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Record No. 5780

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM RAIFORD PIERCE
v.
SAMUEL J. DENNIS, ET AL.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12 BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

NOTICE TO COUNSEL

This case probably will be called at the session of court
to be held MAR 1964

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5780

VIRGINIA :

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 17th day of October, 1963.

WILLIAM RAIFORD PIERCE, Appellant,
against

SAMUEL J. DENNIS, THOMAS R. JONES, LEE RHOADS
AND HAROLD SILVERSTEIN, Appellees.

From the Circuit Court of Fairfax County
Calvin Van Dyck, Judge

Upon the petition of William Raiford Pierce an appeal is awarded him from a decree entered by the Circuit Court of Fairfax County on the 14th day of March, 1963, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and Samuel J. Dennis and others were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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page 1]

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Filed in Circuit Court Clerk's Office Jun 8 1962.

THOMAS P. CHAPMAN, JR.
Clerk, Fairfax County, Va.

MOTION FOR DECLARATORY JUDGMENT

The Motion for Declaratory Judgment of the plaintiff, William Raiford Pierce, respectfully represents to this Court as follows:

1. The plaintiff, William Raiford Pierce, is a resident of the City of Falls Church, State of Virginia, is presently residing therein, and is a qualified voter and taxpayer of said City.

2. The defendant, Samuel J. Dennis, is a member of the City Council of the City of Falls Church, State of Virginia.

3. The defendant, Thomas R. Jones, is a member of the City Council of the City of Falls Church, State of Virginia.

4. The defendant, Lee Rhoads, is a member of the City Council of the City of Falls Church, State of Virginia.

5. The defendant, Harold Silverstein, is a member of the City Council of the City of Falls Church, State of Virginia.

page 2] 6. The plaintiff says that the defendants and each of them are not legally eligible, nor do they have the capability in law, to hold office as a member of the City Council of the City of Falls Church, State of Virginia, by *virtue* of the fact that they hold the same in violation of §2-27 of the Code of Laws of the State of Virginia, 1950 Edition. The said defendants do not come within any of the constitutional sections of the exceptions set forth in §2-29 of the Code of Laws of the State of Virginia, 1950 Edition.

7. The plaintiff says that §2-27 of the Code of Laws of the State of Virginia specifically excludes the eligibility and capability in law of the defendant, Samuel J. Dennis, in that

said defendant is employed by the United States Government as Chief of Construction, Statistics Division, Bureau of Census, Department of Commerce; he is, to wit, a Grade 15 employee and draws a salary, to wit, in excess of Fourteen Thousand Dollars (\$14,000.00) per year.

8. The plaintiff says that §2-27 of the Code of Laws of the State of Virginia specifically excludes the eligibility and capability in law of the defendant, Thomas R. Jones, in that said defendant is employed by the United States Government as Chief Librarian, Army Engineer Research Laboratories, Fort Belvoir, Virginia; he is to wit, a Grade 13 employee and draws a salary, to wit, in excess of Eleven Thousand Dollars (\$11,000.00), per year.

9. The plaintiff says that §2-27 of the Code of Laws of the State of Virginia specifically excludes the eligibility and capability in law of the defendant, Lee Rhoads, in that said defendant is employed by the United States Government as Director of Contract Planning, Bureau of Ships, Navy Department; he is, to wit, a Grade 14 employee and draws a salary, to wit, in excess of Thirteen Thousand Dollars (\$13,000.00) per year.

10. The plaintiff says that §2-27 of the Code of Laws of the State of Virginia specifically excludes the eligibility and capability in law of the defendant, Harold Silverstein, in that said defendant is employed by the United States Government as Special Assistant to the Chief Signal Officer, United States Army; he is, to wit, a Grade 16 employee and draws a salary, to wit, in excess of Sixteen Thousand Dollars (\$16,000.00) per year.

page 3] 11. The plaintiff says that by virtue of the foregoing the said defendants and each of them are ineligible and incapable of holding office on the City Council of the City of Falls Church, State of Virginia.

WHEREFORE, the premises considered, the plaintiff asks judgment that the offices held by the defendant as members of the City Council of the City of Falls Church, State of Virginia, be declared vacant from the date that each defendant undertook to enter upon the duties of said office. And

For such other and further relief as the nature of this case may require, and to which this Honorable Court may feel just and proper.

WILLIAM RAIFORD PIERCE
By Counsel

DOUGLAS A. CLARK
 LOUIS RABIL
 Cedar Lane
 Merrifield, Virginia

Attorneys for Plaintiff

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page 9]

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Filed Jul 17 1962.

THOMAS P. CHAPMAN, JR.
 Clerk of the Circuit Court
 of Fairfax County, Va.

ANSWER

The defendants, Samuel J. Dennis, Thomas R. Jones, Lee Rhoads, and Harold Silverstein, for their joint and several answer to the Motion for Declaratory Judgment filed herein against them respectfully set forth as follows:

1. The allegations in paragraph 1 of the motion are admitted.

2. The allegations in paragraph 2 of the motion are admitted.

3. The allegations in paragraph 3 of the motion are admitted.

4. The allegations in paragraph 4 of the motion are admitted.

5. The allegations in paragraph 5 of the motion are admitted.

6. The allegations in paragraph 6 of the motion are denied, and defendants say that they have been duly elected and qualified and are legally eligible to hold office as a member of the City Council of the City of Falls Church, Virginia.

7. Each of the defendants, and specifically Samuel J. Dennis, deny that Section 2-27 of the Code of Virginia specifically excludes his eligibility and capability in law
 page 10] to hold office as a member of the City Council by virtue of his employment by the United States Government as alleged in paragraph 7 of the motion.

8. Each of the defendants, and specifically Thomas R. Jones, deny that Section 2-27 of the Code of Virginia specifically excludes his eligibility and capability in law to hold office as a member of the City Council by virtue of his employment by the United States Government as alleged in paragraph 8 of the motion. The defendant, Thomas R. Jones, further says in answer to said paragraph that he is a Grade 11 employee and draws a salary of \$9,300.00 per year.

9. Each of the defendants, and specifically Lee Rhoads, deny that Section 2-27 of the Code of Virginia specifically excludes his eligibility and capability in law to hold office as a member of the City Council by virtue of his employment by the United States Government as alleged in paragraph 9 of the motion.

10. Each of the defendants, and specifically Harold Silverstein, deny that Section 2-27 of the Code of Virginia specifically excludes his eligibility and capability in law to hold office as a member of the City Council by virtue of his employment by the United States Government as alleged in paragraph 10 of the motion.

11. The allegations of paragraph 11 are denied.

12. For further answer, said defendants each say that he is eligible to hold office as a member of the City Council of the City of Falls Church, Virginia, by virtue of the authority of Section 20-14 of the City charter of Falls Church, Virginia, Acts of Assembly 1950, Chapter 323, approved April 4, 1950.

13. For further answer, said defendants each say that he is eligible to hold office as a member of the City Council of the City of Falls Church, Virginia, by virtue of Section 2-29, paragraph 10, of the Code of Virginia of 1950, as amended.

SAMUEL J. DENNIS
THOMAS R. JONES
LEE RHOADS
HAROLD SILVERSTEIN
By LaRUE VAN METER

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Filed Jan. 4 1963.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

DEFENDANTS' MOTION TO AMEND ANSWER

The defendants, Samuel J. Dennis, Thomas R. Jones, Lee Rhoads and Harold Silverstein, by counsel, move the Court for leave to amend their answer heretofore filed herein by adding the following paragraphs 14 and 15:

14. For further answer to the motion for declaratory judgment the said defendants allege:

- a. Plaintiff has no substantial interest in the subject matter of this suit, whereas, the public interest is substantial;
- b. That no practical benefit is at issue in this case, and
- c. That plaintiff unreasonably delayed in bringing this suit.

15. Defendants further allege that the relief prayed for in the motion for declaratory judgment cannot be granted by the Court.

SAMUEL J. DENNIS, THOMAS R. JONES,
LEE RHOADS and HAROLD SILVERSTEIN
By LaRUE VAN METER
Of Counsel

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Filed Jan. 4 1963.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

MOTION TO DISMISS

The defendants, Samuel J. Dennis, Thomas R. Jones, Lee Rhoads and Harold Silverstein, by council, move the Court

to dismiss the motion for declaratory judgment filed herein against them for want of jurisdiction over the subject matter by reason of the following:

The subject matter of this suit involves the qualification of each of the defendants to serve as members of the City Council of the City of Falls Church, and Section 4.05 of the Charter of the City of Falls Church, Virginia, Acts of Assembly of 1950, Chapter 323, approved April 4, 1950, as amended, provides that the Council shall be the judge of the election and qualifications of its members. Accordingly, this Court ought not to take jurisdiction over this case.

SAMUEL J. DENNIS, THOMAS R. JONES,
LEE RHOADS and HAROLD SILVERSTEIN
By LaRUE VAN METER
Of Counsel

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Filed Jan. 22 1963.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

ANSWER TO AMENDED ANSWER

Comes now the plaintiff, William Raiford Pierce, and for answer to the Amendment to the Answer filed by the defendants respectfully represents to the Court as follows:

Defendants' Amendment is, in effect, the addition of paragraphs 14 and 15 to their Answer, and the plaintiff says, in answer to paragraph 14:

(a) That he is a resident of, domiciled in, and a taxpayer of the City of Falls Church; that the defendants are members of the City Council; that he has a substantial interest in the subject matter of this suit; and that the public interest is not affected thereby;

(b) That the practical benefit at issue in this matter is

that the laws of the Commonwealth of Virginia be upheld;
and

(c) That he has not unreasonably delayed his action, the same having been filed early in the year of 1962.

In answer to paragraph 15, the plaintiff says:

15. That the relief prayed for in the Motion for Judgment can only be granted by this Court.

WHEREFORE, having full answered, the plaintiff asks judgment that the relief prayed for in his Motion for Declaratory Judgment be granted him.

WILLIAM RAIFORD PIERCE
By counsel

DOUGLAS A. CLARK
Attorney for Plaintiff
Cedar Lane
Merrifield, Virginia

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Fairfax County Courthouse,
Fairfax, Virginia
February 14, 1963.

Filed Feb. 14 1963.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

La Rue Van Meter, Esq.,
City Attorney,
City Hall,
Falls Church, Virginia.

John S. Davenport, III, Esq.,
Denny, Valentine and Davenport,
Travelers Building,
Richmond 19, Virginia.

Douglas A. Clark, Esq.,
Attorney at Law,
Cedar Lane,
Merrifield, Virginia.

Re: Pierce v. Dennis, et als,
In Chancery No. 17054.

Gentlemen:

This is in reference to the hearing in the above cause, including the evidence and exhibits, together with the authorities presented and argument of counsel.

The suit has been brought as a motion for declaratory judgment by William Raiford Pierce, a citizen and taxpayer of the City of Falls Church, and is brought against four members of the city council, Samuel J. Dennis, Thomas R. Jones, Lee Rhoads and Harold Silverstein. Pierce, designated as plaintiff, contends that the four defendants, all employees of the United States government, are incapable of holding office as city councilmen because of the prohibition against such dual office contained in section 2-27 of the Virginia Code, and seeks to have the council offices of the defendants declared vacant in accordance with section 2-27, which prescribes as follows:

“Holding office under United States. — No person shall be capable of holding any office or post mentioned in the preceding section, who holds any office or post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of the United
page 44] States, or who is in the employment of such government, or who receives from it in any way any emolument whatever; and the acceptance of any such office, post, trust, or emolument, or the acceptance of any emolument whatever under such government, shall, *ipso facto*, vacate any office, or post of profit, trust or emolument under the government of this Commonwealth or under any county, city, or town thereof. (Code 1919, Section 290; 1942, Ex. Sess., p. 10).”

The City of Falls Church was granted leave to intervene, and will be considered as a defendant to the suit along with the four councilmen. The opposition and defenses of all defendants, including the city, are the same.

The defendants contend, in brief, that this court does not have jurisdiction, but that in any event the four councilmen are exempted from the operation of code section 2-27 by the provisions of both Code section 2-29(10) and section 20.14 of the Falls Church charter. The plaintiff maintains that neither exception applies.

The specific issues raised by the present controversy are:

1. Does this court have jurisdiction of the controversy, in view of section 4.05 of the Falls Church charter which makes the council itself the judge of the qualifications, of its members?

2. Assuming that the court has jurisdiction, does the plaintiff have standing to bring this suit?

3. If so, is the court bound by legal principles in deciding the issues presented, or may it consider the equities involved?

4. Are the defendants exempted from the prohibition of Code section 2-27 against dual office by coming within the exception for government clerks contained in Code section 2-29(10)?

5. If not, are the defendants still exempt as coming within the coverage of the exception found in section 20.14 of the city charter?

6. Assuming that the defendants are covered page 45] by section 20.14, is this charter provision a special act, and if so, is it then unconstitutional?

With regard to the first issue, it is the defendants' position that this court is ousted of jurisdiction by section 4.05 of the city charter. This provides in part that "The council shall be the judge of the election and qualifications of its members."

This position is supported by the cited cases of *Mitchell v. Witt*, 98 Va. 459, 36 S.E. 528, *Price v. Fitzpatrick*, 100 S.E. 872 (W. Va.) and *Trunick v. Town of Northview*, 91 S.E. 1081 (W. Va.), which gave effect to statutory provisions calling for the municipal council to be the judge of the election and qualifications of its members.

The question is, what does the word "qualifications" mean, as used in charter section 4.05, and specifically, does it include the issue of capacity to hold office which is the subject matter of section 2-27? One indication that it might is the language of Falls Church charter section 20.14, which purports to allow Federal employees to serve the city despite Code section 2-27, the charter provision providing that no person shall be *disqualified* from serving the city because of Federal employment.

Despite the above, it is my opinion that the General Assembly did not intend to give to the Falls Church council the right to pass on the question of capacity of its members to hold office, as that issue is raised by section 2-27.

For one thing, there is an obvious distinction between a person possessing or having met the required qualifications for election to an office, and the doing by that person of an act which renders him incapable of holding such office, this being pointed out in the leading case of *Dean v. Paolicelli*, 194 Va. 219, 236, 72 S.E.

(2d) 506. Also, in this connection, the title of Chapter 4 of Title 2, which includes section 2-27, uses the word "disabilities," rather than "qualifications."

In the cases cited by the defendants holding that the municipal council was the judge of the qualification of its members, the issues involved were the validity of elections or property qualifications, and not the question of disability or capacity to hold office.

Although the scope of the word "qualifications" in charter section 4.05 cannot be told from the language use, it is difficult to suppose that the General Assembly, in enacting the Falls Church charter, intended to give to the council of that city the power of decision on such a basic public policy of the Commonwealth, and one founded upon a requirement of undivided allegiance. The unlikelihood of such an intent is heightened in the present case by the fact that the seats of a majority of the city council are under challenge.

It is my finding that this court and not the city council is the proper tribunal to hear this issue, and the court will accordingly assume jurisdiction.

The next point raised concerns the right of the plaintiff to maintain this suit, brought as a motion for declaratory judgment. The defendants say, primarily under the authority of *Commonwealth v. Rouse*, 163 Va. 841, 178 S. E. 37, that Pierce has no standing in court, inasmuch as he makes no claim to the office sought to be vacated. The defendants further say that the suit was not promptly brought.

page 47] The *Rouse* case involved the extraordinary remedy of *quo warranto*. The recent cases of *Dean v. Paolicelli*, 194 Va. 219, 72 S. E. (2d) 506 and *Joy, Draheim and Cox v. Green*, 194 Va. 1003, 76 S. E. (2d) 178, were both brought by individuals in their capacity as citizens and taxpayers, without apparent objection. In view of this, and in view of the differences between a *quo warranto* proceeding and the remedy of declaratory judgment for which, as it has developed, a liberal construction is prescribed, I believe that the plaintiff, as a citizen and taxpayer of Falls Church, has standing to maintain the present suit. I further feel that the suit is timely.

Before proceeding to the merits of the case, it may be well to take a brief look at the history and purpose of Code Section 2-27.

At common law the rule was well ingrained that a person could not hold two incompatible offices. This common law principle may have found its origin in the Biblical admonition (Matthew 6:24), that no man can serve two masters.

Many states, including Virginia, have adopted statutes embodying the common law inhibition. The Federal government also has enacted legislation to carry out this policy. (See *Dean* case *supra*, 194 Va. at page 231.) The Federal Constitution itself, in Article I, Section 9, includes a restriction designed to prevent a divided allegiance.

Virginia enacted its first statute in this regard in the year 1788. 12 Hening's Statutes at Large, ch. 38, p. 694. This act has been amended and re-enacted from time to time, with the present act, section 2-27, being the basis for this suit. The pertinent provision of the state Constitution is page 48] section 56, which prescribes in part:

"— and the General Assembly may declare the cases in which any office shall be deemed vacant where no provision is made for that purpose in this Constitution."

This policy of the Commonwealth of Virginia, as now embodied in section 2-27, has thus been in effect for 175 years, and is well entrenched. Its purpose, simply stated, "is to prevent a conflict of interest in those who would serve both the Federal and State Governments." *Joy* case, *supra*, 194 Va. at page 1009.

During the legislative history of the Virginia statute, the General Assembly has at times decided to except from the basic statute certain classes or groups, generally those holding minor Federal positions, in which it determined that such conflict of interest was not likely to occur. These exceptions are found in section 2-29.

The validity of several of these exceptions has been tested in three recent cases. Section 2-27 is general legislation (*Joy* case, *supra*, 194 Va. at page 1008), which, under the prohibition found in section 64 of the Constitution, may not be amended by a special act, but only by another general statute. A primary issue in each of the three cases accordingly was whether the exception provision in question was a general or a special act.

In *Dean v. Paolicelli*, *supra*, involving a member of the Arlington County Board of Supervisors, section 2-29 (11), which contained the exception relied on, was held unconstitutional as special legislation. Section 2-29(14), the exception under challenge in *Joy, Draheim and Cox v. Green*, *supra*, concerning the Arlington County School Board, was held valid as being a general statute. The validity of section 2-29 (10), was upheld in *Hanes v. Fox*, 196 Va. 51, 82 page 49] S. E. (2d) 495, where an attempt was made to un-

seat a police justice for the Town of Herndon. This subsection (10) of section 2-29, excepting United States government clerks from the operation of section 2-27, is the one with which we are concerned in the present suit.

With regard to the relief requested here by the plaintiff, it is urged by the defendants that in passing on the issue of whether the challenged councilmen should be removed from office the court should consider the equities involved. I do not feel that I can properly do this.

The defendant councilmen all appear to be able men. There is no question in my mind but that in serving on the Falls Church council, they are doing so with unselfish purpose, and with no thought of conflict of interest.

It is also obvious that in Northern Virginia, with its high percentage of Federal employees, the operation of section 2-27 will mean that political subdivisions in this area will be denied the services of many capable Federal employees, with experience in a wide range of fields, unless they can come within an exception to the rule. The same would apply to other Virginia communities or areas with a significant number of people working for the United States government.

Despite these considerations, the underlying public policy behind the enactment of section 2-27 and its predecessors is a sound one, and is well expressed in *Dean v. Paolicelli, supra*, 194 Va. at page 236, as follows:

“The object sought to be accomplished by section 2-27 was, and is, to safeguard and protect the state’s independent sovereignty by requiring strict and undivided allegiance to the duties and obligations of a public office by its
page 50] incumbent. Its justification and the need for its enactment is traceable to and based on the principle that complete and unimpaired loyalty and fidelity are owed by a public officer to his trust and to the sovereign that created the office and made it available to the electee. Recognition of and adherence to that age-old truth are as important today as when the legislation was first adopted.”

It is clear from this language used that the public policy of Virginia in this regard is not directed at individual situations, but is instead a general policy directed toward requiring the undivided loyalty and fidelity of the incumbents of public office in this Commonwealth, and to impose a ban on dual State and Federal office in those instances in which the General Assembly feels a conflict of interest may occur.

If any changes are to be made in the foregoing public

policy, either in the basic prohibition or in the exceptions thereto, it is fundamental that such changes must be addressed to the general Assembly, who established the policy and who alone can change it, and not to the courts, whose sole function is to apply and interpret the pertinent statutes. This court, in deciding the present cause, cannot, in my opinion, balance the law against the equities or against the benefits and detriments involved, either with regard to individuals or to the municipality whose government may suffer disruption; the court can only follow the governing law, as to do otherwise would be to set at naught the established public policy of the state.

Getting on to the merits of the suit, the first question to be decided is whether the four defendant councilmen are excepted from the prohibition of section 2-27 by the exception for clerks contained in subsection 10 of 2-29. This statute reads:

“Section 2-27 shall not be construed:

• • • • •

page 51] “(10) To prevent any United States government clerk from holding any office under the government of any town or city;”

There is no claim by the defendants that the provisions of 2-27 would not apply to the present situation if the councilmen cannot be brought under a statutory exception, and if the other defenses raised should be overruled.

In connection with the issue under discussion, section 2-27 has been ruled constitutional in the *Dean* case, and the validity of the exception for clerks in section 2-28(10) has been upheld in *Hanes v. Fox, supra*.

The question is, are the four councilmen, or any of them, exempt from 2-27 by coming under the classification of United States government clerk? The councilmen contend that they are such clerks; the plaintiff argues that they are obviously not.

The position grades held by the defendant councilmen with the Federal government range from Grade 11 for the defendant Jones to Grade 16 for the defendant Silverstein, with a corresponding salary range of from \$9,900 to \$17,500 per year. The Civil Service regulations placed into evidence show that under the Civil Service system clerks are classified as Grade 5 or below.

The *Joy* case, *supra*, in considering the exception in section 2-29(15), allowing Federal clerks and employees to act as school trustees, referred to the clerks and employees covered by the exception as being "a group of employees who hold *minor* positions with the Federal Government" (194 Va. at page 1009). (Emphasis supplied)

"Clerk" is defined in Webster's dictionary as "one employed to keep records or accounts, or to have charge of correspondence, etc." Black's Law Dictionary is to the same effect.

page 52] I have read in detail the job descriptions of the four councilmen, which have been placed in evidence. According to these descriptions, each of the four is charged with responsibility for the planning, coordination and execution of projects, some involving large sums of money. Dennis supervises 40 to 45 persons, Jones about 5, and Rhoads 10. Silverstein supervises only one person directly, but holds a grade 16 position, the highest of the four.

Even allowing, perhaps, for some degree of over-zealousness on the part of the writers of the job descriptions concerned, a fair appraisal of the positions held by the four councilmen with the United States government compels the conclusion that, under any reasonable definition of the term, none of these men can be considered as "clerks" within the meaning of the exception in section 2-29(10).

It is next argued by the defendants that even if the councilmen are held not to come within the exception for clerks in 2-29(10), that they are still exempt from the prohibition of 2-27 because of the exception found in section 20.14 of the Falls Church charter, which provides:

"Section 20.14. United States Government Employees. — No person otherwise eligible, shall be disqualified, by reason of his accepting or holding an office, post, trust or emolument under the Government of the United States, from serving as an officer or employee of the city, or as a member, officer, or employee of any board or commission, including the school board."

The first question to be decided under this defense is whether council members are included within the scope of this charter provision, and, specifically, whether the word "officer" as used in this section includes councilmen.

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It will be the court's finding that members of the city council are included within the group which section

20.14 seeks to exempt. Examination of the city charter, and particularly the title given section 3.04 of "*Vacancies in Office of Councilman*" read together with that of the succeeding section 3.05, "*Election of Other City Officers*" makes it clear, in my opinion, that the legislature intended to include councilmen under the general term of "officers." (Emphasis supplied).

We are brought next to the most involved issue in the case, namely the validity of section 20.14 of the Falls Church charter, this section purporting to give to the City of Falls Church an exemption from the requirements of 2-27.

Section 2-27 is a general statute, and, as seen, the issue in the *Dean, Joy* and *Hanes* cases was whether the exception concerned violated section 64 of the Constitution as being an attempt to amend a general statute by special act.

A statute is special in a constitutional sense when, by force of an inherent limitation, it arbitrarily separates some persons, places, or things from others, upon which, but for such limitation, it would operate. *Budd v. Hancock*, 66 N.J.L. 133, 48 Atl. 1023.

The Supreme Court of Appeals of Virginia has been confronted many times with the problem of whether a given act is general or special under the foregoing definition, and has stated often the principles governing this determination. (See *Joy* case, 194 Va. at page 1008, and cases cited). It would serve no purpose to review these principles, however, as the issue with which we are concerned, although related, is not the same as that presented by the cited cases.

page 54] Every charter of the Falls Church type is special in nature, as it represents a grant by the General Assembly of a special bundle of powers to a particular municipality, with the act granting the charter not covering cities and towns generally, but covering only the municipality receiving the charter.

Section 20.14 of the Falls Church charter, as granted to that city, is not a part of the general law of Virginia for cities and towns, and must be considered a special act. This conclusion is not changed by the fact that the General Assembly may in its wisdom grant a similar provision to other municipalities requesting it as a part of their charters. Such a provision, on being granted, would become a special act as to each such municipality.

The defendants concede, in effect, that 20.14 is a special act, but claim that it is nonetheless valid. The real issue thus becomes: Is section 20.14, which purports to remove the City of Falls Church from the operation of 2-27, invalid because

its effect is to amend a general statute by a special act, or is it valid under the law of Virginia despite its seeming conflict with section 64 of the Constitution.

The defendants contend that section 20.14 of the city charter is a valid exception under the authority of section 117 of the Constitution despite the apparent conflict with section 64.

Before attempting to determine the effect of section 117 and other pertinent sections of the Virginia Constitution, it would be well to keep in mind the underlying difference between the State and Federal Constitutions, and correspondingly the extent of powers of the General Assembly of Virginia as compared to Congress.

page 55] The Congress may exercise only those powers granted it by the Federal Constitution, with all powers not so granted, nor prohibited to the states, being reserved by the Tenth Amendment to the states or to the people. The General Assembly, on the other hand, does not function under a grant of power from the Virginia Constitution, but has basic and plenary power to legislate, except where restricted by the State or Federal Constitutions. *Quesinberry v. Hull*, 159 Va. 270, 165 S. E. 382, *Newport News v. Elizabeth City Co.*, 189 Va. 825, 55 S. E. (2d) 56, *Dean v. Paolicelli*, *supra*.

Section 117 of the Virginia Constitution provides that:

“(a) General laws for the organization and government of cities and towns shall be enacted by the General Assembly, and no special act shall be passed in relation thereto, except in the manner provided in article four of this Constitution, and then only by a recorded vote of two-thirds of the members elected to each house.”

The meaning and effect of section 117 has been considered by the Supreme Court of Appeals at various times since its adoption. *Campbell v. Bryant*, 104 Va. 509, 52 S. E. 638, was the first case dealing with this section. It held that cities and towns incorporated after the adoption of the Constitution of 1902 had to be organized and governed by the general laws (page 513), but left open the question as to what special acts may be passed by the General Assembly in relation to cities and towns, this being noted in the next case to consider the subject, *Miller v. Pulaski*, 109 Va. 137, 142, 63 S. E. 880.

The *Miller* case involved the right of the Town of Pulaski to exercise the power of eminent domain with regard to water rights, the power being granted to the town by charter

amendment. This amendment was attacked broad-
 page 56] ly as being special legislation in violation of
 section 63 of the Constitution, which prescribes
 that the General Assembly shall not exact laws in certain
 fields. The Court disagreed with this contention, finding that
 63 did not cover the act in question. The Court then set forth
 this general principle:

“We are of opinion that it is within the power of the
 legislature to amend the charter of a municipal corporation
 if it pursues the mode provided in article IV of the Constitu-
 tion, and the special act is passed by a recorded vote of two-
 thirds of the members elected to each house, as provided by
 section 117.” (page 142)

Town of Narrows v. Giles County, 128 Va. 572, 105 S. E.
 82 concerned the validity of town charter provisions at
 variance with the general law and particularly a provision
 giving to the town the right to collect three-fourths of all the
 road tax levied by Giles County on town inhabitants. Nar-
 rows was not in existence when the Constitution of 1902
 went into effect. The county argued, in effect, that while
 section 117 permitted special acts, if passed in a prescribed
 manner, this permission covered only acts which were special
 because they were enacted for a particular municipality and
 not for cities and towns generally, and did not cover acts
 which were special because they granted powers to a munici-
 pality which were not part of the general law for cities and
 towns. The county relied on *Campbell v. Bryant*, *supra*, in
 support of its position that the substance of charter acts for
 new towns had to conform to the general law, and could not
 vary therefrom.

The Court rejected the constitutional attack, holding (pages
 584, 586) that section 117 did not prohibit the passage of
 special acts affecting the organization and govern-
 page 57] ment of cities and towns which differed from the
 general law, and made the principle of *Miller v.*
Pulaski more specific by saying:

“The right to create the differences mentioned was within
 the legislative power provided the charter was enacted in
 the manner prescribed by article IV of the Constitution and
 by the vote required by section 117.” (page 586)

The first case attempting to reconcile sections 117 and 63
 was *City of Portsmouth v. Weiss*, 145 Va. 94, 133 S. E. 781.

Here, Portsmouth had a charter provision requiring notice of a negligence claim against the city within thirty days after the injury, and this provision was assailed as being contrary to section 63 of the Constitution which provides specifically that the General Assembly shall not enact special laws "regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals." The Court did not rule on whether the notice requirement was a regulation of practice within the meaning of 63, but considered the issue as though it were.

The Court first discussed the need of municipal corporations for special powers and the intent of the Constitutional Convention of 1902 in regard to this need, as follows:

"Municipal corporations are given very large powers of self-government. They have extensive powers of taxation and are subjected to pains and penalties unknown to other political subdivisions of the State. This is especially noticeable with reference to negligence in the exercise of their corporate powers. It was to be expected, therefore, that, in framing the Constitution, some provision would be made to enable them to care for their special interests and to protect themselves against improper litigation. Usually this could be done by general laws applicable to all municipal corporations, but the Convention realized that there might be cases where it would be desirable to confer special powers, or special
page 58] privileges, on one not needed or required by all, and hence we find it provided by section 117 of the Constitution that 'general laws for the organization and government of cities and towns shall be enacted by the General Assembly, and no special act shall be passed in relation thereto, except in the manner provided in article four of this Constitution, and this only by a recorded vote of two-thirds of the members elected to each house.'" (page 105)

The opinion next noted the previously cited principles of the *Miller* and *Narrows* cases construing 117 as authorizing statutes conferring special rights and powers on municipalities when enacted as required. The Court also re-stated the established rule that the Constitution must be viewed and construed as a whole, and every section given effect and harmonized, if possible. The Court then ruled that the charter provision under attack was constitutional, and discussed the apparent conflict between 117 and 63 in this language:

"In view of these holdings, and especially in the absence of any evidence to the contrary, we are satisfied that the amendment of the charter of the city of Portsmouth was a valid constitutional enactment, and conferred upon the city the right to demand the notice mentioned in said amendment. If section 63 of the Constitution, forbidding the passage of any local, special or private law regulating the practice in any judicial proceeding, is apparently in conflict with section 117, the conflict is more apparent than real. Section 63 must be held to apply to cases not otherwise specially provided for. It cannot be supposed that the convention intended to impose upon the legislature any other restraints in the enactment or amendment of charters of municipal corporations than those imposed by section 117. It was dealing with that specific subject, and threw around it all the safeguards it deemed necessary. If these were complied with, the power of the legislature in reference thereto was unrestrained. The language of section 63 is general, that of 117 is specific. The general must give way to the specific, and section 63 applied to cases not otherwise specifically provided. In this way the two sections are made to harmonize, and the apparent repugnancy is avoided." (page 107)

Ransone v. Craft, 161 Va. 332, 170 S. E. 610, concerned a City of Roanoke charter provision authorizing the regulation of barber and beauty shops. A contention here, that the General Assembly had passed no general law permitting such regulation, as authorized by section 65 of the Constitution, and that the Roanoke charter provision thus violated section 65 as being special, was overruled by the Court under the principles of the *Miller*, *Narrows* and *Portsmouth* cases.

The decisive case on the scope of section 117 is *Fallon Florist v. City of Roanoke*, 190 Va. 564, 58 S. E. (2d) 316, decided in 1950. The issue here was similar to that in the *Portsmouth* case: Could the City of Roanoke charter, enacted under 117 and concededly a special act, grant the power to impose a certain tax not authorized by general legislation, or was such charter provision invalid as contravening section 63(5), prohibiting special laws "for the assessment and collection of taxes," and section 64, requiring the General Assembly to enact general laws in the cases listed in 63?

The Supreme Court of Appeals in the *Fallon* case rejected the attack on the charter tax provision, and upheld its constitutionality. In its opinion the Court cited at length from *City of Portsmouth v. Weiss*, *supra*, as a basis for its deci-

sion, including the language reconciling sections 63 and 117. (190 Va. at page 574).

The Court then affirmed the principles of the *Miller, Narrows, Portsmouth* and *Ransone* cases, saying:

“We adhere to what was said in these opinions with respect to the proper interpretation and application of these constitutional provisions.” (page 575)

The later case of *Roanoke v. Hill*, 193 Va. 643, 70 S. E. (2d) 270, followed the rule of construction approved in *Portsmouth* and *Fallon*, that general constitutional provisions page 60] must give way to the specific.

The *Fallon* decision, quoting and affirming the holding of *City of Portsmouth v. Weiss*, which had been dicta in that case, overcame any effect of *McClintock v. Richlands Corp.*, 152 Va. 1, 145 S. E. 425, a case subsequent to the *Portsmouth* case and differing with it as to the effect of section 63 on special acts passed under section 117.

The *Fallon* and *Portsmouth* cases both dealt with special acts seemingly prohibited by Section 63. Under challenge in the present cause is a special act, section 20.14 of the city charter, apparently in conflict with that part of section 64 stating that general legislation may not be amended by special act.

The present issue, in my opinion, is controlled by the holding in the *Fallon* case. If the General Assembly has the power to enact a special charter provision under section 117 despite a specific prohibition against such special act in 63, *a fortiori* a similarly enacted charter provision would prevail against the general prohibition as to amendments contained in section 64.

Further, the appellants in *Fallon* attacked the charter tax provision, not only as violating section 63, but also as contravening the first part of section 64 requiring the enactment of general laws by the legislature on the specific subjects listed in 63. Although the argument regarding 64 was not discussed separately, it is clear from the *Fallon* opinion that this contention fell along with that regarding 63, and that the Court considered both sections 63 and 64 to apply only to those situations not otherwise specifically provided for.

For these reasons, it must follow that the con- page 61] tention in the present case, that section 20.14 of the city charter is invalid as violating the section 64 rule against the amendment of general legislation by special act, cannot prevail in the light of the *Fallon* decision.

The real issue here is not whether section 20.14 of the Falls Church charter is invalid under section 64, considered alone, but whether the General Assembly had the power to enact 20.14 under the authority of section 117 of the Constitution without regard to section 64. The *Fallon* decision leaves no doubt but that the General Assembly does have this power, and appears to have decided with finality that the state legislature is unrestrained in the enacting and amendment of municipal charters, except for those restraints imposed by section 117. (190 Va. at page 574)

It should be noted that the constitutional sanction for special legislation found in section 117 extends only to cities and towns, and does not include counties.

The finding of the court on the constitutional issue concerning section 20.14 of the Falls Church charter is supported by the presumption of validity which is accorded to legislative acts. This presumption is borne out by the following language from *City of Portsmouth v. Weiss, supra*; the Court citing the *Miller* and *Narrows* cases:

"that when the enactment is published by the State as a statute, there is at least a *prima facie* presumption, in the absence of evidence to the contrary, that the charter, or amendment thereof, was enacted in the manner required by the Constitution; and that the rights and powers conferred are within the legislative power to grant." (page 107)

The above presumption as to enactment will apply here, as no evidence was offered to show that the Falls Church charter was not enacted as required by section 117. Indeed, it is questionable, in the light of the discussion in the *Narrows* case, *supra*, 128 Va. at page 586, that this type of attack is permitted at all, once an act has been duly enrolled, signed, and published.

Although I feel that the *Fallon* decision has removed any doubt in the present cause, even should the validity of a given statute be considered as doubtful, the constitutionality of such statute must be upheld in view of this presumption from the *Portsmouth* case, 145 Va. at page 104:

"Whenever a statute is enacted by the legislature, it is a legislative declaration that it is a constitutional enactment, and when approved by the Governor it is an executive declaration to the same effect. Hence the oft-repeated declaration that all doubts about the constitutional validity of a statute are to be resolved in favor of its validity, and that

there is no such thing as a statute of doubtful constitutionality."

The legislative determination as to the scope to be given to section 117 of the Constitution is entitled to great weight, and specifically in point with this principle is this language from the *Fallon* case, 190 Va. at page 575:

"It may be observed in passing that the view we have taken is in accord with the legislative interpretation of these sections of the Constitution. The General Assembly has repeatedly, especially in recent years, enacted special laws granting to various municipalities, by provisions in their charters, special powers suitable to their particular needs, some of which fall within the classes of inhibited special legislation detailed in section 63, paragraph (1) to (20), both inclusive. To be specific, during recent sessions the General Assembly has enacted charter provisions giving certain cities and towns the power to levy taxes on charges for admissions to places of amusement and entertainment and on public utility charges.

While such legislative interpretation is not binding on us it is entitled to much weight. *Harrison v. Barksdale*, 127 Va. 180, 207, 102 S. E. 789; *Board of Sup'rs v. Cox*, 155 Va. 687, 706, 156 S. E. 755; *Roanoke v. Michael's Bakery Corp.*, 180 Va. 132, 143, 21 S. E. (2d) 788, 793."

The plaintiff lastly maintains that inasmuch as section 20.14 of the city charter and the exception in section 2-29(11) were both enacted in 1950, and since subsection (11) has been held invalid in *Dean v. Paolicelli, supra*, charter section 20.14 must also fall, as, it is argued, the legislature intended both acts to stand or fall together.

This contention of the plaintiff has no merit, in my opinion, and will be overruled. If section 20.14 is constitutional, as this court has found, I can see no reason for holding it to be invalid merely because a similar provision for Arlington County, passed at the same session, could not overcome its constitutional hurdles. The pertinent presumptions are in favor of constitutionality, not against.

For the foregoing reasons, and in view of the findings made, the relief prayed for by the plaintiff will be denied.

Yours very truly,
CALVIN VAN DYCK

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Fairfax County Courthouse
Fairfax, Virginia
March 5, 1963

Douglas A. Clark, Esq.
Attorney at Law
650 Warner Building,
Washington 5, D. C.

Re: *Pierce v. Dennis, et al*
In Chancery No. 17054

Dear Mr. Clark:

This will acknowledge your letter of March 1, 1963 calling attention to the case of *Lambert v. Barrett*, 115 Va. 136, 76 S.E. 586, on the issue of whether council members of the City of Falls Church are officers within the meaning of Section 20.14 of the City Charter.

On this question, I felt that the determining factor was not the general law, but the specific intent of the General Assembly in enacting the Falls Church charter, if such intent was shown. On reading the various charter provisions, I felt that the intent was clear to have council members included within the protection of Section 20.14, and the decision was made on this basis. I appreciate, however, your calling the *Lambert* case to my attention.

Sincerely,
CALVIN VAN DYCK

CVD/bar
c. c. LaRue Van Meter, Esq.
John S. Davenport, III, Esq.

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FINAL DECREE

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the plaintiff's motion for declaratory judgment; upon the joint and several answers of the individual defendants; upon the petition for leave to intervene by the City of Falls Church which

was granted by the Court; upon the plaintiff's answer to petition of the City of Falls Church; upon the individual defendants' amendment to their answer, and plaintiff's reply thereto; upon the individual defendants' motion to dismiss for want of jurisdiction of the subject matter; upon the evidence heard *ore tenus* and the argument of counsel for the respective parties heard by the Court on January 28, 1963.

Upon consideration of all of which the Court, for reasons set forth in a memorandum opinion to counsel dated February 14, 1963, hereby made a part of the record, is of the opinion that it has jurisdiction of the subject matter and accordingly doth overrule defendants' motion to dismiss, to which action of the Court defendants and the intervening petitioner objected and excepted. And the Court being further of the opinion, as set forth in said memorandum and in a letter of March 5, 1963, to counsel for plaintiff also hereby made a part of the record, that the plaintiff is not entitled to the relief prayed for in his said motion for declaratory judgment and that the same should be dismissed doth ADJUDGE, ORDER and DECREE that the plaintiff's motion for declaratory judgment be, and the same is, hereby dismissed, to which action of the Court plaintiff objected and excepted.

CALVIN VAN DYCK
Judge

Date: March 14, 1963

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* * * * *

Filed May 13 1963.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: The Clerk of the Circuit Court of Fairfax County, Virginia:

The plaintiff, by his attorney, hereby gives notice, pursuant to the provisions of §4, Rule 1 of the Rules of the Supreme

Court of Appeals of Virginia, of his appeal from that certain Final Judgment entered in the above-styled cause on the 14 day of March, 1963, in which the relief requested by the plaintiff was denied and the defendants were held competent to hold office as councilmen of the City of Falls Church.

Further, pursuant to said Rule, plaintiff assigns the following error:

1. The Trial Court erred as a matter of law in ruling that §20.14 of the Falls Church City Charter as being constitutional.

DOUGLAS A. CLARK
Attorney for Plaintiff
Cedar Lane
Merrifield, Virginia

* * * * *

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June 28, 1963

Re: Pierce v. Dennis, et al,
In Chancery No. 17054

A situation has arisen regarding the date of the final decree in this cause which I feel makes necessary a statement by the court.

A final decree endorsed by all counsel was presented by Mr. LaRue Van Meter, counsel for defendants, based on the court's memorandum opinion of February 14, 1963. This order was signed and entered on March 7, 1963.

Mr. Douglas A. Clark, counsel for the complainant, had previously written on March 1st requesting reconsideration by the court of its decision. This request was denied in my letter of March 5, 1963. Mr. John S. Davenport, III, of Richmond, co-counsel with Mr. Van Meter, wrote Mr. Clark on March 6, 1963, enclosing a revised page one which he felt should be used instead of that originally proposed, the revised page including reference to the court's letter of March 5, 1963. Mr. Clark, not knowing that the original decree had been signed on March 7th, sent the revised page one to Mr. Van Meter on March 11th, indicating that the proposed revision was agreeable to him.

On March 14, 1963, Mr. Van Meter came to my office with the revised page one of the decree and wanted to substitute this for the original page one. I told him that I had already signed the previous decree, but that if the decree had not been

photostatted, I would enter a revised decree without specifically revoking the first. Mr. Van Meter checked and found that the first decree had not been photostatted and brought it back to the office.

There was no new second page to the new decree, but Mr. Van Meter advised the court that Mr. Clark was agreeable to effecting the revision of the decree by a simple page 77] substitution of the revised page one for the original page one, and by letting page two, with his previous endorsement, stand as it was. With this understanding, the substitution for page one was made, and the decree was entered.

When Mr. Clark learned, in early May, that the final decree as entered bore the date of March 7, 1963, he promptly stated that he had never authorized Mr. Van Meter to use his previous endorsement with the original March 7th date in the revised decree.

I met with Mr. Clark and Mr. Van Meter on May 10, 1963. Mr. Van Meter conceded that March 14, 1963 was the first time that the revised decree, requested by the defendants and approved by the complainant, was presented for entry. It was also clear to the court that Mr. Clark had never agreed to have the March 7th date of the original entry stand for the entry of the revised decree, although I am sure Mr. Van Meter believed so in good faith. No reason persuasive to me was offered to show how the defendants could, under these circumstances, be entitled to an entry date prior to the March 14 date of presentation. Mr. Van Meter maintained, however, that he was entitled to the March 7th date.

Since the March 7, 1963 date was allowed to remain in the first place only because of counsel's statement that Mr. Clark was in agreement, it appeared to me to be manifestly unjust to penalize Mr. Clark in his appeal by holding him to this date, and that to do so would permit the defendants to profit by a situation they had created. I considered that the defendants had no standing before me to argue that the mistake could not be corrected, even if caused by them, and therefore used the authority of Code Section 8-348 to amend the decree to give a correct date of entry as March 14, 1963, the date this decree was presented by Mr. Van Meter.

In connection with Section 8-348, the court corrected the final decree on its own motion, at the May 10, 1963 meeting with counsel. Part of the correspondence relating page 78] ing to the final decree is in the court file; the remainder is attached hereto.

Mr. Clark filed his notice of appeal and assignment of error

William R. Pierce

on May 13, 1963, the sixtieth day from March 14, 1963. The record was presented on the same day. Inasmuch as it had been signed by both counsel, the court proceeded to endorse the record as tendered and later as signed, all without comment, in accordance with Rule 5:1, 3(e), (f).

I certify the above to be true to the best of my knowledge.

CALVIN VAN DYCK,
Judge

Received and filed by me this 24, day of June, 1963.

EDWARD E. YOUNG
Deputy Clerk Circuit Court
Fairfax, Virginia

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WILLIAM R. PIERCE

was called as a witness and, having first been duly sworn took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Clark:

Q. Will you state to the Court your name, please?

A. William R. Pierce.

Q. Where do you live, Mr. Pierce?

A. 408 Jackson Street, Falls Church.

Q. Is that in the City of Falls Church proper?

A. It is.

Q. Are you a qualified voter in the City of Falls Church?

A. Yes.

Q. Are you a taxpayer in the City of Falls Church?

A. Yes.

Q. How long have you lived there?

A. I have lived there continuously now since 1945.

Q. Do you own real property in the City of Falls Church?

A. Yes I do.

Q. Do you own personal property in the City of Falls Church?

A. Yes sir.

Q. Do you pay taxes on both —

A. Yes.

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Q. — in the City of Falls Church?

A. Yes.

William R. Pierce

Q. Have you voted in each of its elections?

A. I don't think I have failed to vote in any elections within my recollection.

Mr. Clark: You may examine.

CROSS EXAMINATION

By Mr. Davenport:

Q. Do you make any claim to the office occupied by any one of these four gentlemen?

A. I beg your pardon, sir? I have a bad cold and one ear is stopped up.

Q. Do you make any claim to any office occupied by the four defendants as a Member of the City Council?

A. Any what?

Q. Do you claim you have a right to occupy the office of —

A. No.

Q. — City Council —

A. No.

Q. Did you run for election in the City Council in 1959?

Were you a candidate?

A. No I did not.

Q. Were you a candidate for election in the City Council in 1961?

page 11] A. No I was not.

Q. Did you take an active part in the political campaign for either one of those elections?

A. Not an active part, no.

Q. What part did you take, other than voting?

A. I encouraged the election of certain candidates.

Q. Did those candidates include the defendants in this case?

A. No, they did not.

Mr. Davenport: I have no further questions.

Mr. Clark: That's all. Step down, sir.

(witness excused.)

Mr. Clark: Call Mr. Dennis to the stand, please.

Whereupon,

Samuel J. Dennis

SAMUEL J. DENNIS,
was called as a witness and, having first been duly sworn,
took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Clark:

Q. State your name to the Court, please?

A. Samuel J. Dennis.

Q. Where do you live?

A. 419 East Columbia Street in the City of Falls Church.

Q. Where are you employed?

A. I am employed by the United States Bureau
page 12] of the Census in Suitland, Maryland.

Q. How long have you been employed by the
United States government?

A. By the United States government for nearly 29 years.

Q. And what is your classification with the United States
government? Do you have a rating, a GS rating, ten or
twelve, something — that sort of thing?

A. Yes sir. Fifteen. A GS 15.

Q. GS 15?

A. GS 15.

Q. And what is the salary of a GS 15?

A. My salary is \$17,445.00 a year.

Q. In response to a subpoena *duces tecum*, did you bring
with you the job classification or description sheet?

A. I have it here in my hand.

Q. Will you read it to His Honor, please?

A. I don't quite know where to begin.

Q. May I see it, please?

A. I think the pertinent portion begins down at the bottom
of the first page. If you would like, I will start reading there?

Q. Well, begin with the nature of the job or work. You
have already stated your classification, if it's all right with
the other gentlemen?

Mr. Davenport: Yes. Any way you want.
page 13]

Mr. Clark: Start with that and read your job
description sheet for the United States govern-
ment.

(at this point Mr. Dennis read his job classification sheet.)

Samuel J. Dennis

By Mr. Clark:

Q. Do you have employees under your supervision?

A. Yes.

Q. How many?

A. Between forty and forty-five at the present time.

Mr. Clark: That's all.

CROSS EXAMINATION

By Mr. Davenport:

Q. You are a defendant, Mr. Dennis?

A. I beg your pardon?

Q. You are a defendant, Mr. Dennis?

A. I am a petitioner.

Q. Are you a Member of the Council of Falls Church?

A. I am a Member of the Council of Falls Church?

Q. When were you elected?

A. I was elected in June, 1961.

Q. You took office when?

A. I took office in April 1961, because I was appointed to the Council before my election.

Q. To fill a vacancy?

A. Yes.

page 14] Q. Then you were elected for that position beginning — the term began on what date?

A. At the beginning of September 1, 1961.

* * * * *

page 21]

* * * * *

RE-DIRECT EXAMINATION

By Mr. Clark:

* * * * *

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Q. Now, isn't it a fact that there are no government em-

Thomas R. Jones

ployees that are members of the City Council in the City of Alexandria?

A. I have no knowledge of that fact.

Q. You don't know that to be so. And do you have any knowledge as to whether or not the City Council of the City of Fairfax has any government employees as such on it?

A. I have only hearsay on that.

Q. As a matter of fact, you know it is true that there are no government —

A. This is my understanding.

Q. — employees on either one?

A. This is my understanding.

Q. That's all. Oh, just one second. As a matter of fact, there are no government employees on the County Board of the County of Arlington, is there?

A. This is also my understanding.

Q. Also —

A. Of course I am not competent to testify on that point.

Q. And there are no government employees on the Board of Supervisors of Fairfax County, is there — isn't that your understanding?

A. *That is* my understanding, though again, I page 23] do not feel competent to testify.

• • • • •

THOMAS R. JONES

was called as a witness, and having first been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Clark:

Q. What is your name, please?

A. Thomas R. Jones.

Q. And where do you live?

A. 1304 Tracy Place, Falls Church.

Q. You are a Member of the City Council of Falls Church?

A. I am.

Q. *And when* did you take office?

A. September 1, 1961.

Q. And you have served since that time?

A. That's right.

Thomas R. Jones

- Q. Where are you employed?
page 24] A. At the Research Development Laboratories,
Fort Belvoir, Virginia.
- Q. Is that for the United States government?
A. Yes sir.
- Q. How long have you been employed there?
A. I have been employed at this particular agency a little
over two years.
- Q. What is the title of the position you hold?
A. Chief, Technical Library.
- Q. And what GS rating do you have?
A. Eleven.
- Q. And what is your salary?
A. Approximately \$9,900.
- Q. That is per year?
A. Per year.
- Q. Do you have personnel you supervise?
A. I do.
- Q. How many people do you supervise?
A. Five or six, approximately.
- Q. Are you head of a division or a section?
A. It is actually a section of a branch.
- Q. In response to a subpoena *duces tecum*, did you bring
with you your job classification sheet?
A. I did.

- Q. Will you read it into the record, please sir?
page 25] A. May I ask Mr. Van Meter if I could have
that copy, please.

- Q. Do you have more than one copy of that?
A. No I don't, at the present time.
- Q. Will you read that into the record, please sir. Let me
see that just a second, please sir. I think we had better start
at the top with the job and work down and read the entire
classification sheet.
- A. All right — all right.

(At this point Mr. Jones read his job classification sheet.)

- Q. I might have asked you this question before. You are
a defendant in this action?
A. I am.
- Q. Let me ask you, you are a librarian, aren't you?
A. Right.

Lee M. Rhoads

Q. Are you familiar with the job classification standards of the Civil Service Commission?

A. Only to a slight extent.

Q. I show you this and ask you if you are familiar with this publication of the Civil Service Commission —

Mr. Davenport: May I see it, Mr. Clark?

By Mr. Clark:

Q. Are you familiar with the general evaluating guide there as set forth by the Civil Service Commission? page 26] A. I am familiar with the fact that this series exists but I do not have access to them.

Q. You couldn't indentify this?

A. I could not identify it.

Mr. Clark: That's all. I would like to offer this in evidence. I have only *onecopy*. As Plaintiff's Exhibit —

The Court: Is this the job description?

Mr. Clark: Plaintiff's Exhibit No. 2, as to the defendant Jones. That's all.

(The document referred to was marked Plaintiff's Exhibit No. 2 and received in evidence.)

CROSS EXAMINATION

By Mr. Davenport:

Q. Have you ever held a position on the City Council of Falls Church prior to your present term?

A. No sir.

Q. This is your first term?

A. Right.

• • • • •

LEE M. RHOADS

page 27] was called as a witness and, having first been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Clark:

Q. What is your name, please?

Lee M. Rhoads

A. Lee M. Rhoads.

Q. Where do you live?

A. 1302 Tracy Place, City of Falls Church.

Q. Are you a member of the City Council of the City of Falls Church?

A. Yes sir.

Q. You are a defendant in this action?

A. Yes sir.

Q. How long have you been a member of the City Council of Falls Church?

A. In the current term I have been a Member since September of 1959. Previously served on the Council from 1948 to April 1951.

Q. Where are you employed?

A. Navy Department, Washington, D. C.

Q. And what is the title of your position?

A. Supervisory Procurement Analyst.

Q. And how long have you been employed by the government?

A. 28 years, including military service.

Q. How long have you been in the present position?

A. About a little over a year or two years.

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Q. Where were you prior to that time?

A. I have been in the Navy Department since 1946.

Q. At the time you were elected to the City Council, what was your position then with the Navy Department?

A. Which time, Mr. Clark?

Q. The second time, the last election?

A. I was a contract negotiator in the Bureau of Ships.

Q. And you have been in this position how long?

A. About two years.

Q. Do you have your job description sheet of your present position?

A. Yes sir, I do.

Q. Would you read that to us, please sir. Oh, one question before you do that. What is your annual salary?

A. \$14,500.

Q. And what is your job description?

A. This starts — shall I read the description of it?

The Court: Do you have a GS grade?

The Witness: GS 15, Your Honor.

Harold Silverstein

Mr. Clark: What was your GS grade when you were elected to the Council the last time?

The Witness: Thirteen.

Mr. Clark: All right, just read that now.

The Witness: Right.

(At this point, Mr. Rhoads read his job classification sheet.)

Q. Do you have persons that you supervise?

A. Yes sir, I do.

Q. How many?

A. I believe ten.

Q. And are you head of a section or a unit?

A. That would be the head of a section.

Q. Head of a section.

* * * * *

HAROLD SILVERSTEIN

was called as a witness and, having first been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Clark:

Q. What is your name, please?

A. Harold Silverstein.

Q. Where do you live?

A. 203 West Marshall Street, Falls Church, Virginia.

Q. How long have you lived there?

A. Approximately twelve and a half years.

Q. Are you a Member of the City Council of
page 30] Falls Church?

A. I am.

Q. When did you take office?

A. My current position is from September 1, 1961. I previously occupied an interim appointment of a vacancy in February 1961.

Q. And what is your present position?

A. I am Special Assistant to the Chief Signal Officer, United States Army.

Q. How long have you been in that position?

Harley Williams

A. Present position I have been in approximately five years.

Q. What is your GS rating?

A. Sixteen.

Q. And what is your salary?

A. \$17,500.

Q. And you are a defendant in this action?

A. I am.

Q. Do you have with you your job classification sheet?

A. I do.

Q. Will you read it to His Honor, please?

A. Yes sir.

(At this point Mr. Silverstein read his job classification sheet.)

Q. Do you supervise other personnel, and how many?

A. One — my secretary.

page 31] Q. Are you the head of any department or unit?

A. No sir.

Q. What was the title of your job again?

A. Special Assistant to the Chief Signal Officer.

* * * * *

HARLEY WILLIAMS

was called as a witness and, having first been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

By Mr. Clark:

Q. What is your name, please?

A. Harley Williams.

Q. Where do you live.

A. City of Fairfax.

Q. What is your occupation?

A. I am a Federal employee.

Q. In what department?

A. Civil Service Commission.

Q. Are you familiar with the Civil Service Commission's position classification standards?

Harley Williams

A. I have a general familiarity with them, Yes.
page 32] Q. I show you a general grade evaluation guide
for non-supervisory clerical positions and which
consist of the first 50 pages of that and ask you if that is the
Civil Service Commission's guide for classification of clerks?

A. Yes sir, it is.

The Court: Mr. Davenport, do you want to look at this?

Mr. Davenport: I would like to look at it before you ask
anything specific from it. As far as discussion, I would like
to hear that myself.

The Witness: Classification standards for clerks under the
Classification Act of 1949.

Mr. Clark: I offer this in evidence, if the Court please.

The Court: You have no objection to putting this in evi-
dence?

Mr. Davenport: No sir.

The Court: It will be received as Plaintiff's Exhibit No. 5.

(The document referred to was marked Plaintiff's Exhibit
No. 5 and received in evidence.)

By Mr. Clark:

Q. Mr. Williams, do you know at what GS rating clerical
positions stop?

page 33] A. Under the Classification Act of 1949, at
Grade Six generally.

Mr. Clark: That's all, Mr. Williams.

CROSS EXAMINATION

By Mr. Davenport:

Q. Mr. Williams, are you familiar with the Classification
Act that was in effect prior to 1949?

A. Yes sir. The one prior was 1923.

Q. Are you familiar with the provisions of the Virginia
Code, specifically Section 2-27 and 2-29?

A. Yes sir, I am.

Q. Are you familiar specifically with the provisions of 2-29,
known as sub-section 10, dealing with clerks in the Federal
government?

A. Yes sir, I am.

Harley Williams

Q. What Federal act was in effect — Classification Act was in effect at the time section 10 or 2-29 was adopted?

A. I don't remember the precise year that was, but it was around 1900. The Classification Act in effect then was the Classification Act of 1862.

Q. What was the status of a clerk under the Classification Act that was in effect at the time section — subsection 10, 2-29 was adopted?

A. The Classification Act of 1862 provided for four classes of clerks within the Federal government. Really, page 34] all employees were clerks, under those categories.

Q. Did you — have you heard the testimony of the defendants in this case in their job classifications?

A. Yes sir.

Q. Can you testify as to what their status would have been with reference to a clerk, under the Classification Act that was in effect at the time this statute was adopted?

Mr. Clark: I object, because there isn't any evidence here as to when the statute was adopted.

Mr. Davenport: I think it was 1952. Subsection 10. Yes.

Mr. Clark: Go ahead.

The Court: Can you all agree as to when the provision was adopted?

Mr. Clark: If the Court please, I think this provides that it was amended up to 1952.

Mr. Davenport: Subsection 10 which was originally put in the statute prior to 1919. Now what was the — which year the Act was adopted — not sure — but certainly can check that, Your Honor.

By Mr. Davenport:

Q. I *think my* question was did you hear the testimony with reference to the job classifications of the four defendants?

A. I heard that, *Yes* sir.

page 35] Q. Do you know what — whether or not they would have been classified as clerks under the Job Classification Act that was in effect in the Code of 1919?

A. Don't know for certain, but I do know that the heads of the administrative bureaus were called Chief Clerks at that time.

Q. Was each employee under the heading of an administrative bureau also classified as a clerk?

A. Not every employee.

Harley Williams

Q. Any of them classified higher than a clerk?

A. Some were specifically classified as attorneys, for example.

Q. Are there other things such as special professional classifications where they were classified as clerks?

A. It varied. Looking at the appropriation acts, you will find that there were some special classifications.

Q. Do you know whether or not these particular jobs defined in these jobs, in those job descriptions, whether they would be clerks or not under that Act?

A. Some of them would.

Q. Can you specify?

A. I don't remember seeing any Librarian specified in the Acts.

Q. Would the other three defendants?

A. Don't know whether there were any such
page 36] jobs at the time for the others.

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A Copy—Teste:

H. G. TURNER, Clerk.

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