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The Governor of Virginia as Business Manager

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THE GOVERNOR OF VIRGINIA AS BUSINESS MANAGER

BLAKE TYLER NEWTON
SUBMITTED IN PARTIAL FULFILMENT
OF THE REQUIREMENTS
OF
THE COLLEGE OF WILLIAM AND MARY
FOR THE DEGREE
MASTER OF ARTS
1941
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- **Bibliography**
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CHAPTER I
HISTORICAL BACKGROUND

The purpose of this introductory chapter is to trace the development of the office of Governor of Virginia from the beginning of the English settlement at Jamestown to the election of Patrick Henry as the first Governor under the State's own constitutional framework. Reference will be made only to outstanding events in the history of the colony, to events whose repercussions still are felt in the life of the Commonwealth.

In its genesis, if not in its constitutional authority, the governorship of Virginia holds first place among executive offices in the American system of government. The tenure of English settlers at Jamestown marked the first permanent Anglican foothold on this continent. While Captain John Smith was preceded in the presidency of the Council by Edward Maria Wingfield and John Ratcliffe, that doughty old warrior, nevertheless, is known as "The Father of the Colony" and accepted by his successors as the first Governor of Virginia. He remained in the colony nearly three years, returning to England late in 1609 because of severe injuries suffered in an explosion of gunpowder. During that period he saved the settlers repeatedly from the twin threat of starvation and destruction by Indian attack. 1

For the purpose of historical narrative, we reckon the beginnings of Virginia from the landing at Jamestown in 1607. Actually, however, these beginnings go back to the issuance on April 10, 1606, under authority of

1. Margaret V. Smith, *Virginia, 1492-1892*, p. 35
King James, of a charter to the London and Plymouth companies. It is an interesting document. In its twenty-two sections the charter specifically provides that the settlers (in the territory now known as Virginia or elsewhere) and their children should have the same privileges as did those subjects "within this our realm of England." It set up for Virginia a Council of thirteen members, although not more than seven such officials ever served at any one time.

In "Articles, Instructions and Orders" issued by King James on November 30, 1606, it was directed that the Council in Virginia should name one of its own number to be president for a year. However, the official so chosen seems to have lacked special authority, except insofar as his personal influence may have outweighed that of his fellow councilors. The duty of the president is stated always as synonymous with, or including, the collective duty of the Council, as, for example, those of maintaining the Christian religion in the colony, of choosing a treasurer each year, and of granting reprieves to those who were under sentence for offenses against the colony. The power of pardon was reserved alone to the king.

The second charter under which the Jamestown settlers lived was dated May 23, 1609. Under this grant of authority control of the Virginia colony passed from the king to the Virginia Company of London. The new arrangement brought in as Governor Sir Thomas Gates, a tyrant of the "first water." His authority was well-nigh absolute. In its instructions to Gates the Virginia

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Company named the members of the Council-to-be in the colony, whom the Governor was required to consult in "all matters of importance." However, despite advice of the Council, the Governor not only had authority to act upon his own initiative and according to his own judgment but was empowered to transfer a Councilor to the performance of other duties.\(^6\)

There was one limitation to Gates' absolutism: in the second charter the rights of Englishmen guaranteed in Article XV, first charter, are extended to "free denizens and natural subjects" and the rights of children are made the heritage of their descendants.\(^7\)

Of this provision, Brown says: "To this chartered right—'the inalienable rights of free-born Englishmen'—our forefathers at the opening of our War for Independence appealed when they again protested against the royal form of government in America."\(^8\)

Lord Delaware, who followed Gates, had no less power than his predecessor. His commission, dated February 28, 1609/10, making him "lord governor and captain general" of Virginia for life, was sealed by His Majesty's Council for the company on March 10, 1609/10. "His authority in Virginia was to be most absolute."\(^9\) Gates was to become lieutenant governor upon Delaware's arrival. Instructions given the new governor in spirit were much the same as those that had been issued to the old.\(^10\)

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9. Ibid., p. 123.
In 1613, the third charter still further strengthened the company and
rendered it more nearly independent of the king. Besides including Bermuda
in Virginia territory, this grant of authority gave the company the privilege
of holding four great and general courts a year, a provision that, despite
despotic rule, extended the opportunity of friends of liberal government to
widens their influence and further their plans for a representative govern-
ment. Instructions some years later to Sir George Yeardley for "new departures"
in the government were made possible by provisions of Article VIII of the
third charter.

The year 1619 is memorable in the annals of Colonial Virginia, as it is
in the annals of free, representative government on this hemisphere. That
year marks the birth of the Virginia General Assembly, which historians de-
scribe as the world's oldest popularly elected law-making body in virtually
continuous operations. Sir George Yeardley had become Governor. He brought
with him "commissions and instructions from the Company [the Virginia Company
in England] for the better establishing of a Commonwealth here." These
instructions declared "that those cruel laws by which the ancient planters
had so long been governed were now abrogated, and that they were to be govern-
ed by those free laws which his Majesty's subjects lived under in England." Further, "that they might have a hand in the governing of themselves, yt was
granted that a Generall Assemblie should be helde yearly once, whereat were
to be present the Governor and Counsell with two Burgesses from each plantation,
freely to be elected by the inhabitants thereof, this Assemblie to have power
to make and ordaine whatsoever lawes and orders should by them be thought good
and profitable for their subsistence." 11

11. Margaret V. Smith, Virginia, 1492-1892, p. 80
And so on July 30, 1619, with the birth of the first representative law-making body in America, Jamestown assumed a unique place in history. The Burgesses assembled in the "quire of the church." Governor Yeardley appointed John Fordy Speaker of the infant parliament. He himself, along with members of the Council, participated in the deliberations of the General Assembly. The Governor was invested with power to veto legislation enacted by the body.

There was a short session of the General Assembly, February 16 to March 5, 1623/24, just prior to the annulment of the London Company's charter. No assembly met the next year. This was by reason of the fact that, when the London Company's charter was abrogated and the direction of government in Virginia was assumed by the crown, no provision for a representative assembly was made in the form of government devised.

Governor Francis Wyatt, however, favoring popular representation in the government, called together on his own authority a number of leading citizens with whom to confer on the state of the colony. The summons was directed to the commander of each plantation. The resulting meeting is known as the "convention of 1625." In 1627 the Virginia authorities sent to King Charles I a memorial on the subject of a General Assembly. His Majesty immediately granted the request and issued the proper instructions. These instructions were brought to the colony by William Capps of Hampton. The Assembly was held in March, 1627/28.

An extension of representative government came a little more than thirty years after the first Assembly met at Jamestown. These burgesses assumed authority, continuing over a period of eight years, to elect Governors of the

colony. Charles I had lost his kingly head on the executioner's block; and Oliver Cromwell, his conqueror, was ruling over what he termed the Commonwealth of England. Virginians generally had sympathized with the crown in the struggle overseas. For this reason and because of the great ocean barrier between the colony and the Mother Country, Sir William Berkeley, the royal Governor, held office for some time after Cromwell's accession to power. At length, however, the English fleet compelled Berkeley to surrender.

Richard Bennett, who had been active in the effort to bring Virginia under the authority of the Cromwellian government, then became the first Governor of the colony to be elected by the House of Burgesses. This was in 1652. From that time until Charles II regained his father's throne in 1660, two other men, Edward Digges and Captain Samuel Matthews, held the office of Governor through this method of popular choice. Cromwell paid little attention to the internal affairs of Virginia. His protectorate was marked by great prosperity in the colony. No Governor served under his appointment. All executive officers were elected by the House of Burgesses.15

With Charles II on the throne of England, Sir William Berkeley again became Governor of Virginia. He and his successors by royal appointment, most of them despots whose acts engendered revolution, guided the affairs of the Old Dominion for longer than one hundred years. Lord Dunmore was the last such chief executive of the colony.

Leonidas Dodson, without reference to the tyranny usually practiced by them, gives an interesting insight into the duties of the royal governors of Virginia during the expansive period of colonial history.

15. Margaret V. Smith, *Virginia, 1607-1698*, pp. 112-115
"The Governor," he says, "was the chief executive of the province and the
dignified head of its government. His duties were many and as varied as
colonial life itself. As commander-in-chief (captain general) he supervised
defense of the colony, by land and sea, against hostile Indians and European
fleets, revolting Negroes and pirates. He appointed, sometimes in conjunction
with the Council, most of the subordinate officials in the colony, and the sup-
ervision of their activities fell to his lot. The role of mediator in the
internecine quarrels of a neighboring province, of godfather at the christening
of an Indian girl, of exploring the unknown West, cajoler of assemblies...these
and many others were germane to his task."

The upsurge of revolution brought Patrick Henry to the foreground as the
first Governor under the Constitution of Virginia. This was on June 29, 1776.
The Fifth Virginia Convention, meeting in Williamsburg, elected him on the same
day it proclaimed the new Constitution. Virginia had passed from the status of
a royal province to that of a free and independent state.

16. Leonidas Dodson, Alexander Spotswood, Governor of Colonial Virginia,
1710-1722 Chapter 11, p. 7.
17. Margaret V. Smith, Virginia, 1607-1862, pp. 231-252.
CHAPTER II

DEVELOPMENT OF GOVERNOR'S POWERS IN VIRGINIA

STATE CONSTITUTIONS

(1776-1902)

In the days of Patrick Henry the Governor of Virginia, on his own initiative and by his sole judgment, enjoyed virtually no power. He was elected by the General Assembly, which carries the implication at least that he was at all times supposed to be subservient to the whims of his creators. Besides, a Council of State dogged his heels with "advice," which was necessary, under the Constitution of 1776, to decisive action. There was one important exception to this rule. The colonies were at war with Great Britain. Undivided command of the militia in the field seemed imperative. Taking note, apparently, of this condition, the framers of the organic law, with all their fear of further tyrannical rule, made this single concession to the Governor. Once the militia was embodied, "with the advice of the Privy Council," the chief executive alone was responsible for direction of that force, "under the laws of the country."

In 1776, the General Assembly was, in fact, a branch of government almost wholly apart from the executive. Under the Constitution, the Governor could neither prorogue nor adjourn the Assembly, "during their sitting, nor dissolve them at any time," but either upon advice of Council or upon application of a majority of the House of Delegates, he could "call them before the time to which they shall stand prorogued or adjourned."

In matters of legislation the Assembly was supreme. The Governor was given no power over bills that had been passed, either to veto them or to
return them, with suggestions for amendment, to the house of origin. In fact, executive authority in any degree over completed legislation is comparatively a new governmental phenomenon in Virginia. It was not until the Underwood Constitution became effective in 1870 that the Governor was granted the power to veto bills—an action requiring a two-thirds vote of each house to override, and it was not until the Constitution of 1902 that he was permitted to return bills with suggested amendments and to veto any item or items of an appropriation bill without impairing the rest of the measure.

The powers of the Governor were scarcely strengthened under the Constitution of 1850. This officer still was dogged by a Council of State, consisting of three members, elected, as was the Governor, by the General Assembly. The function of the Council, with its resulting implication, is outlined in the Constitution as follows:

The Governor shall, before he exercises any discretionary power conferred on him by the Constitution and laws, require the advice of the Council of State, which advice shall be registered in books kept for that purpose, signed by the members present and consenting thereto, and laid before the General Assembly when called for by them.

Thus the Governor, created by the General Assembly and granted no check on that body's actions, was at the further disadvantage of being advised by councilors whose attitude toward all public questions was a matter of record to be perused at will by a supreme legislature. The chief executive, then, was scarcely more than a legislative puppet.

The Council of State disappears with the Constitution of 1850, and the Governor, for the first time in the history of Virginia, becomes elective by the people, a provision that has been thereafter effective except during the period directly following the War between the States, when civil law in the State was suspended. ² Twenty years later, the organic law of 1850 was superseded by what is generally known as the Underwood Constitution. This was the product of a period distracted by reconstruction—an era marked by Negro ascendancy and scalawag and carpetbag rule. However, the Underwood Constitution for the first time invested the Governor with the power of veto, a step in legislative power that set up a milestone in the halting, tedious advance toward administrative authority. ⁴

It may be said that modern Virginia government began its development in 1902. On July 10 of that year the present Constitution, which since that time has been extensively revised, became effective. It was designed as a new charter for a new era. Virginia had emerged from the throes of reconstruction and had entered the first phase of preparation to meet the challenge of rapidly-changing conditions. In a schedule attached to the freshly-adopted instrument, the constitutional convention directed the Governor to call an extra session of the General Assembly as of July 15, 1902, for the purpose of revising existing governmental machinery and setting up new machinery in accordance with the new organic law. This legislature should “be vested with all the powers, charged with all the duties, and subject to all the limitations prescribed by this Constitution in reference to the General Assembly, except as

³ Ibid., Constitution of 1850, pp. 3843-44.
⁴ The Underwood Constitution, 1889.
to limitation upon the period of its session, qualifications of its members, and as to the time at which any of its acts shall take effect. The said General Assembly shall enact such laws as may be deemed proper, including those necessary to put this Constitution into complete operation."

The extra session continued into the year 1804.

In a brief message to the Assembly, Governor Andrew Jackson Montague, the first Chief Executive of the State to serve under the Constitution of 1802 and thus the first to enjoy such added powers as the new constitution conferred upon his office, summarized as follows the meaning of legislative operations in which the body was to engage:

"Your session at this time marks the end of one era and the beginning of another in the history of Virginia. The people have for years patiently awaited a new organic law, made by themselves and for themselves, that they might the better work out the problem of free government in accordance with the genius and heritage of their race. Such a consummation has come to pass, and the work is in your hands."

Indeed, the new era was at hand. The Constitution of 1802 also was a far step ahead of the organic instrument that had been given to the State by the Underwood Convention of 1869. The men who had framed it were, in the main, both patriotic and far-seeing. However, they had promulgated more of a code of law than a set of fundamental principles. Much of the Constitution was wholly inelastic in its provisions. Only in two instances did its makers increase materially the powers of the Governor, and these were in the legislative field rather than in the field of administration.

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Of this condition Dr. George W. Spicer of the University of Virginia and formerly chairman of the Commission on County Government, writes:

The Constitution of 1902...increased the legislative powers of the Governor by granting him the power to veto specific items in appropriation bills and the power to suggest amendments to bills. The only other significant addition to the Governor's power prior to 1927 came with the Budget Act of 1913, authorizing and requiring the Governor to prepare and submit to the General Assembly a biennial budget.

Thus it will be seen that the developments of a century and a half in the office of Governor of Virginia carried him to a position of legislative leadership and administrative impotence. Through constitutional grants and through his position in the party organization of the State he was now able to play the role of leadership, if not of actual supremacy, in the conduct of all the political functions of the State Government. But in the field of administration he had gained little ground. Such were the restrictions accompanying the grant of administrative powers, and so scattered and disjointed were the various parts of the administrative mechanism that grew up in haphazard fashion in the latter half of the nineteenth century and the first two decades of the present century, that the Governor was unable to exercise any effective control even over those officers appointed by him.  

CHAPTER III
THE GOVERNOR AS BUSINESS MANAGER
(1918-1940)

In the foregoing quotation Dr. Spicer refers to the Budget Act of 1918. This feature of fiscal planning, which--in subsequent extensions of authority--enormously increases the administrative powers of the Governor, had its beginnings with the advent to the governorship of Westmoreland Davis. As a candidate for office in 1917, Mr. Davis stressed the need for such budgetary procedure as, under the law, was followed for the first time in presenting the appropriation bill to the General Assembly of 1922. In his platform, he said:

We should scientifically administer our present State revenue rather than continually seek new subjects of taxation, involving added burdens to our people. To this end I advocate the inauguration of what is known as an 'Executive Budget', that is, an appropriation bill tentatively prepared by the Governor and submitted to the legislature at the opening of the session of the General Assembly.1

The budget proposal was enacted into law at the 1918 session of the General Assembly.2

Governor Davis, nine years before the enactment of the legislative portion of the Byrd reorganisation plan, appreciated the evils of "uncontrolled agencies"

1. Inaugural Address of Governor Davis, printed as House Document No. 5.
2. Acts of the Assembly, 1918, Chapter 64.
and pointed them out to the General Assembly. In his inaugural address of February 1, 1918, he said:

From time to time bureaus and State agencies have been added to the list of our public activities, and it has been the endeavor of their creators to place them beyond the supervision of the Governor, and to permit them to disburse the funds collected by them, as well as practically to add to their own accounts; they hold themselves entirely independent of the General Assembly, and conduct little governments of their own. This state of affairs should be remedied by prompt legislation; all funds should be paid into the treasury subject to appropriation by the General Assembly, and should be audited by the Auditor of Public Accounts, who should have vouchers for every expenditure.

In the same address Governor Davis advocated the creation of the office of State Purchasing Agent, a recommendation that was adopted by the General Assembly two years later. Then the legislature provided for a State Purchasing Commission, composed of the Governor, the State Treasurer, and the Auditor of Public Accounts. The Commissioner of State Hospitals was designated in the act as purchasing agent and secretary of the Commission. The powers of this body, forerunner of the existing Division of Purchase and Printing, were severely limited. The commission acted only in an advisory and cooperative capacity. State agencies might, and did, ignore the commission in their respective buying efforts.

As business manager of the State with limited authority under the law, Governor Davis also contributed notably to Virginia penology in his clean-up of the State Penitentiary, where, through vigorous action, he effected markedly more healthful conditions in the administration of that institution. On the

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3. Inaugural Address of Governor Davis, printed as House Document No. 5.
subject of penal reform the Governor said in his message to the General Assembly of 1922:

The ancient idea that a prison is solely intended for punishment has more and more given away in Virginia to the recognition of the fact that the convict is a moral and economic liability of the State, and that every endeavor should be made to return him to society morally and physically fit for the duties of citizenship upon the expiration of his term of imprisonment. To this end rigid medical examinations are made and subsequent medical treatment given through which the convicts have been cured of grievous diseases and prepared in better spirit and health for their allotted tasks. Striped clothing has been abolished. It was useless as a method of detection and unnecessarily humiliating.

The concept of the Governor as business manager of the State took deep root in Governor Davis' administration. From that time on political implications of the office were less emphasized and more effort was made to bring the law in consonance with the new idea of efficient, business administration. Governor Trinkle, Davis' successor, took the unorthodox action of bringing the late Henry G. Shirley from Maryland to be Highway Commissioner of Virginia. A successor in the office of Governor, John Garland Pollard, brought a storm about his head when he appointed a Massachusetts citizen, Dr. William Draper, State Health Commissioner, to succeed the late Dr. Eunice G. Williams. Both executives explained that they were acting, without political consideration, in what they believed to be the best interests of Virginia.

However, it remained for Governor Harry F. Byrd to bring about the greatest governmental reform in the history of Virginia. His work in making the State structure more responsive to the demands of business administration is regarded as monumental. In a message to the General Assembly transmitted

on February 3, 1926, the new executive said:

The first fundamental change must be to make the Governor the real executive head of the State. In order to do this the essential agencies of the State Government and their heads must be responsible to the Governor. The number of officers elected directly by the people must be reduced, activities of the hundred bureaus and departments must be consolidated into a few departments and the State's activities must be headed up to the Governor as the activities of a great private business corporation are headed up to the president.

Thus was laid the foundation of the short ballot and the reorganized government under the Act of 1927. Governor Price, during the current administration, has attempted to put through the General Assembly governmental reforms which were designed to implement and strengthen the Byrd reorganization but which met with a rebuff from hesitant legislators.

For a long time the tendency in Virginia and elsewhere, including Washington, has been to center responsibility in the hands of the head of the executive department of the government. This is regarded in many quarters as not only the essence but the strength of democratic rule. Ours was never designed as a pure democracy but as a representative one.

The Governor of Virginia is today virtually the business manager of the State, with wide, if somewhat diffused, control over a far-flung line of administrative agencies. Attempts further to implement and strengthen his authority are made at each biennial session of the General Assembly, for always in the intervening two years the business of the State has become more complex and more difficult to administer under divided authority. Generally speaking, the Governors themselves have led in this movement. Their success has been in direct proportion to the political prestige they enjoyed among the membership of the legislative body and the esteem in which they were popularly held.

CHAPTER IV

ADMINISTRATION REORGANIZATION AND THE GOVERNOR'S
POSITION AS BUSINESS MANAGER

Dr. Spicer has referred to the "administrative impotence" that marked
the office of Governor through the first century and a half of its develop-
ment. Other students of government in Virginia have noted the same con-
dition. However, little had been done about it. Successful remedial efforts
required not only a clear vision of procedure but an unquestioned political
leadership.

These requirements were met in the person of Harry F. Byrd. In his
campaign Mr. Byrd stressed the importance of such thorough reorganization of
the State Government as would center responsibility in the Governor as head
of the Commonwealth. He realized, as had others before him, that the adminis-
trative leadership of this officer had failed lamentably to keep pace with
the Governor's leadership in the political and legislative realms. As
Governor-elect, Mr. Byrd prepared the people for a striking program of reorgani-
zation. However, they scarcely contemplated such an heretical and revolutionary
plan as he actually presented to the General Assembly for revamping the structure
of government. This plan called for radical changes of both a constitutional
and statutory nature.

1. George W. Spicer, "Political Chief to Administrative Chief," in
Essays on the Law and Practice of Governmental Administration, pp. 97-98.

In the preceding chapter was quoted in part Governor Byrd's message to the General Assembly urging adoption of the so-called short ballot. There were many Virginians who regarded this as rank political heresy. The opinions of Thomas Jefferson were invoked to show that such a curtailment of the list of elective officers would be in fatal contravention to the principles of democratic government. Notwithstanding all this, however, the machinery had been set in motion for the curing of that administrative impotence which Dr. Spicer had ascribed to the office of Governor.

The General Assembly of 1926 acted with speed and in thorough accord with the Governor's wishes. It adopted a joint resolution proposing the short ballot amendments to the Constitution, under which only the Governor, the Lieutenant Governor and the Attorney General would be elected by direct vote of the people.2 It created a commission of seven eminent legal authorities, of which Judge Robert R. Prentis, president of the Supreme Court of Appeals, was made chairman, to bring in recommendations for such a general revision of the organic law as it deemed necessary to the projected new order of government in Virginia.3 It authorized the Governor to employ an outside agency (which turned out to be the New York Bureau of Municipal Research) to survey the State's administrative agencies and propose a plan of reorganization. It provided, also, for a citizens' committee, of which the late W. T. Reed, Richmond tobacconist, became chairman, whose function it was to cull from the report of the Bureau of Municipal Research such recommendations for reorganization as seemed feasible or desirable under conditions then prevailing in Virginia.

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3. Ibid., p. 136
With all the reports in hand, the Governor called the General Assembly to convene in special session on March 10, 1927. The legislators enacted into law a reorganization bill, under which more than thirty minor and useless administrative agencies were abolished and the remaining agencies of the government consolidated into twelve departments and the Governor's office. They proposed, in a joint resolution, the recommendations of the Prentis Commission for a general revision of the Constitution, further centering administrative authority in the hands of the Governor. This constitutional resolution, together with the one establishing the short-ballot policy, was adopted a second time at the regular session in 1926 and submitted to the people, who approved the amendments on June 19, 1928.

Mr. Byrd thus was the first Governor of Virginia, almost wholly by reason of his own unquestioned political leadership, who enjoyed the exercise of those administrative powers that properly should belong to the responsible head of a State. Administrative order had come out of chaos. When Mr. Byrd assumed the office of Governor, ninety-five separate agencies were responsible for administration of the affairs of Virginia. These agencies embraced in their number single officials, boards and commissions. The personnel of the latter bodies often included ex officio members. Agencies received their authority from varied sources. Of the ninety-five, twenty-seven were embodied in the Constitution and sixty-eight had been created by act of Assembly. Eight of the single officials were elected by the people. The General Assembly appointed several of the administrative agencies. Only twenty of the bureaus and commissions were selected by the Governor. Some of the most important

department heads, such as the State Superintendent of Public Instruction and the Commissioner of Agriculture, were elected by the people and were in great degree independent of the Governor. 5

In the realm of financial affairs the Governor virtually was impotent. Fiscal matters were in the hands of sixteen uncoordinated agencies. It was almost impossible for any single official, at any given time, to determine the status of financial affairs in bureaus, departments, and institutions.

Nor did the reorganization provide a perfect instrument through which the Governor might administer the affairs of the State. Agency confusion was not greatly diminished. Departments lacked administrative heads with authority to consolidate them properly and to channel their energies. The Department of Conservation and Development was made up of commissions. The Department of Finance was split into four sections, each functioning more or less independently. The Department of Highways, the Department of Corporations, and the Department of Workmen's Compensation, were supervised by boards. Without final power vested in an individual or in a board, the agencies or bureaus of a department were unable to function efficiently in cooperation with the Governor and the legislative bodies. Commissions working independently in the same department tended to create a confusion of aims. They swelled beyond bureau status. Lacking supervision, they also lacked direction, of effort. Remedy for this was thought to be found in a strict classification and arrangement of bureaus within unified departments—bureaus for each of which there would be a director responsible to a department head who—in turn—would be responsible to the Governor.

5. Ibid.
Thus, the reorganization, while a step in the right direction, did not prove wholly effective, particularly where the Departments of Conservation and Development and of Finance were concerned.

2. GOVERNOR PRICE'S PROPOSALS FOR REORGANIZATION.

Recognizing these defects in the governmental set-up, Governor Price presented a corrective plan to the General Assembly at its session in 1940. He covered the field in an address to the legislators on January 31, and later two bills embracing his recommendations were sent to the Assembly. One of them, introduced in the Senate on February 12, was known as Senate Bill No. 205. The other found its way to the hopper of the lower branch three days later. Neither of them ever saw the light of day. The Senate bill, referred at first to the Finance Committee, ultimately went to the Committee for Courts of Justice, where it died. The House bill suffered a similar fate, with something more of formality attending its demise. Delegate Queenanberry moved to discharge the committee from further consideration of the measure. This motion was defeated by a vote of 54 to 36.

However, the Assembly adopted a joint resolution creating a commission to study the question of reorganizing certain agencies and departments of the State. These matters, the resolution stated, deserved a "more careful and deliberate study than can be given them during the current session of the General Assembly." The commission was directed to report to the Governor and to each member of the General Assembly by September 1, 1941.

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In addressing the Assembly the Governor said:

The 1928 reorganization went a long way toward making the Governor the business manager of the State Government; but with the development of our governmental services we have not properly implemented the facilities in the Governor's office which enable him to exercise his managerial functions intelligently and constructively. The 1928 reorganization contemplated a much more integrated type of operation than has been attained in some departments of the government, and we have been brought face to face with the sad realization that merely calling a group of agencies a department in an act of the legislature does not necessarily make it so. The need for establishing a unified departmental organization and integrating the various operating procedures has been very greatly overlooked.

In neither of the two bills presented to the General Assembly was there a provision for carrying out one of the interesting recommendations of the Governor in his address of January 31, 1938; that is, his recommendation that the three boards and commissions operating in the fields of conservation, game and inland fisheries, and ocean fisheries be abolished and their functions united under the direction of a Commissioner of Conservation and Development. These agencies now comprise a so-called department, but their activities are uncoordinated and have little or no relation to each other.

Both bills called for a sweeping reorganization of the Department of Finance. The Senate measure set up a Department of Corrections, abolishing certain boards and commissions and coordinating the activities in the prison and correctional field under the over-all supervision of a commissioner. This feature was lacking in the House bill. In both bills was outlined a reorganization of the Department of Public Welfare, and in both was created a Department of Hospitals and Mental Hygiene.

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Striking proposals in the Senate bill with respect to the Department of Finance were:

1. Provision for a Commissioner of Finance, who should be appointive by the Governor, subject to confirmation by the General Assembly, and who should be the executive head of the department.

2. The three divisions of Accounts and Control, Treasury, and Purchase and Printing would remain in the department; that of Motor Vehicles, however, would be abolished and its powers and duties transferred to other departments.

3. The Commissioner, who should himself be director of one of the divisions, should appoint the others, save the Director of the Division of the Treasury, and they should serve at his pleasure. However, all appointments must have been confirmed by the Governor.

4. All powers and duties now vested in the Division of Motor Vehicles with respect to the collection of taxes, fees, etc. should be transferred to the Department of Taxation. This would be true also of all such functions exercised by the Treasury and the Division of Accounts and Control, as well as by the Commission of Game and Inland Fisheries. Similarly, the books of original assessment, now administered by the Division of Accounts and Control, would be transferred for administration to the Department of Taxation.

5. Police duties now exercised by the Division of Motor Vehicles would be vested in a Division of Highway Control, which would be a division of the Governor's office.

This proposed reorganization, had it been affected, would have resulted in a more logical distribution, Governor Price said, of the duties of the Department of Finance and would have relieved the Governor, through concentration of responsibility in a commissioner, of an enormous volume of detail. The re-arrangement of other agencies in two new departments and in an old one, and
abolition of useless boards and commissions within these departments, also
would have tended toward greater efficiency in the State Government.

3. 

TOOLS OF MANAGEMENT.

Under the provisions of the Reorganization Act of 1927, four admi-
nistrative divisions are in the Governor's office. One of these, the Budget,
extremely important in the management of State affairs, will be discussed
in Chapter V. The other three are necessary but less vital. They are
Military Affairs, Records, and Grounds and Buildings. The Governor appoints
heads of the four divisions, who serve at his pleasure, except the Secretary
of the Commonwealth (Division of Records), who is a constitutional officer
in the Executive Department and may be suspended only for cause, pending final
action by the General Assembly. 11

Although the Division of Records is a constitutional agency, its duties
are prescribed wholly by law, and the office of Secretary of the Commonwealth
may be abolished at any time by the General Assembly. 12 Its name implies the
function of the agency. In addition, the Secretary of the Commonwealth assists
the Governor materially in the preparation of records of prisoners who have
applied for pardon or commutation of sentence.

4. 

EXECUTIVE DEPARTMENT.

In a handbook on the organization and activities of the executive depart-
ments (as distinguished from the Executive Department set up in Article
V of the Constitution) submitted to the General Assembly of 1940,

11. Constitution of Virginia, Section 75.
the Governor also includes in his office the Division of Statutory Research and Drafting and the Virginia Legislative Advisory Council. This probably was done for the purpose of classification. Actually, these two agencies are not in the Governor's office as are the four divisions of the Budget, Military Affairs, Records, and Grounds and Buildings. In the Reorganization Act of 1927, what is now the Division of Statutory Research and Drafting was placed in the Department of Law as the Division of Legislative Drafting. That plan was not satisfactory. As time went on, the realization grew that the division could be, and should be, a more important and a more readily accessible agency of the government than was provided for in the Reorganization Act.

Accordingly, in 1930, the General Assembly dissociated the division from the Department of Law. It then became a sort of independent agency, charged with duties of a continuous nature and serving jointly the Governor's office and the legislature. The director of the division is appointed by the Governor, subject to confirmation by the General Assembly, and serves at his pleasure.

5.

ADVISORY COUNCIL.

The Virginia Legislative Advisory Council is a comparatively new agency of the government, albeit a very useful one. Created by the General Assembly of 1930, it is composed of seven members, five of whom must be from the General Assembly. Members are appointed by the Governor to serve at his pleasure. The Council is charged with the duty of studying any question referred to it by the General Assembly and of submitting its recommendations to members of

that body and the Governor at least thirty days prior to the next regular session of the Assembly or at such other time as may be directed. Similarly, the Governor may require such studies, with recommendations. The Director of Statutory Research and Drafting is, ex officio, secretary to the Council.

6. PLANNING BOARD.

Described in the handbook mentioned above as one of the "Associated Agencies" in the Governor's office, the Virginia State Planning Board plays a most important part in the governmental scheme. It consists of twelve members. By statutory requirement, at least eight of these shall be chosen from the heads of State administrative departments and the chiefs of divisions within these departments, one from the Agricultural Department of the Virginia Polytechnic Institute, and three from among citizens of Virginia not holding State office. All members of the Board are appointed by the Governor to hold office at his pleasure.

This agency of the government had its inception in an executive order by Governor Pollard in the fall of 1938. The General Assembly, in regular session the following year, gave the Planning Board official recognition. One of the first functions of the board was to advise the Governor and other officials as to public works projects for which applications were being filed with the Public Works Administration. The purpose of this work was to relate these projects both to immediate needs and to the long-range interests of the State and the several communities that were involved. In this job, extensive data were gathered, covering such a diversified field as population, natural resources, industries, land use, agriculture, transportation, and retail trade.

While its earlier work was financed by outside agencies (such as the old National Resources Committee), the board became in 1938 a permanent agency of the State Government and receives the bulk of its funds from the General Assembly. WPA has continued to provide assistance; some inter-departmental funds have been made available for special studies; and, in 1940, the General Education Board made a special grant of funds for a population study to cover a period of approximately three and a half years.

The board acts as a service agency for the operating departments of the State Government, bringing to their aid information and data that are more extensive in scope than those available within the respective departments and serving to coordinate and correlate the development plans of the departments. The board is also a service agency for the management departments of the State Government, particularly the Division of the Budget, in that the physical planning activities of the board provide a basis for long-range financial planning.

The board is required by statute "to make such studies as may be directed by the Governor or the General Assembly."

7. GOVERNMENT PERSONNEL

One important tool of management that should be available to the Governor is all but lacking. Despite efforts over a long period of years to effect such a reform, the State has no merit system for general application in the employment and promotion of government personnel. A bill prepared by the Advisory Legislative Council, after an exhaustive study of the subject, was rejected by the House of Delegates at the 1940 session of the General Assembly.
Its essential features were:

1. Establishment of a merit basis for appointments, promotions, and tenure in the classified service.

2. Placing responsibility for over-all supervision of personnel in the hands of the Governor and assigning important duties to the heads of departments, making them chief personnel officers for their departments. (Provision was made, however, for the delegation of these powers and duties to trained personnel officers where such delegation is necessary.)

3. Enabling the Governor to appoint an advisory committee to aid in the exercise of his powers.

4. Making possible the filing of applications for employment either centrally or with the individual departments. (Departments wishing to make use of the central files might do so.)

5. Requiring essential personnel data to be kept and to be reported to the General Assembly.

6. Placing in the unclassified service certain judicial and policy-determining officers and their confidential employees, college professors, temporary employees, and laborers.  

While the State has no merit system as such, the Division of the Budget, under an executive order issued by the Governor in August 1939, has adopted certain budget classifications, under which an effort is made to establish uniform, equitable salary rates within specified categories. The General Assembly, in considering the appropriation bill, has the full benefit of these

classifications. The Highway Department and the Department of Alcoholic Boo-
enge Control have systems of ratings that afford valuable data for fixing
salaries and ordering promotions.

Other branches of the government are working, perform, on merit bases.
In 1939 the Congress of the United States amended the Federal Social Security
Act to empower the Social Security Board to require that state welfare agencies
as a condition of receiving funds under the act establish and maintain person-
nel standards on a merit basis. The Federal Social Security Board has pro-
ceed under this act to require that four state agencies, the Unemployment
Compensation Commission, the Virginia Commission for the Blind, the Department
of Public Welfare, and the Department of Health, set up merit system councils,
supervisors, and personnel offices.

All the state agencies named, save the Unemployment Compensation Commis-
sion, have set up or are setting up the necessary personnel council and staff
without the authorization of state laws. The General Assembly at its 1940
session did amend the Virginia Unemployment Compensation Act to provide for a
merit system council and a supervisor. In general, the complete meeting of
the requirements of the Social Security Board has meant the drawing up of
rules and regulations that, among other things, provide for the filling of
positions by open competitive examinations formulated and administered by the
merit system supervisor, who is appointed by a merit system council; the
preparation of classification of position plans; the preparation of compensa-
tion plans; and the setting up of minimum standards to govern promotions and
other personnel actions.

Besides the Governor's Office and the four divisions within the Office, the General Assembly, in the Reorganization Act of 1927, established twelve departments of government. That number since has been increased to thirteen. In 1934, after the State had renounced the prohibition policy that it had adopted twenty years before, the General Assembly created the Department of Alcoholic Beverage Control.

If terminology were uniformly applied in Virginia statutory enactments, the number of departments now would be fourteen, instead of thirteen. At the extra-session of 1936-37, the General Assembly established the Unemployment Compensation Commission. Certainly, the duties and activities of this agency are as important and as far-flung as the duties and activities of the ABC agency. The work of the Unemployment Compensation Commission is, of course, related to that of the Department of Labor and Industry, whose head is ex officio member of the Commission and with which the Commission is grouped in the Appropriation Act of 1940. However, it would seem, by comparison, that the position of the Unemployment Compensation Commission in the governmental scheme of things would entitle this agency to higher rating.

The twelve departments established under the Reorganization Act of 1927 are still functioning in much the same way as they did when the law first became effective. Some of them, as we have seen, are poorly coordinated from the standpoint of units within the departments—a condition that imposes an unnecessarily heavy burden on the Governor, who is responsible for their

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Over two of these departments, Law and Corporations, the Governor has no control, save through the discretion he enjoys in filling, pro tempore, vacancies in the offices of Attorney General and of Corporation Commissioners. The former is elected by the people; the latter are chosen by the General Assembly. There are few demands the Governor may make of the Attorney General. One of them is that he may require the Attorney General to give his opinion in writing upon any question of law affecting the duties of the Governor. The Corporation Commission exercises important judicial powers, aside from legislative and administrative functions. The Attorney General "shall be removable in the manner prescribed for the removal of judges." Any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court [Supreme Court of Appeals].

In the case of other departments and divisions, the control of the Governor, through his power of appointment, suspension, and removal and through his authority to require the production of official books, accounts, vouchers, etc., is almost complete. An overwhelming majority of those who direct the administrative agencies of the Government are appointed by the Governor to serve at his pleasure. Some officials in this group are appointed for stated terms of office. Nevertheless, they may be removed at any time without cause.

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23. Virginia Code, Section 122, and Constitution of Virginia, Section 155, respectively.
24. Constitution of Virginia, Sections 107 and 155, respectively.
25. Constitution of Virginia, Section 74.
26. Constitution of Virginia, Sections 107 and 155, respectively.
Conspicuous among these are the two appointive members of the Unemployment Compensation Commission.

There is no doubt as to the authority the Governor may exercise with respect to all officers, except that of Lieutenant Governor, mentioned in Article V of the Constitution setting up the Executive Department of the Government. These are the Secretary of the Commonwealth, the State Treasurer, and the Auditor of Public Accounts. Section 73 of the Constitution says specifically that, "during the recess of the General Assembly," the Governor "shall have power to suspend from office for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law, all executive officers at the seat of government except the Lieutenant Governor." However, he is required by this same constitutional provision to report to the General Assembly at its next session the fact and the cause of any such suspension, and that body will determine finally whether such suspended officer shall be restored to duty or finally removed.

However, there is some disagreement among lawyers as to whether this power of gubernatorial suspension extends to two powerful agencies of the State Government, namely: the Department of Education and the Department of Agriculture and Immigration. These are constitutional agencies, which are not embraced in Article V of the Constitution, setting up the Executive Department.

A case that seems in point was decided by the Virginia Supreme Court of Appeals, in mandamus proceedings, twenty-five years ago. The General Assembly of 1916 had increased the salary of Davis Bottom, then Superintendent of Public Printing. C. Lee Moore, Auditor of Public Accounts, questioned the validity of this action, citing Section 83 of the Constitution, which reads as follows:
The salary of each officer of the executive department shall be fixed by law, and shall not be increased or diminished during his term of office.

The judicial decision was:

The court is of opinion that Section 83 of the Constitution of the State of Virginia applies only to such public officers as are specifically mentioned in Article V of the Constitution as comprising the executive department of the State Government and does not apply to officers whose positions are created by and may be changed or abolished by the General Assembly.

Mr. Bottom, belonging to the latter group of officers, was awarded the increase in pay that the General Assembly had granted him. This case may not be conclusive as to the Governor's power of suspension over the heads of departments we have mentioned. Certainly, however, the Court of Appeals, a quarter of a century ago, drew a sharp line of distinction between the status of constitutional officers and "officers whose positions are created by and may be changed or abolished by the General Assembly." Similarly, the opinion of the court plainly implies a distinction between officers of the executive department and other constitutional officers who are not mentioned in Article V. Section 73 of this same article grants the Governor power of suspension over "executive officers at the seat of government."

Further strengthening the administrative hands of the Governor is his power to appoint and remove without restriction, in a majority of cases, the members of fact-finding and regulatory boards and commissions. In addition, he is authorized to fill all vacancies in State offices for the filling of

which no other provision is made by law. If the officer be elective by the people, the Governor’s appointee shall hold office until the next general election. Many lawyers familiar with the operation of the State Government believe that, under this authority, the Governor is empowered to appoint a Lieutenant Governor in case of a vacancy in that office. The President pro tempore of the Senate now takes over the duties of the Lieutenant Governor, but he is not Lieutenant Governor.

In connection with the power of the Governor to suspend or remove, with or without cause, a great majority of the heads of governmental administrative agencies, it is significant that, beginning with the Reorganization Act of 1927, the tendency in legislation has been that, when a new office or a new board was created, the officer or those board members were made subject to removal at the pleasure of the Governor.

The Department of Alcoholic Beverage Control and the Unemployment Compensation Commission are notable cases in point. These agencies are the two most important arms of the State Government established since the enactment of the Reorganization bill. Under the law, the Governor appoints, without restriction, for a term of five years, the three members of the ABC Board, directing agency of the department. These appointees may be dismissed by him at any time without cause. This is largely true of the UCC. The Governor appoints two members of the commission for a term of four years, subject to confirmation by the General Assembly. These appointees also serve at his pleasure. The third member, the Commissioner of Labor and Industry, serves

ex officio. While he is appointed by the Governor, he may be suspended only for cause, pending action by the General Assembly.

Over the members of boards of visitors of State institutions, the Governor may exercise virtually complete authority. For "incompetency," a very elastic term, he may remove any such official without regard to the General Assembly. This section of the code, so sweeping in its powers, is worth recording here. It reads:

The Governor is hereby authorized to remove from office for misfeasance, misfeasance, incompetency, gross neglect of duty, or for unlawful or willful neglect of duty, any person appointed by the Governor as a member of the board of visitors of any State college, university, institution, or agency, or as a member of any examining or licensing board of the State, and to fill the vacancy resulting from such removal.

Both the Division of Military Affairs, headed by the Adjutant General, and the Division of Records, directed by the Secretary of the Commonwealth, are in their nature and by legislative enactment tools of management in the office of the Governor and were subjects of legislation in the Reorganization Act of 1927. These divisions, however, are old agencies of the government, and their duties have changed little in many years. They are not effective instruments in the administration of State affairs, however important their presence may be in the structure of government. Of more immediate concern to the Governor, and far more effective in the shaping of his policies, are the activities of his press secretary. This is an office of purely legislative origin whose duties are nowhere set forth. However, these duties are obvious. The press secretary informs the public of what the administration is doing, especially of those phases of administration in which the Governor is primarily interested from the standpoint of State policy. This

31, Virginia Code of 1956, Annotated, Section 336a, Chapter 21, p. 82.
functionary watches the newspapers for popular reaction, and it may be safely stated that the Governor is guided to an appreciable degree by what the people of Virginia, as reported in the press, are thinking of his actions.

The Governor traditionally is "commander-in-chief of the land and naval forces of the State," and as such has "power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws." Naturally, then, the Division of Military Affairs would fall within his office. At this time the National Guard of Virginia is in the Federal service. However, to perform the usual functions of militia, a volunteer group known as the Virginia Protective Force has been organized under the command of Brigadier General E. E. Goodwyn—a force that, unlike the regular National Guard, is subject to the jurisdiction only of the Governor and his military advisors.

Very rarely is the militia, as State troops, called upon for active service. Once, during the administration of Harry F. Byrd, it was dispatched to Gloucester County for the purpose of preventing violence in the so-called "oyster war." Again, when John Garland Pollard was Governor, troops were ordered to Danville for guard duty in the cotton mill strike. Both were bloodless expeditions. In time of danger, the sheriff of any county or the mayor of any city may call upon the Governor for military aid. Where the emergency is such as not to admit of delay, these officials may cut the procedure short by summoning pre-emptorily any commanding officer of a militia unit to render immediate assistance.  

32. Constitution of Virginia, Section 73.
CHAPTER V
GOVERNOR'S FISCAL POWERS

Since the effective date of the Budget Act of 1918, the Governor has enjoyed the powers in fiscal planning and in the administration of State expenditures that never before were his. Both his authority and the scope of activities within the Division of the Budget have increased enormously as service agencies expanded and the necessity became clear for careful institutional surveys and long-range financial planning in the interest of economy, adequately implemented inter-departmental functions and consistently good service at the lowest cost.

I.

BUREAU OF THE BUDGET

In budget affairs the Governor is supreme. This is a shining example of the tendency that has developed during the past two decades to center responsibility in the executive department. As early as 1922 the law designated the Governor as the chief budget officer of the State. ¹ This position with respect to financial planning was continued in the Reorganization Act of 1927, which, on this point, reads:

For the Division of the Budget a director shall be appointed by the Governor; such director, who shall hold his position at the pleasure of the Governor, shall, under the direction and control of the Governor, exercise such powers and perform such duties as have heretofore been conferred or imposed by law upon the Director of the Budget, whose position is hereby continued under the name of the Director of the Division of the Budget, and he shall perform such other duties as may be required of him by the Governor.

Early in 1939, Governor Price was enabled by a grant from the Spelman Fund of New York greatly to expand the activities of the Division of the Budget. This aid has been extended, and the work begun then is continuing. In January 1940, Dr. Rowland Egger, Director of the Budget, said:

The Governor pointed out that the division would continue the preparation of the biennial revenue and expenditure program, but with the additional facilities available would be able, over a period of time, to relate the budget document much more closely to the operating programs of the spending agencies than had hitherto been possible. This, he felt, would shift the emphasis in budget making; departmental budgets could be developed and revised on the basis of careful analyses of the work which the spending agencies performed, rather than resting almost entirely on previous appropriations which might or might not be closely related to present fiscal requirements. In this way, it was felt, opportunities for true economies would become more evident, and budget and allotment programs could be made more effective as instruments of administrative direction and control.

Second, it was believed that the fiscal procedures of the state could be strengthened through implementing the quarterly allotment procedures with an effective scheme of encumbrances and encumbrance liquidation in the Comptroller's Office, and in establishing stricter review of expenditure documents, such as requisitions, purchase orders, contracts, etc., as to propriety, in addition to the review made by the Comptroller as to legality, regularity, and adequacy of funds.

Third, and of great importance, the newly organized Section of Administrative Planning would undertake, on its own initiative and in collaboration with the several departments and institutions, survey programs which would produce a thorough re-study of internal departmental organizations, staffing, methods, and procedures, with a view
to determining whether certain programs might be economically curtailed, eliminated, or expanded, whether money could be saved and services increased by internal reorganization and changes in methods and procedures, and whether economies could be realized by the elimination of overlapping and duplication.

Fourth, and also of very great importance, the Section of Administrative Planning would be charged with developing, on the fiscal and administrative side, specific plans and programs for the broad-gauge, long-term development and improvement of state administration and services. This phase of its work would necessarily involve close collaboration with the Planning Board, which is engaged primarily in the study of physical and economic resources of the Commonwealth, with the Advisory Legislative Council, which is an instrumentality for the pre-planning of projects submitted for the determination of legislative policy and action, and with other agencies working on plans and programs involving activities of the State Government.

At several sessions of the General Assembly the appropriation act has been used as an instrument greatly to strengthen the administrative hands of the Governor. This officer is granted wide powers in determining the proper expenditure of State funds. As business manager for the people of Virginia, 

to see that the one group does not outrun the other.

In the matter of salaries and promotions the Governor exercises almost controlling discretionary authority. He prepares the budget. In the appropriation act for the biennium of 1940-42, moreover, it is provided that he must approve in writing the fixing during this period of all salaries in excess of $1,000. Further, the law reads:

For his assistance in carrying out the provisions of this section the Governor may require information in writing from the head of any department, institution, or agency of the State Government or from any employee thereof, upon any subject relating to the duties of any office or position in such department, institution, or agency.

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3. The Commonwealth Magazine, January 1940
In the Appropriation Act of 1940 there are various pertinent delegations of authority to the Governor, deemed necessary by the General Assembly to proper administration of the State's fiscal affairs. These are too numerous to mention here in detail. They may be found by the student either in the Acts of the Assembly, 1940, or in a separate printing of the Appropriation Act of that year.

However, there is in the act one such delegation of authority that is regarded by fiscal experts as being of prime importance and that is well worth elaboration in this treatise on the Governor as business manager of the State. This provision of the law refers to requirement of the Reorganization Act of 1927 that appropriations must be allotted by the Governor before they are available for expenditure.

An explanation of this system, with comment on its value, is given by Comptroller LeRoy Hodges in his 1940 report to the Governor. In this document Mr. Hodges says of allotments:

This is done quarterly on the basis of estimates of needs submitted by the spending agencies approximately six weeks before the opening of the quarter. The allotment requests conform to the general program laid down in the budget, but are more accurate in detail for the reason that they cover a short period in the immediate future. Unencumbered balances remaining in allotment accounts at the end of each quarter are reverted to the appropriation and must be reallocated before they are available for expenditure.

The value of the allotment system is that it gives the Governor a means of holding down the rate of expenditure in the event that revenue collections do not measure up to estimates or when changes in conditions make it advisable to reduce the activities of an agency. It compels the spending agencies to plan carefully their expenditure programs and to submit them for executive review quarter by quarter at a time which is close enough to the operating period for the figures to be an accurate estimate of needs. The allotment system also prevents a State department or agency from spending all of its appropriations in the first part of the year, leaving
nothing to operate on for the rest of the year.

Certain appropriations, such as those made to Confederate veterans, their widows and dependents, are exempt from curtailment during the biennium. Nor may the Governor reduce appropriations for any specific agency of the government to an amount less than 75 per cent of the total appropriation. 5

2. FINANCE DEPARTMENT

The Department of Finance is an anomaly, in that it is one of the most important agencies of the government, yet has no directing head save the Governor himself, to whom each of the four divisions is individually responsible. These divisions are those of Accounts and Control, Treasury, Purchase and Printing, and Motor Vehicles. While the heads of these units are appointed by the Governor, subject to confirmation by the General Assembly, the authority of the legislative body ends with confirmation. The directors are removable by the Governor at his pleasure. One of the remarkable features of the Reorganization Act of 1927 was its failure to provide for a commissioner to direct all these far-flung activities, under the general supervision of the head of the State Government.

3. DIVISION OF ACCOUNTS AND CONTROL

The Division of Accounts and Control, directed by the Comptroller, serves as the chief bookkeeper for the entire State Government and as guardian of the treasury. It prepares revenue estimates in cooperation with the tax-assessing agencies of the government. The Comptroller has broad powers to

6. Handbook on the Organization and Activities of the Executive Departments, issued by the Governor, 1940.
prescribe the forms and procedures used and the type of accounts to be kept by all spending units. The division, cooperating with the Department of Taxation, is the collecting agent for delinquent State taxes.

No expenditure may be incurred by any spending agency until funds sufficient to pay the bill when it is received are encumbered on the books of the Division of Accounts and Control. Where a purchase order is issued, a copy of the order is used as an encumbrance document, and the Comptroller certifies on the original copy of the purchase order that sufficient funds are available before this copy is sent to the vendor. Any purchase which is not in compliance with the State law or is irregular in any way is generally detected by the Division of Accounts and Control at this point. Sufficient funds to cover expenditure vouchers which are not preceded by a purchase order, as for example payrolls, are encumbered quarterly in advance by blanket encumbrance orders.

No disbursement of State funds may be made from the Treasury except by warrant of the State Comptroller drawn on the State Treasurer. Expenditure of State funds is accomplished by certification to the Division of Accounts and Control by the spending agencies of properly prepared vouchers setting forth the goods or services rendered. Upon receipt of these vouchers, the Comptroller audits the claim and satisfies himself as to regularity, legality and correctness, and that the bill has not been previously paid. He then draws his warrant on the Treasurer and charges the amount to the proper appropriation and allotment accounts.

The warrants of the Comptroller are prepared on a check form which requires for completion only the designation of the depository on which it is drawn, the date and the signature of the Treasurer.

Generally speaking, the Comptroller's function is a pre-audit of State expenditures, while the State Auditor of Public Accounts exercises a post-audit function. Thus a system of checks and balances is maintained. The Comptroller, authorizing payment of vouchers, is named by the Governor; and the Auditor, checking expenditures, is chosen by the General Assembly.

4. DIVISION OF THE TREASURY

The Division of the Treasury is administered by the Treasurer of Virginia, who is the custodian of all State funds and disburses these funds on the warrants of the Comptroller. An average of more than 150,000 checks are issued monthly by the Treasurer. This function in itself requires office work of considerable proportions in the section of receipts and disbursements.

5. DIVISION OF PURCHASE AND PRINTING.

The Division of Purchase and Printing is the logical development of the potent but feebly implemented idea represented in the old State Purchasing Commission established by the General Assembly on the recommendation of Governor Davis. At first this agency enjoyed only cooperative and advisory powers. As the State's business expanded, it was realized that inter-departmental buying was an extremely important phase of governmental activities and that the buying agency should have real authority. Similarly, printing became a major concern of the State. Logically enough, the two activities were combined in the Reorganization Act of 1927.

The Division of Purchase and Printing is charged with handling all printing, binding, ruling, lithographing, and engraving required by State institutions and State agencies and with purchasing for these institutions and agencies their needed supplies. It is divided into three sections: Management, purchasing, and printing.

6. DIVISION OF MOTOR VEHICLES

Duties imposed by law on the Division of Motor Vehicles are varied and far-flung. They include the issuance of certificates of title to owners of motor vehicles, annual registration of motor vehicles, issuance of license
plates, examination and licensing of motor vehicle operators and chauffeurs, suspension and revocation of operators' licenses when prescribed by law; the collection of the motor fuel tax and payment of tax refunds; the licensing of motor vehicle carriers operating under permission from the State Corporation Commission; the enforcement of the Motor Vehicle code and the criminal code; the approval of lighting, warning and signal devices; and the promotion of highway safety.
CHAPTER VI

VETO POWERS OF THE GOVERNOR

Indicative of the slow growth of the powers of the Governor of Virginia, legislative and administrative, is the fact that not until 1869 (under the Underwood Constitution) did the Chief Executive of the Commonwealth have the veto power. And this authority was limited to disapproval of an entire bill, only an item or two of which may have evoked his official condemnation.

The Constitution of 1902, as we have heretofore pointed out, extended the power of veto in two important particulars. Under that organic instrument, the Governor has not only the power to veto specific items of an appropriation bill but the authority also to return to the house in which it originated any bill he wishes amended. The latter constitutional concession has saved many meritorious acts that were either technically faulty or duplicated existing legislation in some particular.

Dr. George W. Spicer, in his essay, "Political Chief to Administrative Chief," says:

The pocket veto exercised in the ten-day period following the final adjournment of the legislature usually is confined to this same type of bills.

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1. Constitution of 1869, Section V.
2. Constitution of Virginia, Section 76.
So closely does the Governor follow his legislative program through the legislature and so effective is his influence over that body that it is rarely necessary for him to exercise his veto on grounds of constitutionality or public policy while the legislature is in actual session. In the sessions of 1926 and 1927 no bills were vetoed and in 1928 only three were vetoed, and these were met with overwhelming approval when returned to the legislature.

This record was not equalled by Governor Price in 1940. However, the effectiveness of the veto provision of 1902 was strikingly demonstrated. Governor Price returned to the General Assembly twenty-seven bills with recommendations for amendment. His proposals were adopted in every case. Just one dissenting vote was cast in all the twenty-seven roll calls.

During the same session, nineteen bills passed by both houses of the General Assembly failed to become laws because of the Governor's disapproval. In no case was he overridden by the legislature. A majority of these bills died by the route of the pocket veto. However, in one instance the Governor lost in a judicial action. He vetoed several "items" of the 1940 appropriation act. The Supreme Court of Appeals was called upon to interpret this grant of the Constitution. One of the items vetoed was a provision in the appropriation for the State Planning Board, which prohibited a study by that body of county government. The State appellate tribunal, quoting from an opinion of the Supreme Court of the United States, in the case of Bangson v. Secretary, etc., 299 U. S. 410, gave the following definition of an item, within the meaning of the Constitution of Virginia:

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5. This paragraph refers to Governor Byrd's Administration.
An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called 'log-rolling'—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.

This decision of the Supreme Court of Appeals merely has served to interpret the word item; it has not diminished in the least degree the power of the Governor to veto an item or items of an appropriation bill. However, he must veto an item of appropriation, rather than a condition of an appropriation.
In the preceding chapters it is shown that the powers of the Governor of Virginia have developed to the point where his position is somewhat comparable to that of the president of a corporation, directing with decision, dispatch, and finality the affairs of stockholders for whom he acts. In sharp contradiction to the position of limited authority occupied by Patrick Henry under the Constitution of 1776, an instrument born of tyranny and the fear of subsequent despots, the chief executive today is virtually business manager of the State with such delegated powers as may be necessary for smooth and efficient functioning.

For many years the development was so gradual that the changes were scarcely perceptible. The metamorphosis of the gubernatorial office had its inception in the Constitution of 1860, under which the people, for the first time, were granted the right to elect their own Governor. Twenty years later came another important departure in the delta of fundamental law. The Underwood Constitution, as has been shown, invested the Governor with the power of limited veto. This concession to the executive department was the last one of consequence until the Constitution of 1902, under which the power of veto was extended to the return of bills with suggested amendments and to the veto of an item or items of an appropriation bill.
After 1903 a decade and a half passed without material change in the administrative functions of the Governor. Westmoreland Davis then stepped into the political picture with old ideas made fresh of an executive budget, a purchasing commission, and a revitalized penal system, so far as State convicts were concerned.

The Reorganization Act of 1927 and the general revision of the Constitution of 1927-28 not only enormously implemented the Governor's authority, but, in the regrouping of departments and in the abolition of useless bureaus, boards, and commissions, appreciably brought order out of governmental chaos, particularly in the administration of the State's financial affairs. This process of reorganization undoubtedly is a continuing phenomenon. Leading Virginians in public life agree that the matter comes distinctly under the heading of unfinished business. A legislative committee has been directed to report by September 1, 1941, on the feasibility of further reorganization as an extension of the Byrd plan of 1927.

Many Virginians view with genuine anxiety the tendency, beginning in 1927, toward centralization of administrative authority. They regard it as a violation of democratic principles, as a breach of faith with those earlier Virginians who rebelled against autocratic rule delegated to the royal Governors from the English crown and who set up here what they conceived to be a government with an impregnable fortress of checks and balances against abuse of power by any temporary ruler. These Virginians still believe in diffused authority, in a minimum of power conferred upon the executive by the legislative branch in the conduct of the State's business.

However, there are many Virginians who view government in the light of a civilization vastly more complex than the civilization of Patrick Henry's day—a civilization becoming more and more complex as modern conditions effect
almost lightning-like changes in State life. At the 1940 session of the General Assembly, Speaker Ashton Dovell spoke eloquently against the new well-entrenched legislative fashion of delegating certain legislative functions to State agencies. A bill actually was introduced incorporating some of the Speaker's views, but just as Mr. Dovell's voice faded away without an echo, the bill died a-borning.

Apparently, delegations of legislative authority have come to stay. In Virginia, the chief repository of such authority is the Alcoholic Beverage Control Board. The General Assembly, in the control act, empowers the Board to promulgate rules and regulations with the force and effect of law. This the agency has done at frequent intervals. In a great experiment, the board fixes the law to suit conditions beyond the ken of the General Assembly. Because of the nature of its business, it is scarcely conceivable that the Board would be able under hard-and-fast legislative restrictions to function either efficiently or acceptably.

It is more important, in the opinion of those who are responsible for policy-making in Virginia, that the Governor should be unh hampered in his administrative duties. For the General Assembly in recess to enact specific legislation to meet specific conditions over a period of two years is an obvious impossibility. Ours is not a static community life. It registers swift, unforeseen changes. A Governor who is, in fact, a Governor, must have abundant authority to function effectively in the face of changing conditions over which neither he nor the Assembly has any controlling influence whatever.

Similarly, he must be enabled to act decisively and with a free hand in the case of subordinates in the government. The Governor must be in reality, as well as in name, the chief executive. To hamper him in the name of
democracy is to make his official designation a misnomer and to make a mockery of democracy. Always the General Assembly may convene itself in extraordinary session to curb a tyrannical or subversive Governor and to reaffirm in its actions the principles of democratic government. Concentration of authority is not without a thorough and a readily invoked safeguard.

The Governor of Virginia is likely to remain, in fact, the business manager of the State.
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VITA

Blake Tyler Newton, son of Edward C. Newton and Lucy Tyler Newton, was born October 21, 1889, at Hague, Westmoreland County, Virginia. He was married to Bertha Effingham Lawrence of New York City on July 29, 1913.

He attended public schools in Westmoreland County, Virginia; received the Bachelor of Arts degree from the College of William and Mary in 1911; was admitted to the State Bar in 1919; and did graduate work at the College of William and Mary.

He was principal of the Hamilton High School, Cartersville, Virginia, 1910-11, 1911-12; of the Blue Ridge Industrial School, 1912-13; and has been Superintendent of the Schools of Richmond and Westmoreland Counties, Virginia since 1915. He has been a member of the Virginia State Board of Education since 1937.