PUBLIC EDUCATION

REPORT OF THE COMMISSION

To the

GOVERNOR OF VIRGINIA

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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 coeducation 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

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.

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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

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

CHAPTER 2

An Act 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.

[H 1]

Approved December 3, 1955

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 Section 141 of the Constitution and no others:

A. The convention may consider and adopt amendments to Section 141 of the Constitution of Virginia 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 public and nonsectarian 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 determined by the State Board of Elections within the limits prescribed by § 24-213 of the Code of Virginia. 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 Section 141 of 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 public and nonsectarian 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.

Footnote: This copy of Chapter 2 of the 1955 Extra Session is substituted for the proposed bill set forth in Senate Document No. 1, pursuant to H.J.R. No. 9 of the same session.