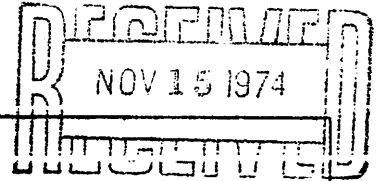


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CLERK  
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

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BOARD OF SUPERVISORS OF  
ALBEMARLE COUNTY

V.

SHELBY J. MARSHALL

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY

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APPENDIX

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Submitted by:

FREDERICK W. PAYNE  
DEPUTY COUNTY ATTORNEY  
416 PARK STREET  
CHARLOTTESVILLE, VIRGINIA 22901  
Counsel for Appellant

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APPENDIX A

PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT  
(Allegations are as follows)

1. That your Plaintiff is the duly elected Clerk of the Circuit Court of Albemarle County, Virginia, and that in her capacity as clerk she employs deputy clerks as provided for by §15.1-48 Code of Virginia (1950) as amended, hereinafter referred to as Code;

2. That your Plaintiff asserts that the amount of the compensation of her deputy clerks and the manner in which it is paid is determined by the State Compensation Board as provided in §14.1-141 of the Code;

3. That your Defendant erroneously has determined and is determining the amount of the compensation paid to the deputy clerks and the timing and manner in which it is paid;

4. That your Plaintiff cannot provide her deputy clerks with the compensation as provided for in §14.1-141 of the Code because of Defendant's action;

5. That by reason of the foregoing an actual controversy exists wherein there is an actual assertion of right and a denial of right;

WHEREFORE, your Plaintiff moves this Honorable Court to enter a declaratory judgment declaring that:

(a) The State Compensation Board as provided in §14.1-141 of the Code controls the amount of the compensation paid to the deputy clerks and the manner in which it

is paid; and,

(b) Any action of the Defendant contrary to that provision is invalid and void.

Respectfully submitted,

SHELBY J. MARSHALL  
Shelby J. Marshall

APPENDIX B

DEFENDANT'S ANSWER TO MOTION FOR DECLARATORY JUDGMENT

1. Each and every material allegation contained in the plaintiff's motion, not specifically admitted herein, is expressly denied.

2. The conclusions of law stated by the plaintiff in numbered paragraphs 1, 2, 3, 4, and 5 of the plaintiff's motion are incorrect; under the County Executive form of government, the Board of Supervisors of Albemarle County is empowered and is solely responsible for establishing the amount and method of payment of the salaries of the Clerk and Deputy Clerks of the Circuit Court of Albemarle County.

BOARD OF COUNTY SUPERVISORS  
OF ALBEMARLE COUNTY

By Counsel

APPENDIX C

JUDGMENT ORDER  
OF THE CIRCUIT COURT OF ALBEMARLE COUNTY

This matter came on this day to be heard upon the filing of Plaintiff's Motion for Declaratory Judgment, the Defendant's Answer to said Motion, upon the evidence presented in open Court and was argued by counsel; and

It appearing to the Court from the evidence and relevant statutes, proper so to do, it is hereby ADJUDGED and DECREED that the State Compensation Board by virtue of §14.1-141 Code of Virginia (1950) as amended determines the amount of compensation paid to the Deputy Clerks of the Circuit Court of Albemarle County, Virginia and the effective dates during which said compensation is due and payable; and

It further appearing that compensation was set by the State Compensation Board for the calendar year 1973 and no appeal therefrom having been taken pursuant to statute, salaries for the Deputy Clerks shall be paid for the calendar year 1973 as prescribed by the State Compensation Board, and Judgment is hereby awarded against the Defendant in favor of the several Deputy Clerks as to any deficiency in their respective salaries for the calendar year 1973.

ENTER: DAVID F. BERRY

DATE: MARCH 15, 1974

APPENDIX D

OPINION OF THE CIRCUIT COURT OF ALBEMARLE COUNTY

April 16, 1974

COURT convened at 9:30 A.M.

COURT: Now gentlemen, I have asked that counsel in the case of Shelby J. Marshall, Clerk against the Board of Supervisors attend this proceeding this morning in order that we might dispose of the case on the question of the Clerk's compensation. I took this case under advisement in order that the statutes and cases pertaining to this question might be further analyzed. I believe this case was heard approximately a month ago on March 1st and it apparently involved no conflict in the evidence but rather an interpretation of the law, and particularly statutory interpretation. To that extent the Court has analyzed certain pertinent Code sections which relate to the office of the Clerk and to the operation of the County generally or of County Government generally and also certain cases which bear on this question. In addition to those items there are a number of legislative projects which have been undertaken relating to County Government generally and then to the fee system as a method of compensation for County officers and that takes us through a long period of legislative history. One of the principal studies which, if it's not the principal study, gave rise to the optional form of Government that the County of Albemarle operates under dates back to the Virginia Commission on County Government which filed its report in 1931 and recommended to the General

1 Assembly and to the Counties three alternate forms of Government,  
2 those being the County Executive Form, the County Manager Form  
3 and the form then in existence, which was the traditional form with,  
4 certain improvements. Then through the years the legislature  
5 has considered generally the matter of the fee system of  
6 compensation through the Page Commission and the West Commission  
7 which were involved with that question. It appears that the  
8 principal objective was to gradually phase out the fee system  
9 as a method of compensation for all constitutional officers,  
10 which is the basis on which they were originally compensated, or  
11 most of them, including the Clerk and the Sheriff. Now that  
12 has largely been accomplished by the establishment of what was  
13 originally known as the State Fee Board and is now the State  
14 Compensation Board and operates to set salaries for those officers  
15 who were formerly under the fee system as a method of compensa-  
16 tion. And the County Executive Form of Government incorporated  
17 the same principal to the extent that one of the specific provisions  
18 was that the method of compensation for the Clerk would be changed  
19 and that the fee system as a method of compensation would be  
20 abolished. In addition to the abolition of the fee system as  
21 a method of compensation the County Executive Form of Government  
22 further provided for the abolition of two constitutional offices,  
23 that of the Commissioner of Revenue and the Treasurer. The thing  
24 that has become apparent through, at least in this Court's  
25 study of the legislative history and statutes is that there



1 has never been any intention on the part of the legislature,  
2 and certainly no provision under the Constitution, which would  
3 act to abolish the office of the Clerk. Now the office of the  
4 Clerk has occupied a dual role apparently from the very be-  
5 ginning of the institution of the County Government in this  
6 State. Historically, the County Clerk was one of the Chief  
7 if not the chief administrative and constitutional officer in  
8 each County and acted as Clerk of what was then known as the  
9 County Court, which was the Court of Record, and is now the Cir-  
10 cuit Court. So the County Clerk designation involves the duties  
11 of the Clerk with regard to both County functions and the  
12 functions of the Clerk of the Circuit Court, and in a large  
13 measure the confusion which has resulted in the interpretation  
14 of these statutes arises out of this dual function. It may well  
15 be that the interpretation which has been placed upon the  
16 statute relating to County Clerks is proper as far as the  
17 position taken by the County of Albemarle. But I find no basis  
18 upon which that position could be taken with regard to the Clerk  
19 of the Circuit Court. Many of the statutes which relate to  
20 this salary schedule relate to the duties or the functions of the  
21 County Clerk and they have been carried through the statutes in  
22 a separate category apparently. And the fact remains that the  
23 office of Clerk is a constitutional office. It has the peculiar  
24 distinction of being the office with the longest term and is  
25 exactly double the term of any other local official. In other

1 words every other elected official is elected for a four year  
2 term, and the office of Clerk occupies, or the Clerk, occupies  
3 a term of eight years. Now, that ought to tell us something  
4 as far as the question that we are dealing with in this case. Is  
5 the office of Clerk subordinate to the office of some other County  
6 official or the Board of Supervisors, or is it, in fact, a se-  
7 parate and distinct constitutional office in every sense of the  
8 word. Now if it is, and if being elected for eight years and  
9 means what it would seem to mean, then the Court would have to  
10 determine that the office of Clerk is not subordinate to that  
11 of any other official in the County. And that seems to me to be  
12 the rational basis upon which this case has to be decided. If,  
13 in fact, the position of the County of Albemarle is upheld it  
14 would mean that the office of the Clerk of the Circuit Court  
15 is subordinate to the Board of Supervisors and through them to  
16 the County Executive. It would certainly be strange to this  
17 Court to reason that an eight year constitutional officer would  
18 be subordinate to the Board of Supervisors who are elected for  
19 four years and each of those supervisors elected from a separate  
20 district and not from the County at large. Now, that generally  
21 is the basis upon which the common sense reasoning in this case  
22 seems to take us. Now, the Supreme Court of Virginia has com-  
23 mented on this point, and that is that the Clerk holds office  
24 by virtue of the constitution and nothing else, and that has  
25 not been changed. If in fact the Clerk is the constitutional

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1 officer that the constitution says he or she is, then it means  
2 that it is not subordinate to any other office. And I want to  
3 refer specifically to a case in which this question was presented  
4 and this had to do, of course, with the role of the Clerk as  
5 County Clerk but it's the same office as the constitution says,  
6 and the statutes. The office of the County Clerk is also the  
7 office of the Clerk of the Circuit Court or the person holding  
8 that office occupies both positions. And in the case of the  
9 County of Culpeper, the Board of Supervisors v. Coons, 121, Va.,  
10 783, The Court of Appeals had this to say, "Sheriffs, Clerks  
11 of Courts, Treasurers, Commonwealth's Attorneys and Commissioners  
12 of the Revenue do not hold their office by virtue of the General  
13 Assembly or by virtue of authority of a Municipality or County.  
14 The Sheriff and the other officers named hold their office by  
15 virtue of Section 110 of the Constitution which provides that  
16 all the officers named shall be elected by the qualified voters  
17 of the County and that their duties and compensation shall be  
18 prescribed by general law." Now, this is certainly true today.  
19 This principal is announced in the case of Hilton v. Amburgey  
20 198 Va. 727 and the quote that I just read is taken from page  
21 729. In the Coons case the Court said on this question, "a  
22 Board of Supervisors cannot place conditions upon the payment  
23 of the salary or compensation allowed by general law to an officer  
24 whose office or position is not the creature of the Board of  
25 Supervisors." The court held in that case that the Board of

1 Supervisors of Culpeper County could not require the Clerk to  
2 perform duties other than those by imposed general law as a  
3 condition precedent to the payment of part of his salary. And  
4 in that case the Court granted mandamus compelling the Board  
5 to pay the Clerk's salary without the condition attached. And  
6 the Court, in disposing of that case, had this to say "By law  
7 therefore, and not by the Board of Supervisors except as they  
8 may act in accordance with the law, must the salary or the  
9 compensation of such office or position be fixed." Now, there  
10 have been many changes with regard to County Government since  
11 that decision was announced. For instance, two of the positions  
12 that the Court was speaking about, have been abolished under the  
13 County Executive Form of Government, namely, the Commissioner of  
14 Revenue and the Treasurer. And the office of the Clerk not  
15 having been abolished, it seems that all principles related to  
16 constitutional officers still remain in effect as far as it  
17 involves the Clerk. There is certainly some confusion on this  
18 point and one of the witnesses, who had occupied the position  
19 of Clerk for many years and who had been sought and followed  
20 in his experience by the various committees of the General  
21 Assembly who dealt with Clerk's salaries, expressed himself on  
22 this point by saying that this is a "legislative thicket" that  
23 has to be construed. And I find that the more you read the  
24 statutes the more difficult it becomes to reconcile some of the  
25 apparent inconsistencies. You can certainly read certain of them to

1 substantiate the position of the Board of Supervisors in this  
 2 case, but taking the law generally and from the principles of  
 3 constitutional law, this Court can't escape the conclusion that  
 4 the Board of Supervisors cannot diminish the office of the Clerk.  
 5 They cannot subordinate it to their own position. And if the  
 6 salary of the Clerk is to be controlled other than by general  
 7 law, then it must be done through the State Compensation Board  
 8 or you would effectively subordinate an office which is not  
 9 intended to be subordinated. Now, if the General Assembly  
 10 intends to do this then, of course, it ought to be more specific,  
 11 at least in this Court's judgment, with regard to the office of  
 12 the Clerk in a County where the County Executive Form of Govern-  
 13 ment prevails. Albemarle County occupies a rather distinct  
 14 position in this regard. There aren't many counties in this state  
 15 which have the County Executive Form of Government. But I find  
 16 nothing to indicate that because Albemarle County does have a  
 17 County Executive Form of Government the duties of the Clerk are  
 18 in any way changed. And the peculiar thing that should be  
 19 noted in this case is that no other statute which prescribes  
 20 the duties of a Clerk have been changed. There is no other  
 21 method by which the Clerk can be removed except the method pre-  
 22 scribed for all Clerks. They can be removed only by the Judge of the  
 23 Circuit Court, not by a Judge but by the Judge of the court in  
 24 which they perform their duties. It's a common sense principal of  
 25 law that if you are a County employee, the County would have the

1 right to fire you. I can't escape that. And to construe the  
2 Clerk as being a County employee is stretching the point too  
3 far. The Court cannot concede that the County Board of Super-  
4 visors can diminish the position of the Clerk anymore than they  
5 can fire the Clerk. The Clerk is elected by the people of the  
6 County for eight years and can be removed only by the Judge of the  
7 Circuit Court. The duties of the Clerk are separate and apart.  
8 There are provisions in the law which allow the Clerk to go to  
9 Court to force the local Board to provide the facilities that  
10 are necessary to operate the Clerk's Office, by mandamus. It would  
11 be a strange point indeed if an employee had the right to sue  
12 the employer to require the employer to carry out the duties  
13 which are prescribed by law. And the fact is that the Clerk  
14 occupies the unique function of serving both the County generally  
15 and the Court. It may well be that this Court has placed an  
16 undue emphasis on the importance of the Clerk's Office, but if  
17 that is the case then it is rather strange that the Clerk still  
18 is elected for a term of eight years. And it seems to me that  
19 we would stretch common sense completely out of proportion and  
20 constitutional law to the point of ridiculousness if the Court  
21 held in this case that the County Board of Supervisors has the  
22 right to set the salary of the Clerk independently of any other  
23 agency such as the State Compensation Board, or general law.  
24 I am very frank to say that in my opinion the General Assembly,  
25 through an oversight or a failure to coordinate the various

1 statutes, failed to provide the setting of the salary of the  
 2 Clerk by the State Compensation Board as it did with every  
 3 other fee paid officer when the fee system of compensation was  
 4 abolished. It's the only office in which that method was not  
 5 applied, if that was intended. In other words as each constitu-  
 6 tional office was taken off the fee system of compensation, it  
 7 was placed under the State Compensation Board or formerly the  
 8 State Fee Board. And The State Fee Board and then the Compensa-  
 9 tion Board became the substitute for the old system. And in  
 10 this case if the Court held that the statute not having provided  
 11 for the Clerk's salary to be fixed by the State Compensation  
 12 Board left the Clerk's salary completely to the discretion of the  
 13 Board of Supervisors would in effect be holding that the office  
 14 of Clerk is subordinate to that of the County Board of Super-  
 15 visors, and the Court cannot find any reason for such a finding.  
 16 Therefore the Court awards judgment to the Clerk to the extent,  
 17 subject to the proper calculation of the amount, of the salary  
 18 which has been deficient and which has been presented in the  
 19 form of exhibits from the State Compensation Board or the forms  
 20 filed with the State Compensation Board and is readily reduced  
 21 to a liquidated amount. And in addition to that, of course,  
 22 the effect of this ruling is to find as a matter of future  
 23 reference, unless it's reversed, that the Clerk's salary is that  
 24 which is prescribed for all clerks and construing the statute  
 25 which was one of the principal issues in this case, the Court

1 holds that the minimum salary to the Clerk is the maximum  
 2 salary prescribed under the statute. That's the only way I can  
 3 construe it. There being no other salary prescribed and there  
 4 being no means by which the salary can be adjudicated by any  
 5 independent agency, the Court finds that the amount which  
 6 the Clerk would be entitled to under the general law is the  
 7 same in Albemarle County as any other County. And that being  
 8 the case, the amount is not something that can be set by the  
 9 Board of Supervisors but is set by general law of the State of  
 10 Virginia.

11 Now gentlemen, I have undertaken to review rather  
 12 informally the basis of the Court's ruling. I have done a lot  
 13 of reading on this subject and had intended to write a rather  
 14 formal opinion as a result of it, but it's too long and too  
 15 complex and I leave it to you gentlemen to thrash it out in your  
 16 briefs on appeal if it gets that far, because I have pointed out to  
 17 you some of the areas that the Court has read. Specifically,  
 18 several of these cases, the statutes generally and the legisla-  
 19 tive history of the old West Fee Bill and the Page Commission,  
 20 the Virginia Commission on County Government I referred to,  
 21 the latter of which really is the forerunner of the County  
 22 Executive and other optional forms of Government from which  
 23 Albemarle County obtained its initial information, I'm sure.  
 24 This probably originated all of the activities in this field.  
 25 This was Chapter 268 of the Acts of The General Assembly of 1930



1 which created the Commission and its report was filed in a  
2 bound volume on December 1, 1931, under the style Virginia  
3 Commission on County Government and, of course, has been brought  
4 up to date by other studies and other legislative changes. Mr.  
5 Bains, if you will prepare an order then incorporating the  
6 findings of the Court it will be entered as of this date.

7 ST. JOHN: If Your Honor please I think this is an  
8 extremely well reasoned opinion and I would like to have your  
9 opinion typed and I would like to have the record typed whether  
10 it's appealed or not because this explanation should be presented  
11 to everybody concerned - whether it's appealed or not and also  
12 if it is appealed under the new rules, it saves both counsel  
13 the trouble of tendering the record to each other and so forth  
14 and getting a date to tender it to you. If you will order the  
15 Reporter at this time to type the transcript and make it a part  
16 of the record - I don't have the rules with me but as I under-  
17 stand from memory, if you do that, then counsel don't have to  
18 bother about any deadline in getting this transcript. And I  
19 request Your Honor, that you do that at this time.

20 COURT: All right, sir, and I know the record would  
21 not be very long. The evidence introduced was relatively short.  
22 The Court will order that the transcript and the opinion of  
23 the Court be typed as part of the record in this case and made  
24 available to counsel.

25 COURT ADJOURNED.

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**STATE OF VIRGINIA AT LARGE:**

I, Jean D. Easton, Notary Public in and for the State of Virginia at Large having been so duly commissioned and qualified do certify that the foregoing hearing was duly taken by me at the time and place specified in the caption hereof, said witnesses having been first duly sworn.

I do further certify that said hearing was correctly taken by me by mechanical methods and the same was accurately written out in full and transcribed into the English language and that said hearing is a true, accurate and correct record of the testimony by said witnesses.

I further certify that I am neither attorney nor counsel for or related to or employed by any of the parties to the action in which this hearing was taken and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

My commission expires

Given under my hand and seal this 24th day of May, 1974.

\_\_\_\_\_  
Notary Public

APPENDIX E

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR

1. It was error for the Court to rule that the amount of compensation paid to Deputy Clerks of the Circuit Court of Albemarle County, Virginia, and the effective date during which said compensation is due and payable is to be determined by the State Compensation Board by virtue of Section 14.1-141 of the Code of Virginia (1950) as amended. The amounts and effective dates of such compensation are to be determined by the Board of Supervisors of Albemarle County, Virginia, pursuant to Section 15.1-616 of the Code of Virginia (1950) as amended.

BOARD OF SUPERVISORS OF  
ALBEMARLE COUNTY

By Counsel

APPENDIX F  
STIPULATION

The parties hereto hereby stipulate and agree that no material issue of fact is presented on this appeal and that no purpose would be served by the filing of a transcript of the testimony taken in this cause.

SHELBY J. MARSHALL

By Counsel

EDWARD H. BAIN, JR.  
Edward H. Bain, Jr.  
Counsel for Shelby J. Marshall

BOARD OF SUPERVISORS OF  
ALBEMARLE COUNTY

By Counsel

GEORGE R. ST. JOHN  
GEORGE R. ST. JOHN,  
Counsel for Board of Supervisors  
of Albemarle County