

**EDUCATION IN VIRGINIA**

**REPORT OF THE  
COMMISSION ON EDUCATION  
to the  
GOVERNOR  
OF VIRGINIA**

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**MAJORITY REPORT  
CONCURRING STATEMENTS  
DISSENTING REPORT**



**COMMONWEALTH OF VIRGINIA**  
*Department of Purchases and Supply*  
Richmond  
1959

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EDUCATION IN VIRGINIA  
REPORT OF THE  
COMMISSION ON EDUCATION

Richmond, Virginia

March 31, 1959

TO: HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia:*

Your Commission was appointed February 5, 1959, to make recommendations by March 31, 1959, for meeting the crisis brought about by a series of judicial decrees affecting the Public Free School System of Virginia.

SYNOPSIS

Five years ago, on May 17, 1954, the Supreme Court, in the case of *Brown v. Board of Education*, 347 U. S. 483, startled the nation and shocked the South by striking down the provisions of State Constitutions and laws requiring racial separation of children in public schools. Never before had the court rendered a decision so drastically invading the right of the states to manage their internal affairs. The reaction in Virginia was prompt, positive and adverse.

The General Assembly of Virginia in keeping with the overwhelming sentiment of the people of this State made every effort to preserve our system of separate schools. The efforts included the invocation of the police powers of the State, state sovereignty, interposition and state immunity from suit. They also included an effort by the General Assembly to interpret "efficient" schools in keeping with the policy of the State, and a cut-off of funds and the closing of schools.

One by one these laws have been struck down, some by the federal courts and some by the Supreme Court of Appeals of Virginia. None of these laws can be made effective against overwhelming federal force.

As the result of the *Brown* decision, and subsequent court decrees, racial integration has already taken place in some school divisions in Virginia. Every resource known to the law was exhausted in the defense of every case before the courts. All in authority in Virginia have exhausted every legal means of preventing any integration in our schools. Our officials are entitled to commendation for their unswerving devotion to the cause committed to them.

When the decrees become final, the course to be followed was clear. Under the firm, courageous and dedicated leadership of those in authority, Virginia responded in keeping with her best and finest traditions, and under the most trying circumstances, set for the nation an example of respect for law and order of which we can be justly proud. There was no mob rule, no violence, no ugly incident.

We are now faced with decision. The Commission believes that it is its duty to present the problem with complete frankness. The truth is that neither the General Assembly nor the Governor has the power to overrule or nullify the final decrees of the federal courts in the school cases.

There is sentiment that it would be better to have no public schools than to have any mixed schools anywhere in Virginia. However, we believe that at this time a majority of the people of Virginia is unwilling to have the public schools abandoned.

Accordingly, we propose measures to bring about the greatest possible *freedom of choice* for each locality and each individual.

We recommend that scholarships be made available to children in every locality to attend nonsectarian private schools.

We recommend a flexible pupil placement plan to meet the varied conditions throughout the State.

We recommend a compulsory attendance law with adequate safeguards which may be used by any locality that desires to do so.

We recommend additional legislation for disposal of surplus school property.

We recommend local budgetary changes which will give the local tax levying body full control over local expenditures to the end that a locality faced with an intolerable situation can constitutionally withhold local support from public schools by the simple method of not levying taxes or appropriating money.

Under these recommendations no child will be forced to attend a racially mixed school.

We believe that under present conditions these proposals will produce results more acceptable to the people of Virginia than abolition of all public schools. If not, and if the people then demand the abolition of all public schools, the people themselves can decide that issue at that time.

Despite the widespread belief to the contrary, the repeal by itself of Section 129 of the Constitution of Virginia would accomplish nothing that cannot be accomplished by statute. In view of the foregoing, no constitutional amendment is necessary and none is recommended.

These proposals permit the preservation of public free schools and implement flexible local autonomy. They are founded on the twin principles of local determination and *freedom of choice*.

## THE PROBLEM

It would be wholly unrealistic for this Commission not to state with all frankness that its creation was made necessary and that it came into being as a result of the great constitutional and social issues that have faced this country since the *Brown* decision, which held the states could not operate racially segregated public schools.

Following the *Brown* decision, all of Virginia's neighboring States and some other States in the South began integrating their public schools, while schools in this State remained segregated until February of this year by reason of the determined stand on the part of representatives of the State and of the various localities. Notwithstanding the supreme efforts that were made, Virginia was unsuccessful in sustaining the laws that were designed to prevent integration.

Subsequent to the *Brown* decision Louisiana amended its constitution to provide for segregated schools under the authority of its police powers. It was held by the federal courts that the police powers cannot be invoked to preserve segregated schools. *Orleans Parish School Board v. Bush*, 242 F. (2d) 156. Since a writ of certiorari was denied in this case by the Supreme Court, it is evident that it would be futile to assert again such a defense.

In the Charlottesville and Arlington school cases, it was strongly advocated that the plaintiffs could not maintain those actions on the ground they were suits against the State and thus prohibited by the Eleventh Amendment of the Federal Constitution. It was held that the immunity of a state from suit under the Eleventh Amendment did not prevent action to enjoin state officials from depriving persons of their constitutional rights. *School Board v. Allen*, 240 F. (2d) 59. The Supreme Court refused to review this decision.

The hope that the Supreme Court would modify or reverse the *Brown* decision was shattered on September 29, 1958, in the Little Rock case, *Aaron v. Cooper*, 358 U. S. 1.

The problem which confronts this Commission, the General Assembly and the Commonwealth of Virginia, can be understood only in the light of the following quotations from court decisions.

In *Aaron v. Cooper*, with three new Justices sitting, the Supreme Court not only unanimously reaffirmed the *Brown* decision, but went even further and held:

"It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. \* \* \* State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the law. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law."

Obviously this sweeping decision was written with the laws of Virginia and other Southern States in mind.

On January 19th, 1959, a three-judge federal court in *James v. Almond* held unconstitutional Virginia's automatic school closing law, under which the schools in Norfolk, Charlottesville and Warren County had been closed during the fall of 1958, saying:

"While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the state permits other public schools or grades to remain open at the expense of the taxpayer. \* \* \* We do not suggest that, aside from the Constitution of Virginia, the state must maintain a public school system. That is a matter for State determination. \* \* \*

"In the event the State of Virginia withdraws from the business of educating its children, and the local governing bodies assume this responsibility, the same principles with respect to equal protection of laws would be controlling as to that particular county or city. \* \* \* Such schemes or devices looking to the cutoff of funds for schools or grades affected by the mixing of races, or the closing or elimination of specific grades in such schools, are evasive tactics which have no standing under the law."

On the same day the Supreme Court of Appeals of Virginia in *Harrison v. Day*, 200 Va. 439, also held Virginia's automatic school closing law and fund cutoff law invalid under *the Constitution of Virginia*. The Court further recognized the *Brown* case by stating that our public schools must operate even though integrated.

These decisions clearly demonstrate the position in which Virginia now finds herself after years of litigation.

Regardless of how unsound we may regard the *Brown* decision of the Supreme Court of the United States and irrespective of what action may be taken in the future to convince that Court, the Congress, or the people of the United States that the decision should be reversed, we are now compelled to recognize the existence of that decision and the overwhelming power of the Federal Government by the use of force to carry out Federal Court decrees.

## THE OBJECTIVE

The Commission has received more than five hundred petitions signed by over twenty-five thousand people from every section of the State stating that they are "wholeheartedly opposed to the mixing of the races in our schools and will not countenance such "mixing" and urging this Commission, the General Assembly and Your Excellency "to restore to us the enjoyment of Virginia's honor and sovereign State's rights and rapidly to put Virginia back into the enviable position of no integration".

The Commission is opposed to integration and offers the program set out herein because it thinks it is the best that can be devised at this time to avoid integration and preserve our public schools. If anyone suggests at any time in the future a better plan it will be welcomed and supported with all the vigor at our command.

The Commission is of the opinion that it would be necessary to close all public schools throughout the State in order to prevent any integration.

The culture and the economy of our State are directly geared to the educational attainments of our people. Steady progress has been made in raising our standards of education. We cannot afford to let those stand-

ards be lowered. Virginia is largely dependent upon the public schools for the education of her children.

The problem created by the *Brown* decision varies greatly in the different sections of the State. Therefore, as much autonomy as possible must be placed in the localities of the State so that no child will be compelled to attend a mixed school and so that the people will be assured the greatest possible freedom of choice in securing educational opportunities for their children.

In the following sections of this report, there are set forth the matters considered by the Commission and its recommendations for legislative action.

## THE VIRGINIA CONSTITUTION

The Commission, in considering whether to recommend any change in the provisions of the Virginia Constitution, has done so with the belief that any locality which finds itself in an intolerable situation with respect to its public schools should be permitted to turn to other methods of providing educational opportunities for its children.

There is confusion as to what our State Constitution requires with respect to public schools. It is important to set forth both what is and what is not required.

While some language of our Supreme Court of Appeals in the recent case of *Harrison v. Day* may be subject to a different interpretation, the Commission acting upon the advice of counsel for the Commission, the Attorney General, and their assistants, states the following conclusions in complete confidence of their correctness. It is satisfied that these conclusions will be upheld by our court should the question be presented to it.

Sections 129 to 142, inclusive, constituting Article IX, and a portion of Section 173, have to do with public education.

Section 129 reads: "The General Assembly shall establish and maintain an efficient system of public free schools throughout the State." However, the system of "public free schools" required by this mandate consists of only the public schools of the "primary and grammar grades" mentioned in Section 135. Our Constitution does not require the General Assembly to establish or maintain high schools.

Section 135 requires the General Assembly to make three appropriations: (1) the interest on the Literary Fund, (2) the State's two-thirds of the \$1.50 capitation tax and (3) an amount equal to the total that would be received from an annual tax on property of not less than one mill on the dollar. These funds are for the schools of the "primary and grammar grades", and are apportioned on the basis of school population. For the year 1957-58 the total of these minimum constitutional appropriations was approximately \$9,000,000.

Section 135 also provides: "And the General Assembly shall make such other appropriations for school purposes as it may deem best, to be apportioned on a basis to be provided by law." Thus it is clear that any appropriation above the constitutional minimum is entirely within the discretion of the General Assembly.



The Constitution does not require localities to levy any taxes or to appropriate any money for public schools, not even those of the primary and grammar grades. Under Section 136 it is optional with the local authorities. The General Assembly has no authority to require the localities to provide any financial support for public schools.

For the year 1957-58 the total spent for the operation of all public schools in Virginia, exclusive of debt service and capital outlay, was \$163,370,000. This consisted of \$65,250,000 from the State, \$12,000,000 from the federal government and \$86,120,000 from the localities. This was eighteen times as much as the mandatory requirements of the Virginia Constitution.

Thus, from a financial standpoint, the constitutional provisions are not as important as many believe. Unless it is the desire of the people of Virginia to abandon completely the state-wide public school system, there is no need for an amendment to the Constitution.

Within the existing constitutional framework two approaches are available. The State, itself, could limit its appropriation for public schools to the bare minimum specified by Section 135 of the Constitution, that is to say, approximately nine million dollars. If this were done and the balance of funds otherwise available for school purposes were appropriated for distribution to the localities on a population basis or other equitable formula either for educational purposes generally or for general governmental purposes, a locality could go out of the public school business (except to the extent of its proportionate share of the nine million dollars) merely by not making any local appropriation for public schools. It could use its funds and the funds received from the State for the purpose of providing scholarships for its children to attend nonsectarian private schools.

Such an approach would in policy and theory be as drastic as repealing Article IX. It would amount to an abandonment of our "State system" of public free schools. The State would reduce its support for public schools by ninety percent and the statewide system would consist only of those primary and grammar grades that could be maintained with nine million dollars.

Before such a drastic approach is adopted, it is the Commission's belief that the localities should avail themselves of all possible means of meeting the situation by exercising the authority they now have, or which may properly be given to them, without completely disrupting public education throughout Virginia.

Under Section 136 of the Constitution no locality is required to appropriate funds for the support of public schools. Traditionally, and under the present Appropriation Act, funds for school purposes above the constitutional minimum are distributed only to those localities which, themselves, contribute to the support of public schools. Therefore, under the present Appropriation Act, localities which elect not to make a levy or appropriate funds for school purposes will effectively end public schools in that locality. Its share of funds appropriated by the State to meet the constitutional minimum would still have to be expended for maintenance and for the primary and grammar grades, but the extent of instruction that could be provided would be limited.

Either of the two approaches provides the desired result of permitting local determination as to the operation of public schools. However, the first method effectively destroys our State system of public free schools. The locality would be free to determine the use of all state appropriations above the constitutional minimum. There would be little or no State control. The second method keeps the State system intact except in localities which refuse to support their schools. For that reason and because it requires no amendment to the Appropriation Act, the latter approach is recommended. The Commission is making certain recommendations for legislation that would give localities greater freedom of action in handling their budgetary and tax levying procedures to accomplish the desired result.

Serious consideration was given to the possibility of an outright repeal of Section 129 of the Constitution to meet the decision of our Supreme Court of Appeals in *Harrison v. Day*, and thus remove the mandate to maintain a system of public schools "throughout the State".

However, without the repeal of other sections of Article IX of the Constitution and of that portion of Section 173 requiring one dollar of the State capitation tax to be applied exclusively in aid of public schools, the State would still have to maintain a school system throughout the State to the extent of approximately nine million dollars. As pointed out, this constitutional appropriation is required by Section 135.

This approach would accomplish no more than can now be accomplished by simple budgetary and appropriation measures.

The Commission rejected a proposal that an election be held to submit to the electors of the State the question, "Shall there be a convention to revise, amend or repeal Article IX and to revise Section 173 by deleting therefrom the reference to the use of State capitation taxes for public free schools?" After full debate, a majority decided that this proposal should not be submitted, not only because it does not believe an amendment is necessary at this time, but also because it believes the people should be told what the convention is expected to accomplish. Under the proposal the convention would be restricted to considering Article IX and Section 173, but it would not be restricted as to what it could do to Article IX. It could make it better or worse; it could abolish all authority to operate schools or it could require the maintenance of all schools including high schools, depending on the composition of the convention.

The Commission also considered the advisability of amending the Constitution by inserting a new section to permit a locality to withdraw from the State public school system. For legal reasons, this approach was abandoned.

The most defensible position legally would be for the State to go *completely* out of the school business as a State function leaving it to each locality to operate public schools or not as it sees fit with funds raised from local tax sources and funds received from the State for general governmental purposes. In that way there would be complete "local autonomy" and the operation or non-operation of public schools would be a matter for the people of each political subdivision to decide. The abandonment of such a local system by local action would present no question of discrimination among the people of the political subdivision involved. The Constitution could be amended to provide for local auton-

omy, but this should not be done unless it is decided to abolish the state system of public free schools and set up 120-odd local systems with little or no state control.

Another approach to an amendment of the Constitution, and one which would undoubtedly prevent any integration anywhere in Virginia, would be to repeal all constitutional provisions dealing with public education and insert in lieu thereof an *outright absolute constitutional prohibition* against the expenditure of any public funds, either state or local, for the operation of public schools. For reasons previously stated, this course was rejected.

Before discussing the last approach which the Commission considered, it is necessary to state the two narrow limits to which Virginia is confined if there is to be any public education:

1. Virginia can elect to continue its "State system" of public schools, but if it does, the system must be operated in every locality. True, it can be a nine million dollar system with additional funds going to the localities on a matching or reimbursement basis or for educational purposes generally or for general governmental purposes. While that nine million dollar system must operate everywhere, under our present Constitution anything more must meet the approval of first the General Assembly and then the locality.

2. Virginia can elect to abolish its "State system" and have "Local Autonomy" in its place. It has been seen that this means 120-odd local systems with little or no State control.

The final suggestion considered by the Commission is that all constitutional provisions concerning schools be repealed and that there be inserted in their place the simple statement "The General Assembly may make laws concerning education and may make appropriations therefor".

There are only three choices open to Virginia: (1) no public education; (2) a "State system", and (3) "local autonomy". We already have a "State system"; consequently, any chance would necessarily be for the purpose of having no schools or of permitting "local autonomy". We believe that the electorate has complete confidence in the General Assembly to make the proper choice. However, where the choice is limited to one of two courses, the Commission believes that, if the people are to be asked to vote on this issue, they are entitled to know which course is intended and to have it written into our Constitution.

All things considered, the Commission recommends that we retain our "State system" for the present with the power in each locality, where the situation demands, to limit that system to that locality's share of the nine million dollars. This recommendation requires no constitutional amendment.

## LOCAL BUDGETS AND APPROPRIATIONS

It is recommended that a number of changes be made in the existing laws relating to local budgets, tax levies, appropriations, and school funds so as to give the tax levying body of each county, city, or town full control over local expenditures.

The provisions of the Code relating to budgets were first enacted into law in 1926. Prior to that year there were no general provisions requiring any type of budget by counties, cities, or towns. Under the existing law the adopted budget has come to be considered as an annual appropriation ordinance.

The budgetary procedures of local governments should be similar to that of the State. Local officers and department heads should submit an estimate of the money they need to operate their office or department. An annual budget should be prepared and published for informative and fiscal planning purposes only, and the budget should never be adopted or approved. No money collected from a general levy would be considered available, allocated, or expended for any purpose until there is first an appropriation for the purpose by the governing body. Appropriations could be made in the discretion of the governing body, annually, semi-annually, quarterly, or monthly.

It is now required, with the exception of certain specific localities, that the local tax levy must be fixed not later than the last day of May. It is recommended that this be changed to permit any locality to fix its annual levy as late as the last day of June. Three bills to carry out these recommended changes are included in the appendix to this report.

There is no State or Federal constitutional requirement that a county, city, or town raise or appropriate any money for public schools. The elected representatives of the people of any locality should be able to control and manage their local affairs in keeping with the wishes of the people. The Constitution of Virginia gives each locality the right to decide whether or not local funds will be raised or appropriated for schools. Every recommendation of the Commission is in furtherance of this right of the locality.

The Commission recommends that each reference in Title 22 to school fund or funds be changed to "funds made available to the school board for public schools". Funds made available to the school board for public schools could be derived from these sources: a special local school levy; appropriations for public schools by the governing body; and, State and Federal funds which are paid to the locality specifically designated for public school purposes.

It is recommended that the division superintendents of schools be required to submit the estimate of funds deemed to be needed by the school board in two ways. The first would be an estimate of money deemed to be needed during the next scholastic year for the support of public

schools of the county or city. The second would be an alternative estimate of the amount of money deemed to be needed for educational purposes.

If these recommendations are adopted the governing body will have a wide latitude and may appropriate funds on the basis of the estimate of money deemed to be needed for public schools, or on the basis of the estimate of money deemed to be needed for educational purposes, or on the basis of a combination of the two. A bill to carry out these recommended amendments to the provisions of the Code relating to local funds for education is attached to this report as an appendix.

## SURPLUS PROPERTY

Broad statutory provisions exist empowering local school boards to sell school property with all sales to be approved by the local court of record. These provisions, first enacted in 1887, are found in §§ 22-161 and 15-692 of the Code of Virginia. These two statutes should not be changed. The problem of disposal of school property will differ in each locality and with each parcel of property. Local school boards and courts can make realistic determinations as to when specific parcels of school property should be sold.

The Commission recommends the passage of an additional act which would permit the qualified voters to petition the court of record for their county, city, or town to order a referendum to be held to determine if the specific school property or properties, personal, real, or both, is any longer needed for public purposes. If a majority of the voters voting in such referendum find that a specific parcel of property is no longer needed, the property shall be sold by the school board under the applicable provisions of law. A bill to carry out this recommendation is included in the appendix to this report.

A loan made from the Literary Fund constitutes a specific lien on the school building for which such loan was made. There is no constitutional or statutory provision prohibiting the sale, subject to the lien, of school property on which there is an outstanding lien in favor of the Literary Fund.

No statutory standards or tables of minimum sale prices for property no longer needed for public purposes exist or should exist. The local school board must be relied upon to obtain the highest possible sale price for the property and a court would not approve a sale unless it appeared that it was made for the highest responsible bid or offer. School property may be sold on terms with deferred payments for the purchase price secured by a lien on the property if the court approving the sale finds that making the sale upon terms is for the best interest and benefit of the locality and is not for the purpose of aiding or benefiting the purchaser. The court approving a sale on terms must take into consideration the provisions of § 185 of the Constitution and find that the sale transaction then before the court does not constitute a violation of that section.

## ENROLLMENTS AND TRANSFERS

As part of the total program, the Commission recommends the bill, found in the appendix to this report, which would require the State Board of Education to adopt rules and regulations for use of local school boards in making the initial placement of pupils in the public schools. The bill also creates a State Placement Board of Appeals to review the placement of pupils, with appeals therefrom to the state courts.

In this connection, the Commission further recommends an additional appropriation to the State Department of Education for the purpose of completing a uniform testing program for use in the public schools as required by § 22-240.1 of the Code. An amendment to Item 131 of the Appropriation Act is found in the bill to amend same.

## TEACHER STATUS

The Virginia Supplemental Retirement Act was amended in 1956 to provide that any corporation organized after December 29, 1956, for the purpose of providing elementary or secondary education may, under certain conditions, elect to have teachers employed by it become eligible to participate in the state retirement system. The Commission was informed that this 1956 amendment is now functioning in a satisfactory manner and is apparently accomplishing the purpose for which it was enacted. It is therefore the conclusion of the Commission that no legislation in this field is necessary.

§ 22-207 of the Code, as amended, requires written contracts with teachers in a form to be prescribed by the Superintendent of Public Instruction. Paragraph 7 of all such contracts provides that a school board may cancel the contract after thirty days notice whenever "the services of such teacher are no longer needed due to a lack of funds, a decrease in enrollment or attendance of pupils in the school to which said teacher has been assigned." Upon consideration of the conditions prevailing today, the Commission concludes that the 30-day clause should remain in teacher contracts and that no additional legislation is necessary toward this end.

Item 132 of the Appropriation Act of 1958 appropriates a certain sum for teacher education and teaching scholarships in aid of the public school system. The present laws and the rules and regulations promulgated thereunder permit recipients of teacher loans to repay them by teaching for a stipulated period in the public schools. It is recommended by the Commission that teachers receiving loans out of funds appropriated under Item 132 of the Appropriation Act be permitted to repay them by teaching in a nonsectarian private school approved for that purpose by the State Board of Education. A bill carrying out this recommendation is included in the appendix to this report.

### MINIMUM NUMBER OF PUPILS NECESSARY TO MAINTAIN A PUBLIC SCHOOL

§ 22-6 of the Code directs the State Board of Education to prescribe by regulation the minimum number of pupils required in order to form or maintain a public school. The minimum standards are:

"Schools of one teacher, average daily attendance of twenty-five (25);

Schools of two teachers, average daily attendance of fifty (50);

Schools of three teachers, average daily attendance of seventy-five (75);

Schools of four or more teachers, average daily attendance of thirty (30) per teacher."

Certain exceptions are made for the operation of one-room schools for fifteen and sometimes ten children of school age.

In view of the above, it is the conclusion of the Commission that no further legislation is needed for the purpose of regulating the number of pupils necessary to form and maintain a public school.

## COMPULSORY ATTENDANCE

The Commission recommends for consideration of Your Excellency the bill included in the appendix which provides for "local option" in dealing with the compulsory attendance of pupils upon the public schools.

The first twenty-three sections of the proposed bill are substantially the same as former §§ 22-251 through 22-274 of the Code, all of which were repealed by the current session of the General Assembly. However, the provisions of §§ 22-253.1 and 22-253.2 are omitted.

The bill provides that any child may, with consent of his parent or guardian, be excused from school either on recommendation of the school authorities and the juvenile judge or on recommendation of the Superintendent of Public Instruction.

It also provides that its provisions shall not be in force in any locality until it has been recommended by the local school board and then duly adopted by the governing body of the locality. The operation of the bill may be suspended at any time in the same manner as local ordinances are repealed.

If any section or part thereof, is declared unconstitutional, the remainder of the bill becomes inoperative.

## EXTRACURRICULAR AND SOCIAL ACTIVITIES

In studying this matter, the Commission was appalled over the extent to which extracurricular and social activities have grown and developed throughout our public school system. Undoubtedly, in some instances, this multitude of activity has reached the point where it is beginning to supplant and impair fundamental learning.

The effectiveness of the present curriculum in the public schools is directly related to extracurricular activities in the public schools and it is felt that the Commission on Public Education created in 1958 by S.J.R. No. 14 will thoroughly study the problems above mentioned.

Until that Commission reports it is believed that the problems may be handled by the State Board of Education.

## TRANSPORTATION

The Commission has also drafted for your consideration a bill to provide for the transportation of children to nonsectarian private schools or in lieu thereof to provide transportation grants in amounts approved by the State Board of Education. It may be found in the appendix of this report.

## SCHOLARSHIPS AND AID TO EDUCATION GENERALLY

The Commission recommends that the program of State and local aid to children securing their education in nonsectarian private schools be broadened to provide scholarships to all children entitled to attend the public free schools who prefer to secure their education in private schools rather than public schools.

In the appendix to this report is a proposed bill which the Commission recommends be adopted to accomplish this purpose. The bill, if enacted into law, would provide for each child a minimum scholarship of \$250.00, the actual cost of tuition at the school attended, or an amount equal to the total cost, excluding debt service and capital outlay, per pupil in average daily attendance, of operating the public schools in the locality making the scholarship grant, whichever of such three sums is the lowest. The State and localities would participate jointly in providing such scholarship, each locality's share of each scholarship to be the same percentage as is its contribution to the cost of operating the public schools. The funds for the scholarship would be disbursed by the localities under rules and regulations promulgated by the State Board of Education.

The Commission also recommends that the tuition that one locality may charge for attendance at its public school by a child residing in another locality in Virginia be limited to the total per capita cost of education, excluding debt service and capital outlay, of the public schools of the locality to which such child is admitted. A proposed bill to amend Section 22-219 of the Code to accomplish this purpose is contained in the appendix of this report.

In order to prevent road blocks being placed in the path of those attempting to organize and establish private schools in the form of numerous inspections of buildings sought to be used for such schools and requiring unnecessary remedial steps before the issuance of a use permit for the desired purpose, your Commission believes that legislation is necessary. Included in the appendix to this report is a proposed bill which provides that where a private school has secured a permit issued by the State Board of Education with the approval of the State Fire Marshal, to use an existing building for the operation of a school it will not be subject to local zoning ordinances, plumbing or building codes, etc. Such permits would be for a period of one year, subject to extension for one additional year, after which time the operation would be subject to local regulations. The Commission recommends the adoption of such a bill.

## PUPIL PREFERENCE PLAN

This Commission has given consideration to the possibilities of a Pupil Preference Plan under which, in addition to the operation of public schools open to the admission of children of both races, public schools would be operated for the children of each race whose parents object to sending their children to mixed schools.

The pupil preference plan, or the three school plan as it is sometimes called, if it could be successfully defended in the courts, has some attractive features. It has the advantage of being based upon the principal of freedom of choice and would, if approved, avoid enforced integration. Under it, the State would maintain the right to operate segregated schools for those who desire them. It would present practical difficulties in administration in some localities.

The plan has uncertainties from a legal standpoint. In a weakly defended case which arose in an unfavorable situation, such a plan was declared invalid by a Federal District Court in Tennessee. The case was



not appealed. There is language in the decision of the Supreme Court of the United States in *Aaron v. Cooper* which casts doubt upon its legality.

However, there are those who feel that such a plan should be adopted as a new line of defense and vigorously defended all the way to the Supreme Court in the hope that the principle of freedom of choice would be upheld or in the hope that further support for our position would be obtained throughout the nation should the court strike down such principle and disclose that it is pursuing a course that would compel the intermingling of the races.

To be upheld, such a plan probably should be tested in a situation where there is at least some measure of integration and not in a situation which results in fact in a two school system which is fully segregated.

Due to the practical difficulties in establishing a three school system in many localities the Commission does not recommend the adoption of any pupil preference plan at this time.

### REPEAL OF LAWS

It is recommended that the following Sections of the Code pertaining to local budgets and appropriations, be repealed: 15-582, 22-121, 22-122, 22-123, 22-125, 22-127.1, 22-129, 22-131, 22-139 and 22-139.1. This recommendation is carried out in bills previously discussed in this report and found in the appendix.

Since a new enrollment bill is recommended, Sections 22-232.1 through 22-232.17, which created a State Pupil Placement Board, should be repealed. This is done in the enrollment bill found in the appendix.

Sections 22-115.1 through 22-115.20 and Chapter 56, Acts of Assembly, Extra Session, 1956, are repealed in the recommended bill for pupil scholarships since they are in conflict therewith. Sections 22-194 and 22-186 are repealed in the same bill. They deal with the charge of tuition in public high schools and are unnecessary because of Section 22-219 of the Code.

The decision of *Harrison v. Day* rendered the following Sections of the Code inoperative:

1. Sections 22-188.3 through 22-188.15, commonly known as the school closing statutes;
2. Sections 22-188.30 through 22-188.40, pertaining to state-established school systems in school divisions where an emergency exists;
3. Sections 22-188.41 through 22-188.49, generally known as the Little Rock bills;

A bill is found in the appendix to this report which repeals the aforesaid sections.

The Commission also recommends for consideration a bill, found in appendix to this report, which permits a locality to close its public schools whenever federal military forces are deployed in connection with the operation thereof.

## CONCLUSION

Many uncertainties surround the operation of public schools due to the attempt to force the mixing of the races therein. In view of the difficulties in appraising the extent of such efforts and the extent to which the federal courts will go in supporting what appears to be a deliberate drive to change the customs and social structure of our people, the Commission believes that action at this time should be limited to that recommended herein.

Due to the limitations of time your Commission is not prepared to report to this session of the General Assembly whether any adjustments in our tax structure are required. It is recommended that this study be continued for report by the next regular session.

The Commission should also continue its study to determine whether the Constitution should be amended to provide for local autonomy or otherwise.

The Commission wishes to recognize the contribution that public school teachers generally are making in these uncertain days. Included in the appendix is a proposed House Joint Resolution commending these public school teachers. The Commission recommends the adoption of such resolution by the General Assembly.

Respectfully submitted,

Mosby G. Perrow, Jr.  
Harry B. Davis  
Howard H. Adams  
Fitzgerald Bemiss  
Edw. L. Breeden, Jr.  
Robert Y. Button  
Curry Carter  
Geo. M. Cochran  
John A. K. Donovan  
Charles R. Fenwick  
Earl A. Fitzpatrick  
Kossen Gregory  
Robert R. Gwathmey, III  
Lawrence H. Hoover  
S. F. Landreth  
W. T. Leary

M. M. Long  
Harrison Mann  
W. M. Minter  
Willard J. Moody  
Garnett S. Moore  
W. Tayloe Murphy  
Fred G. Pollard  
James W. Roberts  
V. C. Smith  
Harry C. Stuart  
H. Ray Webber  
Hunt M. Whitehead  
Robert Whitehead  
Edward E. Willey  
Joseph J. Williams, Jr.