

2050739

Record No. 5968

PETITION FOR WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

ROBERT Y. BUTTON, ATTORNEY
GENERAL OF VIRGINIA

v. (Virginia College Building Authority)

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 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.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. **5968**

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Friday the 11th day of September, 1964.

ROBERT Y. BUTTON, ATTORNEY GENERAL OF VIRGINIA,
Petitioner,

against (Virginia College Building Authority)

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

Upon a Petition for a Writ of Mandamus

On the first day of the session came Robert Y. Button, 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, respondent, to issue warrants upon the Treasurer of Virginia in such amounts as may be authorized by certain State educational institutions from funds derived from fees, rents and charges for the purposes set forth in Chapters 607 and 635 of the Acts of Assembly of 1964, as more fully set out in the 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 the same, and for other relief.

Whereupon came the respondent, by counsel, and filed his answer to the aforesaid petition.

Upon mature consideration whereof, M. Wallace Moncure, Jr., Esquire, is hereby appointed as counsel to represent the said respondent, and it is ordered that the cause be docketed and the record printed.

On motion of the parties agreed, it is further ordered that 25 printed copies of the petitioner's brief be filed with the clerk on or before October 14, 1964; that 25 printed copies of the respondent's brief be filed with the clerk on or before November 18, 1964; and that 25 printed copies of the petitioner's reply brief, if any, be filed with the clerk on or before December 2, 1964; and the cause is hereby placed upon the privileged docket of the January, 1965, session of this court.

RECORD

**NOTICE OF APPLICATION FOR WRIT OF
MANDAMUS.**

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

Please take notice that on the 9th day of September, 1964, at 9:30 A. M., the undersigned will make application to the Supreme Court of Appeals of Virginia then sitting at Staunton, Virginia, for a writ of mandamus against you, a copy of the petition for said writ being attached to this notice.

This the 18 day of August, 1964.

ROBERT Y. BUTTON
Attorney General.

Service of the foregoing notice of application for a writ of mandamus with attached copy of the petition for said writ is accepted this 18 day of August, 1964.

SIDNEY C. DAY, JR.,
Comptroller.
By C. P. MILLER, JR.
Asst. Comptroller.

PETITION FOR WRIT OF MANDAMUS.

Your petitioner, Robert Y. Button, Attorney General of Virginia, by this petition for a writ of mandamus, respectfully represents unto the Court as follows:

I.

Under the provisions of Chapter 607, Acts of General Assembly of Virginia (1964), the Virginia College Building Authority (hereinafter designated as Authority) was established as a public body corporate and a political subdivi-

sion and an agency and instrumentality of the Commonwealth of Virginia. This Act is codified as Chapter 3.1 of Title 23 of the Code, the sections of said Chapter being numbered 23-30.1 through 23-30.22 of the Code. The powers of the Authority are generally set forth in § 23-30.6, among which are those powers set forth in paragraphs (e), (f) and (g) of said § 23-30.6, which subsections read as follows:

“(e) to finance the establishment, construction, repair, reconstruction, acquisition, extension, enlargement or improvement of projects at any educational institution within the Commonwealth, all as may be determined by the Authority and any such educational institution and provided for in a contract or lease;

(f) to issue revenue bonds of the Authority, payable solely from the lease rentals, contract payments and other funds pledged for their payment, for the purpose of providing funds for paying all or any part of the cost of any one or more projects at any one or more educational institutions, and to refund any of its bonds;

(g) to pledge to the payment of the principal of and the interest on its revenue bonds any moneys to be received by it pursuant to law; * * *”

Section 23-30.7 of the Code, in paragraphs (b) and (c), authorizes each State educational institution, as same is defined in § 23-30.2(b):

“(b) to fix, revise, charge and collect fees, rents and charges for or in connection with the use, occupation or services of any project and to pledge the same and any increases in the revenues to be derived from any existing facilities at such educational institution resulting from any increase in the fees, rents or charges for or in connection with the use, occupation or services of any such existing facilities to the payment of the rentals payable under a lease or the contract payments payable under a contract;

(c) to fix, revise, charge and collect fees, rents and charges for or in connection with the use, occupation or services of any existing facilities at such educational institution and to pledge the same to the payment of the rentals payable under a lease or the contract payments payable under a contract; * * *”

II.

Under the provisions of Chapter 635, Acts of General Assembly (1964), §§ 23-14, 23-15, 23-19, 23-21, 23-22 and 23-26 of the Code of Virginia, relating to the issuance of bonds and the incurring of certain obligations by the educational institutions named in § 23-14 of the Code, were amended and reenacted. Prior to these amendments, the educational institutions set out in § 23-14 were authorized to pledge the revenues and receipts received directly and indirectly from any project, as the same is defined in § 23-15(e), for the erection of which its bonds were issued as security for the payment of such bonds and in addition, as further security, such educational institutions were authorized to pledge the revenues and receipts derived directly or indirectly from any existing facilities of the type described in § 23-15(e) of the Code, but only those revenues and receipts derived from increases in such revenues and receipts resulting from any increase in fees, rents or charges for or in connection with the use, occupation, products and/or services of such other existing facilities or any services rendered therein.

In Chapter 635, Acts of General Assembly (1964), § 23-19, relating to the issuance of bonds for the purpose of financing the construction of projects, paragraph (d) was amended so as to provide as follows:

“(d) Any resolution or resolutions authorizing such bonds may contain a provision or provisions which shall be part of the contract with the holders of such bonds as to

(1) fixing, revising, charging and collecting fees, rents and charges for or in connection with the use, occupation or services of the project and pledging the same and any increases in revenues to be derived from any existing facilities at such institution resulting from any increase in the fees, rents or charges for or in connection with the use, occupation or services of any such existing facilities to the payment of the principal of and the interest on such bonds;

(2) fixing, revising, charging and collecting fees, rents and charges for or in connection with the use, occupation or services of any existing facilities at such institution and pledging the same to the payment of the principal of and the interest on such bonds; * * *

III.

The provisions of §§ 23-19(d) (2) and 23-30.7(c), authorizing the educational institutions to pledge all the rents, fees and charges for or in connection with the use, occupation or services of any existing facilities at such institution to the payment of the principal of and interest on any bonds issued by such institution, or to pledge the same to the payment of rentals payable under a lease or the contract payments payable under a contract have been questioned by the Honorable Sidney C. Day, Jr., Comptroller of the State of Virginia, upon the ground that he entertains some doubt as to the constitutionality of the provisions of Chapters 607 and 635 of the Acts of the General Assembly of Virginia (1964), to the extent that they permit the said educational institutions to pledge all the fees, rents and charges for or in connection with the use, occupation, products and/or services of existing facilities of such educational institutions to secure the payments of bonds issued under Chapter 3 of Title 23 of the Code of Virginia, 1950, as amended, or to pledge all such fees, rents and charges as security for the payment of rentals payable under a lease or the contract payments payable under a contract as provided for in § 23-30.7(c) of the Code. The Comptroller suggests that both provisions permitting the pledging of all the fees, rents and charges from an existing facility are antagonistic to Section 184a of the Constitution of Virginia, which provides that no law contracting a debt or liability by or in behalf of the State shall take effect until it shall have been submitted to the people at a general election and shall have received a majority of all votes cast for or against it. A copy of the Comptroller's letter, designated as "Exhibit No. 1" is attached hereto and made a part hereof.

IV.

The specific question raised by the Comptroller in his letter is as follows:

"Will the provisions of Chapters 635 and 607, Acts of General Assembly of Virginia (1964), which authorize the governing body of any educational institution to pledge the revenues derived from any existing facility,—being the fees, rents and charges for or in connection with the use, occupation or services thereof—(1) to secure the payment of bonds

issued under Chapter 3 of Title 23 of the Code, or (2) to secure the payments of rentals payable under any lease or the contract payments payable under any contract executed under Chapter 607 of the Acts of General Assembly of Virginia (1964), absent a State election on the question of so pledging such fees, rents and charges of such existing facilities, result in a violation of Section 184a of the Constitution of Virginia which provides that no law contracting a debt or liability by or in behalf of the State shall take effect until it shall have been submitted to the people at a general election and shall have received a majority of all the votes cast for (or against) it?"

V.

The letter from the Comptroller to your petitioner constitutes sufficient grounds for this Court to exercise jurisdiction in this case and to consider and determine all questions raised therein or in this petition or in the respondent's answer, such jurisdiction being expressly conferred in § 8-714 of the Code of Virginia.

VI.

Your petitioner believes, and so avers, that the provisions of Chapters 607 and 635 of the Acts of the General Assembly of Virginia (1964), concerning which the Comptroller has raised a question as to their constitutionality, are valid enactments of the General Assembly of Virginia and are not in violation of any provision of the Constitution of Virginia, and that the question presented in paragraph IV should be answered in the negative, although said Chapters 607 and 635 have not been approved by a vote of the people pursuant to the provisions of Section 184a of the Constitution, inasmuch as no debt or liability, within the meaning of those terms as used in said section of the Constitution can ever be contracted under the provisions of Chapters 607 and 635.

Wherefore, for the reasons stated, your petitioner files this petition and prays that this Court will adjudge and decree that the provisions of Chapters 607 and 635 of the Acts of the General Assembly of Virginia (1964), especially those provisions thereof concerning which the Comptroller entertains doubt as to the validity thereof, are valid enactments of the

General Assembly of Virginia and do not create any debt or liability by or on behalf of the State, and are not in violation of any provision of the Constitution of Virginia and that the question set forth in paragraph IV of this petition be answered in the negative; 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; and that a writ of mandamus may be issued by this Court directed to the said defendant, Sidney C. Day, Jr., Comptroller of Virginia, requiring him to issue warrants upon the State treasury, in such amounts as may be authorized by said State educational institutions from funds derived from said fees, rents and charges, for the purposes set forth in said Chapters 607 and 635 of the Acts of the General Assembly of Virginia (1964).

ROBERT Y. BUTTON
Attorney General of Virginia.

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

This day personally appeared before me, Mabel G. Hurt, a Notary Public in and for the city aforesaid, in the State of Virginia, Robert Y. Button, who stated on oath that he is the 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 will expire on the 8th day of May, 1966.
Given under my hand this 13th day of August, 1964.

MABEL G. HURT
Notary Public.

ROBERT Y. BUTTON
Attorney General.

KENNETH C. PATTY
Assistant Attorney General
Supreme Court Building
Richmond, Virginia

Attorney for Petitioner.

EXHIBIT NO. 1.

COMMONWEALTH OF VIRGINIA

August 13, 1964

Honorable Robert Y. Button,
Attorney General of Virginia,
Richmond, Virginia.

Dear Mr. Button:

*Re: Chapter 635 and Chapter 607 Acts of General
Assembly of Virginia (1964)*

Chapter 635 of the Acts of the General Assembly of Virginia (1964) amended Section 23-19 of the Code of Virginia so as to permit those educational institutions mentioned in Section 23-14 of the Code to pledge, as further security for bonds issued under Chapter 3 of Title 23 of the Code of Virginia, those fees, rents and charges for or in connection with the use, occupation, or services of any existing facilities at such institution to the payment of principal and interest on any bonds issued by such institution under said Chapter 3 of Title 23 of the Code.

Chapter 607, Acts of General Assembly of Virginia (1964), created the Virginia College Building Authority. This Authority is authorized to issue revenue bonds as provided in Section 9 of said Act. The Authority and any educational institution as defined therein may enter into lease or contract agreements with respect to any project or projects financed under the provisions of said Chapter 607, and any educational institution entering into such lease or contract is authorized to pledge all fees, rents and charges for or in connection with the use, occupation or services of any existing facilities at such educational institution for the payment of the rentals payable under any lease or the contract payments payable under any contract.

Such fees, rents and charges, if pledged under the provisions of Chapter 635 or of Chapter 607, Acts of General Assembly of Virginia (1964), may be expended for the purposes for which they are pledged only upon warrants of the State Comptroller. In considering my responsibility in connection with this matter, the following question is raised by me:

Will the provisions of Chapters 635 and 607, Acts of General Assembly of Virginia (1964), which authorize the governing body of any educational institution to pledge the revenues derived from any existing facility,—being the fees, rents and charges for or in connection with the use, occupation or services thereof—(1) to secure the payment of bonds issued under Chapter 3 of Title 23 of the Code, or (2) to secure the payments of rentals payable under any lease or the contract payments payable under any contract executed under Chapter 607 of the Acts of General Assembly of Virginia (1964), absent a State election on the question of so pledging such fees, rents and charges of such existing facilities, result in a violation of Section 184a of the Constitution of Virginia which provides that no law contracting a debt or liability by or in behalf of the State shall take effect until it shall have been submitted to the people at a general election and shall have received a majority of all the votes cast for (or against) it?

The Supreme Court of Appeals of Virginia in *Button v. Day*, 204 Va. 270, held that these educational institutions may pledge revenues derived from *increases* in fees, rents and charges from any existing facilities, but it did not, in my judgment, pass upon the validity of any statute under which *all* of the revenues derived from fees, rents and charges from any existing facilities may be pledged for the purpose of securing bonds issued under Chapter 3, Title 23, or to secure rentals under contracts made with the Authority under Chapter 3.1, Title 23 of the Code.

In view of the foregoing question, I entertain doubt as to the validity of the provisions referred to herein under the Constitution of Virginia, especially Section 184a thereof.

Therefore, in accordance with the provisions of Section 8-714 of the Code of Virginia, I hereby notify you that, until there has been a final adjudication by the Supreme Court of Appeals of Virginia holding that the pledging of all such fees, rents and charges as provided for in Chapters 635 and 607, Acts of the General Assembly of Virginia (1964), are not in violation of any of the provisions of the Constitution of Virginia, I shall decline to issue any warrants complying with such provisions.

Sincerely yours,

SIDNEY C. DAY, JR.
Comptroller.

* * * * *

ANSWER.

The answer of SIDNEY C. DAY, JR., Comptroller of Virginia, to a petition for writ of mandamus filed against him in the Supreme Court of Appeals of Virginia at Staunton, Virginia, by ROBERT Y. BUTTON, Attorney General of Virginia, Petitioner.

This respondent, reserving to himself the benefit of all just exceptions to the said petition, for answer thereto or to so much thereof as he is advised that it is material that he should answer, answers and says:

1. Respondent admits the correctness of the recitations contained in counts I, II, III, IV, and V of said petition.

2. Respondent does not concur in the conclusions set forth in Count VI of said petition. With respect to said conclusions respondent is advised that the provisions of Chapters 607 and 635 of the Acts of the General Assembly of Virginia of 1964 are unconstitutional because their provisions are in conflict with Section 184a of the Constitution of Virginia as is set forth specifically in Exhibit No. 1 filed with the petition.

And now having fully answered the said petition, the respondent prays to be hence dismissed, etc.

SIDNEY C. DAY, JR.

Comptroller of Virginia

By M. WALLACE MONCURE, JR.
Counsel.

MONCURE & CABELL

402 Mutual Building
Richmond, Virginia

Attorneys for Respondent.

I hereby certify that a copy of the foregoing answer was delivered to Robert Y. Button, Esq., Attorney General of Virginia, on the 9th day of September, 1964.

M. WALLACE MONCURE, JR., p. d.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

| | Page |
|--|------|
| Order—September 11, 1964 | 1 |
| Record | 3 |
| Notice of Application for Writ of Mandamus | 3 |
| Petition for Writ of Mandamus | 3 |
| Exhibit No. 1 | 9 |
| Answer | 11 |