

file Sch. T. El B

June 18, 1937

Whereas the School Trustee Electoral Board failed to meet within the time prescribed by law prior to July 1, 1936 to appoint school trustees for the four year term ending July 1, 1940, and

Whereas the Attorney-General of Virginia has rendered an opinion that the appointment of school trustees for the regular four-year term could be made only within the time prescribed by law and,

Whereas, the Circuit Court of Loudoun County has dismissed a mandamus proceeding instituted by J. H. Purcell praying for a preceptory order to compel a meeting of the school trustee electoral board to appoint school trustees for the four year term ending July 1, 1940 and the Supreme Court of Appeals of Virginia has declined to grant a writ of error in this case and

Whereas both the circuit court of Loudoun County and the Supreme Court of Appeals have refused application of J. H. Purcell for an injunction to prevent the county school board as constituted on June 30, 1936 from action in March or April 1937 in appointing a division superintendent of schools, and

Whereas doubt now exists as to the right of this board to appoint school trustees,

Now, therefore, Be It Resolved: That the school trustee electoral board of Loudoun County in meeting assembled at Leesburg on July 18, 1937 does hereby appoint school trustees ^{for Loudoun County} as follows for the four-year term ending July 1, 1940 -

Chas. J. Ford,	Jefferson District
Herbert E. Howard	Town of Leesburg District
Wm. T. Smith	Mount Gilead District
C. T. Potterfield	Lovettsville District
M. B. Costello	Leesburg District
Augustus Zeraga	Mercer District

it being recited that these are the same persons who held office as school trustees and members of the County School Board of Loudoun County on June 30, 1936 and who have continued to serve as such since June 30, 1936 except that the name of E. L. Norman of Broad Run District is omitted on account of his death on June 16, 1937 and this board rules that these persons hold office either by reason of this appointment as above or by reason of their legal right to continue in office until July 1, 1940 on account of failure of the School Trustee Electoral Board to meet and appoint school trustees within the time prescribed by law.

J. H. Purcell

vs

The School Trustee Electoral Board
and

The County School Board of Loudoun County

On July 30, 1934, Judge J. R. H. Alexander entered an order in Common Law Book No. 15 appointing J. B. Hackley, Alfred diZerega, and William Groom as members of the School Trustee Electoral Board for the term beginning August 1, 1934.

On February 11, 1936 William Groom died thus creating a vacancy on the board.

On May 15, 1936 Judge J. R. H. Alexander entered an order in Common Law Book No. 16 appointing John M. Douglass of Aldie as a member of the said board. (The Law, Code section 653, directed that the appointment be made within thirty days after the vacancy occurs. This, however, is an omission that can be corrected only by appointment at a later date.)

During the month of March the superintendent of schools, at the home of J. B. Hackley, in the presence of J. T. Hirst called the former's attention to the fact that school board members should be appointed before July first of the current year.

The chairman of the school trustee electoral board states that he forgot about the appointments. The other members state that they looked for the chairman to call a meeting.

The County School Board of Loudoun County composed of Wm. T. Smith, C. J. Ford, Augustus Zerega, C. T. Potterfield, M. B. Costello, E. L. Norman and Herbert Howard met at the usual place and on the date fixed by section 655 Code of Virginia, namely, July 7, 1936 for their annual meeting. This was after the expiration of the terms of office of all

Page 2 - J. H. Purcell, etc.

members. The superintendent of schools being expected to be familiar with school laws and to advise board members except when more expert advice is requested by the board, stated that the statute authorized the present board to continue in office until their successors are appointed and qualify and that they were the only persons authorized to carry on the important school business of the county and no one could successfully contest their right to serve at that time. The board then elected officers as required by law and then and at subsequent meetings held each month has proceeded to transact the important school business of Loudoun County.

In February, 1937 Judge J. R. H. Alexander dismissed the mandamus proceeding filed by J. H. Purcell. In February, 1937 J. H. Purcell served notice on all members of the school board of his intention to apply to Judge J. R. H. Alexander on February 27, 1937 for an injunction to prevent the school board from holding a meeting to appoint a division superintendent of schools on March 2. On February 27 this suit was dismissed.

On February 27, 1937 J. H. Purcell served notice on the clerk of the County School Board of his intention to apply to Justice Browning on March 1 for an injunction to prevent the school board from appointing a division superintendent on March 2.

On March 2, 1937 the County School Board met. The chairman reported that by agreement of counsel the board could not appoint a division Superintendent. The board then adopted a resolution authorizing E. E. Garrett and Chas. J. Harrison to represent the board before the Supreme Court of Appeals in any litigation effecting or attacking their right to act in any capacity.

~~Subsequent to March 2 an appeal from the decision of the Circuit~~

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~~Court in his mandamus proceedings was taken by J. H. Purcell to the Supreme Court of Appeals.~~

On February 4, 1937 J. B. Hackley died, thus creating a vacancy on the School Trustee Electoral Board. On February 17 Judge J. R. H. Alexander entered an order appointing R. J. McCray as a member of the board for the unexpired term.

On March 5, 1937 the school trustee electoral board met and elected John M. Douglass, chairman and O. L. Emerick, Clerk.

On March 23, 1937 J. H. Purcell appealed to the Supreme Court of Appeals from the decision of the circuit court in his mandamus proceedings attempting to require the school trustee electoral board to meet and appoint members of the county school board.

J. H. Purcell

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C. J. Ford, Augustus Zerega, C. T. Potterfield, M. B. Costello, E. L.
Norman and Herbert Howard met at the usual place and on the date fixed
by section 655 Code of Virginia, namely, July 7, 1936 for their annual
meeting. This was after the expiration of the terms of office of all

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On March 2, 1937 the County School Board met. The chairman reported that by agreement of counsel the board could not appoint a division Superintendent. The board then adopted a resolution authorizing E. E. Garrett and Chas. J. Harrison to represent the board before the Supreme Court of Appeals in any litigation effecting or attacking their right to act in any capacity.

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file

Petition

To: Hon. J. R. H. Alexander, Judge of the Circuit Court of Loudoun County, State of Virginia:

Your petitioner, J. H. Purcell, a citizen of the United States and a resident of the County of Loudoun, State of Virginia, respectfully represents:

(1) that on the 30th day of July 1934, your Honor's court did duly appoint Alfred L. B. di Zerega, William Groom and Dr. J. B. Hackley as members of the Loudoun County School Trustee Electoral Board, and that on the 30th day of July 1934, the above mentioned persons did qualify as members of said Board, with their term of office ~~beginning~~ commencing August 1, 1934 and continuing for four years from that date.

(2) that since the first day of August 1934, William Groom died creating a vacancy in the Loudoun County School Trustee Electoral Board.

(3) that on the 15th day of May 1936, John M. Douglass was ~~xxxxx~~ appointed by your Honor to fill the unexpired term of William Groom.

(4) that Alfred L. B. di Zerega, Dr. J. B. Hackley and John M. Douglass were empowered by law to appoint members of and to the the school board for the County of Loudoun, State of Virginia on or before the 1st day of July 1936.

(5) Your petitioner further represents that Alfred L. B. di Zerega, Dr. J. B. Hackley and John M. Douglass have failed and neglected to appoint a school board for the County of Loudoun for the term commencing July 1, 1936 as provided for by section 653 of the Code of Virginia.

Wherefore, and forasmuch as your petitioner is otherwise without ~~sufficient~~ sufficient and adequate remedy, he prays that a peremptory writ of mandamus may be issued by this Honorable Court directed to Alfred L. B. di Zerega, ~~and~~ John M. Douglass, and Dr. J. B. Hackley, commanding and compelling them to appoint members to the school board of Loudoun County in such manner as is prescribed by law; that your petitioner be awarded reasonable costs expended and that all such other, further and general relief be granted your petitioner as the nature of this case may require.

J. H. Purcell
Petitioner

Sworn to before Derry Tribby a Notary on Sept. 28, 1936.

To: Dr. J. B. Hackley:

You are hereby notified that on the 14th day of December 1936 at 10 A. M. of that day. I will make application to the Circuit Court of Loudoun County, Virginia for a writ of Mandamus on a petition verified by oath, a copy of which said petition is served herewith.

J. H. Purcell
by Francis L. Patton, Attorney

Notice served on J. B. Hackley on December 2, 1936 by S. P. Alexander
Deputy Sheriff

file

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(2) that since the first day of August 1934, William Groom died creating a vacancy in the Loudoun County School Trustee Electoral Board.

(3) that on the 15th day of May 1936, John M. Douglass was ~~xxxxx~~ appointed by your Honor to fill the unexpired term of William Groom.

(4) that Alfred L. B. di Zerega, Dr. J. B. Hackley and John M. Douglass were empowered by law to appoint members of and to the the school board for the County of Loudoun, State of Virginia on or before the 1st day of July 1936.

(5) Your petitioner farther represents that Alfred L. B. di Zerega, Dr. J. B. Hackley and John M. Douglass have failed and neglected to appoint a school board for the County of Loudoun for the term commencing July 1, 1936 as provided for by section 653 of the Code of Virginia.

Wherefore, and forasmuch as your petitioner is otherwise without ~~sufficient~~ sufficient and adequate remedy, he prays that a peremptory writ of mandamus may be issued by this Honorable Court directed to Alfred L. B. di Zerega, ~~and~~ John M. Douglass, and Dr. J. B. Hackley, commanding and compelling them to appoint members to the school board of Loudoun County in such manner as is prescribed by law; that your petitioner be awarded reasonable costs expended and that all such other, further and general relief be granted your petitioner as the nature of this case may require.

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by Francis L. Patton, Attorney

Notice served on J. B. Hackley on December 2, 1936 by S. P. Alexander

Deputy Sheriff

~~vs~~ J. H. Purcell

vs

The School Trustee Electoral Board
in the Circuit Court of Loudoun
County, Virginia.

On July 30, 1934, Judge J. R. H. Alexander entered an order in Common Law Book No. 15 appointing J. B. Hackley, Alfred diZerega, and William Groom as members of the School Trustee Electoral Board for the term beginning August 1, 1934.

On February 11, 1936 William Groom died thus creating a vacancy on the board.

On May 15, 1936 Judge J. R. H. Alexander entered an order in Common Law Book No. 16 appointing John M. Douglass of Aldie as a member of the said board. (The law, Code section 653, directed that the appointment be made within thirty days after the vacancy occurs. This, however, is an omission that can be corrected only by appointment at a later date.)

During the month of March the superintendent of schools, at the home of J. B. Hackley, in ~~in~~ the presence of J. T. Hirst called the former's attention to the fact that school board members should be appointed before July first of the current year. The question of the third member was discussed and the view expressed that a meeting should await the appointment of a third member.

Shortly after the expiration of the thirty day period following the death of William Groom the superintendent of schools examined the Common Law order book and found no order appointing a successor to William Groom. At that time the superintendent reached the conclusion

that appointing members of the school trustee electoral board and consequently of the county school board was strictly work of the judge and of the school trustee electoral board. Nothing subsequently happened to cause the superintendent of schools to know of the appointment of John M. Douglass until after the first of July.

The chairman of the school trustee electoral board states that he forgot about the appointments. The other members state that they looked for the chairman to call a meeting.

The County School Board of Loudoun County composed of Wm. T. Smith, C. J. Ford, Augustus Zerega, C. T. Potterfield, M. B. Costello, E. L. Norman and Herbert Howard met at the usual place and on the date fixed by section 655 Code of Virginia, namely, July 7, 1936 ~~this was~~ for their annual meeting. ^{This was} ~~this~~ after the expiration of the terms of office of all members. The superintendent of schools being expected to be familiar with school laws and to advise board members except when more expert advice is requested by the board, stated that the statute authorized the present board to continue in office until their successors are appointed and qualify and that they were the only persons authorized to carry on the important school business of the county and no one could successfully contest their right to serve at that time. The board then elected officers as required by law and then and at subsequent meetings held each month has proceeded to transact the important school business of Loudoun County.

On December 1936 J. H. Purcell filed a petition praying the Judge of the Circuit Court of Loudoun County, Virginia to enter an order requiring the members of the school trustee electoral board to meet and appoint school trustees.

The statutes and their implications seem to deny the right of the school trustee electoral board to make these appointments prior to 1940.

1. Code section 653 authorizes the school trustee electoral board to appoint school trustees within 60 days prior to July 1, 1936 and within 60 days prior to July 1, of each fourth year thereafter, unless in case of a vacancy.
2. No vacancy exists because the authority in office of the present members continues until their successors are appointed and have qualified.

Conclusion - The school trustee electoral board cannot make appointments of school board members until 1940.

3. Code section 653 provides that appointees shall serve for a term of four years from July 1 following ~~following~~ their appointment. If appointments are made now, there being no vacancy, would not the term end in 1941 instead of 1940 as provided by statute?

Conclusions Appointments after June 1936 and before 1940 would disrupt the term of office, throw the appointing time in years not authorized by statute and hence appointments at this time are in reality prohibited by statute.

4. The statute required publication of notice of appointment. In order to comply with the law as it reads this notice would have

had to appear in one of the weekly papers published in Loudoun County on or before June 18, 1936. The petitioner had opportunity to know on June 18, 1936 that no notice had been published. Ample opportunity was afforded the petitioner to seek redress by petition to court between June 18, 1936 and the first Tuesday in July 1936 (July 7th) and such petition could and would have served notice upon the present members of the school board that some action was being taken looking toward the selection of school trustees and the action could actually have been started prior to July 1, 1936.

Conclusions The incumbent school trustees have had to assume a four year term of office because no provision was made at the proper time for their successors.

5. While the failure to hold a hearing did deny persons interested the opportunity to be heard it did not deny them any actual share in the selection of school trustees because the school trustee electoral board can appoint a school trustee with all electors of the district opposing. (See minutes of Loudoun County School Trustee Electoral Board in 1932).
6. The principle of procedure often suggested by the courts that whenever an act has been omitted it should be done as early as possible after the time prescribed will apply only when the omission by the designated person or persons leaves the thing undone. In this case the law does what the appointing power failed to do, that is, continues the present board members in office.

The Case of Chadduck V Burke

103 Virginia 694^{is} cited as distinctly bearing upon this case.

Chadduck held the office of Superintendent of the Poor in Culpeper County up to January 1, 1904.

By Act of Assembly 1902-3-4 adopted December 18, 1903 the County Judge was authorized to make appointments on or before January 1, 1904 on recommendation of the County Board of Supervisors. The Board of Supervisors recommended Burke on December 31, 1903. The judge declined to appoint and on January 11, 1904 appointed Chadduck. On April 19, 1904 the Circuit Court Judge appointed Burke on the recommendation of the County Board of Supervisors. The Supreme Court ruled that both appointments were invalid and that Chadduck should continue to hold the office under his original appointment prior to January 1, 1904.

In this case the court has ruled that no vacancy existed because the incumbent on January 1, 1904, Chadduck, continued to hold office until his successor should be legally appointed and qualified.

The Supreme Court has noted that the authority of the County judge to appoint except to fill a vacancy was limited by Statute to the period from December 18, 1903 to January 1, 1904~~x~~ and the power of the Circuit Court judge to appoint was limited to November 1907 except to fill a vacancy. The Court has further noted that the Circuit Court succeeded to all of the powers of the county court under the provision of section 3058 of Virginia Code, 1904.

The conditions involved in the Chadduck V Burke case are similar to those in our Purcell v. School~~Trustee~~ Board case, to wit, no appointments of school board members were made within the time pre-

scribed by Statute, no vacancies exist because the members hold over, no authority to appoint exists except within 60 days prior to July 1, 1936, 1940, etc.

Hence the present school board members in Loudoun County are entitled to hold office until July 1, 1940.

On February 1937 Judge J. R. H. Alexander dismissed the Mandamus proceedings filed by J. H. Purcell.

On February 1937 J. H. Purcell served notice on all members of the school board of his intention to apply to Judge J. R. H. Alexander on April 27th for an injunction to prevent the school board from holding a meeting to appoint a division superintendent of schools on Mar. 2nd. On Feb. 27th this suit was dismissed.

On Feb. 27th 1937 J. H. Purcell served notice on the clerk of the county school board of his intention to apply to Justice Browning on Mar. 1 for an injunction to prevent the school board from appointing a division superintendent of schools on Mar. 2. Mr. Chas. F. Harrison appeared for the board on Mar. 7th and agreed to have the appointment of a division superintendent postponed for 2 weeks with the understanding that a hearing on the petition for an injunction would be heard before the full membership of the Supreme Court of Appeals.

County School Board

April 13, 1937.

Be It Resolved: That the resolution recorded on page 27 of minutes book number one and adopted at a meeting of the county school board held on September 2, 1922, said resolution relating to meetings of the school board be and hereby is amended and readopted to read as follows:

1. All meetings of the County School Board shall be in the school board's office unless otherwise ordered by the board or unless the call for a special meeting shall designate some other place.

2. Regular meetings shall be held on the second Tuesday of each month at 10:00 A. M. except that in July the regular meeting shall be on the first Tuesday.

3. Special meetings shall be held when called by the chairman on his own motion and he shall be required to call a special meeting whenever requested in writing by two or more members to do so. Notices for special meetings shall be in writing and shall reach each member at least one full day prior to the time of the meeting, provided, however, that in case of an emergency the chairman may call a meeting by giving notice to each member of not less than two hours prior to the time set for the meeting, which notice may be in writing or oral by himself or by the clerk of the board under his direction. No question may be raised as to the legality of a notice of a special meeting unless done not later than the next succeeding meeting held after the meeting in question and a majority vote of the full membership

of the board shall validate any special meeting concerning which any question of legal notice may be raised.

Appointment of teachers -

Bills.

Whereas, J. H. Purcell did on the twenty-third day of February, 1937 serve notice upon the members of this board that upon the twenty-seventh day of February, 1937 he would apply to the circuit court of Loudoun County for an injunction to restrain this board from appointing a division superintendent of schools on the second day of March, 1937,

Therefore, Be It Resolved by the County School Board of Loudoun County, Virginia at a special meeting held in Leesburg, Virginia on the twenty-sixth day of February, 1937, said meeting being held in pursuance to the call of the chairman in accordance with the provisions of section 655 of the code of Virginia and of the rule of this board adopted on September 1, 1922, that Commonwealth's Attorney, Charles F. Harrison in his official capacity and Mr. E. E. Garrett, as special attorney employed by this board, be and are hereby requested and designated to represent this board before the circuit court of Loudoun County in relation to the aforesaid action of J. H. Purcell and said attorneys are hereby requested and instructed to represent to the court that this board considers itself properly qualified and authorized by law to meet and appoint a division superintendent of schools on the second day of March, 1937.

February 27, 1937.

Mr. Charles F. Harrison,
Leesburg, Virginia.

My dear Mr. Harrison:

Please note the affidavit which you requested herein. The statutes ~~have~~ do not change the advance notice required for a meeting but section 655 of the Code does authorize the chairman to call a meeting on his own motion. It has been the custom of the board to call all meetings by written notice delivered through the mails but no order of the board exists in relation to this.

Please note that the Clerk of the board is the only official who has received the notice of this application for an injunction and in this connection she has no legal status in connection with calling a meeting of the school board except as directed by the Chairman. Under section 655 only the chairman could call a meeting of the board or by a very loose construction by two members thereof but neither the chairman nor any two members have had any notice of this injunction suit and I doubt if the clerk of the school board is under any particular obligation to notify either the chairman or any of the members prior to their meeting on March 2, 1937. This is just a further idea to indicate the fact that an improper and insufficient notice of this suit has been served on the interested parties.

Good luck to you.

Very sincerely yours,

Division Superintendent.

OLE:RME

County School Board Meeting - March 2, 1937

1. On motion the board adjourned to meet March 2, 1937 to elect a division superintendent and to transact such other business as may properly come before the board.
2. Whereas J. H. Purcell did on the twenty-seventh day of February, 1937 serve notice upon the clerk of this board that upon the first day of March 1937 he would apply to Justice Browning of the State Supreme Court of Appeals for an injunction to restrain this board from appointing a division superintendent of schools on the second day of March, 1937 and,

Whereas on the first day of March 1937 a temporary injunction was issued restraining the County School Board from appointing a division superintendent of schools on the second day of March, 1937,

Therefore, Be It Resolved by the County School Board of Loudoun County, Virginia at a meeting held in Leesburg, Virginia on the second day of March, 1937, said meeting being held in pursuance to orders of this board previously entered in its minutes on February 9 and February 26, 1937, that Chas. F. Harrison and E. E. Garrett be and are hereby employed by this board as attorneys and that the same be and are hereby requested and designated to represent this board before the Supreme Court of Appeals of Virginia in relation to the aforesaid action of J. H. Purcell or in relation to any other action pertaining to the right of this board to discharge its duties as prescribed by law and that the aforesaid attorneys be and are hereby requested and instructed to represent to the court that this board considers itself properly qualified and authorized by law to meet and appoint a division superintendent of schools within the time limit prescribed by law.

To Hon. J. R. H. Alexander, Judge of the Circuit Court
of Loudoun County, Virginia.

One J. H. Purcell, a citizen of Loudoun County, Virginia,
having filed in your Honor's Court a petition praying for a
writ of mandamus requiring the School Trustee Electoral Board
to meet and appoint school trustees, your respondent, J. B.
Hackley, a member of said board represents:

1. The law does not make provision for calling meetings of the
School Trustee Electoral Board, yet your respondent admits
that he over-looked the matter at the proper time prior to
July 1, 1936.
2. The statute (section 653 Of the Code of Virginia) authorizes
the School Trustee Electoral Board to meet and appoint school
trustees, unless in filling a vacancy, only within 60 days
prior to July 1, 1936 and within 60 days prior to July 1 of
each fourth year thereafter.
3. Opinions of the Attorney-General of Virginia in similar cases
in 1928 in the City of Hopewell and in 1936 in the County of
Bath have supported the view that this board was without
authority to act in the appointment of school trustees after
July 1, 1936, unless to fill a vacancy, until in 1940.
4. Your respondent has refrained from calling a meeting since
July 1, 1936 for the appointment of school trustees because
such action might involve litigation if any member should
fail of reappointment and because code section 653 continues
the members appointed in 1932 in office until their successors
are appointed and qualify.

5. Your respondent has received no compensation as a member of said board within four years prior to this date and this board has control of no public funds for the employment of legal counsel and for this reason he is not represented by counsel.

6. Your respondent is willing to participate in a meeting to select school trustees should your honor rule that the School Trustee Electoral Board has the power to do so.

Respectfully submitted,

Chairman and Member of School Trustee
Electoral Board of Loudoun County, Va.

December 12, 1936.

State of Virginia,
County of Loudoun, To Wit:

I, _____, a Notary Public in and f
for the County and State aforesaid do certify that J. B. Hackley,
whose name is signed to the above writing, dated December 12, 1936,
has acknowledged the same before me in the County of Loudoun.
Given under my hand this twelfth day of December, 1936.

NOTARY PUBLIC