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Record No. 4930

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

ALBERTIS S. HARRISON, JR.,
ATTORNEY GENERAL OF VIRGINIA

v. (Produce Market Loan Fund)

SIDNEY C. DAY, JR.,
COMPTROLLER OF VIRGINIA

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.

HOWARD G. TURNER, Clerk.

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

200 VA 750

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4930

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 6th day of October, 1958.

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL
OF VIRGINIA, Petitioner,

against (Produce Market Loan Fund)

SIDNEY C. DAY, JR., COMPTROLLER OF VIRGINIA,
Respondent.

Upon a Petition for Writ of Mandamus

This day came the Attorney General of Virginia and presented to the Court a petition praying that a writ of mandamus do forthwith issue requiring and compelling Sidney C. Day, Jr., Comptroller of Virginia, to issue warrants upon the Treasurer of Virginia for payment of such amounts as may be authorized by the vouchers of the Commissioner of Agriculture and Immigration pursuant to the provisions of the Produce Market Loan Fund Act, as more fully set out in said petition. The petitioner further prays that the said Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to this petition and be required to answer same, and for other relief.

And it appearing to the Court that a copy of the petition has been duly served upon said respondent, it is ordered that the cause be docketed, and continued for further consideration by the Court.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4930

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 16th day of October, 1958.

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL
OF VIRGINIA, Petitioner,
against (Produce Market Loan Fund)
SIDNEY C. DAY, JR., COMPTROLLER OF VIRGINIA,
Respondent.

Upon a Petition for Writ of Mandamus

It appearing to the Court that the Attorney General of Virginia has made application for a writ of mandamus directed to the Comptroller of Virginia, Record No. 4930, it is ordered that Frank W. Rogers, Esquire, be, and he is hereby, appointed as counsel to represent the said Comptroller in this proceeding.

Whereupon, this day came again the parties, by counsel, and on motion of the parties agreed, it is further ordered that the record be printed; that the respondent file with the clerk his answer to the petition for writ of mandamus on or before October 22, 1958; that 25 printed copies of the petitioner's brief be filed with the clerk on or before November 4, 1958; that 25 printed copies of the respondent's brief be filed with the clerk on or before December 9, 1958; and that 25 printed copies of the petitioner's reply brief, if any, be filed with the clerk on or before January 2, 1959, and the cause is hereby placed on the privileged docket of the January, 1959, session of this Court.

RECORD

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NOTICE.

To the Honorable Sidney C. Day, Jr., Comptroller of Virginia:

Take notice that on the 6th day of October, 1958, at 9:30 A. M., or as soon thereafter as the matter can be heard, I will make application to the Supreme Court of Appeals of Virginia at Richmond, for a writ of mandamus, in accordance with the attached petition, directing you to issue warrants upon the State Treasurer for the payment on vouchers issued by the Commissioner of Agriculture and Immigration on the Produce Market Loan Fund authorized by the Produce Market Loan Fund Act Title 3, Chapter 7.1, Article 2 of the Virginia Code of 1950, as amended.

ALBERTIS S. HARRISON, JR.
Attorney General of Virginia.

Service of the above Notice and a true copy of the Petition for a writ of mandamus attached thereto, is hereby acknowledged on this the 6th day of October, 1958.

SIDNEY C. DAY, JR.
Comptroller of Virginia.

• • • • •

Received Oct. 6, 1958, Clerk Supreme Court of Appeals, Richmond, Virginia.

Albertis S. Harrison, Jr., Attorney General of Virginia,
Petitioner,

v.

Sidney C. Day, Jr., Comptroller of Virginia, Defendant.

PETITION FOR WRIT OF MANDAMUS.

Your Petitioner, Albertis S. Harrison, Jr., Attorney General of Virginia, by this petition for a writ of mandamus, respectfully represents unto this Court the following:

1. Under the Produce Market Loan Fund Act (Code of Virginia of 1950, Sections 3-79.19 through 3-79.27, inclusive) there is established a special loan fund to be known as the Produce Market Loan Fund to provide equity capital for the construction of wholesale produce markets within the Commonwealth which loan fund was made available to any municipality, political subdivision or agency of this State, including any city port authority or produce market authority established by or under the laws of this State which qualify under the provisions of the Act.

2. This Act further provides that from this fund there shall be paid as loans by the State Treasurer on warrants of the Comptroller on vouchers issued by the Commissioner of Agriculture and Immigration such sums not exceeding the uncommitted balance of such Produce Market Loan Fund as may have been approved by the Governor.

3. Under Title 3, Chapter 7.1, Article 1 of the Code of Virginia of 1950, as amended, (Section 3-79.1 to 3-79.18, inclusive) authority is granted for the establishment of produce market authorities. In conformity with this section the Richmond Produce Market Authority was established and continues to exist and by Section 3-79.2 is designated as a political subdivision of the Commonwealth. That authority expects to sell its bonds and has made application for a loan from the Produce Market Loan Fund.

4. It is understood that pursuant to Section 3-79.8 of the Code the bonds will be secured by first mortgage or deed of trust conveying the market and by a first pledge and assignment of the tolls, fees, rents or other charges to be fixed by the authority. The loan from the Commonwealth pursuant to the Produce Market Loan Fund Act will either not be secured or will be secured in such manner as always to be subordinate to the bonds.

5. On September 26, 1958, the Honorable Sidney C. Day, Jr., Comptroller of Virginia, notified your Petitioner, in writing, that he entertains some doubt as to the constitutionality of this Act authorizing the establishment and use of this fund and that he will refuse to honor the vouchers submitted by the Commissioner of Agriculture and Immigration thereon until there has been an adjudication by the Supreme Court of Appeals of Virginia as to the constitutionality of the Act. A copy of the letter of notification is attached hereto as a part of this petition, being designated as Exhibit No. 1.

6. Your Petitioner represents to this Court that such notification by the Comptroller of Virginia to your Petitioner constitutes sufficient ground for this Court to exercise jurisdiction in this case and resolve the question presented by

this petition, such jurisdiction being expressly conferred in Section 8-714 of the Code of Virginia of 1950, as amended.

7. Your Petitioner believes, and so avers, that the Comptroller of Virginia has questioned the constitutionality of Title 3, Chapter 7.1, Articles 1 and 2 of the Code of Virginia of 1950 in the belief that such enactments are violative of Section 184 (a) which forbids the State contracting debts in the absence of a referendum and also violative of the prohibition of Section 185 of the Virginia Constitution that forbids the State to "become a party to or become interested in any work of internal improvement."

8. Your Petitioner avers that the loan of funds under this act is not violative of Section 184 (a) which forbids the State contracting debts in the absence of a referendum nor is it an undertaking by the State in which it becomes a party to or becomes interested in any work of internal improvement so as to bring it within the purview of the inhibition of Section 185 of the Virginia Constitution.

Wherefore, for the reasons stated herein, your Petitioner files this petition and prays that this Honorable Court will adjudge and decree the provisions of Title 3, Chapter 7.1, Articles 1 and 2 of the Code of Virginia of 1950, as amended, are valid enactments of the General Assembly of Virginia and are not in violation of Sections 184 (a) and 185 of the Virginia Constitution; and your Petitioner further prays that the said Sidney C. Day, Jr., Comptroller of Virginia, be made a party defendant to this petition and be required to answer the same; that a writ of mandamus be issued by this Honorable Court directed to the said defendant, Sidney C. Day, Jr., State Comptroller, requiring him to issue warrants upon the State Treasurer for payment of such amounts as may be authorized by the vouchers of the Commissioner of Agriculture and Immigration pursuant to the provisions of the Produce Market Loan Fund Act.

And your Petitioner will ever pray, etc.

ALBERTIS S. HARRISON, JR.
Attorney General of Virginia.

M. HARRIS PARKER
Assistant Attorney General of Virginia.

State of Virginia,
City of Richmond, to-wit:

This day personally appeared before me, M. L. Waddill,

Supreme Court of Appeals of Virginia

a Notary Public in and for the City aforesaid, in the State of Virginia, Albertis S. Harrison, Jr., who stated, upon oath, that he is Attorney General of Virginia, and that the matters and things stated in the foregoing petition are true to the best of his knowledge, information and belief.

My commission expires on the 6th day of January, 1961.
Given under my hand this 3rd day of October, 1958.

M. L. WADDILL, Notary Public.

This is to certify that a copy of the foregoing petition was served upon Sidney C. Day, Jr., Comptroller of Virginia, at his office this 6th day of October, 1958.

M. HARRIS PARKER
Assistant Attorney General of Virginia.

EXHIBIT NO. I.

COMMONWEALTH OF VIRGINIA

Office of The Comptroller
P. O. Box 6-N
Richmond 15, Va.

Sidney C. Day, Jr.
Comptroller
C. P. Miller, Jr.
Asst. Comptroller

September 26, 1958.

Honorable Albertis S. Harrison, Jr.
Attorney General of Virginia
Richmond, Virginia

Dear Mr. Harrison:

The Commissioner of Agriculture and Immigration contemplates the issuance of vouchers for the payment to Richmond Produce Market Authority (herein called the Authority) of a loan pursuant to the Produce Market Loan Fund Act (Title 3, Chapter 7.1, Article 2 of the Virginia Code of 1950, as amended). I have been requested to advise the Commissioner whether or not such vouchers will be honored when presented for payment.

The Authority was established pursuant to Chapter 7 of Title 3 of the Code of 1950 and continues to exist under Chapter 7.1 of Title 3 of the Code. By section 3-79.2 of the Code the Authority is designated as "a political subdivision of the Commonwealth."

I am advised that the Authority is now engaged in developing plans for the construction of a market, as provided

in Article 1 of Chapter 7.1 of Title 3 of the Code, and, in order to provide the funds required for such construction, the Authority expects to sell its Bonds and to apply for a loan from the Commonwealth pursuant to the Produce Market Loan Fund Act. The Bonds, by Section 3-79.6 of the Code, are not to constitute a debt of the Commonwealth or of any city or county or a pledge of the faith and credit of the Commonwealth or of any city or county. The Produce Market Loan Fund Act provides that the loan therefrom is for the purpose of providing equity capital and shall be secured as prescribed by the Governor. I understand that, pursuant to Section 3-79.8 of the Code, the Bonds will be secured by a first mortgage or deed of trust conveying the market and by a first pledge and assignment of the tolls, fees, rents or other charges to be received by the Authority. The loan from the Commonwealth pursuant to the Produce Market Loan Fund Act, on the other hand, will either not be secured or will be secured in such manner as always to be subordinate to the Bonds.

I entertain some doubt as to the constitutionality of the statutory provisions authorizing the Commonwealth to lend money to the Authority and especially those provisions authorizing a loan by the Commonwealth the repayment of which may be made subordinate to the Authority's Bonds secured by a mortgage or deed of trust on the market and a prior pledge and assignment of the tolls, fees, rents or other charges to be received by the Authority. In view of such doubt I do not feel that it would be proper or safe to pay any money to the Authority on account of a loan from the Commonwealth until there has been a final adjudication by the Supreme Court of Appeals determining the constitutionality of such statutory provisions.

Accordingly, I shall refuse to honor any vouchers submitted for any loan to the Richmond Produce Market Authority until there has been an adjudication by the Supreme Court of Appeals of Virginia as to the constitutionality of those statutory provisions.

Very truly yours,

SIDNEY C. DAY, JR.
Comptroller.

cc—Mr. Parke C. Brinkley
State Commissioner of
Agriculture and Immigration
Richmond, Virginia

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Rec'd. 10/22/58.

H. G. T.

ANSWER TO PETITION FOR WRIT OF MANDAMUS.

In answer to the petition of Albertis S. Harrison, Jr., Attorney General of Virginia, for a writ of mandamus, the respondent Sidney C. Day, Jr., Comptroller of Virginia, says that:

(A) Respondent admits the jurisdiction of the court as alleged in Paragraph 6 of the petition.

(B) Respondent admits the factual allegations of the petition as set forth in Paragraphs 1-5, inclusive.

(C) Respondent does not contend that the statutes in question are violative of Section 184(a) of the Constitution of Virginia.

(D) Respondent does assert that the statutes in question are violative of Sections 185 and 188 of the Constitution of Virginia and for that reason he has indicated his unwillingness to issue the warrants mentioned in the petition.

IN CONSIDERATION WHEREOF respondent prays that the petition may be denied and that respondent may be hence dismissed with his own proper costs in this behalf expended.

Very respectfully,

SIDNEY C. DAY, JR.,
Comptroller of Virginia
By FRANK W. ROGERS
Of Counsel.

WOODS, ROGERS, MUSE & WALKER

P. O. Box 720
Roanoke, Virginia

Attorneys for Respondent.

State of Virginia,
City of Richmond, to-wit:

THIS DAY personally appeared before the undersigned notary public in and for the city and state aforesaid SIDNEY C. DAY, JR., Comptroller of Virginia, who made oath that according to his information and belief the matters stated in the foregoing answer are true and correct.

Given under my hand this 22nd day of October, 1958.

....., Notary Public.

My commissioner expires February 5, 1961.

I hereby certify that I have this 22nd day of October, 1958, served the foregoing answer by delivering a true copy thereof to Albertis S. Harrison, Jr., Attorney General of Virginia.

FRANK W. ROGERS
Of Counsel for Respondent.

* * * * *

STIPULATION AS TO THE RECORD.

It is hereby stipulated that:

The record herein shall be deemed to consist of the Petition for Writ of Mandamus and attached exhibit, the Notice thereof, the Answer of the respondent, all orders of Court or any other papers herein that the Court shall designate by order to be filed herein.

IN WITNESS WHEREOF the parties have, subject to the approval of the Court, filed this Stipulation in Richmond, Virginia, on October 29, 1958.

ALBERTIS S. HARRISON, JR.,
Attorney General of Virginia.
By M. HARRIS PARKER

SIDNEY C. DAY, JR.
Comptroller of Virginia
By FRANK W. ROGERS, Atty.

Rec'd. 10/29/58.

H. G. T.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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