

3069

195-31

Record No. 4087

In the
Supreme Court of Appeals of Virginia
at Richmond

MILES SPENCE BRAY

v.

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, AND ANOTHER**

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

195 VA 31

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record 4087

VIRGINIA :

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Monday the 1st day of December, 1952.

MILES SPENCE BRAY, Plaintiff in Error,

against

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, AND ANOTHER, Defendants in Error.

From the Circuit Court of Arlington County.

Upon the petition of Miles Spence Bray a writ of error is awarded him to a judgment rendered by the Circuit Court of Arlington County on the 29th day of July, 1952, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and The County Board of Arlington County, Virginia, a body corporate, and another were defendants, upon the petitioner, or some one for him entering into bond with sufficient surety before the clerk of the said circuit court in the penalty of three hundred dollars, with conditions as the law directs:

RECORD

* * * * *

Filed in the Clerk's Office the 3 day of April, 1952.

Teste:

H. BRUCE GREEN, Clerk.
VIRGINIA C. LONG, D. C.

NOTICE OF MOTION FOR A DECLARATORY
JUDGMENT.

You are hereby notified that twenty-one days after service of a copy of this motion for a declaratory judgment against you, I will move the Circuit Court of Arlington County, Virginia, for a judgment under Chapter 25, Section 8-578 to 8-585, inclusive, of the Code of Virginia, 1950, and amendments thereto, for that, to-wit:

On February 2, 1949, the County Board of Arlington adopted an ordinance known as "Arlington Business Privilege License Ordinance" and in said ordinance, under Chapter 3, Section 63, and under the heading of "Professional Occupations", it provided:

"Every person conducting or engaging in one or more of the following professional occupations shall pay for the privilege an annual license tax of \$10.00 if his gross receipts did not exceed five thousand dollars; if his gross receipts exceeded five thousand dollars, but did not exceed twelve thousand dollars, the licensee shall pay an annual tax of \$35.00; if his gross receipts exceeded twelve thousand dollars but did not exceed twenty-five thousand dollars, the licensee shall pay an annual license tax of \$75.00; if his gross receipts exceeded twenty-five thousand dollars, the licensee shall pay an annual license tax of \$100.00."

Your plaintiff, an attorney at law, is one of those who are classified under said section as being compelled to pay a license fee as aforesaid, to practice his profession as an attorney, he being licensed by the Commonwealth of Virginia to do so, and having paid to the State of Virginia his State license fee for said privilege.

Plaintiff alleges that in accordance with said County license ordinance, he was assessed for the taxable year of 1952 by the Commissioner of the Revenue on a gross income for page 2 } the year of 1951 of \$3,941.86, a tax of \$10.00, which your plaintiff avers that he refused to pay on April 1, 1952, when demand was made on him to do so by the Commissioner of the Revenue. Your plaintiff avers that his grounds for failure and refusal to pay said license tax are as follows:

1. That the publication of said ordinance for adoption by the defendant County Board does not show upon what statute or act of the Legislature it based its authority for adopting such an ordinance.

2. That the ordinance in itself and on the face of it shows conclusively that it is a local and special tax, prohibited by Section 63 of the Constitution of Virginia, Subsection 5, which provides:

“The General Assembly shall not enact any local, special or private law in the following cases:

* * * * *

“5. For the assessment and collection of taxes * * *”

Your plaintiff avers that a complete copy of this ordinance is attached to this motion for judgment, and asks that the same be made a part of said motion.

Your plaintiff shows that Section 23 of the aforesaid ordinance provides for penalty for violations as follows:

“It shall be unlawful and constitute a misdemeanor for any person to conduct a business or to engage in a profession, trade or occupation before procuring a license as required under the provisions of this ordinance. It shall also be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this ordinance. Any person who is convicted for failing to procure a license as required, or convicted of a violation of any of the provisions of this ordinance, shall be punished by a fine not to exceed \$300.00, or by imprisonment in the County jail for a period of thirty days, or both. Each day any person shall continue to violate the provisions of this ordinance after the due date of any license tax or taxes prescribed herein, shall constitute a separate offense.”

Your plaintiff also shows that Section 8, of said ordinance, provides:

“All license taxes imposed by this ordinance, except as herein otherwise provided, shall become due and payable on or before the 31st day of January of each year, provided that the license taxes for the year 1949, except as otherwise herein provided, shall become effective March 1, for the calendar year 1949, and shall be due and payable on or before March 31, 1949.”

Your plaintiff alleges that under the terms of said ordinance he is in arrears, and subject to the penalties above set forth for violation of the aforesaid Section 23; and page 3 } your plaintiff avers that under Section 20 of said ordinance the Commissioner of the Revenue is empowered to enforce said ordinance.

Plaintiff alleges that there is an actual controversy existing between himself on the one hand, and the County Board and the Commissioner of the Revenue on the other hand, and therefore an adjudication by this Honorable Court is desired as to the rights of the respective parties.

Your plaintiff further alleges that his refusal to pay the aforesaid tax, which he alleges is invalid and unconstitutional, places him in jeopardy of the penalties prescribed by the aforesaid ordinance, and violates his constitutional rights as a citizen and an attorney at law licensed by the Commonwealth of Virginia to practice his profession.

And your plaintiff, believing that the said ordinance is illegal, and that the statute upon which said ordinance was adopted, if any, is in violation of the Constitution of Virginia, and asks that a declaratory judgment be entered by the Judge of the Circuit Court of this County, and that such further relief be granted as the case may require.

MILES SPENCE BRAY
Plaintiff.

GREEN and TRUEAX
By JOHN LOCKE GREEN
MILES SPENCE BRAY
Counsel for Plaintiff.

* * * * *

Rec'd. Sheriff's Office. Arl. Co. Va. Apr. 4 8
page 30 } 52 AM '52.

PROOF OF SERVICE.

Virginia:

In the Circuit Court of the County of Arlington.

LAW NO. 3957.

Miles Spence Bray, Plaintiff,

v.

The County Board of Arlington County, Virginia, George D. Fischer, Commissioner of the Revenue of Arlington County, Virginia, Defendants.

Returns shall be made hereon, showing service of Notice issued April 3rd, 1952, with copy of Motion for Judgment filed April 3rd, 1952, attached:

Executed on the 5 day of April, 1952, in the County of Arlington, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Robert W. Cox, Chairman of the County Board of Arlington County, Virginia in person.

(8:55 A. M.)

CARL TAYLOR,
Sheriff, County of Arlington, Va.
By C. C. OMOHUNDRO, Deputy Sheriff.

Executed this 4 day of April, 1952, by serving a true copy of the within process on George D. Fischer, Commissioner of the Revenue of Arlington County, Va., in person, in Arlington County, Virginia.

Given under my hand this 4 day of April, 1952.

Time 1:30 P. M.

CARL TAYLOR,
Sheriff, Arl. Co., Va.
By C. C. OMOHUNDRO, Deputy Sheriff.

Supreme Court of Appeals of Virginia

Credited to Sheriff's Account \$1.50.

Date 4/3/52.

Returned and filed the 5 day of April, 1952.

H. BRUCE GREEN, Clerk.
V. LONG, Deputy Clerk.

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Filed. Apr. 24, 1952.

H. BRUCE GREEN, Clerk.
Circuit Court, Arlington County, Va.
By F. WOODYARD, Deputy Clerk.

ANSWER.

COMES now the Defendants, The County Board of Arlington County, Virginia, a body corporate, and George D. Fischer, Commissioner of the Revenue of Arlington County, Virginia, by their Attorney, William J. Hassan, Commonwealth's Attorney, by way of answer to the Notice of Motion for a Declaratory Judgment, and represent to this Honorable Court as follows:

1. Your Defendants neither admit nor deny the allegations of Paragraph One of the Notice of Motion for a Declaratory Judgment, and call for strict proof thereof.
2. Your Defendants deny the allegations of Paragraph Two of the Notice of Motion for a Declaratory Judgment.
3. Your Defendants admit that the Plaintiff is in violation of the "Arlington Business Privilege License Ordinance" in that he has not obtained thereunder the proper license for the practice of law in the County of Arlington, Commonwealth of Virginia.
4. And your Defendants having fully answered the said Notice of Motion for a Declaratory Judgment, pray that the Court may enter a Declaratory Judgment upholding the validity and constitutionality of the "Arlington Business Privi-

lege License Ordinance”, and that such further relief be granted as the case may require.

page 62 } COUNTY BOARD OF ARLINGTON COUNTY
VIRGINIA, a body corporate.
GEORGE D. FISCHER, Commissioner of the
Revenue of Arlington County, Virginia.
By: WILLIAM J. HASSAN,
Attorney for the Commonwealth.

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MOTION.

NOW COMES the plaintiff, by his attorney, and moves the Court for a summary judgment, in that the pleadings and issues formed on said pleadings show that the plaintiff is entitled to judgment.

MILES SPENCE BRAY, Plaintiff.

* * * * *

Filed. Apr. 28, 1952.

H. BRUCE GREEN, Clerk,
Circuit Court, Arlington County, Va.
By R. H. WHITE, Deputy Clerk.

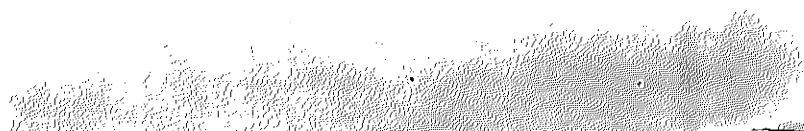
page 64 }

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Recorded in Common Law Order Book No. 34, Page No. 311, on 7/29, 1952.

FINAL ORDER.

THIS CASE came on the 27th day of May, 1952, to be heard upon the motion for a declaratory judgment by Miles Spence Bray, plaintiff herein; upon the answer filed thereto in behalf



of the defendant; and upon the motion for summary judgment filed by said plaintiff;

And all matters of law and fact having been submitted for determination by the Court, the said Court proceeded to hear, *ore tenus*, all of the evidence offered by the parties upon all the issues in this action, and thereafter considered the matter upon the oral argument upon law and fact submitted by counsel.

And the Court having considered the same, and having reached certain conclusions, doth now adjudge and declare as follows:

(1) That the Arlington County Business Privilege Ordinance, a copy of which was attached to the plaintiff's motion for a declaratory judgment, was validly adopted by the County Board of Arlington County, Virginia, on February 2nd, 1949, pursuant to enabling legislation embodied in Section 58-266.2 of the Code of Virginia of 1950, as amended;

(2) That the classification set forth in Section 58-266.2 of the Virginia Code of 1950, as amended, insofar as the same relates to density of population, to-wit: "Any county in this State having a population of more than two thousand per square mile, according to the last preceding United States census", is reasonable, and therefore, the said enabling legislation embodied therein is not local and special law for the assessment of collection of taxes prohibited by Section 63 of the Constitution of Virginia, Sub-section 5, and is not in violation of Section 64 of the Constitution.

And this order is final.

To which finding and ruling of the Court the defendant excepts.

WALTER T. McCARTHY, Judge.

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Filed. Sep. 11, 1952.

H. BRUCE GREEN, Clerk,
Circuit Court, Arlington County, Va.
By V. LONG, Deputy Clerk.

NOTICE OF APPEAL.

To H. Bruce Green, Clerk of said Court:

You are hereby notified that petition for writ of error in the above action will be filed in the Supreme Court of Appeals of Virginia within the time prescribed by the rules of that Court, and you are accordingly requested to make up the record on appeal, as required by the said rules of the Supreme Court.

ASSIGNMENT OF ERROR.

The Court erred in entering a final order declaring Section 58-266.2 of the Code of Virginia, 1950, as amended, constitutional insofar as it relates to density of population as applied to Arlington County, in that said section is a special and local law for taxation, applicable only to Arlington County, and violates Section 63 of the Constitution of Virginia, and Section 64 of the Constitution of Virginia; and being such, the Court erred in denying the petitioner relief as prayed for in his petition for a declaratory judgment.

GIVEN under our hands this 11th day of September, 1952.

MILES SPENCE BRAY, Petitioner.

By Counsel.

A Copy—Teste:

H. G. TURNER, Clerk.