

We hope it will be clearly understood by everyone that the adoption of this resolution recommended by our attorneys is no guarantee that some colored children will not be enrolled in certain white schools, thereby closing those schools come this September.

The Norfolk School System is in a precarious predicament. By Federal Court order, which will be obeyed, we may have to admit colored children to our white schools. If this comes to pass those schools are closed by State law.

The situation is serious, the citizens of Norfolk, past and present, have spent millions of dollars erecting fine schools and establishing a first rate school system. That system is now in jeopardy of being severely damaged if not destroyed.

If our schools are closed not only our children suffer, but the entire city will be severely damaged economically.

How can we expect new industry and business to come to Norfolk if we cannot guarantee all children adequate educational facilities?

How can we expect good citizens and parents of Norfolk to remain here if their children cannot be educated in our public schools?

The School Board at present has no solution to this dilemma. We have used, and we will continue to use every means at our command to handle this matter with dignity and patience. In less than sixty days, it appears that at least some of our schools are in danger of being closed. How long they would remain closed we have no way of knowing.

Because of the seriousness of this situation and the complexity of the applicable law we have posed to our attorneys certain questions which have been frequently asked of us. We have asked our attorneys to be here today to give the answers to these questions to the best of their ability. They are not easily answered and for this reason we can have no oral questions at this meeting. If other questions are in your minds, please submit them to us in writing at your convenience.

We feel this situation is of such paramount importance to the people of Norfolk that they should be as fully advised as is possible. It is for this reason that we make this statement.

QUESTIONS ASKED BY NORFOLK SCHOOL BOARD AND ANSWERS BY COUNSEL

1. Q. Assuming one or more Negro children must be assigned and enrolled in a previously all white school as a result of the Federal Court order, we understand that school is automatically closed to both white and colored children by State law.

Is there any legal means at the School Board's disposal which will permit that school to remain open and function?

- A. No. Section 22-188.5 of the Code of Virginia provides that when the School Board, acting under compulsion of any court order, assigns to and enrolls in any school, children of both races, such school is closed and removed from the public school system. This state law provides further that the making of such assignment of children of both races to the same school and such enrollment therein automatically divests the School Board of all further authority, power and control over such school and vests such authority, power and control over such school in the State of Virginia to be exercised by the Governor of Virginia.

2. Q. Once a school is closed by State law because children of both races are assigned to and enrolled in it, what provision has been made for the reopening of that school, under what circumstances can that school be reopened and who has the authority to reopen it?

- A. The answer to this question is in several parts.

First: Section 22-188.6 apparently authorizes the Governor of Virginia to reopen such a school if, after an investigation by him, he finds and

issues an executive order that (1) the peace and tranquility of the community in which the school is located will not be disturbed by such school being reopened, and operated, and (2) the assignment of pupils to such school could be accomplished without enforced or compulsory integration of the races therein contrary to the wishes of any child enrolled therein or of his or her parent or parents, lawful guardian or other custodian.

Second: Section 22-188.7 authorizes the Governor, if after investigation he concludes that such school cannot be reopened under the conditions provided for in Section 22-188.6, to reorganize and reopen such school if he finds and issues an executive order that such school can be reorganized and reopened in accordance with the provisions of Section 22-188.6.

Third: Section 22-188.11 provides that whenever it is made to appear to the Governor that such school can be reopened and operated in accordance with the provisions of Section 22-188.6, the Governor is authorized to return the operation, control and maintenance of such school to the School Board. In such event, it appears that upon the return of such school to the School Board, the School Board could reopen it.

Fourth: Section 22-188.12, as amended, provides that if after investigation the Governor concludes, or, at any time the School Board and the City Council certify to the Governor by resolution that in their opinion such school cannot be reopened, or reorganized and reopened, in conformity with the provisions of law heretofore set forth in the answer to this question, the Governor may (but does not have to) so

proclaim, in which event such school shall again become a part of the public school system of the City, and such school, elementary or secondary, shall, along with all other schools of its class (elementary or secondary), in the City, thereby become subject to the applicable provisions of the laws of the State.

If such school should again become a part of the City's public school system pursuant to the provisions of Section 22-188.12, it appears that the School Board could reopen such school but that as soon as it is reopened, because of children of both races being mixed and taught in it, all State funds for all schools of its class (elementary or secondary) would be cut off, by virtue of the Appropriations Act of 1958 (Chapter _____ of the 1958 Acts of Assembly), and it would be necessary for the City to operate all of the schools of its class (elementary or secondary) with its own funds plus such funds as would be received from the Federal Government for federally connected school children.

3. Q. When and under what conditions are State funds cut off to a school district?
- A. When children of both races are mixed and taught in the same school, then all State funds for all of the schools in that class (elementary or secondary) are cut off by virtue of the Appropriations Act of 1958.
4. Q. Under the present State law, would it be legally possible for Norfolk to operate its schools on an integrated basis to any degree, even though Norfolk would forego State school funds and the City would carry the full financial burden of educating its children?

- A. If the Governor would reopen a closed school and return it to the City in accordance with Section 22-188.6, which has been previously mentioned, or if the closed school should again become a part of the City's public school system, pursuant to the provisions of Section 22-188.12, which has been previously mentioned, it would appear that Norfolk could operate such a school on an integrated basis with Norfolk carrying the full financial burden of operation not only as to that particular school but as to all other schools of its class (all elementary or secondary schools, as the case might be).
5. (a) Q. Assuming that a Negro child is enrolled in a white high school and that school is automatically closed, would that Negro child be eligible for reassignment to, and enrollment in, Booker T. Washington High School?
- A. When such a school is closed, the School Board is automatically divested of all further authority, power and control over such school and such authority, power and control is automatically vested in the State of Virginia, to be executed by the Governor of Virginia. Therefore, such child could only be reassigned by the Governor of Virginia.
- (b) Q. If that white high school is reopened on a segregated basis, would that same Negro child be eligible for reassignment back to the reopened white high school?
- A. Counsel do not think that that child would be eligible for reassignment back to the reopened white high school during the current school session.

6. Q. If any one school is closed and the Governor is not able to reopen the school under State law and returns that school to the system, does such action then close all other schools in the same class (elementary or secondary)?

A. This question is not clearly answered in the statute. There is great diversity of opinion respecting its answer; however, after careful consideration, counsel believe that the answer is "No".

7. Q. Assuming that a special session of the State Legislature would be necessary to consider resolving the conflict between Federal and State laws what is the procedure and who has the authority to call such a meeting of the Legislature?

A. By call of the Governor, under the authority conferred on him by Section 73 of the Virginia Constitution and by Section 30-3 of the Virginia Code, or under those respective sections of the Constitution and the State Code by application in writing to the Governor, signed by two-thirds of the members of each House of the General Assembly.

8. Q. In view of the existing court order, to what extent would the Norfolk School Board be in jeopardy if it declined or refused to admit, because of their race or color, otherwise qualified Negro children who apply to schools normally attended by white children?

A. The School Board would be in contempt of the order of the Federal Court and the Members of the Board would be subject to fine or imprisonment, or both, at the discretion of the Court.

9. Q. As attorneys for the School Board and the City of Norfolk would you advise the School Board to take any action that could be construed as

being in contempt of the existing Federal Court order in this matter?

A. Counsel would not advise the School Board to take any action which in the opinion of counsel could be reasonably construed as contempt.

10. Q. As attorneys for the School Board and City Attorney would you advise us to take any action that would in any way conflict with the present State laws on this matter?

A. Counsel would not advise the School Board to take any action conflicting with the present State laws, except to the extent that any such conflict may arise as a result of obedience of the School Board to the order of the Court. In any such event, the order of the Court, having been sustained on appeal by the Court of Appeals of the Fourth Circuit and review denied by the Supreme Court of the United States, must be regarded by the School Board as paramount.