fifty-five counties, located in various parts of the State, through resolutions adopted by their representative governing bodies, have expressed opposition to integration in the public schools and that of the fifty-five counties only twenty-one have over fifty percent Negro population. A number of school boards have expressed opposition to integration of the races in the schools, as have many non-governmental

organizations and associations of our citizens. Included in the latter group are large and representative Statewide organizations. In addition; the sentiment of a large number of individuals has been expressed through the medium of petitions opposing integration.

The public hearing held in Richmond, the content of many communications to Your Excellency and to the Commission, conversations with the people of this Commonwealth, and the actions taken by a majority of the boards of supervisors of the counties, and by school boards and other organizations, have convinced the Commission that the overwhelming majority of the people of Virginia are not only opposed to integration of the white and negro children of this State, but are firmly convinced that integration of the public school system without due regard to the convictions of the majority of the people and without regard to local conditions, would virtually destroy or seriously impair the public system in many sections in Virginia.

The welfare of the public school system is based on the support of the people who provide the revenues which maintain it, and unless that system is operated in accordance with the convictions of the people who pay the costs, it cannot survive; and this is particularly true in Virginia where a large percentage of the cost of public education is dependent upon local revenues.

In view of the foregoing, I have been directed to report that the Commission, working with its counsel, will explore avenues toward formulation of a program, within the framework of law, designed to prevent enforced integration of the races in the public schools of Virginia.

Respectfully submitted,

GARLAND GRAY, Chairman.

January 19, 1955.

APPENDIX II

RICHMOND, VIRGINIA, JUNE 10, 1955.

To:

HONORABLE THOS. B. STANLEY, *Governor of Virginia*

The Commission in its report to Your Excellency, dated January 19, 1955, stated that it would explore avenues toward formulation of a program, within the framework of law, designed to prevent enforced integration of the races in the public schools of Virginia. In furtherance of that aim, counsel, working closely with the undersigned, the full Commission, the executive committee, a committee of attorneys consisting of three members of the Commission and many others, has studied and evaluated various plans and programs of suggested legislation and has now reached some general conclusions.

By necessity no plan or program could be evolved until the final decision of the Supreme Court of the United States was rendered. This was done on May 31, 1955, and, at the request of Your Excellency, the undersigned called a meeting of the Commission on June 8, 9 and 10 for the specific purpose of considering the effects of the Supreme Court's latest enunciation concerning the public school system in Virginia.

Throughout its deliberations the Commission has been fully conscious that one of the most important functions of State and local government is the education of our youth. It has been at all times guided by the realization that education for the children of this State is of paramount consideration.

The plans the Commission has under consideration, necessitated by the decisions of the Supreme Court of the United States, require numerous, involved and complex changes in the present laws of Virginia. Such changes relate to the State Board of Education, local school boards, appropriations by local tax levying bodies, the employment of teachers, their tenure in office and retirement, distribution of school funds by the State, and other related matters. No political subdivision of Virginia can initiate a system designed to achieve an orderly and equitable adjustment consistent with law before the enactment of appropriate legislation by the General Assembly and the formulation and application of local policy thereunder. The Court in its opinion of May 31, 1955, recognized that a variety of obstacles would have to be eliminated before any transition could be had to a school system operated in accordance with its views. The responsibility for assessing and solving these problems was placed on the school authorities. In Virginia the public schools are the creature of law and operate as a joint State and local responsibility. Time and exhaustive study are required for the formulation and enactment of legislation if the interest and welfare of the pupils of both races, the protection of the status of the teachers, and the financial problems involved are to receive constructive attention. Hasty action could well result in the serious impairment or destruction of the public school system. This should be as obvious to all who have carefully considered the problem confronting the State and the localities, as it is to the Supreme Court of the United States itself.

Because of the many complex statutory changes involved and the necessity to consider many of them in the light of the Constitution of Virginia, it has not yet been possible for the Commission to work out

APPENDIX C

appropriate legislation. Meanwhile both local school authorities and the State Board of Education face the necessity of concluding and announcing plans for the 1955-1956 school year.

In the circumstances it is the recommendation of this Commission that Your Excellency and the State Board of Education declare that it is the policy of the State to continue schools through the school year 1955-1956 as presently operated. Further, it is the judgment of this Commission that an adjustment, at this time, to a school system not based on race would not be practicable or feasible from an administrative standpoint or otherwise.

Your Commission will continue its work and submit a further report at its conclusion. The report will contain specific bills for enactment by the General Assembly. For the foregoing reasons, it is the view of the Commission that an extra session of the General Assembly should not be called at this time.

GARLAND GRAY, Chairman.

APPENDIX III

A BILL

To provide for submitting to the qualified electors the question of whether there shall be a convention to revise and amend certain provisions of the Constitution of Virginia.

Whereas, by Item 210 of the Appropriation Act of 1954 (Acts of Assembly, 1954, Chapt. 708, p. 970), the General Assembly sought to enact measures to aid certain war orphans in obtaining an education at either public or private institutions of learning, which said Item has been adjudicated by the Supreme Court of Appeals of Virginia, insofar as it purports to authorize payments for tuition, institutional fees and other expenses of students who attend private schools, to be violative of certain provisions of the Constitution respecting education and public instruction; and,

Whereas, the State's entire program, insofar as attendance at private schools is concerned, involving the industrial rehabilitation program, grants for the education of war orphans, grants in aid of Negro graduate students, and scholarships for teaching and nursing, is in jeopardy; and

Whereas, in order to permit the handicapped, war orphans, Negro graduate students and prospective teachers and nurses to receive aid in furtherance of their education at private schools and in order to insure educational opportunities for those children who may not otherwise receive a public school education due to the decision of the Supreme Court of the United States in the school segregation cases, it is deemed necessary that said provisions of the Constitution be revised and amended; and,

Whereas, it is impossible to procure such amendments and revisions within the time required to permit educational aid forthwith for the current school year and that beginning in the fall of 1956 except by convening a constitutional convention; and,

Whereas, because it is deemed unwise at this time to make any sweeping or drastic changes in the fundamental laws of the State, and also, in order to assure the adoption of the contemplated amendments and revisions within the time necessary to permit educational aid in the school year of 1956-57, it is deemed necessary that the people eliminate all questions from consideration by said convention save and except those essential to the adoption of those revisions and amendments specified in this Act; and,

Whereas, in order to avoid heated and untimely controversies throughout the State as to what other matters, if any, may or should be acted upon by said convention, it is believed to be in the public interest to submit to the electors the sole question whether a convention shall be called which will be empowered by the people to consider and act upon said limited revisions and amendments only, and not upon any others:

Now, therefore, be it enacted by the General Assembly of Virginia:

1. § 1. That at an election to be held on such day as may be fixed by proclamation of the Governor (but not later than sixty days after the passage of this Act) there shall be submitted to the electors qualified to vote for members of the General Assembly the question "Shall there be a convention to revise the Constitution and amend the same?" Should a majority of the electors voting at said election vote for a convention, the

legal effect of same will be that the people will thereby delegate to it only the following powers of revision and amendment of the Constitution and no others:

A. The convention may consider and adopt amendments necessary to accomplish the following purposes, and no others:

To permit the General Assembly and the governing bodies of the several counties, cities and towns to appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in nonsectarian public and private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town.

B. The convention shall be empowered to proclaim and ordain said revisions and amendments adopted by it within the scope of its powers as above set forth without submitting same to the electors for approval, but the convention will not have the power to either consider, adopt, or propose any other amendments or revisions.

§ 2. The judges of election and other officers charged with the duty of conducting elections at each of the several voting places in the State are hereby required to hold an election upon the said question of calling the convention, on the day fixed therefor by proclamation of the Governor, at all election precincts in the State, but the several electoral boards may, in their discretion, dispense with the services of clerks of election in such precincts as they may deem appropriate. Copies of the Governor's proclamation shall be promptly sent by the State Board of Elections to the secretary of each electoral board and due publicity thereof given through the press of the State and otherwise if the Governor so directs.

§ 3. The ballots to be used in said election the State Board of Elections shall cause to be printed, and distributed and furnished to the respective electoral boards of the counties and cities of the State. The number furnished each such board shall be ten per centum greater than the total number of votes cast by said board's county or city in the last presidential election. The respective electoral boards shall cause the customary identification seal to be stamped on the ballots delivered to them. In order to insure that the electors will clearly understand the limited powers which may be exercised by the convention, if called, said ballots shall be printed in type not less in size than small pica and contain the following words and figures:

"Constitutional Convention Ballot:

"INFORMATORY STATEMENT

"The Act of the General Assembly submitting to the people the question below provides that the elector is voting for or against a convention to which will be delegated by the people only the limited powers of revising and amending the Constitution to the extent that is necessary to accomplish the following purposes, and no other powers:

"To permit the General Assembly and the governing bodies of the several counties, cities and towns to appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in nonsectarian public and private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town.

"The Act also provides that the legal effect of a majority vote for a

convention will be that the people will delegate to it only the foregoing powers, except that the convention will be empowered to ordain and proclaim said revisions and amendments adopted by it within the scope of said powers without submitting same to the electors for approval, but the convention will not have the power to either consider, adopt or propose any other amendments or revisions.

"In the light of the foregoing information the question to be voted on is as follows:

"Shall there be a convention to revise the Constitution and amend the same?

For the convention.

Against the convention."

§ 4. A ballot deposited with a cross mark, a line or check mark placed in the square preceding the words "For the convention" shall be a vote for the convention, and a ballot deposited with a cross mark, line or check mark preceding the words "Against the convention" shall be a vote against the convention.

§ 5. The ballots shall be distributed and voted, and the results thereof ascertained and certified, in the manner prescribed by section 24-141 of the Code of Virginia. It shall be the duty of the clerks and commissioners of election of each county and city, respectively, to make out, certify and forward an abstract of the votes cast for and against the convention in the manner now prescribed by law in relation to votes cast in general State elections.

§ 6. It shall be the duty of the State Board of Elections to open and canvass the said abstracts of returns, and to examine and make statement of the whole number of votes given at said election for and against the convention, respectively, in the manner now prescribed by law in relation to votes cast in general elections; and it shall be the duty of the State Board of Elections to record said certified statement in its office, and without delay to make out and transmit to the Governor of the Commonwealth an official copy of said statement, certified by it under its seal of office.

§ 7. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the convention to be published in such newspapers in the State as may be deemed requisite for general information. The State Board of Elections shall cause to be sent to the clerks of each county and corporation, at least fifteen days before the election, as many copies of this Act as there are places of voting therein; and it shall be the duty of such clerks to forthwith deliver the same to the sheriffs of their respective counties and sergeants of their respective cities for distribution. Each such sheriff or sergeant shall forthwith post a copy of such Act at some public place in each election district at or near the usual voting place in the said district.

§ 8. The expenses incurred in conducting this election, except as herein otherwise provided, shall be defrayed as in the case of the election of members of the General Assembly.

§ 9. The State Board of Elections shall have authority to employ such help and incur such expense as may be necessary to enable it to discharge the duties imposed on it under this Act, the expenses thereof to be paid from funds appropriated by law.

2. An emergency existing, this Act shall be in force from the time of its passage.

APPENDIX C

GENERAL ASSEMBLY

of the

COMMONWEALTH OF VIRGINIA

EXTRA SESSION 1956

ACTS OF ASSEMBLY RELATING TO EDUCATION

Richmond
Division of Purchase
and Printing
1956

CHAPTER 71

An Act to amend and reenact § 1 of Chapter 716 of the Acts of Assembly of 1956, approved March 31, 1956, relating to the appropriation of the public revenue for the two years ending, respectively, on the thirtieth day of June, 1957, and the thirtieth day of June, 1958, so as to provide that the sums appropriated in Items 133, 134, 137, 138 and 143 shall be for the maintenance of an efficient system of elementary and secondary schools, respectively; to establish and define an elementary and secondary public school system; to prohibit the expenditure of any of the funds appropriated by such items in support of any system of public schools which is not efficient; and to provide for and prescribe the conditions under which such funds may be expended for educational purposes in furtherance of education of Virginia students in elementary and secondary nonsectarian private schools.

[H 1]

Approved September 29, 1956

(Note—Complete text of amendments to Chapter 716, Acts of Assembly, Regular Session 1956)

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 716 of the Acts of Assembly of 1956, approved March 31, 1956, be amended and reenacted as follows:

§ 1. The public taxes and arrears of taxes, as well as the revenue and money derived from all other sources, which shall come into the State treasury prior to the first day of July, nineteen hundred and fifty-eight, are hereby appropriated for the years to close on the thirtieth day of June, nineteen hundred and fifty-seven, and the thirtieth day of June, nineteen hundred and fifty-eight, respectively, as set forth in the following sections and items for the purposes stated. Such public taxes, arrears of taxes, revenues, and money derived from other sources as are not segregated by law to special funds shall establish the general fund of the State treasury. Except where otherwise provided in this act, the sums appropriated are appropriated from the general fund of the State treasury.

BIENNIUM 1956-1958
LEGISLATIVE DEPARTMENT OF THE
GOVERNMENT
GENERAL ASSEMBLY OF VIRGINIA

Item 1	First Year	Second Year
For legislating for the State, a sum sufficient, estimated at	\$ 74,206	\$ 339,896

Out of this appropriation shall be paid the salaries of members, clerks, assistant clerks, officers, pages and employees; the mileage of members, officers and members of legislative committees sitting during recess; and the incidental expenses of the General Assembly.

Out of this appropriation the following salaries shall be paid:

Clerk of the House of Delegates.....	\$12,000
Index Clerk, Deputy and Secretary to the Clerk of the House of Delegates.....	5,000
Clerk of the Senate.....	10,000
Senate Index Clerk, not exceeding.....	6,000
Secretary to the Clerk of the Senate.....	4,000

It is further provided that out of this appropriation there is hereby appropriated for payment of expenses of the Lieutenant-Governor, \$1,500 each year, to be paid in equal monthly installments of \$125.00 each.

AUDITING COMMITTEE OF THE GENERAL ASSEMBLY

Item 2 For auditing public accounts.....	\$ 585	\$ 585
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DIVISION OF STATUTORY RESEARCH AND DRAFTING

Item 3 For assistance in preparing legislation.....	\$ 37,415	\$ 53,950
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Out of this appropriation the following salary shall be paid:

Director	\$11,000
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VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Item 4 For study and advice on legislative matters.....	\$ 21,260	\$ 23,260
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VIRGINIA CODE COMMISSION

Item 5 For carrying out the duties prescribed by §§ 9-66 through 9-68, inclusive, of the Code of Virginia, pertaining to the codification and printing of acts of the General Assembly in code form.....	\$ 2,500	\$ 17,400
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VIRGINIA COMMISSION ON INTERSTATE COOPERATION

Item 6 For promoting interstate cooperation.....	\$ 10,375	\$ 10,375
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COMMISSION ON VETERANS' AFFAIRS

Item 7 For making investigations and recommendations concerning appropriate legislation for the benefit of Virginia war veterans and their dependents.....	\$ 500	\$ 500
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Total for Legislative Department of the Government	\$ 146,841	\$ 445,966
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NT OF THE GOVERNMENT

SUPREME COURT OF APPEALS

Item 8	First Year	Second Year
For adjudication of legal cases.....	\$ 196,012	\$ 199,212
Out of this appropriation the following salaries and wages shall be paid:		
Chief Justice	\$16,000	
Associate Justices (6), at \$15,500 each.....	93,000	
It is further provided that out of this appropriation shall be paid the traveling and other expenses of the Justices of the Supreme Court of Appeals, one thousand five hundred dollars for each Justice, which sum shall be in lieu of mileage.		
 Item 9		
For printing records of litigation, a sum sufficient, estimated at	\$ 30,000	\$ 30,000
 Item 10		
For maintenance of law library.....	\$ 23,516	\$ 23,316
 Item 11		
For office of executive secretary to the Supreme Court of Appeals, the salaries of such employees to be fixed by the Supreme Court; provided that the salary of such executive secretary shall not exceed the amount allowed by law to a judge of a trial court of record.....	\$ 18,000	\$ 18,000
Total for the Supreme Court of Appeals.....	<u>\$ 267,528</u>	<u>\$ 270,528</u>

RETIREMENT OF JUSTICES AND JUDGES

Item 12		
For retirement pay of Justices of the Supreme Court of Appeals, and Judges of Circuit, Corporation and Hustings, and City Courts, and expenses of retired Justices and Judges when recalled to active duty, in accordance with law, a sum sufficient, estimated at	\$ 44,190	\$ 44,190

CIRCUIT COURTS

Item 13		
For adjudication of legal cases.....	\$ 430,512	\$ 430,512
Out of this appropriation shall be paid the following salaries only:		
Judges (37), at \$10,700 each.....	\$395,900	
Additional salaries	3,112	
Judge 29th Circuit.....	10,700	
Compensation to sheriffs, sergeants and their deputies for attendance upon the circuit courts, as authorized by § 14-85 of the Code of Virginia.....	1,500	

CORPORATION AND HUSTINGS COURTS

Item 14		
For adjudication of legal cases.....	\$ 184,020	\$ 184,020
Out of this appropriation shall be paid the following salaries only:		
Judges (17), at \$10,700 each.....	\$181,900	
Judge of the Corporation Court, city of Winchester	1,120	
Clerk at Richmond.....	1,000	

CITY COURTS

Item 15		First Year	Second Year
For adjudication of legal cases.....	\$	70,700	\$ 70,700
Out of this appropriation shall be paid the following salaries and wages only:			
Judges (6), at \$10,700 each.....	\$64,200		
Compensation to sheriffs, sergeants and their deputies, for attendance upon city courts, as authorized by § 14-85 of the Code of Virginia	6,500		

VIRGINIA STATE BAR

Item 16	
For administration of the integrated bar act, to be paid only out of revenues collected and paid into the State treasury in accordance with the provisions of said act and not out of the general fund of the State treasury	\$33,382
for the first year and \$33,582 the second year.	

JUDICIAL COUNCIL

Item 17			
For the expenses of the Judicial Council authorized by §§ 17-222 to 17-227, inclusive, of the Code of Virginia, and for the expenses of the Judicial Conference.....	\$	5,500	\$ 5,500

DEPARTMENT OF LAW

Attorney General

Item 18			
For providing legal services for the State.....	\$	139,350	\$ 144,750
Out of this appropriation the following salary shall be paid:			
Attorney General	\$14,850		
It is provided that all attorneys authorized by this act to be employed by any department or agency, and all attorneys compensated out of any monies appropriated by this session of the General Assembly, shall be appointed by the Attorney General and be in all respects subject to the provisions of §§ 2-85 to 2-93, inclusive, §§ 2-94 to 2-97, inclusive, and § 14-14 of the Code of Virginia.			

Division of Motion Picture Censorship

Item 19			
For examining and licensing motion picture films publicly exhibited in Virginia.....	\$	54,915	\$ 55,960

Division of War Veterans' Claims

Item 20			
For preparation and prosecution of claims against the United States Veterans' Administration and other agencies on behalf of war veterans and their dependents and the surviving dependents of deceased war veterans, in accordance with the provisions of § 2-93.1 of the Code of Virginia.....	\$	217,046	\$ 219,129

Commissioners for the Promotion of Uniformity of Legislation in the United States

Item 21			
For promoting uniformity of legislation.....	\$	1,250	\$ 1,250

Total for the Department of Law.....	\$	412,561	\$ 421,089
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Total for the Judicial Department of the Government	\$	1,415,011	\$ 1,426,539
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EXECUTIVE DEPARTMENT OF THE GOVERNMENT
GOVERNOR

	First Year	Second Year
Item 22		
For executive control of the State.....	\$ 91,252	\$ 95,460
Out of this appropriation the following salaries shall be paid:		
Governor	\$17,500	
Secretary of the Commonwealth and ex-officio secretary to the Governor.....	6,500	
It is provided, however, that on and after the beginning of the term of the Governor of Virginia taking office in January, 1958, the salary of the Governor shall be \$20,000 per annum and the salary of the Secretary of the Commonwealth and ex-officio secretary to the Governor shall be \$7,000 per annum.		
Item 23		
For a discretionary fund, to be expended by the Governor for such objects or purposes, including reorganization studies of State agencies, as the Governor, in his discretion, may deem proper to meet any contingencies or conditions which may arise from time to time....	\$ 130,000	\$ 120,000
Item 24		
To be expended by the Governor pursuant to the provisions of § 15-891.3 of the Code of Virginia for regional planning commissions heretofore established.....	\$ 20,000	\$ 20,000
Item 25		
For payment of Virginia's quota of the expenses of administrative services and operations of the Board of Control for Southern Regional Education.....	\$ 28,000	\$ 28,000
Item 26		
For operation and maintenance of the Governor's Mansion..	\$ 24,941	\$ 25,441
Item 27		
For carrying out the purposes of, and subject to the conditions stated in, Chapter 22, Acts of Assembly of 1950, which authorizes the Governor to take certain steps in event of a coal production emergency, there is hereby appropriated from the general fund of the State treasury a sum sufficient.		
Total for the Governor.....	\$ 294,193	\$ 288,901

State Board of Elections

Item 28		
For supervising and coordinating the conduct of elections..	\$ 43,800	\$ 33,600
Out of this appropriation shall be paid the following salary:		
Secretary	\$7,950	

State and Local Defense

Item 29		
For promotion and coordination of State and local civil defense activities, a sum sufficient estimated at.....	\$ 87,300	\$ 88,050
It is hereby provided that this appropriation shall be expended on warrants of the Comptroller, issued upon vouchers signed by the Governor, or by such other person or persons as may be designated by him for the purpose.		

DIVISION OF THE BUDGET

	First Year	Second Year
Item 30		
For preparation and administration of the executive budget	\$ 38,922	\$ 74,458
Out of this appropriation the following salary shall be paid:		
Director	\$12,000	
Item 31		
For institutional engineering.....	\$ 186,460	\$ 190,270
Item 32		
For records management.....	\$ 37,790	\$ 35,660
It is provided that the special revenues collected for records management services shall be paid into the general fund of the State treasury.		
Item 33		
For maintenance and operation of grounds and buildings..	\$ 591,807	\$ 645,362
It is hereby provided that no part of this appropriation for maintenance and operation of grounds and buildings shall be used to furnish floor coverings, electric fans or other office equipment to any State officer, department, board, institution or other State agency.		
It is provided, further, that a pro rata share of the costs of operating a central telephone system shall be charged to each State department and agency in Richmond served by the system; payments for such charges shall be credited against the expenses of the Section of Grounds and Buildings of the Division of the Budget for the operation of the system.		
Out of this appropriation shall be paid a sum sufficient, not more than \$20,000 each year, for the maintenance and operation of the Virginia World War II Memorial.		
Item 34		
For aiding in the production of motion picture films depicting activities of the State government.....	\$ 2,500	\$ 2,500
Total for the Division of the Budget.....	\$ 857,479	\$ 948,250

DIVISION OF PERSONNEL

Item 35		
For administration of the Virginia Personnel Act.....	\$ 94,400	\$ 96,095
Out of this appropriation the following salary shall be paid:		
Director	\$9,900	
Item 36		
For administration of the Merit System Council, to be paid only out of funds to be transferred to the Merit System Council by order of the Governor from the appropriations herein made to the Unemployment Compensation Commission, Department of Welfare and Institutions, the State Board of Health, State Hospital Board, and the Virginia Commission for the Blind	\$30,970	
the first year, and \$32,070 the second year.		
The Governor is hereby authorized to transfer to the Merit System Council from the respective appropriations herein made to the Unemployment Compensation Commission, the Department of Welfare and Institutions, the State Board of Health, the State		

First Year Second Year

Hospital Board, and the Virginia Commission for the Visually Handicapped, a sum equal to the value of the services rendered by the Merit System Council for the respective agencies.

It is hereby provided that this appropriation shall be expended on warrants of the Comptroller, issued upon vouchers signed by the Director of the Division of Personnel or by such other person or persons as may be designated by the Governor for that purpose.

VIRGINIA SUPPLEMENTAL RETIREMENT SYSTEM

Item 37

For expenses of administration of the Board of Trustees of the Virginia Supplemental Retirement System.....\$	91,335	\$	92,155
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As used in Items 38 through 48, inclusive, the term "Social Security" has reference to the Federal Insurance Contributions Act with respect to contributions and to the Federal Old-Age and Survivors Insurance System with respect to employee benefits.

Item 38

For the State employer's Social Security payment, on behalf of State employees excepting those paid from special funds, to the Contribution Fund, pursuant to Chapter 3.1, Title 51, Code of Virginia, a sum sufficient estimated at.....\$	1,052,980	\$	1,105,625
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Item 39

For reimbursement to each local school board of the actual employer's Social Security payments made by it, on behalf of teachers, to the Contribution Fund pursuant to Chapter 3.1, Title 51, Code of Virginia, a sum sufficient, estimated at	\$ 1,985,460	\$	2,084,735
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Item 40

For reimbursement to each political subdivision the pro-rata share of the actual employer's Social Security payments made by it, on behalf of local special employees, to the Contribution Fund, pursuant to Chapter 3.1, Title 51, Code of Virginia; such pro rata share shall bear the same relationship to the total employer's payment for such special employees as the State's share of the special employee salaries, or the State's share of any excess fees from the special employee's office, bears or would bear to the total of such salaries or excess fees, respectively, a sum sufficient, estimated at	\$ 87,000	\$	91,300
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Item 41

In the event any political subdivision required pursuant to Chapter 3.1, Title 51, Code of Virginia, and by any agreement pursuant to the cited act, to make payments to the Contribution Fund, fails to make such payments as are duly prescribed, either from its local employees or on behalf of its employer's contribution, the Board of Trustees of the Virginia Supplemental Retirement System shall inform the Comptroller of the delinquent amount and political subdivision. The Comptroller shall forthwith transfer such amount to the Contribution Fund from any non-earmarked monies otherwise distributable to such subdivision by any department or agency of the State; provided that if the Comptroller reports to the Board of Trustees that, by law, no such amounts are dis-

First Year Second Year

tributable to a specified political subdivision, the Board shall require such subdivision to post bond or securities in an amount sufficient to protect the State against loss from failure by such subdivision to pay any amounts required under the act providing Social Security coverage.

Item 42

To provide for the payment of increased retirement compensation to certain retired State employees and beneficiaries thereof, in accordance with the provisions of Chapter 404, Acts of Assembly of 1954, there is hereby appropriated out of the general fund of the treasury to Trust Fund B, established by § 51-111.68, Code of Virginia.....\$ 21,210 \$ 20,440

Item 43

To provide for the payment of increased retirement compensation to certain retired teachers and beneficiaries thereof, in accordance with the provisions of Chapter 404, Acts of Assembly of 1954, there is hereby appropriated out of the general fund of the treasury to Trust Fund B, established by § 51-111.68, Code of Virginia\$ 360,090 \$ 352,340

Item 44

For the State contribution, on behalf of State employees excepting those paid from special funds, to the retirement allowance account as provided by Chapter 3.2, Title 51, of the Code of Virginia.....\$ 1,033,110 \$ 1,084,015

Item 45

For the State contribution, on behalf of teachers, to the retirement allowance account as provided by Chapter 3.2, Title 51, of the Code of Virginia.....\$ 2,941,285 \$ 3,159,550

Item 46

For the State contribution, on behalf of teachers, to the retirement allowance account as provided by Chapter 3.2, Title 51, of the Code of Virginia, to be paid from the principal of the literary fund in excess of \$10,000,000, the sum of.....\$1,465,000 each year.

Item 47

On July 1, 1956, and on July 1, 1957, the Comptroller shall transfer, from each special fund in the State treasury out of which any State employees are paid, to the retirement allowance account provided in Chapter 3.2, Title 51, Code of Virginia, and to the Contribution Fund as provided in Chapter 3.1, Title 51, Code of Virginia, and to the retirement allowance account as provided for State Police Officers by the Acts of Assembly of 1954, such amount as shall be estimated to have accrued and to accrue on account of salaries and wages for the quarter preceding and the three quarters following. At the close of each fiscal year the Comptroller shall adjust such transfers, if necessary, for each special fund in accord with actual accruals for retirement and Social Security purposes, during the four quarters concerned. The estimate of accruals and the subsequent report of actual accruals shall be supplied by the Board of Trustees of the

	First Year	Second Year
Virginia Supplemental Retirement System to the Comptroller and shall be used by him in making the transfers required by this item.		
Item 48		
For payment to the Secretary of the Treasury of the United States to the credit of such account as may be designated in accordance with the agreement entered into under Chapter 3.1, Title 51, Code of Virginia, for the purposes stated in the cited act, and in such amounts as may be specified pursuant to the cited agreement, there is hereby appropriated from the Contribution Fund established by the cited act, a sum sufficient.		
Total for Virginia Supplemental Retirement System	\$ 7,572,470	\$ 7,990,160

ART COMMISSION

Item 49		
For appraising works of art and structures.....	\$ 1,000	\$ 1,000

AUDITOR OF PUBLIC ACCOUNTS

Item 50		
For auditing the accounts of the State and local government units	\$ 432,625	\$ 441,075
Out of this appropriation the following salary shall be paid:		
Auditor of Public Accounts.....	\$11,000	
the first year and \$11,000 the second year.		

STATE COMMISSION ON LOCAL DEBT

Item 51		
For aiding localities in the flotation of new bonded debt....	\$ 2,500	\$ 2,500

DEPARTMENT OF THE TREASURY

Item 52		
For the custody and disbursement of State money.....	\$ 105,030	\$ 110,655
Out of this appropriation the following salary shall be paid:		

State Treasurer\$9,500
the first year and \$9,730 the second year.

It is provided that out of this appropriation shall be paid the premiums on the official bonds of the State Treasurer and employees of the Department of the Treasury, and the premiums on insurance policies on vault in the Department of the Treasury and on messenger insurance policy.

It is further provided that out of this appropriation the State Treasurer shall be paid as compensation for services rendered as Chairman of the Investment Committee of the Virginia Supplemental Retirement System the sum of \$500 during the year ending June 30, 1957, and the sum of \$270 during the year ending June 30, 1958.

On and after the beginning of the term of the State Treasurer in January 1958, the annual salary of the State Treasurer shall be \$11,000 per annum, which shall include compensation for services rendered as Chairman of the Investment Committee of the Virginia Supplemental Retirement System.

TREASURY BOARD

	First Year	Second Year
Item 53		
For payment of interest on the State debt.....	\$ 350,121	\$ 350,121
Item 54		
For providing sinking fund for redemption of Riddleberger bonds, Century bonds and general fund bonded indebtedness	\$ 514,879	\$ 514,879
Total for Treasury Board.....	\$ 865,000	\$ 865,000

DEPARTMENT OF ACCOUNTS AND PURCHASES

Division of Accounts and Control

Item 55		
For auditing and recording the financial transactions of the State	\$ 309,200	\$ 308,800
Out of this appropriation the following salary shall be paid:		
Comptroller	\$11,000	
Out of this appropriation shall be paid the costs of the official bonds of the Comptroller; and the costs of the surety bonds of the employees in the Division of Accounts and Control, in accordance with the provisions of §§ 2-7 and 2-8 of the Code of Virginia.		
Item 56		
For collecting old claims, as authorized by § 2-270 of the Code of Virginia, and for adjustment of State litigation, a sum sufficient, estimated at.....	\$ 2,500	\$ 2,500
Out of this appropriation shall be paid the costs of civil prosecution in civil cases, expenses and commissions in collecting old debts, etc., in accordance with § 8-780 of the Code of Virginia.		
Item 57		
For support of lunatics in jails and in charge of private persons, a sum sufficient, estimated at.....	\$ 2,000	\$ 2,000
Item 58		
For payment of pensions, funeral expenses, relief of Confederate women and administrative expenses.....	\$ 366,575	\$ 348,695
Out of this appropriation each pensioner in the several classes now on the pension roster, or hereafter placed on the pension roster, under the regular pension act (as continued in effect by § 51-1 of the Code of Virginia) approved March 26, 1928, chapter 465, as amended March 24, 1930, and March 30, 1934 and subsequent acts appropriating the public revenue, shall be paid as follows: to Confederate veterans, \$1,200 a year; to each widow of a Confederate soldier, sailor or marine, \$600 a year; and for the funeral expenses of each deceased pensioner, to be paid to the personal representative of such deceased pensioner or, without qualification of a personal representative, to the undertaker, upon submission to the Comptroller of certificates and affidavits required by law, \$45; provided, however, that the said allowance for the funeral expenses of each Confederate veteran who was on the pension roster at the time of his death shall be \$100; provided, further, that under the provisions of this act any person who actually accom-		

First Year Second Year

panied a soldier in the service and remained faithful and loyal as the body servant of such soldier or who served as cook, hostler or teamster, or who worked on breastworks under any command of the army and thereby rendered service to the Confederacy, shall be entitled to received an annual pension of \$240, proof of service to be prescribed by the Comptroller; provided that to each widow of a Confederate soldier as above set out who is now or who may become an inmate of an institution receiving support from the State and who was married prior to October 1, 1880, and has not remarried, shall be paid the sum of \$25.00 per month; and to each such widow who was married on or after October 1, 1880, and prior to January 1, 1921, and who has not remarried and to each such widow who married on or after January 1, 1921, who is over 75 years of age and who has not remarried, shall be paid the sum of \$20.00 per month.

Any unexpended portion of this appropriation shall revert to the general fund of the State treasury, and no part thereof shall be prorated among pensioners.

It is further provided that out of the appropriation for public printing the Director of the Division of Purchase and Printing shall supply all forms and have done and pay for all printing, binding, ruling, etc. required by the Comptroller in pension matters and in connection with the payment of pensions. The Comptroller shall pay monthly at such dates as he may prescribe the pensions authorized by this act.

It is further provided that out of this appropriation of \$366,575 for the first year and \$348,695 for the second year, there shall be expended for relief of needy Confederate women of Virginia including daughters of Confederate soldiers who are now widows, born not later than December 31, 1883, who are not upon the State pension roster, and who are not inmates of any Confederate, independent or church home or charitable institution, in accordance with the provisions of the act approved March 10, 1914 (Acts of Assembly, 1914, chapter 56, page 81); provided that each such needy Confederate woman shall receive \$90.00 per year.....\$119,250 each year.

It is further provided that out of this appropriation, there shall be expended for care of needy Confederate women who are inmates of the Home for Needy Confederate Women at Richmond, in accordance with the provisions of the act approved March 4, 1914 (Acts of Assembly, 1914, chapter 40, page 60)\$65,000 each year.

It is provided, however, that no part of this appropriation shall be available for expenditure until satisfactory evidence of compliance with the following conditions has been presented the Auditor of Public Accounts:

- (1) Copies of all current and future applications for admission to the Home have been or will be filed with the Auditor of Public Accounts. (2) Proof that admissions to the Home are being made as far as practicable on the basis of first come first

served, provided that where the governing board of the Home deviates from the policy of first come first served the reasons therefor shall be filed with the Auditor of Public Accounts, it being understood that such board shall have the right to deviate from such policy in cases which are considered by the board to be of dire necessity or distress. (3) Upon the admission of any guest to the Home the Auditor of Public Accounts shall be informed thereof and also as to the length of time which the application has been pending; and whether it has been given priority over other applications. (4) Copies of the rules of admission have been filed with the Auditor of Public Accounts. (5) No part of this appropriation shall be available directly or indirectly for the care or maintenance of any person who is not a member of the class for which the Home was originally established.

The governing body of the Home may refuse to admit anyone sick of an incurable disease or who is bedridden or who is an addict to narcotics or to the use of intoxicating liquors or who is mentally affected to the extent of materially affecting the comfort of the other inmates.

Item 59

For assessing property for taxation and collecting and distributing records of assessments, a sum sufficient, estimated at \$ 1,296,650 \$ 1,296,650

Out of this appropriation shall be paid compensation and expenses of office of city and county commissioners of the revenue, as authorized by § 14-77 of the Code of Virginia, after certification by the chairman of the Compensation Board to the State Comptroller of the amounts of the salaries and expense allowances of such officers fixed and ascertained by said board, and commissions to examiners of records, the postal and express charges on land and property, books, etc.

Item 60

For collecting State taxes a sum sufficient, estimated at.... \$ 1,605,000 \$ 1,605,000

Out of this appropriation shall be paid to county and city treasurers the compensation and expenses of office authorized by § 14-77 of the Code of Virginia, but only after certification by the chairman of the Compensation Board to the State Comptroller of the amounts of the salaries, if any, and expense allowances of such officers, fixed and ascertained by said board; and to county and city clerks of courts, the commissions to which they are entitled by law for the collection of State taxes.

Item 61

For premiums on official bonds of county and city treasurers, as required by § 15-480 of the Code of Virginia, a sum sufficient, estimated at..... \$ 60,000 \$ 20,000

Item 62

For reissue of old warrants, previously charged off, a sum sufficient, estimated at..... \$ 20,000 \$ 20,000

Item 63

For per diem and expenses of presidential electors..... \$ 500

Item 64	First Year	Second Year
For criminal charges, a sum sufficient, estimated at.....	\$ 4,500,000	\$ 4,500,000

Out of this appropriation shall be paid the costs incident to the arrest and prosecution of persons charged with the violation of State laws, including salaries of attorneys for the Commonwealth, as provided by § 14-77 of the Code of Virginia, expenses of juries, witnesses, etc., but where a witness attends in two or more cases on the same day, only one fee shall be allowed such witness; the transportation costs of children committed to the State Board of Welfare and Institutions, and compensation at the rate of nine dollars a day to each agent of the State Board of Welfare and Institutions for each day such agent is engaged in transporting children committed to the Board to homes, institutions, training schools or other locations; the necessary traveling expenses incurred by these agents in carrying out their duties as agents of the Board; and the transportation cost of the State Prison Farm for Defective Misdemeanants, as provided by law, cost of maintenance in local jails of persons charged with violation of State laws, including food, clothing, medicine, medical attention, guarding, etc.; provided, however, that all jail physicians be paid at the rate provided by law, but not more than five hundred dollars per calendar year shall be paid the jail physician or physicians for any city or county, the population of which is less than 100,000, and not more than one thousand dollars per calendar year shall be paid the jail physician or physicians of any city or county, the population of which is 100,000 or over, and coroner's fees, etc., said compensation for jail physician to be paid at the end of the calendar year; provided, however, that in case of death or resignation his compensation shall be prorated on the basis of time of service bears to the full calendar year. Provided, no deduction or cut shall be made in reimbursing any city sergeant or sheriff the actual cost of supplies purchased by him under authority of law, and provided, further, that no salaries, fees or expenses shall be paid to any officers out of this appropriation in cases where the Compensation Board is required to fix and ascertain same or any part thereof, until after certification by the chairman of the Compensation Board to the State Comptroller of the amounts of the salaries, if any, and expense allowances of such officers, fixed and ascertained by said board.

Out of this appropriation shall be paid the State's share of the salaries and expenses of sheriffs and sergeants and their deputies in accordance with law.

It is further provided that out of this appropriation shall be paid the expenses necessarily incurred on official business by judges of circuit, city, and corporation and hustings courts, for postage, stationery, and clerk hire, not exceeding \$300 a year for each judge.

Out of this appropriation shall be paid not exceeding \$120,000 each year of the biennium for reimbursing counties and cities under the provisions of § 16-172.67, § 16-172.68, § 16-172.13, and § 16-172.16 of the Code of Virginia; provided that no part of this appropriation shall be paid to any county or city which

expends in any year following the fiscal year ending June 30, 1954, less than it spent in such fiscal year for the purposes for which reimbursement is provided and authorized; provided further than such amounts as have been paid from the appropriation for criminal charges in the fiscal year ending June 30, 1954, in reimbursing counties and cities under any of the sections hereinbefore referred to or such amounts as would be payable under such sections prior to the amendments at the 1946 session of the General Assembly, shall not be charged against the payments authorized to be made under this paragraph.

Out of this appropriation shall be paid the actual expenses of the committee of circuit court judges, as provided by § 14-50 of the Code of Virginia.

It is provided, however, that no part of this appropriation shall be used for the payment of criminal charges incident to prisoners employed on the State Convict Road Force or at the State Industrial Farm for Women, or at the State Penitentiary Farm and State Prison Farm for Defective Misdemeanants.

Item 65

For apportionment to counties which have withdrawn from the provisions of Article 4, as amended, of Chapter 1 of Title 33 of the Code of Virginia, of the proceeds of the motor vehicle fuel tax to which such counties are entitled by law, a sum sufficient.

Item 66-A

For payment to counties and cities of their distributive share of the proceeds of the tax levied upon certain alcoholic beverages by § 4-24 of the Code of Virginia, a sum sufficient.

Item 66-B

There is hereby appropriated to the cities, incorporated towns, and counties of the State two-thirds of the net profits derived under the provisions of § 4-22 of the Code of Virginia, in excess of seven hundred fifty thousand dollars, each city, incorporated town, and county to receive an amount apportioned on the basis of their respective populations according to the last preceding United States census. It is intended that this item shall provide for the payment to cities, incorporated towns, and counties of only so much of the amounts they would normally receive under the provisions of § 4-22 of the Code of Virginia, as is embraced in the distribution of two-thirds of the said net profits, in excess of seven hundred fifty thousand dollars, but that, by reason of other appropriations made out of the general fund of the treasury for the benefit of said cities, incorporated towns, and counties, there shall be no distribution of any of said net profits except two-thirds thereof, as provided in § 4-22 of the Code of Virginia. In order to be able to ascertain and determine properly the actual amount of said profits the Comptroller may, from time to time, credit on his books to the said board the value of merchandise on hand in the warehouses and stores of the board at the actual cost thereof to the said board.

	\$ 8,162,425	\$ 8,103,645
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Division of Purchase and Printing

Item 67	First Year	Second Year
For purchasing commodities and supervising public printing for the State.....	\$ 225,815	\$ 308,085

Out of this appropriation shall be paid only the cost of such public printing required for the work of departments, institutions and agencies of the State government as is authorized by law to be paid out of the public printing fund, including the cost of printing and binding the Virginia Reports.....\$27,500 the first year and \$105,000 the second year.

It is hereby provided that no part of this appropriation for the Division of Purchase and Printing shall be expended in furnishing stationery or other office supplies to any State officer, department, board, institution or other State agency.

Compensation Board

Item 68		
For regulating compensation of local officers, in accordance with law.....	\$ 30,235	\$ 30,685

Out of this appropriation the following salary may be paid:

Chairman, not exceeding.....\$5,000

It is provided, however, that for such time, if any, as the Chairman of the Compensation Board receives additional pay for other services rendered the State, his salary as such Chairman shall not exceed \$3,505; but on and after the beginning of the term of the Governor taking office in January, 1958, such salary shall be \$2,505; and such salary shall be included as creditable compensation under Chapter 3.2, Title 51 of the Code of Virginia.

DEPARTMENT OF TAXATION

Item 69		
For administration of the tax laws, the Virginia Unfair Sales Act, and aiding in general assessment or re-assessment of real estate.....	\$ 1,028,425	\$ 1,058,560

Out of this appropriation shall be paid the following salary:

State Tax Commissioner.....\$14,850

DIVISION OF MOTOR VEHICLES

Item 70	
For administration of motor vehicle license, registration and fuel tax laws.....	\$1,233,520
the first year, and \$1,257,870 the second year.	

Out of this appropriation the following salary shall be paid:

Commissioner\$11,000

Item 70-A	
For furnishing localities with lists of all registered automotive equipment within their respective jurisdictions	\$25,000
each year.	

	First Year	Second Year
Item 71		
For refund of taxes on motor vehicle fuels in accordance with law, a sum sufficient.		
Item 72		
For licensing operators of motor vehicles.....	\$383,100	
the first year, and \$376,780 the second year.		
Item 73		
For promoting safety in the operation of motor vehicles	\$437,600	
the first year, and \$443,750 the second year.		
Item 74		
For receiving application for the registration of titles to motor vehicles and for issuance of licenses in accordance with law, at branch offices, a sum sufficient, estimated at	\$433,980	
the first year and \$441,300 the second year.		
Item 75		
For maintenance and operation of building occupied by Division of Motor Vehicles.....	\$74,690	
the first year and \$75,240 the second year.		
Item 76		
For regulating the distribution and sales of motor vehicles	\$71,200	
the first year, and \$71,820 the second year.		
Item 77		
For administration of the use fuel tax act of 1940	\$39,040	
the first year, and \$39,450 the second year.		
Item 78		
For examining applicants for operators' and chauffeurs' licenses	\$302,440	
the first year, and \$306,650 the second year.		
Item 79		
All appropriations herein made to the Division of Motor Vehicles shall be paid only out of revenues collected and paid into the State treasury by the Division of Motor Vehicles and credited to the State highway maintenance and construction fund, and none of the appropriations made to the said division shall be paid out of the general fund of the State treasury, provided further, however, that no expenditures out of these appropriations shall be paid out of the revenue derived from the taxes levied under §§ 58-628, 58-711, and 58-744 of the Code of Virginia, as amended.		
Item 80		
All revenue received by the Division of Motor Vehicles for any purpose whatsoever or in accordance with any law or regulation administered by said division shall be paid directly and promptly into the State treasury to the credit of the State highway maintenance and construction fund.		
Total for the Division of Motor Vehicles from special funds.....	\$3,000,570	
the first year, and \$3,037,860 the second year.		

DEPARTMENT OF STATE POLICE

- | | First Year | Second Year |
|---|-------------|-------------|
| Item 81 | | |
| For State police patrol..... | \$4,495,220 | |
| the first year, and \$4,715,500 the second year. | | |
| Out of this appropriation the following salary shall be paid: | | |
| Superintendent of State Police..... | \$11,000 | |
| Item 82 | | |
| For promoting highway safety..... | \$174,750 | |
| the first year, and \$168,380 the second year. | | |
| Item 83 | | |
| For operation of State Police Radio System..... | \$507,940 | |
| the first year, and \$515,140 the second year. | | |
| Item 84 | | |
| For operation and maintenance of headquarters buildings and grounds | \$94,350 | |
| the first year, and \$97,720 the second year. | | |
| Item 85 | | |
| For operation of State Police Dining Room..... | \$43,615 | |
| the first year, and \$43,760 the second year. | | |
| Item 86 | | |
| For retirement of State Police officers..... | \$242,970 | |
| the first year, and \$267,500 the second year. | | |
| It is hereby provided that out of this appropriation there shall be paid the cost of the required valuation report by the actuary and other necessary administrative expense, not to exceed in either year of the biennium the sum of \$3,000. | | |
| Item 87 | | |
| In the event the Superintendent of State Police is requested, as provided by law, to police a turnpike project the Superintendent is authorized to expend such additional amounts from the State highway maintenance and construction fund for such purpose as the turnpike authority making the request shall agree to reimburse and the Governor shall approve. | | |
| Item 88 | | |
| All appropriations herein made to the Department of State Police shall be paid only out of revenues collected and paid into the State treasury by the Division of Motor Vehicles or by the Department of State Police and credited to the State highway maintenance and construction fund, and none of the appropriations made to the said division shall be paid out of the general fund of the State treasury, provided further, however, that no expenditures out of this appropriation shall be paid out of the revenue derived from the taxes levied under §§ 58-628, 58-711, and 58-744 of the Code of Virginia as amended. | | |
| Item 89 | | |
| All revenue received by the Department of State Police for any purpose whatsoever or in accordance with any law or regulation administered by said department shall be paid directly and promptly into the | | |

First Year Second Year

State treasury to the credit of the State highway maintenance and construction fund.

Total for the Department of State Police from special funds\$5,558,845
the first year, and \$5,808,000 the second year.

DEPARTMENT OF MILITARY AFFAIRS

Item 90

For providing military protection for the State, to be expended in accordance with § 44-14 of the Code of Virginia\$ 273,350 \$ 272,850

Out of this appropriation the following salary shall be paid:

Adjutant General\$9,350

Item 91

For the military contingent fund, out of which to pay the military forces of the Commonwealth when aiding the civil authorities, as provided by § 44-82 of the Code of Virginia, a sum sufficient.

In the event units of the Virginia National Guard shall be in Federal service, the sum allocated herein for their support shall not be used for any different purpose, except, with the prior written approval of the Governor, to provide for the Virginia State Guard.

DEPARTMENT OF CORPORATIONS

State Corporation Commission

Item 92

For expenses of administration of the State Corporation Commission and expenses of retired Commissioners recalled to active duty, in accordance with law.....\$ 133,775 \$ 133,535

Out of this appropriation the following salaries shall be paid:

Chairman, State Corporation Commission....\$14,000
Other members of the State Corporation Commission (2), at \$13,500 each.....\$27,000

Item 93

For assessment and taxation of public service corporations\$ 35,225 \$ 35,535

Item 94

For rate regulation\$ 21,155 \$ 20,730

Item 95

For providing legal services for the State.....\$ 20,445 \$ 20,795

Item 96

For regulating sale of securities, in accordance with the provisions of §§ 13-106 to 13-164 (Chapter 8 of Title 13 of the Code of Virginia).....\$ 17,750 \$ 17,750

With the prior written approval of the Governor, this appropriation may be increased, provided, however, that the total appropriations shall not exceed the sum collected from filing and license fees under the sections of the Code pertaining to this activity.

	First Year	Second Year
Item 97		
For preparation and prosecution of rate cases.....	\$ 1,000	\$ 1,000

Item 98		
For payment of court costs, a sum sufficient, estimated at	100	\$ 100

Item 99
 For making appraisals, valuations, investigations and inspections of the properties and services of certain public service companies, and for the supervision and administration of the laws relative to public service companies, in accordance with §§ 58-660 to 58-671, inclusive, of the Code of Virginia, to be paid only out of the proceeds of the taxes levied and collected under Article 15 of Chapter 12 of Title 58 of the Code of Virginia, and not out of the general fund of the State treasury, the amount derived from the aforesaid taxes, and unexpended balances from said tax revenue, estimated at.....\$299,775 the first year, and \$302,105 the second year.

Item 100
 For the promotion of aviation in the public interest, to be paid only out of the tax on gasoline or fuel used in flights within the boundary of the State; and fees from the licensing or registering of airmen, aircraft, and airports, and from all heretofore unexpended balances derived from any of the above sources, and not out of the general fund of the State treasury\$126,035 the first year, and \$140,855 the second year.

Item 101
 For regulating and taxing motor vehicle carriers, to be paid only out of fees collected from them by the State Corporation Commission and taxes on them collected under acts administered by the State Corporation Commission and paid into the State treasury to the credit of the highway maintenance and construction fund, the amount of said revenues, estimated at\$326,970 the first year, and \$334,100 the second year.

Item 102
 For examination and supervision of banks, small loan companies, credit unions, and building and loan associations, to be paid only out of the fees, licenses, and taxes levied and collected for the examination and supervision of the said banks, small loan companies, credit unions, and building and loan associations and paid into the State treasury in accordance with law, and out of unexpended balances in said fees, licenses, and taxes heretofore paid into the State treasury, as aforesaid; provided, however, that no part of this appropriation shall be paid out of the general fund of the State treasury, not exceeding.....\$254,421 the first year, and \$254,339 the second year.

Out of this appropriation the following salary shall be paid:

Commissioner of Banking, not exceeding.....\$9,900

Item 103-104

First Year Second Year

For supervision and inspection of concerns conducting an insurance business in Virginia, as required by law, and for administration of the Virginia Fire Hazards Law, to be paid out of the fees, licenses and taxes levied and collected for the payment of the expenses incurred in supervising and inspecting the aforesaid concerns, and paid into the State treasury in accordance with law, and out of unexpended balances in said fees, licenses and taxes heretofore paid into the State treasury as aforesaid; provided, however, that no part of this appropriation shall be paid out of the general fund of the State treasury, not exceeding\$367,520 the first year, and \$371,870 the second year.

Out of this appropriation the following salary shall be paid:

Commissioner of Insurance, not exceeding\$10,450

This sum includes any compensation for services as a zone manager of the National Association of Insurance Commissioners.

Total for the Department of Corporations.....	\$ 229,450	\$ 229,445
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DEPARTMENT OF LABOR AND INDUSTRY**Item 105**

For expenses of administration of the Bureau of Labor and Industry	\$ 33,125	\$ 33,265
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Out of this appropriation the following salary shall be paid:

Commissioner\$10,000

Item 106

For research and statistics.....	\$ 41,765	\$ 42,530
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Item 107

For factory, institution and mercantile inspections.....	\$ 95,310	\$ 97,930
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Item 108

For mines and quarries inspection.....	\$ 75,450	\$ 77,025
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Item 109

For supervising the industrial employment of women and children	\$ 49,255	\$ 50,065
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Item 110

For apprenticeship training	\$ 83,200	\$ 82,550
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Total for the Department of Labor and Industry...	\$ 378,105	\$ 383,365
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DEPARTMENT OF WORKMEN'S COMPENSATION**Industrial Commission of Virginia****Item 111**

For administration of the Virginia Workmen's Compensation Act, to be paid out of the receipts from taxes levied and collected and paid into the State treasury for the administration of the Workmen's Compensation Act in accordance with law, and expenses of re-

First Year Second Year

tired Commissioners recalled to active duty, in accordance with law; provided, that no part of this appropriation shall be paid out of the general fund of the State treasury, not exceeding.....\$331,600 the first year, and \$304,425 the second year.

Out of this appropriation the following salaries shall be paid:

Commissioners (3), at \$11,000 each.....\$33,000

Item 112

For administration of the Workmen's Compensation Act there is hereby appropriated the additional sum of \$10,000 each year to be paid out of the workmen's compensation fund; provided, however, that no part of this appropriation shall be expended except with the Governor's approval in writing first obtained.

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

Item 113

For expenses of administration of the Virginia Unemployment Compensation Act, exclusive of the payment of unemployment compensation benefits, a sum sufficient, estimated at.....\$2,679,200 the first year, and \$2,726,800 the second year.

It is hereby provided that out of this appropriation the following salary shall be paid:

Commissioner\$11,000

Item 114

For administration of a merit system program for the Unemployment Compensation Commission of Virginia, a sum sufficient, estimated at.....\$6,000 each year.

Item 115

It is hereby provided that the aforesaid appropriations for administration of the Virginia Unemployment Compensation Act and administration of a merit system program shall be paid only out of the unemployment compensation administration fund established by § 60-21 and Article 2 of Chapter 8 of Title 60 of the Code of Virginia, and not out of the general fund of the State treasury. All monies which are deposited or paid into this fund are hereby appropriated and made available to the commission.

Item 116

For payment of unemployment benefits as authorized by the Virginia Unemployment Compensation Act, a sum sufficient, estimated at.....\$7,200,000 each year.

It is hereby provided that this appropriation for payment of unemployment benefits shall be paid only out of the monies requisitioned from the State of Virginia's account in the unemployment compensation trust fund in the treasury of the United States, and paid into the State treasury to the credit of the unemployment compensation fund in accordance with the provisions of §§ 60-90 through 60-94, inclusive, of the Code of Virginia, and not out of the general fund of the State treasury.

Item 117

First Year Second Year

For special unemployment compensation expenses to be paid only out of the Special Unemployment Compensation Administration Fund continued in effect by § 60-95 of the Code of Virginia, a sum sufficient, not to exceed\$10,000 each year.

Item 118

For refund of contributions and interest thereon in accordance with the provisions of § 60-94 of the Code of Virginia, to be paid only out of the clearing account created by § 60-90 of the Code of Virginia, a sum sufficient.

Item 119

For payment to the Secretary of the Treasury of the United States to the credit of the unemployment compensation trust fund established by the Social Security Act, to be held for the State of Virginia upon the terms and conditions provided in the said Social Security Act, there is hereby appropriated the amount remaining in the clearing account created by § 60-90 of the Code of Virginia after deducting from the amounts paid into the said clearing account the refunds payable therefrom pursuant to § 60-94 of the Code of Virginia.

Total for the Unemployment Compensation Commission of Virginia from special funds..\$9,895,200 the first year, and \$9,942,800 the second year.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Items 120-121

For administration of the functions, powers and duties assigned to the Virginia Alcoholic Beverage Control Board by the Alcoholic Beverage Control Act, to be paid only out of the monies collected and paid into the State treasury by the said board, as provided by § 4-23 of the Code of Virginia, and not out of the general fund of the State treasury, provided, however, with approval of the Governor, loans for the payment of such expenditures may be made from the general fund and from any other funds in the State treasury upon such terms as the Governor may approve, a sum sufficient, estimated at.....\$86,785,630 the first year, and \$86,846,230 the second year.

It is hereby provided that out of this appropriation the following salaries shall be paid:

Chairman of the board.....\$11,500
Vice-Chairman\$11,500
Member of board.....\$11,500

Salaries for other personal service shall be fixed by the Virginia Alcoholic Beverage Control Board, with approval by the Governor, as provided by the Alcoholic Beverage Control Act. (The sums for such purpose set forth in the Budget are estimates only, and are not to be construed as affecting the discretion of the Governor or the Board with regard thereto as provided in said Act.)

VIRGINIA STATE LIBRARY

	First Year	Second Year
Item 122		
For maintenance and operation of the Virginia State Library	\$ 307,110	\$ 312,420
Item 123		
For acquiring, preserving and publishing records and books, including the microfilming of newspapers and records	\$ 110,000	\$ 110,000
Item 124		
For State aid to public libraries in accordance with the provisions of §§ 42-24 to 42-32 of the Code of Virginia	\$ 129,500	\$ 129,500
Total for Virginia State Library.....	\$ 546,610	\$ 551,920

VIRGINIA MUSEUM OF FINE ARTS

Item 125		
For maintenance and operation of the Virginia Museum of Fine Arts.....	\$ 224,677	\$ 231,367
It is provided that no part of this appropriation from the general fund shall be expended in the maintenance and operation of theatrical productions.		
Item 126		
It is provided that the board of directors of the Virginia Museum of Fine Arts may expend for the maintenance and operation of said museum, and for the purchase of additional equipment and works of art, the revenues collected from interest on endowments or from the operation of said museum, or donated therefor, and paid into the State treasury, estimated at\$95,173 the first year, and \$97,983 the second year.		

DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION

Item 127		
For expenses of administration of the State Board of Education, including the payment of premiums on official bonds in accordance with the provisions of § 2-8 of the Code of Virginia.....	\$ 149,300	\$ 150,300
Out of this appropriation shall be paid the following salary:		
Superintendent of Public Instruction (without fees, the fees collected by him to be paid into the general fund of the State treasury)	\$14,850	
Item 128-A		
For research, planning and testing.....	\$ 146,780	\$ 148,680
Item 128-B		
For teacher education and teaching scholarships for the public free schools, an amount not to exceed.....	\$ 612,500	\$ 696,100
To be apportioned under rules and regulations of the State Board of Education with the approval of the Governor.		
Item 129		
For State supervision.....	\$ 322,500	\$ 326,500

Item 130	First Year	Second Year
For production of motion picture films.....	\$ 36,950	\$ 37,125

Item 131

For production of motion picture films, to be paid only from funds derived by the State Board of Education from the production of such films and paid into the State treasury, and not out of the general fund of the State treasury.....\$15,000 each year.

Item 132

For local administration (salaries of division superintendents)	265,000	\$ 265,000
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This appropriation shall be expended for salaries of division superintendents under the conditions set forth in § 22-37, as amended, of the Code of Virginia.

Item 133

For the establishment and maintenance of local supervision of instruction in <i>efficient</i> elementary and * <i>secondary</i> schools, including visiting teachers, to be apportioned among such schools by the State Board of Education	\$ 698,000	\$ 698,000
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Item 134

For basic appropriation for * <i>salaries of teachers employed only in efficient elementary and secondary schools</i>	\$34,342,000	\$37,882,000
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It is provided that in the apportionment of this sum no county or city shall receive less than the amount prescribed by § 135 of the Constitution of Virginia.

It is provided, further, that the total of this sum, including the aforementioned apportionment, and the sums set forth in Items 135 and 136 shall be apportioned to the public schools by the State Board of Education under rules and regulations promulgated by it to effect the following provisions:

a. The apportionment shall be on the basis of an equal amount not exceeding \$1,500 for each year of the biennium for each State aid teaching position, provided, however, that no payment from this item for a State aid teaching position shall exceed two-thirds of the salary paid the incumbent of a State aid teaching position when the total salary of such incumbent is less than the amount of State aid available for each State aid teaching position. For purposes of this act, "State aid teaching position" is defined as one teaching position for each thirty (30) pupils in average daily attendance in the elementary grades and one teaching position for each twenty-three (23) pupils in average daily attendance in the high school grades. The average daily attendance figures used in the apportionment for the first fiscal year of this biennium shall be the average daily attendance figures for the school year preceding such apportionment. The average daily attendance figures used in the apportionment for the second fiscal year of this biennium shall be the average daily attendance figures for the second school year of the biennium.

b. No apportionment from this item shall be made to any county or city for State aid teaching

First Year Second Year

positions in excess of the number of such positions in which teachers are actually employed; provided, however, that in exceptional circumstances and in the discretion of the State Board of Education, a county or city may employ fewer teachers than the number of assigned State aid teaching positions allotted in accordance with paragraph a.

c. No apportionment from this item shall be made to any county or city except for payment of salaries of teachers or other instructional personnel in the public schools, or for payment of tuition in lieu of teacher or other instructional salaries under rules and regulations of the State Board of Education.

d. The annual expenditure of funds, derived from local sources, for instruction in the public schools shall not be less than the annual expenditure made from local sources for such instruction for the school year 1955-1956. However, if a county or city has established and maintains a salary schedule for teachers and other instructional personnel satisfactory to the State Board of Education, the expenditure, derived from local funds, for the salaries of teachers and other instructional personnel may be reduced below such expenditures for the school year 1955-1956, provided the reduction and the amount of reduction are approved by the State Board of Education. Also, a county or city may reduce such expenditure in exceptional circumstances due to a substantial loss in average daily attendance of pupils in the county or city, or in other exceptional local conditions, provided the reduction and the amount of reduction are approved by the State Board of Education.

e. The county or city shall pay from local funds at least thirty per cent (30%) of the total amount expended for salaries of teachers and other instructional personnel. However, a county or city shall be permitted by the State Board of Education to pay not less than twenty per cent (20%) of such amount if the county or city provides a levy or cash appropriation or a combination of both for schools which, when converted to an equivalent true tax rate, is as great as the average of all county or all city levies or cash appropriations or a combination of both such levies and appropriations for schools converted to an equivalent true tax rate; in converting a levy or cash appropriation or a combination of both for schools to an equivalent true tax rate, ratios of assessed valuations to true values used shall be the most recent such ratios determined by the State Tax Commissioner. For such counties or cities, the State Board of Education shall determine the per cent of local contribution, in no instance less than twenty per cent (20%) of the total amount expended for salaries of teachers and other instructional personnel.

f. A minimum salary schedule for teachers and other instructional personnel, satisfactory to the State Board of Education and approved by the Governor, shall be put into effect.

g. If any municipality annexes any portion of any county or counties, the State Board of Education shall make such equitable adjustment of the funds which would otherwise have gone to either as is in its opinion justified by the peculiar condition created by such annexation, and order distribution of such funds according to its findings. This provision shall not apply if a court of competent jurisdiction makes such adjustment and orders such distribution.

h. Allotments of funds from this item and from Items 135 and 136 beyond the constitutional appropriation shall be paid to a county or city only after submission of evidence satisfactory to the State Board of Education that the amount for which the allotment is claimed has been or will be expended for the purpose designated and in full compliance with the terms and conditions set forth pursuant to this item.

It is further provided that in the event the total of the sums set forth in Items 134, 135, and 136 exceeds the amount necessary to make the apportionments required by this item, any balance remaining may, upon request by the State Board of Education, and with the prior written approval of the Governor, be transferred and added to the sums set forth in Item 138, or in Item 144 or in both.

Item 135

For basic appropriation for teachers' salaries, to be paid from the actual collections of special taxes segregated by § 135 of the Constitution of Virginia to support of the public free schools; provided, that no part of this appropriation shall be paid out of the general fund of the State treasury, estimated at.....\$ 1,100,000 each year.

Item 136

For basic appropriation for teachers' salaries, to be paid from the proceeds of interest payments to the Literary Fund; provided, that no part of this appropriation shall be paid out of the general fund of the State treasury, estimated at.....\$750,000 each year.

Provided that should such interest payments exceed the sum of \$750,000; then such excess to the extent of \$100,000 during the second year of the biennium is hereby appropriated for transportation of pupils of primary and grammar grades, to be apportioned on a basis of school population, which shall be in addition to all other appropriations for pupil transportation.

Item 137

For salary equalization of teachers employed only in efficient elementary and secondary schools.....\$ 7,079,680 \$ 9,174,625

a. It is provided that the State Board of Education shall first distribute from these sums to each county and city an amount equal to the amount paid to each such county and city during the year ended June 30, 1954, from Item 186, Chapter 716 of the Acts of Assembly of 1952.

First Year Second Year

b. It is provided that the State Board of Education shall next distribute from these sums to each county and city amounts required to place in effect the salary schedules approved for public school teachers by the State Board of Education and the Governor. The distribution shall be made subject to conditions stated herein and subject to rules and regulations, not conflicting therewith, promulgated by the State Board of Education. The amounts distributed subject to this paragraph shall not exceed the amounts necessary, as supplements to total salaries paid teachers in State aid teaching positions in 1955-56, to place such teachers on the salary schedules. In addition, the State Board of Education may distribute from this item such sums as it deems reasonable to supplement local sums paid for teachers employed in new State aid teaching positions subsequent to 1955-56. No funds distributed from this item shall be expended to increase the salary of a teacher for the year 1956-57 or for the year 1957-58 by an amount exceeding \$200 each year for a teacher holding Collegiate Professional or related teaching certificates or \$150 each year for a teacher holding Normal Professional or related teaching certificates; with the prior written approval of the Governor, this limit of amount may be removed by the State Board of Education for the year 1957-58. If the sums available for this paragraph as listed herein or by authorized transfer hereto are not sufficient for the purposes described, the distribution of such sums shall be made on a pro rata basis; if such sums exceed the amounts required for the purposes described, any excess amounts may, with the prior written approval of the Governor, be transferred and added to the amounts set forth in Item 138.

c. It is provided further that the State Board of Education shall make no distribution from this item to any county or city which has not first complied with the conditions stated in paragraphs c-h, inclusive, of Item 134 and in paragraph b of Item 138.

Item 138

For providing a minimum educational program in efficient elementary and secondary schools only.....\$ 6,240,090 \$ 6,536,400

A county or city, which meets the requirements stated below is eligible, subject to rules and regulations promulgated by the State Board of Education, to receive an apportionment from this item to provide sufficient monies to operate a minimum educational program; a minimum educational program is defined as expenditure for school operation of not less than one hundred and seventy dollars per pupil in average daily attendance. To be eligible for an apportionment from this item, a county or city must:

- a. Have projected, in the opinion of the State Board of Education, a well-planned educational program, and
- b. Have expended from local sources for school operation, exclusive of capital outlay and debt serv-

ice, an amount equivalent to a uniform tax levy of fifty cents per one hundred dollars (\$100) of true valuation of local taxable wealth within such county or city. The true valuation of local taxable wealth used for this purpose shall be that determined by the State Department of Taxation for the tax year 1950.

c. Be still unable, with the amount thus provided from local sources, other available State apportionments for the public free schools, and Federal funds (not including capital outlay), to provide a minimum educational program as defined above.

It is further provided that the State Board of Education may, in its discretion, apply eligibility requirements and compute allocations from this fund separately for any town school district operated by a school board of not more than five members, and the county in which such town is located.

If the amount set forth in Items 134-136, inclusive, or in Item 137 are not sufficient for the purposes described therein, the State Board of Education with the prior written approval of the Governor, may transfer from Item 138 to Item 134 or to Item 137, or to both, such sums as may be deemed proper.

If the amount provided by this item is insufficient to meet the entire needs of those counties and cities which qualify for apportionments as herein provided, the amount shall be distributed to such counties and cities on a pro rata basis.

No county or city shall receive from the total appropriation under this item more than one hundred and seventy-five thousand dollars during the year ending June 30, 1957, or more than two hundred thousand dollars during the year ending June 30, 1958.

Item 139
 For special education.....\$ 481,850 \$ 507,350

Item 140
 For vocational education and to meet Federal aid.....\$ 3,414,315 \$ 3,703,635

Item 141
 For vocational education, the funds received from the Federal government for vocational education, provided that no part of this appropriation shall be paid out of the general fund of the State treasury, estimated at\$780,630 each year

It is provided that a sum, not less than \$4,500 each year, be transferred from this appropriation to the general fund of the State treasury as a proportionate share of the administrative expenses of the State Board of Education.

Item 142
 For guidance and adult education.....\$ 40,000 \$ 40,000

Item 143	First Year	Second Year
For pupil transportation to and from efficient elementary and secondary schools only.....	\$ 4,895,145	\$ 5,035,145

This appropriation shall be distributed as reimbursement for costs of pupil transportation under rules and regulations to be prescribed by the State Board of Education; provided no county or city shall receive an allotment in excess of the amount actually expended for transportation of pupils to and from the public schools, exclusive of capital outlay; provided, further, that if the funds appropriated for this purpose are insufficient, the appropriation shall be prorated among the counties and cities entitled thereto.

The General Assembly declares, finds and establishes as a fact that the mixing of white and colored children in any elementary or secondary public school within any county, city or town of the Commonwealth constitutes a clear and present danger affecting and endangering the health and welfare of the children and citizens residing in such county, city or town, and that no efficient system of elementary and secondary public schools can be maintained in any county, city or town in which white and colored children are taught in any such school located therein.

An efficient system of elementary public schools means and shall be only that system within each county, city or town in which no elementary school consists of a student body in which white and colored children are taught.

An efficient system of secondary public schools means and shall be only that system within each county, city or town in which no secondary school consists of a student body in which white and colored children are taught.

The General Assembly, for the purpose of protecting the health and welfare of the people and in order to preserve and maintain an efficient system of public elementary and secondary schools, hereby declares and establishes it to be the policy of this Commonwealth that no public elementary or secondary schools in which white and colored children are mixed and taught shall be entitled to or shall receive any funds from the State Treasury for their operation, and, to that end, forbids and prohibits the expenditure of any part of the funds appropriated by Items 133, 134, 137, 138 and 143 of this section for the establishment and maintenance of any system of public elementary or secondary schools, which is not efficient.

The appropriations made by Items 133, 134, 137, 138 and 143 of this section shall be deemed to be appropriated separately to the counties and cities and the funds made available and apportioned to the counties and cities severally and separately by the Department of Education and the State Board of Education shall be separately subject to the limitations imposed in this section for their use, which limitations and a strict observance thereof shall be a condition precedent to their use.

For the purposes of this section and all other applicable laws, the public schools of the counties, cities and towns shall consist of two separate classes, namely, elementary and secondary schools.

Notwithstanding any other provisions of this Chapter or the provisions of any other law, whenever the student body in any elementary or secondary public school shall consist of both white and colored children, the Department of Education, the State Board of Education, the State Comptroller, the State Treasurer, local school board, local treasurer, and any officer of the State or of any county or city who has power to distribute or expend any of the funds appropriated by Items 133, 134, 137, 138 and 143, each severally and collectively, are directed and commanded to refrain immediately from paying, allocating, transferring or in any manner making available to any county, city or town in which such school is located any part of the funds appropriated in Items 133, 134, 137, 138 and 143 for the maintenance of any public school of the class of the school in which white and colored children are taught. Whenever it is made to appear to the Governor, and he so certifies to the Department of Education, that all such schools of such class within any such county, city or town can be maintained and operated without white and colored children being mixed or taught therein, the funds appropriated in Items 133, 134, 137, 138 and 143 to such county or city shall be made available, subject to the limitations contained herein and only for such period of time as it is made to appear to the Governor that there is no school of that class being operated in such county, city or town, in which white and colored children are mixed and taught, provided that all the limitations herein contained shall again be effective immediately whenever it appears that any children are being mixed and taught in any public school of the class involved.

It is provided that the limitations herein set forth shall not prohibit the release and distribution of the funds apportioned and allocated, or any unexpended part thereof, to which any county, city or town would otherwise be entitled, to such county, city or town for the payment of salaries and wages of unemployed teachers in State aid teaching positions, and other public school employees, who are under contract and for educational purposes which may be expended in furtherance of elementary and secondary education of Virginia students in nonsectarian private schools, as may be provided by law.

Item 144

For a discretionary fund to be disbursed under the rules and regulations of the State Board of Education.....\$ 100,000 \$ 100,000

It is provided that the State Board of Education may make apportionments from this discretionary fund only under the following conditions:

- (1) For the purpose of aiding certain counties to operate and maintain a nine-month school term: satisfactory assurances must be given to the State Board of Education that (a) without aid from this fund the county is unable from local funds and

	First Year	Second Year
<p>other State funds to operate and maintain a nine-month school term, (b) maximum local funds for instruction, operation, and maintenance have been provided, and (c) such local funds, with other State funds apportioned to said county, and aid from this appropriation will enable the schools in said county to be operated and maintained for a term of not less than nine months.</p> <p>(2) For the purpose of aiding those counties and/or cities which are experiencing extraordinary continuing increases in average daily attendance, thereby requiring employment of additional teachers in excess of the number anticipated on the basis of average daily attendance of pupils enrolled during the preceding school year.</p>		
Item 145		
For sick leave with pay for teachers in the public free schools, to be expended in accordance with regulations of the State Board of Education, subject to the prior written approval of the Governor.....\$	231,000	\$ 241,000
Item 146		
For providing free text books.....\$	203,000	\$ 203,000
Item 147		
For maintenance of libraries and other teaching material in public schools.....\$	451,775	\$ 471,325
Item 148		
For maintenance of libraries and other teaching materials in public schools, to be paid only out of the funds received from localities, and paid into the State treasury, and not out of the general fund of the State treasury, estimated at.....\$233,000 the first year, and \$244,000 the second year.		
Item 149		
For industrial rehabilitation.....\$	526,065	\$ 533,735
Item 150		
For industrial rehabilitation to be paid only from funds received from the Federal government and from local contributions for any such rehabilitation and not out of the general fund of the State treasury, estimated at\$796,135 the first year, and \$811,465 the second year.		
Item 151		
For industrial rehabilitation to be paid from the fund for the administration of the Workmen's Compensation Act and not out of the general fund of the State treasury\$17,000 each year.		
Item 152		
For placement and training of veterans in business establishments\$	8,260	\$ 8,285
Item 153		
For placement and training of veterans in business establishments, to be paid only out of funds received from the Federal government for this purpose, and not out of the general fund of the State treasury....\$235,000 each year.		

Item 154	First Year	Second Year
<p>For the education of orphans of soldiers, sailors and marines who were killed in action or died, or who are totally and permanently disabled as a result of service during the World War.....\$</p>	16,000	\$ 18,000

It is provided that the sum hereby appropriated shall be expended for the sole purpose of providing for tuition, institutional fees, board, room rent, books and supplies, at any educational or training institution of collegiate or secondary grade in the State of Virginia, approved in writing by the Superintendent of Public Instruction, for the use and benefit of the children not under sixteen and not over twenty-five years of age, either of whose parents was a citizen of Virginia at the time of entering war service and was killed in action or died from other causes in World War I extending from April 6, 1917, to July 2, 1921, or in any armed conflict subsequent to December 6, 1941, while serving in the army, navy, marine corps, air force or coast guard of the United States, either of whose parents was, or is, or may hereafter become totally and permanently disabled due to such service during either such period, whether such parents be now living or dead.

Such children upon recommendation of the Superintendent of Public Instruction, shall be admitted to State institutions of secondary or college grade, free of tuition.

The amounts that may be, or may become, due hereunder by reason of attendance at any such educational or training institution, not in excess of the amount specified hereinafter shall be payable from this appropriation hereby authorized on vouchers approved by the Superintendent of Public Instruction.

The Superintendent of Public Instruction shall determine the eligibility of the children who may make application for the benefits provided for herein; and shall satisfy himself of the attendance and satisfactory progress of such children at such institutions and of the accuracy of the charge or charges submitted on account of the attendance of any such children at any such institution, provided, that neither said Superintendent nor any member of the State Board of Education, nor any official or agent or employee thereof, shall receive any compensation for such services.

Not exceeding four hundred dollars shall be paid hereunder for any one child for any one school year; and no child may receive benefits of this or similar appropriations for a total of more than four school years.

This amendment shall not operate to divest any such child of any such scholarship now holding any such scholarship under this act except that the four-year limitation herein provided for shall apply to any scholarship heretofore issued.

<p>Item 155</p> <p>For twelve months' principals.....\$</p>	300,000	\$ 300,000
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<p>Item 156</p> <p>For the acquisition and distribution of surplus equipment, to be paid only from funds derived by the State Board of Education from such acquisition and distribution of the said equipment and paid into the State treasury, and not out of the general fund of the State treasury\$30,000 each year.</p>	<p>First Year Second Year</p>
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Item 157

The State Board of Education shall make rules and regulations governing the distribution and expenditure of such additional Federal, private and other funds as may be made available to aid in the establishment and maintenance of the public schools.

Total for the State Board of Education.....	\$60,560,210	\$67,076,205
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CHAPTER 56

An Act to make available to certain counties, cities and towns funds to be expended in furtherance of the elementary and/or secondary education of pupils in nonsectarian private schools and for payments to teachers and other employees under certain conditions, and to provide for a determination of the amount and conditions for receipt of such funds.

[H 2]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia :

1. § 1. Whenever the amounts, or any part thereof, of the funds appropriated by Items 133, 134, 137, 138 and 143 of Chapter 716 of the Acts of Assembly of 1956, as amended, to which any county, city or town would otherwise have been entitled for the maintenance of its elementary public school system, shall be withheld as prescribed by law, the amounts so withheld shall be available to such county, city or town for the furtherance of the elementary education of the children of such county, city or town in nonsectarian private schools as hereafter provided, and for the payment of salaries and wages of unemployed teachers in State aid teaching positions, and other public school employees, who are under contract; provided, nothing herein contained shall obligate the State to release such funds for the employment or compensation of unemployed teachers and other public school employees beyond the terms and conditions of their contracts, or the end of the school year, whichever is longer.

§ 2. Whenever the amounts, or any part thereof, of the funds appropriated by Items 133, 134, 137, 138 and 143 of Chapter 716 of the Acts of Assembly of 1956, as amended, to which any county, city or town would otherwise have been entitled for the maintenance of its secondary public school system, shall be withheld as prescribed by law, the amounts so withheld shall be available to such county, city or town for the furtherance of the secondary education of the children of such county, city or town in nonsectarian private schools as hereafter provided, and for the payment of salaries and wages of unemployed teachers in State aid teaching positions, and other public school employees, who are under contract; provided, nothing herein contained shall obligate the State to release such funds for the employment or compensation of unemployed teachers and

other public school employees beyond the terms and conditions of their contracts, or the end of the school year, whichever is longer.

§ 3. Such amounts as may be available to any county, city or town under the provisions of §§ 1 and 2 of this act shall be distributed, under rules and regulations of the State Board of Education, to such county, city or town, for grants to pupils attending nonsectarian private schools, upon the following basis:

(a) Each pupil attending a nonsectarian private school, elementary or secondary as the case may be, shall be entitled to an amount equal to the quotient derived by dividing the total amount withheld for the elementary or secondary public school system by the enrollment of pupils formerly attending those schools which comprised the elementary or secondary public school system for which such amounts have been withheld.

§ 4. Should any of the funds authorized to be distributed under § 3 of this act remain undistributed at the end of any school year, such surplus may be released under rules and regulations of the State Board of Education to the counties, cities and towns entitled thereto for distribution to the pupils to whom grants for that school year were originally made; provided, however, in no case shall the total amounts distributed to a pupil exceed the total cost of his attendance for that school year in a nonsectarian private school; provided, further, the aggregate received on account of any one pupil shall not from all public sources exceed three hundred fifty dollars.

§ 5. No distribution shall be made to any county, city or town under the provisions of §§ 3 and 4 of this act except upon receipt of evidence, satisfactory to the State Board of Education, that such sums have been or will be expended in furtherance of the elementary and/or secondary education of the children of such county, city or town in nonsectarian private schools.

§ 6. In the event of the unavailability of any data for the current school year which would otherwise have been utilized by the State Board of Education in making allocations in accordance with the provisions of Items 133, 134, 137, 138 and 143 of Chapter 716 of the Acts of Assembly of 1956, as amended, and rules and regulations of the State Board, the most recent data available to the State Board of Education shall be used in making such allocations.

CHAPTER 57

An Act to authorize certain localities to raise sums of money by a tax on property, subject to local taxation, to be expended by local school authorities for educational purposes including cost of transportation, and to impose penalties for violations.

[H 3]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. In any county or city wherein no levy is laid or appropriation made for operation of the public schools, the governing body of such county or city is hereby authorized to provide for the levy and collection of such educational taxes as in its judgment the public welfare may require. Such levy shall be on property, subject to local taxation, not to exceed in the aggregate in any one year, the rate fixed by § 22-126 of the Code, as amended.

§ 2. In lieu of making such levy, the governing body of any such county or city may, in its discretion, make an appropriation for educational purposes from funds derived from the general county or city levy of an

amount not more than the maximum amount which would result from the laying of the educational levy authorized by § 1 hereof. In addition to this, the governing body of any such county or city may appropriate from any funds available, such sums as in its judgment may be necessary or expedient for educational purposes.

§ 3. In any town wherein no levy is laid or appropriation made for operation of the public schools, if the same be a separate school district approved for operation, the governing body thereof is hereby authorized to provide for the levy and collection of such additional educational taxes on all the property in the town subject to local taxation at such rate as it may deem proper, but in no event more than one dollar on the one hundred dollars of the assessed value of property in the town subject to taxation by the local town authorities. In lieu of such levy, the governing body may make an appropriation out of the general town levy and from any other source, of such sums as in its judgment may be deemed necessary or expedient for educational purposes.

§ 4. Any town wherein no levy is laid or appropriation made for operation of the public schools, if the same be a separate school district approved for operation, shall be entitled to its share of school funds as distributed under § 22-141 of the Code, as amended, and is hereby authorized and required to expend same for educational purposes, as provided in § 7 of this act.

§ 5. If any town constitutes a separate town school district approved for operation and any county in which it is located does not lay a levy or make an appropriation for operation of the public schools, the governing body of such town may impose such additional town school levy on locally taxable property, not exceeding three dollars on the one hundred dollars of the assessed value of the property in any one year, as in its discretion is required. If the county imposes a levy or makes appropriations for educational purposes the town school district shall receive its share of such funds in the same manner as provided in § 22-141 of the Code, as amended, for the distribution of school funds, to be expended as the town school board directs.

§ 6. The procedure to be followed by school officials and local tax-levying bodies for obtaining the educational funds provided for in this act shall, except insofar as altered herein, be mutatis mutandis the same as prescribed by law for the raising of funds for public school purposes.

§ 7. The educational funds raised or appropriated under §§ 1, 2, 3, and 4 hereof, or otherwise made available, shall be expended by the school board in payment of grants for the furtherance of the elementary or secondary education, as the case may be, of the children of such county, city or town in nonsectarian private schools. The local school board may by rules and regulations provide for the cancellation or revocation of any such grant which the board finds was not obtained in good faith; provided, that the action of the board in cancelling or revoking any grant shall be subject to review by bill of complaint against the school board to the circuit or corporation court having equity jurisdiction.

§ 8. School boards may provide transportation for those pupils qualifying for such grants, and in such event, shall be entitled to reimbursement out of State funds to the same extent as counties and cities are reimbursed for costs expended for transportation of pupils to and from the public schools.

§ 9. It shall be unlawful for any person to obtain, seek to obtain, expend, or seek to expend, any tuition or transportation grant for any purpose other than the education or transportation of the child for which such grant is sought or obtained. Violation hereof shall, except for offenses

punishable under § 18-237 of the Code, constitute a misdemeanor and be punished as provided by law.

CHAPTER 58

An Act to require the inclusion in school budgets of amounts sufficient for the payment of grants for educational purposes; to provide for local governing bodies raising money for educational purposes and making appropriations therefor; to provide for the expenditure of such funds for payment of such grants and transportation costs under certain circumstances; to empower the State Board of Education to make rules and regulations and pay such grants; to provide for the withholding of certain funds and the use thereof; and to provide penalties for the violation of this act.

[H 4]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. The division superintendent of schools of every county, city, or town if the same be a separate school district approved for operation, wherein public schools are operated shall include in his estimate of the school budget required by law, the amount of money needed for the payment of grants for the furtherance of the elementary or secondary education, as the case may be, of the children of such county, city or town, in nonsectarian private schools.

§ 2. The boards of supervisors of the several counties and the councils of the several cities and towns, if the same be separate school districts approved for operation, shall include in the school levy or cash appropriation provided by law the amount necessary to meet the estimates required by § 1 hereof, notwithstanding the provisions of §§ 22-126 and 22-127 of the Code of Virginia. Such boards of supervisors and councils are hereby authorized to make a cash appropriation for the payment of grants under this act even though a school budget is not before them for consideration.

§ 3. The educational funds so raised and other available funds shall be expended by the local school board in payment of grants for the furtherance of the elementary or secondary education, as the case may be, of the children of such county, city or town in nonsectarian private schools; such payments shall be made to parents, guardians or other persons having custody of children who have been assigned to or are in attendance at public schools wherein both white and colored children are enrolled; provided, the parents, guardians or other persons having custody of such children shall make affidavit to the local school board that they object to the assignment of such children to or their attendance at any school wherein both white and colored children are enrolled. No mandamus to compel payment of a grant under this section shall lie as to any child who has been assigned or reassigned to a school wherein only members of his race are enrolled.

§ 4. The total amount of each such grant shall be the amount necessary to be expended by the parent, guardian or other person having custody of the child, in payment of the cost of his attendance at a nonsectarian private school for the current school year; provided, however, that such annual grant, together with any tuition grant received from the State, shall not exceed the total cost of operation per pupil in average daily attendance in the public schools for the locality making such grant

as determined for the preceding school year by the Superintendent of Public Instruction.

§ 5. Any school board providing transportation to pupils attending its public schools shall supply like transportation for those pupils qualifying for grants under this act; provided that any such school board may in lieu of providing such transportation provide such pupils with a transportation grant equal to the per pupil cost of transportation in such school district for the preceding year.

§ 6. Payments for grants under the provisions of this act shall be considered in the distribution of State funds allocated and apportioned for such purposes as though such expenditures were made by the locality for operation and maintenance of the public schools.

§ 7. Local school boards are hereby authorized to promulgate such rules and regulations not inconsistent with those of the State Board of Education as may be deemed necessary to carry out the purpose of this act. Such rules and regulations may provide for the cancellation or revocation of any grant which the board finds was not obtained in good faith; provided, that the action of the board in cancelling or revoking any such grant shall be subject to review by bill of complaint against the school board to the circuit or corporation court having equity jurisdiction.

§ 8. It shall be unlawful for any person to obtain, seek to obtain, expend, or seek to expend, any grant for any purpose other than the education or transportation of the child for which such grant is sought or obtained. Violation hereof shall, except for offenses punishable under § 18-237 of the Code, constitute a misdemeanor and be punished as provided by law.

§ 9. When the school budget has been prepared in accordance with § 1 hereof and the levy laid or appropriation made as set forth in § 2 hereof neither the school board nor the governing body shall have power to cancel, or transfer and use for any other purpose, the funds available for grants; provided, however, that if by the end of the eleventh month of the school year any such funds are unobligated they may be expended for any other object set forth in the school budget.

§ 10. For so long as such failure or refusal under § 3 hereof shall continue, the State Board of Education shall authorize and direct the Superintendent of Public Instruction, under rules and regulations of the State Board of Education, to provide for the payment of grants on behalf of such county, city or town out of funds to which such county, city or town would otherwise be entitled for the maintenance of its public school system in such county, city or town. In such event the Superintendent of Public Instruction shall at the end of each month file with the State Comptroller and with the school board and the governing body of such county, city or town a statement showing all disbursements and expenditures so made for and on behalf of such county, city or town, and the Comptroller shall from time to time as such funds become available deduct from other State funds appropriated by the State, in excess of the requirements of the Constitution of Virginia, for distribution to such county, city or town, such amount or amounts as shall be required to reimburse the State for expenditures incurred under the provisions of this act. All such funds so deducted and transferred are hereby appropriated for the purposes set forth in this act and shall be expended and disbursed as provided in this act; provided, that in no event shall any funds to which such county, city or town may be entitled under the provisions of Title 63 of the Code be withheld from such county, city or town under the provisions of this act.

CHAPTER 59

An Act to provide that no child shall be required to attend integrated schools.

[H 5]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. Notwithstanding any other provision of law, no child shall be required to enroll in or attend any school wherein both white and colored children are enrolled.

CHAPTER 60

An Act to amend and reenact § 22-72, as amended, of the Code of Virginia, relating to the powers and duties of the county school boards, and to amend the Code of Virginia by adding a new section numbered 22-72.1, authorizing county school boards to provide for transportation of pupils.

[H 6]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 22-72, as amended, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding a new section numbered 22-72.1, the amended and new sections being as follows:
§ 22-72. Powers and duties.—The school board shall have the following powers and duties:

(1) Enforcement of school laws.—To see that the school laws are properly explained, enforced and observed.

(2) Rules for conduct and discipline.—To make local regulations for the conduct of the schools and for the proper discipline of the students, which shall include their conduct going to and returning from school, but such local rules and regulations shall be in harmony with the general rules of the State Board and the statutes of this State.

(3) Information as to conduct.—To secure, by visitation or otherwise, as full information as possible about the conduct of the schools.

(4) Conducting according to law.—To take care that they are conducted according to law and with the utmost efficiency.

(5) Payment of teachers and officers.—To provide for the payment of teachers and other officers on the first of each month, or as soon thereafter as possible.

(6) School buildings and equipment.—To provide for the erecting, furnishing, and equipping of necessary school buildings and appurtenances and the maintenance thereof.

(6a) Insurance.—To provide for the necessary insurance on school properties against loss by fire or against such other losses as deemed necessary.

(7) Drinking water.—To provide for all public schools an adequate and safe supply of drinking water and see that the same is periodically tested and approved by or under the direction of the State Board of Health, either on the premises or from specimens sent to such board.

(8) Textbooks for indigent children.—To provide such textbooks as may be necessary for indigent children attending public schools.

(9) Costs and expenses.—In general, to incur costs and expenses, but only the costs and expenses of such items as are provided for in its budget without the consent of the tax levying body.

(10) Consolidation of schools *.—To provide for the consolidation of schools * whenever such procedure will contribute to the efficiency of the school system.

(11) Other duties.—To perform such other duties as shall be prescribed by the State Board or as are imposed by law.

§ 22-72.1. *County school boards may provide for the transportation of pupils; but nothing herein contained shall be construed as requiring such transportation.*

CHAPTER 61

An Act to amend and reenact § 22-205 of the Code of Virginia, relating to assignment of teachers by division superintendents.

[H 7]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 22-205 of the Code of Virginia be amended and reenacted as follows:

§ 22-205. The division superintendent shall have authority to assign to their respective positions *in the school wherein they have been placed by the school board* all teachers, * *including* principals, * and reassign them *therein*, provided no change or reassignment shall affect the salary of such teachers; and provided, further, that he shall make appropriate reports and explanations on the request of the school board.

CHAPTER 62

An Act to authorize local school boards to expend funds designated for public school purposes for such grants in furtherance of elementary and secondary education as may be permitted by law without first obtaining authority therefor from the tax levying body.

[H 8]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. The local school board of every county, city or town is hereby authorized when it is deemed to be for the public benefit, to transfer school funds, excluding those for capital outlay and debt service, within the total amount of its authorized budget, without the consent of the tax levying body, notwithstanding any other law to the contrary, and to expend same in furtherance of the elementary and secondary education of the children of such county, city or town in nonsectarian private schools as may be permitted by law.

CHAPTER 63

An Act to provide for the employment of counsel to defend the actions of members of school boards and to provide for the payment of costs, expenses and liabilities levied against such members out of local public funds.

[H 9]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. Notwithstanding any other provision of law, the attorney for the Commonwealth or other counsel approved by the school board may be employed by the school board of any county, city or town, to defend it, or any member thereof, or any school official, in any legal proceeding, to which the school board, or any member thereof, or any school official, may be a defendant, when such proceeding is instituted against it, or against any member thereof by virtue of his actions in connection with his duties as such member.

§ 2. All costs, expenses and liabilities of proceedings so defended shall be a charge against the county, city or town treasury and paid out of funds provided by the governing body of the county, city or town in which such school board discharges its functions.

2. An emergency exists and this act is in force from its passage.

CHAPTER 64

An Act to amend and reenact § 51-111.10, as amended, of the Code of Virginia, relating to the meaning of certain words as used in the Virginia Supplemental Retirement Act, and to amend the Code of Virginia by adding to Title 51, Chapter 3.2 thereof, an Article 4.1, containing §§ 51-111.38:1 through 51-111.38:3, providing for the retirement of certain private school teachers.

[H 10]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 51-111.10, as amended, of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding Article 4.1, containing §§ 51-111.38:1 through 51-111.38:3, to Chapter 3.2, Title 51, the amended section and new article being as follows:

§ 51-111.10. Definitions.—As used in this chapter unless a different meaning is plainly required by the context:

(1) "Retirement system" means the Virginia Supplemental Retirement System provided for in § 51-111.11;

(2) "Board" means the board of trustees as provided by § 51-111.17;

(3) "Medical board" means the board of physicians as provided by § 51-111.26;

(4) "Teacher" means any person who is regularly employed on a salary basis as a professional or clerical employee of a county, city or other local public school board or of a corporation participating in the retirement system as provided by Article 4.1;

(5) "State employee" means any person who is regularly employed full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, not oftener than semimonthly, in whole or in part, by the Commonwealth or any department, institution or agency thereof, except (a) an officer elected by popular vote or, with the exception of the Auditor of Public Accounts and the Director of the Division of Statutory Research and Drafting, by the General Assembly or either House thereof, (b) a trial justice, county or city treasurer, commissioner of the revenue, Commonwealth's attorney, clerk, sheriff, sergeant or constable, and a deputy or employee of any such officer, and (c) any employee of a political subdivision of the Commonwealth;

(6) "Employee" means any teacher, State employee, * officer or employee of a locality participating in the retirement system as provided in

Article 4, or any employee of a corporation participating in the retirement system as provided in Article 4.1;

(7) "Employer" means Commonwealth, in the case of a State employee, * the local public school board in the case of a public school teacher, or the locality or corporation participating in the retirement system as provided in Articles 4 and 4.1;

(8) "Member" means any person included in the membership of the retirement system as provided in this chapter;

(9) "Service" means service as an employee;

(10) "Prior service" means service as an employee rendered prior to the date of establishment of the retirement system for which credit is allowable under §§ 51-111.39 to 51-111.41, 51-111.63 and 51-111.64 or service as an employee for such periods as provided in § 51-111.32;

(11) "Membership service" means service as an employee rendered while a contributing member of the retirement system except as provided in §§ 51-111.45, 51-111.57, 51-111.63 and 51-111.64;

(12) "Creditable service" means prior service plus membership service for which credit is allowable under this chapter;

(13) "Beneficiary" means any person entitled to receive benefits under this chapter;

(14) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, together with interest credited on such amounts and also any other amounts he shall have contributed or transferred thereto including interest credited thereon as provided in § 51-111.49;

(15) "Creditable compensation" means the full compensation payable to an employee working the full working time for his position which is in excess of twelve hundred dollars per annum, except when computing a disability retirement allowance in which event no exclusion shall apply; in cases where compensation includes maintenance or other perquisites, the Board shall fix the value of that part of the compensation not paid in money;

(16) "Average final compensation" means the average annual creditable compensation of a member during his five highest consecutive years of creditable service if less than five years; provided, that the retirement allowance of any person who retired under this chapter between March one, nineteen hundred fifty-two and June thirty, nineteen hundred fifty-four shall be recomputed in accordance with this section and such recomputation shall be applicable only to allowances payable on and after July one, nineteen hundred fifty-six;

(17) "Retirement allowance" means the retirement payments to which a member is entitled as provided in this chapter;

(18) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board;

(19) "Normal retirement date" means a member's sixty-fifth birthday; and

(20) "Abolished system" means the Virginia Retirement Act, §§ 51-30 to 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952 as of February one, nineteen hundred fifty-two.

Article 4.1

Participation of Certain Educational Corporations in Retirement System

§ 51-111.38:1. Any corporation organized after the effective date of this act for the purpose of providing elementary or secondary education may by resolution duly adopted by its board of directors and approved by the Board of Trustees of the Virginia Supplemental Retirement System elect to have teachers employed by it become eligible to participate in the

retirement system. Acceptance of the teachers employed by such an employer for membership in the retirement system shall be optional with the Board and if it shall approve their participation, then such teachers, as members of the retirement system, shall participate therein as provided in the provisions of this chapter.

§ 51-111.38:2. The chief fiscal officer of the employer shall submit to the Board such information and shall cause to be performed in respect to the employees of the employer such duties as shall be prescribed by the Board in order to carry out the provisions of this chapter.

§ 51-111.38:3. The employer contribution rate shall unless otherwise fixed by the Board be the normal and accrued contribution rate determined as provided in § 51-111.47 for members of the retirement system qualifying under § 51-111.10 (4). The contributions so computed shall be certified by the Board to the chief fiscal officer of the employer. The amounts so certified shall be a charge against the employer. The chief fiscal officer of each such employer shall pay to the State Treasurer the amount certified by the Board as payable under this article, including such charges as the Board may deem necessary to cover costs of administration, and the State Treasurer shall credit such amounts to the appropriate accounts of the retirement system.

CHAPTER 65

An Act to amend the Code of Virginia by adding a new section numbered 2-86.1, providing that the Attorney General shall render certain services to local school boards, and to appropriate funds.

[H 11]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a new section numbered 2-86.1, the new section being as follows:

§ 2-86.1. The Attorney General shall give such advice and render such legal assistance as he deems necessary, when requested so to do by resolution adopted by a county, city or town school board, upon matters relating to the commingling of the races in the public schools of the State.

2. There is hereby appropriated out of the general fund of the State treasury to the office of the Attorney General for each year of the biennium beginning July one, nineteen hundred fifty-six, the sum of one hundred thousand dollars.

CHAPTER 66

An Act to amend and reenact § 22-5, as amended, of the Code of Virginia, relating to minimum school terms.

[H 12]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 22-5, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 22-5. Minimum term.—The school board of each county and city in the State is empowered * to maintain the public free schools of such county and city for a period of at least nine months or one hundred and eighty teaching days in each school year; provided, however, * that if the

length of the term of any school be reduced *, the amount paid by the State shall, *unless otherwise provided by law*, be reduced in the same proportion as the length of the term has been reduced from nine months.

CHAPTER 67

An Act to amend and reenact § 15-577 of the Code of Virginia, relating to county and city budgets; to amend and reenact § 22-117 of the Code of Virginia, relating to when State funds are to be paid for public schools; to amend and reenact § 22-125 of the Code of Virginia, relating to procedure when governing body refuses to provide funds for public school purposes; to amend and reenact § 22-126 of the Code of Virginia, as amended, relating to school levies and the use thereof; to amend and reenact § 22-127 of the Code of Virginia, relating to cash appropriations in lieu of school levies; to amend and reenact § 22-129 of the Code of Virginia, relating to town levies and appropriations for public school purposes; to amend and reenact § 22-138 of the Code of Virginia, relating to unexpended school funds; to amend the Code of Virginia by adding thereto a section numbered 22-127.1, relating to levies and appropriations by the governing bodies of counties, cities and towns for school purposes, so as to authorize such governing bodies to withhold funds already made available for school purposes, and to provide penalties for violation.

[H 13]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That §§ 15-577, 22-117, 22-125, 22-126 as amended, 22-127, 22-129, 22-138 of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding a new section numbered 22-127.1, the amended sections and new section being as follows:

§ 15-577. A brief synopsis of the budget shall be published in a newspaper having general circulation in the locality affected, and notice given of one or more public hearings, at least fifteen days prior to the date set for hearing, at which any citizen of the locality shall have the right to attend and state his views thereon. The board of supervisors of any county not having a newspaper of general circulation may in lieu of the foregoing notice provide for notice by written or printed handbills, posted at such places as it may direct, so as to accomplish the purposes of this chapter. After such hearing is had the boards of supervisors of the counties and the councils of the cities and towns shall by appropriate order adopt and enter on the minutes thereof a budget covering all *tentative* expenditures for the locality or any subdivision thereof for the next appropriation year, itemized and classified as required by the preceding section. The boards, councils or other governing bodies may recess or adjourn from day to day or time to time as may be deemed proper before the final adoption of the budget, provided that the final adoption of the county budget by the board of supervisors shall not be later than the date on which the annual levy is made.

The proposed expenditures for school purposes as contained in any budget prepared under §§ 15-575 and 15-576 and published under this section shall be tentative only and conditioned upon appropriations for such purposes being made by the board, council or other governing body, from time to time, as authorized by § 22-127 and § 22-129.

§ 22-117. No State money shall be paid for the public schools in any county until evidence is filed with the State Board, signed by the super-

intendent of schools and the clerk of the board, certifying that the schools of the county have been kept in operation for at least nine months, or a less period satisfactory to the State Board, or that arrangements have been made which will secure the keeping of them in operation for that length of time *or a less period satisfactory to the State Board*; provided, however, that no county shall be denied participation in State school funds, *except* as provided by law, when the board of the county has appropriated a fund equivalent to that which would have been produced by the levying of the maximum local school tax allowed by law, or has levied the maximum local school tax allowed by law; provided, such appropriation or levy is based on assessments not lower than the assessments on real and personal property in such counties in the year nineteen hundred and twenty-five.

§ 22-125. If the governing body refuse to lay such a levy or make such cash appropriation as is recommended and requested by the division superintendent, then, on a petition of not less than twenty per centum of the qualified voters of the county or city qualified to vote, requesting the same, the circuit court of the county or corporation court of the city or the judge thereof in vacation may, in its or his discretion, order an election by the people of the county or city to be held during the month of June, to determine whether such levy or cash appropriation in lieu of such levy shall or shall not be fixed, provided that in those counties and cities in which a school levy is made the election shall be limited to the question as to whether or not such levy shall be increased; *provided that, whenever any such governing body has made a cash appropriation on a tentative basis only as provided by § 22-127, no petition hereunder shall lie and no order calling an election may be entered, even though no resolution authorizing the payment or transfer of any funds to the local school board has been made.*

§ 22-126. Each county and city is authorized to raise sums of money by a tax on all property, subject to local taxation, at such rate as may be deemed sufficient, but in no event * more than three dollars on the one hundred dollars of the assessed value of the property in any one year, to be expended by the local school authorities * in establishing, maintaining and operating such schools as in their judgment the public welfare requires *and in payment of grants for the furtherance of elementary or secondary education and transportation costs as required or authorized by law*; provided that in counties with a population of more than six thousand four hundred but less than six thousand five hundred, such rate may be increased to four dollars on the one hundred dollars of the assessed value of the property therein in any one year; and provided further that in counties having a population of more than thirty-seven thousand but less than thirty-nine thousand such rate may be increased to four dollars on the one hundred dollars of the assessed value of the property therein in any one year.

§ 22-127. In lieu of making such school levy, the governing body of any county or city may, in its discretion, make a cash appropriation, *either tentative or final*, from the funds derived from the general county or city levy of an amount not less than the sum required by the county or city school budget provided for by § 22-122 and approved by the governing body of the county or city, but in no event to be less than the minimum nor more than the maximum amount which would result from the laying of the school levy authorized by the preceding section for the establishment, maintenance and operation of the schools of the county or city *and for the payment of grants for the furtherance of elementary or secondary education and transportation costs*. In addition to this, the governing body of any county or city may appropriate, *either tentatively or finally*, from

any funds available, such sums as in its judgment may be necessary or expedient for the establishment, maintenance and operation of the public schools in the county or city, and for the payment of such grants and transportation costs required or authorized by law.

Whenever any such appropriations have been made on a tentative basis, no part of the funds so appropriated shall, in any event, be available to the local school board except as the local governing body may, from time to time, by resolution authorize the payment or transfer of such funds, or any part thereof, to such local school board.

§ 22-127.1. *Notwithstanding any other provision of law to the contrary, the governing body of any county, city or town which has made a levy for school purposes under § 22-126 or § 22-129 or has made a cash appropriation under § 22-127 or any other provision of law may by resolution direct the school board of such county, city or town and the treasurer of such county, city or town to make no further expenditures of local school funds until further authorized to do so by such local governing body. Any school board, and each member thereof, and any treasurer who makes any expenditure of local school funds after being so directed not to make such expenditures shall be personally liable to make restitution to the county, city or town involved of the funds so expended in violation of any such resolution of the local governing body and may be removed from office under the provisions of Article 3, Chapter 16, Title 15, of the Code.*

§ 22-129. *The governing body of any incorporated town in the State is authorized to levy an additional tax on all the property in the town, subject to local taxation, at such rate as it may deem proper, but in no event more than one dollar on the one hundred dollars of the assessed value of property in the town subject to taxation by the local town authorities, for the support and maintenance, and capital outlay of the public schools in the town and for the payment of grants for the furtherance of elementary and secondary education and transportation costs. In lieu of such levy, the governing body may, in its discretion, make a cash appropriation, either tentative or final, out of the general town levy of an amount not more than the maximum amount which would result from the school levy for the support and maintenance of the public schools in the town and for the payment of such grants and transportation costs required or authorized by law.*

Whenever any such appropriation has been made on a tentative basis, no part of the funds so appropriated shall, in any event, be available to the local school board except as the governing body may, from time to time, by resolution authorize the payment or transfer of such funds, or any part thereof, to such local school board.

§ 22-138. *All sums of money derived from State funds for school or educational purposes, which are unexpended in any year in any county or city shall go into the * fund of the State from which derived for re-division the next year, unless the State Board direct otherwise. All sums derived from county or city funds unexpended in any year shall remain a part of the county or city funds, respectively, for use the next year, but no local funds shall be subject to re-division outside of the county or city in which they were raised.*

CHAPTER 70

An Act to create a Pupil Placement Board and confer upon it powers as to enrollment or placement of pupils in the public schools and determination of school attendance districts, and to provide for administrative

procedure and remedies for pupils seeking enrollment in a school or a change from one school to another school.

[H 68]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. All power of enrollment or placement of pupils in and determination of school attendance districts for the public schools in Virginia is hereby vested in a Pupil Placement Board as hereinafter provided for. The local school boards and division superintendents are hereby divested of all authority now or at any future time to determine the school to which any child shall be admitted. The Pupil Placement Board is hereby empowered to adopt rules and regulations for such enrollment of pupils as are not inconsistent with the provisions hereinafter set forth. Such rules and regulations shall not be subject to Chapter 1.1 of Title 9 of the Code of Virginia, the short title of which is "General Administrative Agencies Act". The Pupil Placement Board and any of its agents hereinafter provided for shall have authority to administer oaths to those who appear before said Board or any of its agents in connection with the administration of this act.

§ 1a. There is hereby created a board to be known as the Pupil Placement Board which shall consist of three residents of the State appointed by the Governor to serve for terms to expire at the expiration of the term of the Governor making the appointment. Members of the Board shall receive as compensation for their services a per diem of twenty dollars for each day actually spent in the performance of their duties and shall be entitled to reimbursement for their necessary expenses incurred in connection therewith.

§ 2. The Pupil Placement Board may designate, appoint and employ such agents as it may deem desirable and necessary in the administration of this act. It may authorize such agents to hold the hearings hereinafter provided for and take testimony and submit recommendations in any and all cases referred to them by said Board.

§ 2a. For the conduct of such hearings and to facilitate the performance of the duties imposed upon it and its agents under this act, the Pupil Placement Board is authorized to promulgate all such rules and regulations and procedures and prescribe such uniform forms as it deems appropriate and needful and to require strict compliance with the same by all persons concerned.

§ 3. The Pupil Placement Board in enrolling each pupil in a school in each school district shall take into consideration:

(1) The effect of the enrollment on the welfare and best interests of such child and all other children in said school as well as the effect on the efficiency of the operation of said school.

(2) The health of the child as compared to other children in the school.

(3) The effect of any disparity between the physical and mental ages of any child to be enrolled especially when contrasted with the average physical and mental ages of the group with which the child might be placed.

(4) Availability of facilities.

(5) The aptitude of the child.

(6) Availability of transportation.

(7) The sociological, psychological, and like intangible social scientific factors as will prevent, as nearly as possible, a condition of socioeconomic class consciousness among the pupils.

(8) Such other relevant matters as may be pertinent to the efficient operation of the schools or indicate a clear and present danger to the public peace and tranquility affecting the safety or welfare of the citizens of such school district.

§ 4. After the effective date of this act, each school child who has heretofore attended a public school and who has not moved from the county, city or town in which he resided while attending such school shall attend the same school which he last attended until graduation therefrom unless enrolled, for good cause shown, in a different school by the Pupil Placement Board.

§ 5. Any child who desires to enter a public school for the first time following the effective date of this act, and any child who is graduated from one school to another within a school division or who transfers to a school division, or any child who desires to enter a public school after the opening of the session, shall apply to the Pupil Placement Board for enrollment in such form as it may prescribe, and shall be enrolled in such school as the Board deems proper under the provisions of this act. Such application shall be made on behalf of the child by his parent, guardian or other person having custody of the child.

§ 6. Both parents, if living, or the parent or guardian of a pupil in any school in which a child is enrolled by action of the Pupil Placement Board, if aggrieved by an action of the Board, may file with the Board a protest in writing within fifteen days after the placement of such pupil. Upon receipt of such protest the Board shall hold or cause to be held a hearing, within not more than thirty days, to consider the protest and at the hearing shall receive the testimony of witnesses and exhibits filed by such parents, guardians or other persons, and shall hear such other testimony and consider such other exhibits as the Board shall deem proper. The Board shall consider and decide each individual case separately on its merits. The Board shall publish a notice once a week for two successive weeks in a newspaper of general circulation in the city or county wherein the aggrieved party or parties reside. The notice shall contain the name of the applicant and the pertinent facts concerning his application including the school he seeks to enter and the time and place of the hearing. The Board shall, within not more than thirty days after the hearing, file in writing its decision, enrolling such pupil in the school originally designated or in such other school as it shall deem proper. The written decision of the Board shall set forth the findings upon which the decision is based. Any parent, guardian or other person having custody of any child in the particular school in which a child is enrolled by action of the Board shall be deemed an interested party and shall have the right to intervene in such proceeding in furtherance of his interest.

§ 6a. Any party aggrieved by a decision of the Pupil Placement Board under this act, or any party defined as an interested party in § 6 may obtain a review of such decision by filing an application in writing for a review thereof with the Governor within fifteen days after such decision. Such application shall be by a petition in writing, specifying the decision sought to be reviewed, and the actions taken by the Pupil Placement Board, together with a statement of the grounds on which the petitioner is aggrieved or by reason of which he is an interested party. The petitioner shall file with his petition a copy of the decision of the Pupil Placement Board and a transcript of the proceedings before the Pupil Placement Board, which shall be furnished to the petitioner by the Pupil Placement Board within ten days after request therefor upon payment of the costs of such transcript by the petitioner. Upon the filing of a petition for a review with the Governor, the Governor shall set the same for a hearing and within fifteen days after the petition has been filed with him, he shall file, in writing, his decision, enrolling such pupil in the school originally designated or in such other school as he shall deem proper. The written decisions of the Governor shall set forth the findings upon which his decision is based.

§ 7. Any party aggrieved by a decision of the Governor under this act or any party defined as an interested party in § 6 may obtain a review of such decision by filing in the clerk's office of the circuit court of the county or corporation court of the city in the jurisdiction of which such party resides, within fifteen days after such decision, a petition in writing, specifying the decision sought to be reviewed, and the actions taken by the Governor, together with a statement of the grounds on which the petitioner is aggrieved or by reason of which he is an interested party. The petitioner shall file with his petition a copy of the decision of the Governor and a transcript of the proceedings before the Governor, which shall be furnished to the petitioner by the Governor within ten days after request therefor upon payment of the costs of such transcript by the petitioner.

§ 7a. Any interested party, as defined in § 6 may, by petition, intervene for the purpose of making known and supporting his interest, in any proceeding for review of the Pupil Placement Board's decision instituted by an aggrieved party or by another interested party; and the court having jurisdiction of such review proceedings shall hear the evidence of as many interested parties, as defined in § 6, in any such review proceeding, as in its discretion it may deem proper, whether or not such interested parties shall have petitioned for such review or petitioned to intervene therein.

§ 8. Upon the filing of the petition the clerk of the court shall forthwith notify the Pupil Placement Board, requiring it to answer the statements contained in the application within twenty-one days, but failure to do so shall not be taken as an admission of the truth of the facts and allegations set forth therein. The clerk of the court shall publish a notice of the filing of such application once a week for two successive weeks in a newspaper of general circulation in the county or city for which the court sits and shall, in addition, post the same at the door of the courthouse. The notice shall contain the name of the applicant and the pertinent facts concerning his application including the school he seeks to enter, and shall set forth the time and place for the hearing. The proceedings shall be matured for hearing upon expiration of twenty-one days from the issuance of the notice to the Pupil Placement Board by the clerk of the court and heard and determined by the judge of such court, either in term or vacation.

§ 9. The findings of fact of the Pupil Placement Board shall be considered final, if supported by substantial evidence on the record.

§ 10. From the final order of the court an appeal may be taken by the aggrieved party or any interested party, as defined in § 6, to the Supreme Court of Appeals as an appeal of right, in the same manner as appeals of right are taken from the State Corporation Commission.

§ 10a. An injunction proceeding may be brought in any State court of competent jurisdiction by the Commonwealth, or by any interested party as defined in § 6, for the purpose of restraining the performance of any act, or any intended or threatened act, which may be in evasion of, in disregard of, or at variance with, any of the foregoing provisions.

§ 11. Neither the Pupil Placement Board nor its agents shall be answerable to a charge of libel, slander or insulting words, whether criminal or civil, by reason of any finding or statement contained in the written findings of fact or decisions or by reason of any written or oral statement made during the proceedings or deliberations.

CHAPTER 69

An Act to declare an emergency to exist in any school division in which an efficient system of elementary or secondary public schools is not

operated under local authority, and in such case to invoke the police powers of the Commonwealth and the Constitutional powers of the General Assembly; to establish in every such school district, subject to the adoption by the local governing body of a resolution declaring the need therefor, an efficient system of elementary or secondary public schools operated by the Commonwealth; to provide that such system be operated and maintained by the Governor for and on behalf of the General Assembly; to define "efficient system of elementary public schools" and "efficient system of secondary public schools"; to provide for the use of local school buildings and related facilities of certain counties, cities and towns; to provide for the purchase of textbooks, supplies and equipment, and to permit local school boards to provide for the transportation of pupils; to provide for the administration of the school system hereby established and the employment of persons therein; to provide for the application of this act to counties, cities and towns; to vest in the State Board of Education the general supervision of such schools and to authorize it, subject to certain limitations, to make rules and regulations applicable thereto; to provide how proceedings against local school boards in matters involving the State established schools may be instituted; to prescribe the effect of certain proceedings brought against local school boards and the members thereof; to provide the circumstances under which pupils may be admitted to the State schools; to provide for the employment and assignment of teachers and other personnel; to prescribe the provisions of Title 22 of the Code of Virginia which shall apply to the State established and maintained schools; to provide the method for admission to the State established schools and the terms and conditions thereof.

[H 77]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. Whenever in any school division an efficient system of elementary or secondary public schools as herein defined is not operated under local authority, an emergency hereby is declared to exist. In such case the police powers of the Commonwealth and the Constitutional powers of the General Assembly hereby are invoked. In every school division in which such emergency shall exist there is hereby established by the General Assembly an efficient system of elementary or secondary public schools to be operated by the Commonwealth; provided, the local governing body adopts a resolution reciting the existence of such emergency and declaring the need for such State operated public school system, in which case all of the provisions of this act shall apply.

A copy of such resolution, properly certified, shall be sent to, and kept by, the Keeper of the Rolls of the State. Upon receipt of such resolution it shall be the duty of the Keeper of the Rolls to forward a true copy thereof to the Governor, who shall thereupon, for and on behalf of the General Assembly, operate and maintain an efficient system of elementary or secondary schools in such school division pursuant to the provisions of this act.

Whenever in such school division an efficient system of elementary or secondary public schools as herein defined again shall be established and operated under local authority and the State Board of Education shall have certified such fact to the Keeper of the Rolls of the State such emergency shall cease to exist and the provisions of this act shall cease to apply to such school district.

The Keeper of the Rolls forthwith shall forward a true copy of such certificate to the Governor.

§ 2. As used in this act an efficient system of elementary public schools, hereinafter referred to as elementary schools, means and shall be only that system within each county, city or town in which no elementary school consists of a student body in which white and colored children are taught.

An efficient system of secondary public schools, hereinafter referred to as secondary schools, means and shall be only that system within each county, city or town in which no secondary school consists of a student body in which white and colored children are taught.

§ 3. The provisions of this act shall be controlling over all other provisions of law in conflict therewith. In any case in which any other provision of law is not in conflict with a provision of this act such other statute shall apply as to the system of public free schools hereby established.

§ 4. The system of schools established by the State shall use and be housed in the unused school buildings and related facilities now or hereafter owned, constructed, and maintained by the school boards of the several counties, cities, and towns if such towns constitute separate school districts. The provisions of law applicable to the purchase of textbooks, supplies, and equipment by local school boards shall remain in force and it shall be the duty of such local school boards to supply same in accordance with law to the pupils attending the schools established and maintained by the State. The local school boards may provide transportation to pupils attending such schools.

§ 5. The State established public free school system shall be administered by the Governor for the General Assembly. Local school boards shall have such administration of such schools as will not conflict with this act or rules and regulations of the State Board of Education.

§ 6. The general supervision of the State established school system is vested in the State Board of Education which is authorized to make regulations for the operation thereof in an efficient manner. Provided, however, that except as specifically stated, nothing in this act shall be construed as conferring upon the State Board the power to determine the educational policies of the State in conflict with this act.

§ 7. No suit, action, prosecution or proceeding shall be brought against a local school board in any matter involving the State established schools unless the same be instituted by the Attorney General. If any local school board or member thereof be proceeded against otherwise such shall automatically terminate the powers of the members and such local school board as to any such State schools and the State Board of Education shall appoint a trustee to operate same until the powers of such local school board be reestablished by the General Assembly as to such State schools.

§ 8. The enrollment or placement of pupils in and the determination of school attendance districts for the State established public schools shall be accomplished only by such authority and in such manner as now or hereafter may be prescribed by law, and the school boards of the several counties, cities and towns shall have no power to admit or assign pupils except in accordance therewith.

§ 9. The local school board, subject to the State Board of Education, shall employ teachers and assign them to the several schools. Such teachers shall be paid from the funds available to operate such schools.

§ 10. The provisions of Title 22 of the Code of Virginia and other provisions of law applicable to the operation of public free schools by the school boards of the several school divisions shall apply mutatis mutandis to the schools established and operated in accordance with the provisions of § 1 hereof, except when a different requirement is imposed by this act or the State Board of Education.

§ 11. Each county, city, or town, if the same be a separate school district, and school district in which State established schools are operated

shall raise from local levies or cash appropriations an amount equivalent to that required under Chapter 716 of the Acts of Assembly of 1956, as amended, for local maintenance of schools and may so raise or appropriate such further sums as in their judgment the public welfare may require for assisting in the operation of the State established schools or, as the case may be, a system of elementary free public schools or a system of secondary free public schools. All such funds shall be paid into the State treasury, are hereby made available to the State Board of Education, and shall be expended by the State Board of Education in the respective counties, cities and towns which paid in such funds. Such expenditures shall be for the support of State established public schools in the county, city or town involved and for no other purpose.

CHAPTER 68

An Act to establish the responsibility of the Commonwealth of Virginia for the control of certain public schools under certain conditions; to that end to state the conditions which must exist in relation to such schools in order for the Commonwealth to assume such responsibility; to vest in the Commonwealth control of certain schools under stated conditions, and to confer powers and impose duties upon the Commonwealth to be exercised by the Governor of Virginia; to provide the conditions under which such powers shall be designated; to empower the Governor to act in certain cases; to confer immunity from legal proceedings upon the Commonwealth of Virginia and the Governor; to refuse the consent of the Commonwealth to certain legal proceedings; to provide for the payment of certain educational grants; and to provide for the appropriation and expenditure of funds necessary under this act.

[S 56]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. The General Assembly declares that, as a consequence of the decisions of the Supreme Court of the United States affecting the public school system, school authorities of the various political subdivisions of the Commonwealth of Virginia will be faced with unprecedented obstacles if and when ordered to enroll white and colored children in the same public schools, and such enforced integration of the races by a county or city school board could destroy the efficiency of the school in which white and colored children were so enrolled, and would tend to disturb the peace and tranquility of the community in which such school is located.

§ 2. The General Assembly declares that the welfare of all the citizens of the Commonwealth, the preservation of her public school system and a continuance of universal public education, make it necessary that there be uniformity of action throughout the State in all instances where school authorities acting voluntarily, or under compulsion, enroll a child in a public school, which enrollment would require a child of the white race to attend a public school with a child of the colored race, or which enrollment would require a child of the colored race to attend a public school with a child of the white race.

§ 3. From and after the effective date of this act, and in conformity with the public policy of the Commonwealth of Virginia as herein established in §§ 1 and 2, and specifically invoking the police powers of the Commonwealth and the constitutional powers of the General Assembly, the Commonwealth of Virginia assumes direct responsibility for the con-

trol of any school, elementary or secondary, in the Commonwealth, to which children of both races are assigned and enrolled by any school authorities acting voluntarily or under compulsion of any court order. The making of such an assignment, and the enrollment of such child, or children, shall automatically divest the school authorities making the assignment and the enrollment of all further authority, power and control over such public school, its principal, teachers and other employees, and all pupils then enrolled or ordered to be enrolled therein; and such school is closed and is removed from the public school system, and such authority, power and control over such school, its principal, teachers, other employees and all pupils then enrolled or ordered to be enrolled, shall be and is hereby vested in the Commonwealth of Virginia to be exercised by the Governor of Virginia in whom reposes the chief executive power of the State.

§ 4. Immediately upon such control, power and authority becoming vested in the Commonwealth of Virginia, by reason of the occurrences provided for in § 3 aforesaid, such school is closed, and shall not be reopened, as a public school, until, in the opinion of the Governor, and after an investigation by him, he finds and issues an executive order that (1) the peace and tranquility of the community in which the school is located will not be disturbed by such school being reopened and operated, and (2) the assignment of pupils to such school could be accomplished without enforced or compulsory integration of the races therein contrary to the wishes of any child enrolled therein, or of his or her parent or parents, lawful guardian or other custodian.

§ 5. If after investigation, the Governor concludes that such school cannot be reopened, under the conditions provided for in § 4 of this act, he is given authority to reorganize the school, its personnel, curriculum and facilities, and make such other changes therein as in his discretion may be necessary and desirable and needed to effect a reopening of such school and, in such reorganization and in making assignment of pupils to such school, or in making reassignments to the school or schools in which they were formerly enrolled if he deems it necessary to preserve the peace and tranquility of the community or in making assignments of pupils to other available schools, he shall give due consideration to the laws of the Commonwealth relative to assignment and enrollment of pupils and due consideration to the individual safety, needs and welfare of the child or children involved and the safety, welfare and best interest of other children attending the school and the welfare and safety of the community, the availability of facilities, the health and aptitude of such child, the availability of transportation, and all other relevant factors, and their effect on such child and other children attending said school and on the welfare and best interest of the administration of the school or schools involved, which assignment and enrollment shall remain in effect for the remainder of the current school session unless otherwise ordered or authorized by the Governor; provided, however, no school which has been closed, as aforesaid, shall be reopened, or reorganized and reopened, by the Governor, unless and until he finds and issues an executive order that such school can be reopened or reorganized and reopened in accordance with the provisions of § 4 above.

§ 6. If after investigation, the Governor concludes that such school cannot be reopened, or cannot be reorganized and reopened, he is authorized to assign the children in such school to any available public schools where such an assignment is practicable and to the best interest of the children involved, and to the public school system of the political subdivision concerned, taking into consideration the factors aforesaid; and the Governor is further authorized to make available other facilities for

the instruction of such children, and to reassign the teachers in such closed school to other public schools in the political subdivision in which such closed school is located, or to other school or schools or other facilities made available for the instruction of such children, as authorized herein.

§ 7. Whenever any public school shall be closed under the circumstances aforesaid and as provided in the preceding sections of this act, and any child, or children, enrolled in such school cannot be reassigned to another public school, the Governor and the duly constituted authorities of the locality formerly having control of such school are authorized to make available to such child or children an education or tuition grant from funds which would otherwise have been available for the operation of the school in which he or she was enrolled, or are otherwise available for that purpose, the amount of such grant to be expended under rules and regulations established by law or in the absence thereof to be promulgated by the Governor, which grants shall be expended by pupils attending non-sectarian private schools only, and provided, further, however, that the amount of such grant authorized and expended shall not exceed an amount equal to the quotient derived by dividing the total amount expended in the elementary and secondary school system of the political subdivision in which such school is located by the enrollment of pupils attending such public school system of such political subdivision for the year next preceding.

§ 8. Should the Governor, in carrying out the provisions of this act and in providing for the education of the children assigned and enrolled in any school which is closed hereunder, expend an amount in excess of the amount which would have been expended by the school board of the political subdivision in which such school is located, had such school not closed, authority is hereby given and the Governor is authorized to supplement the appropriation available to such political subdivision for educational purposes by an amount equal to such difference, such supplement to be made from funds which may be available and upon such conditions as may be decided upon by the fiscal officers of the Commonwealth, the State Board of Education and the duly constituted authorities of the locality involved.

§ 9. Whenever it is made to appear to the Governor that any school which has been closed under the conditions aforesaid can be reopened and operated in accordance with the provisions of § 4 of this act, the Governor is authorized to return forthwith the operation, control and maintenance of such school to the local school board of the political subdivision in which it is located.

§ 10. Notwithstanding any other provision contained in this act, if after investigation the Governor concludes, or, at any time the school board or board of supervisors of the county or the council of the city in which the closed school is located, certifies to the Governor by resolution that in it or their opinion such school cannot be reopened, or reorganized and reopened, in conformity with provisions of this act, the Governor shall so proclaim, in which event the said school shall again become a part of the public school system of the political subdivision in which it is located, and such school, elementary or secondary, shall along with all other schools of its class in the political subdivision in which it is located thereby become subject to the applicable provisions of the laws of this State.

§ 11. The Governor is given the power to take any and all actions and make such expenditures as may be necessary to carry into effect the provisions of this act and to fulfill the responsibilities assumed hereunder for the control of certain public schools upon the happening of certain contingencies.

§ 12. The Commonwealth of Virginia assumes the contractual obligation of the school board of any political subdivision, in which a school is closed under this act, with the principal, teachers and employees of such closed school, and it is directed that the salary, wage or compensation of such principal, teachers or employees be paid upon authorization of the Governor as agreed and provided by the terms of their contract with such school board and for the time specified in the contract, or so long as such principal, teachers and employees are under the control of the Governor by virtue of the provisions of this act; provided, however, nothing herein contained shall obligate the Commonwealth of Virginia to employ or compensate such principal, teachers and other employees beyond the expiration date of their contract with such school board.

§ 13. Every action authorized and taken in conformity with the provisions of this act shall be and is hereby declared to be the act of the General Assembly of Virginia and an act of the Governor of Virginia and an act taken on behalf of the sovereign Commonwealth of Virginia, and if any suit, action or other legal proceedings be instituted relative thereto, the same shall be regarded and is hereby declared to be a suit, action or proceeding against the Commonwealth of Virginia, and the Commonwealth hereby declines and refuses for the Commonwealth of Virginia or the Governor of Virginia to be subject to such a suit unless it shall be one brought by the Attorney General of Virginia to enforce the laws of the Commonwealth.

2. If any part, section, portion or provision of this act or the application thereof to any person or circumstance be held invalid by a court of final resort, such holding shall not affect any part, section, portion, provision or application of this act which can be given effect without the part, section, portion, provision or application so held invalid; and to this end, the parts, sections, portions, provisions and applications hereof are declared severable.

3. Any acts or parts of acts in conflict herewith are hereby repealed to the extent of such conflict.

4. An emergency exists and this act is in force from its passage.

APPENDIX D

Acts of the General Assembly relating to education