

ADDRESS
OF
J. LINDSAY ALMOND, JR.
GOVERNOR

TO THE
GENERAL ASSEMBLY
EXTRA SESSION
MONDAY, APRIL 6, 1959



HOUSE DOCUMENT No. 1

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1959

ADDRESS

of

J. LINDSAY ALMOND, JR.

GOVERNOR

Mr. Speaker, Mr. President, Members of the General Assembly:

When I had the honor to address you on January 28, 1959, I submitted certain emergency recommendations, limited in scope, relating to the crisis which had its inception with the ill-advised and unwarranted decision of the Supreme Court of the United States of May 17, 1954, and culminating in the decisions of the Federal District Court for the Eastern District of Virginia (Norfolk Division) and the Supreme Court of Appeals of Virginia, rendered on January 19, 1959. You responded promptly and affirmatively to those recommendations and honored my request to defer consideration of further legislation until the Commission on Education, subsequently appointed, could formulate and submit a more thorough, carefully and legally devised program.

It was readily realized then, as now, by all who bear responsibility in this grave matter, that the difficult and complex facets of such a program must be soundly coordinated and correlated with the paramount obligation devolving upon each of us to serve and promote the best interests and welfare of the people of Virginia.

It is my firm belief that the people of Virginia comprising the several constituencies which you represent require of us, individually and collectively, to blend in harmony of spirit and understanding, without surrender of conviction or principle, our best efforts spawned from the traditional and native genius of this great Assembly to evolve a rational and constructive solution to the grave and difficult problems which have been so ruthlessly shackled upon us. I cannot believe that this, or future generations voicing the judgment of history, will lend aught but condemnation—though the way be tortious—the hour dark and the temptation great—if we deviate from or abandon that solemn and irrevocable commitment of record that Virginia would, consistent with the highest tenet of her immaculate honor and within the framework of law, continue her struggle to defend and enjoy the rights reserved to her under the Constitution of the United States, and which have never been delegated, forfeited or surrendered to the Federal Government.

That which the Commission on Education after careful, painstaking study, laborious and dedicated effort, under the guidance of able and experienced legal counsel, has submitted, and which I in turn endorse and recommend to you is in keeping with that commitment. It recognizes and extols that commitment. It represents the next best step in determined continuation of our struggle, under the Polar Star of honor and within the framework of law, in defense of our rights. In design, purpose and content, it bears no semblance of surrender.

With commendable candor and frankness the report portrays the truth to the

people of Virginia. It deals with fact—not fiction, a condition and not abstract theory, reality not surmise and wishful thinking. It recognizes that there is—as a fact—integration in some of the public schools of Virginia. It does not run from the problem. It points a way to deal with it without total destruction of public education. It does not condone or recognize arrogated authority, nor is it blind to the crushing force of the overriding supremacy of federal power. It squarely faces the cold fact that no state legislative assembly can enact any law effectively against overwhelming federal force, or arm any Governor with power to undo what the federal judiciary has done. It points out, contrary to the advice of some who should know better, that the police power cannot be exercised by any agency of a state to reverse or negate a federal decree; that a state cannot interpose its authority or power between the Federal Government and the object of a federal law or decree. It does not blame or castigate the Chief Executive for failure to do that which the Assembly itself is powerless to authorize him to do.

The Commission makes crystal clear to all who will stop, look and listen, that massive resistance lies not in the enactment of fruitless laws in contravention of federal power; that massive resistance to that which a people believe to be wrong and inimical to their rights and the welfare of their children lies with the individual citizen, and that the right to associate carries with it the right not to associate. No federal court can require a state to maintain a public school or require a parent to send a child to a school that is so maintained. The exercise by the parent of this right does not necessarily involve considerations of race. The Commission proposes measures, which I recommend to your favorable consideration, which will secure the “greatest possible freedom of choice for each locality and each individual.” No child will be forced to attend a racially mixed school.

CONSTITUTIONAL AMENDMENT

The program recommended points up the inadvisability and demonstrates the absence of necessity for consideration of amendments to our Constitution at this time. There are many who believe that removal of the mandate of section 129 would relieve the State of the obligation relative to a state-wide system of public free schools. This is a demonstrable misconception. The State's minimum obligation imposed by other sections of Article IX and section 173 would remain in full force and vigor to the extent of required appropriations approximating nine million dollars. The Constitution does not and the General Assembly possesses no authority to require localities to levy any taxes or to appropriate any money for public schools. Under this constitutional situation no court, state or federal, can require a locality to levy taxes or appropriate money for such purpose. A locality is, therefore, free to turn to other methods than maintenance of public schools in providing educational opportunities for its children. The program proposed by the Commission affords this freedom of choice with local autonomy augmented by State aid on a nondiscriminatory basis. It affords relief to any locality which finds itself in an unbearable situation with respect to its public schools.

The Commission considered and rejected a proposal designed to submit to the people the question of calling a convention “to revise, amend or repeal Article IX” and to remove from section 173 the requirement that State capitation taxes be used for public schools.

We would do well to first carefully consider the sweeping power and potential consequences which would attend the exercise of the authority of such convention.

The convention could abolish our public school system everywhere in Virginia; it could abolish the State Department of Education; it could bring to an abrupt halt our Retirement System as to those aspects relating to teachers; it could deny to the State any supervisory or regulatory power in the field of education; it could vacate the office of every school trustee and terminate the existence of every school board; it could wipe out the Literary Fund; it could offer at public auction every school building in Virginia, and it could withdraw the permissive authority to every locality to appropriate its own funds for public school purposes. On the other hand it could establish a mandatory requirement that the State and the localities maintain schools, including high schools, throughout Virginia irrespective of peculiar situations applying to any particular locality.

The time may arrive when the people of Virginia may be forced by ruthless federal pressure to consider constitutional revision but that time, in my judgment, is not now. When and if circumstances and conditions impel such consideration, the people should be told in explicit language what the submitted proposal is expected to accomplish.

It is my considered judgment that we should exhaust every available resource to preserve public education to the fullest extent and as long as possible before we consider total surrender of our right and privilege so to do.

I am not ready to give up the fight to exercise that right, nor do I believe that its achievement requires total dissolution of our educational system everywhere in Virginia. In deference to those who disagree and however caustic some may continue to be of my position, abandonment of public education everywhere in Virginia at this time would smack of defeatism and surrender. That, I am not ready to embrace. The Commission offers and I recommend what I believe to be a more salutary and constructive approach. It is that "we retain our 'State System' for the present with the power in each locality, where the situation demands, to limit that system to that locality's share of the nine million dollars. This recommendation requires no constitutional amendment."

LOCAL BUDGETS

The Commission made a comprehensive and much needed study of the statutes relating to budgets, tax levies and school funds of counties, cities and towns. A number of changes are recommended so as to give governing bodies more effective control over local expenditures. Under existing law the adopted budget has come to be considered an act of appropriation. This is putting the cart before the horse. Local officers should submit an estimate of their monetary needs. The budget should reflect estimated needs and should be published for informative and fiscal planning purposes only. It should never be adopted or approved. The governing body should fix the levy on the basis of need determined by it. No money collected from a general levy should be available to be expended for any purpose until there is an appropriation for the purpose by the governing body. Appropriations could be made in the discretion of the governing body, annually, semi-annually, quarterly or monthly. Throughout its deliberations the Commission has been mindful of the prerogatives of local autonomy. It has adhered to the principle

that the elected representatives should control and manage local affairs in response to the will of the people. The Constitution confers the right upon a locality to determine whether or not local funds will be made available for schools.

It is recommended that the division superintendent of schools be required to submit his estimate of funds in two ways. The first would be an estimate of money needed during the next scholastic year for the support of public schools. The second would be an alternative estimate of the amount of money deemed to be needed for educational purposes. Accordingly, the governing body would have a wide latitude and could appropriate funds on the basis of the estimate of money deemed to be needed for public schools, or on the basis of the estimate for educational purposes, or a combination of the two.

Bills will be introduced designed to give effect to these recommendations. I urge that you give them favorable consideration.

SURPLUS PROPERTY

The Commission made a thorough study relating to the disposal of property as surplus when no longer needed for the purpose of original intentment.

Broad statutory authority, with ample safeguards, now exists permitting local school boards to sell school property. The power of the school board in this respect coincides with the statutory power of the governing body of a county with reference to the disposition of other county property. The power of disposition, however, shall not be exercised without the approval and ratification of the Circuit Court.

It is the opinion of the Commission that there is no necessity to change the statutory provisions relating to this subject, as the school board and the Circuit Court can make a more realistic determination as to when and under what conditions specific property should be sold without the circumscription of standards and criteria legislatively imposed. I agree with this conclusion.

The Commission, however, does strongly recommend and urge the enactment of an Act permitting the qualified voters of a political subdivision to petition the appropriate court to order a referendum to determine by majority vote whether specific property is any longer needed for public school purposes. I endorse this recommendation.

PUPIL ENROLLMENT

The matter of pupil placement is vital in its importance and poses problems complex and difficult. Able counsel and the Commission have labored arduously over these problems.

The Pupil Placement Act came into being with the design and purpose of giving statutory effect to the theory and principle of interposition. The Resolution of Interposition and the "Southern Manifesto" are nothing more nor less than honorable and dignified protests against specified federal action. They start with that and they stop with that. If the "Southern Manifesto" has more efficacy, why have not those who signed it employed it for affirmative action?

Whether some will admit or not, every lawyer in Virginia knows that no administrative agency can be empowered by this or any other state legislative body to negate the decision of a federal court or repulse the overriding and ruthless

power of the Federal Government. Time after time the authority of the Pupil Placement Board has been injected defensively in federal cases. The Act was held unconstitutional by one court, ignored by another, and sneeringly scoffed at by another, all of which were finally upheld on appeal.

Any central placement agency which is to function in the application of valid criteria would of necessity have to be a permanent, full time agency of the State Government, with a huge and costly staff of administrative and clerical assistants. If it did not function in the application of valid criteria, it could not function at all.

In its approach to this matter, the Commission has commendably endeavored to give full weight to legal considerations.

It is recommended that a bill be enacted which would require the State Board of Education to adopt rules and regulations as a basis for valid criteria, which rules and regulations shall be followed by the local boards which would fix attendance areas and adopt such other rules and regulations needed to meet local conditions. Initial placements would be made at the local level.

The proposed bill would create a five member Placement Board of Appeals.

This is not the local assignment plan envisioned and advocated by some. It safeguards state-wide uniformity of basic criteria with review of its application and administration by a central agency.

Permit me to respectfully admonish the exercise of extreme care and caution to the end that the enactment on this subject be not rendered too prolix or cumbersome, or that it impose burdens not reasonably commensurate and necessary to its orderly and expeditious administration. Otherwise it will contain the virus of its own dissolution.

I endorse the recommendations of the Commission with respect to this subject, and the further recommendation for an additional appropriation to the State Department of Education for the purpose of completing a uniform testing program.

TEACHER STATUS

The Extra Session of the Assembly in 1956 amended the Virginia Supplemental Retirement Act relating to teacher retirement. It was provided that certain corporations organized for a stated purpose might elect to have teachers employed by them acquire eligibility to participate in the state retirement system. The Commission gave this matter careful and cautious consideration. It appeared that the Retirement Act is now apparently functioning in a satisfactory manner. No further action is recommended at this time.

TEACHER CONTRACTS

In the matter of teacher contracts present law provides that such contracts be in a form prescribed by the Superintendent of Public Instruction. These contracts carry a thirty-day cancellation clause predicated on the occurrence of eventualities therein stated. Some teachers have expressed concern relative to contract status. However, a vast majority realizing the crisis confronting our system of education have demonstrated a commendable willingness to co-operate in every possible way to alleviate the impact of the situation thrust upon us by superior force. In practice local school boards have exercised discretion in a

manner best adaptable to local situations. In the light of prevailing conditions it is the sense of the Commission that the thirty-day clause should remain in teacher contracts, and that further legislation at this time is not demanded. I believe this position to be sound.

TEACHER SCHOLARSHIPS AND LOANS

The State Board of Education administers funds appropriated for teacher education and teacher scholarships. The recipients of these loans are permitted to repay them by teaching in the public schools. The present law does not apply to obligors who teach in private schools. This places a discriminatory burden or penalty upon these teachers, as well as an unfair burden on the necessary initiation and operation of private schools. The Commission recommends the enactment of a statute to correct this situation. This is a salutary recommendation in which I join.

COMPULSORY ATTENDANCE

When I exercised the privilege of addressing you on January 28, I recommended the repeal of the compulsory attendance statutes. You honored this request. At the same time I stated that I would submit for the consideration of the Commission, thereafter to be appointed, a more thorough exploration of a longer range view of these statutes. When I appeared before the Commission on Education at its initial meeting, I stated:

"If we are to achieve and hold the support and understanding of the people of various areas of the State we must * * * give careful study to our compulsory attendance laws in the long range projection of our judgment. * * * I believe it would be well to consider, with proper and cautiously worded safeguards, the restoration of authority to local governing bodies to deal with this subject as local conditions may prove advisable."

The Commission has given thorough and careful attention and study to this matter. A bill will be introduced, in the nature of an enabling act, which will restore the compulsory attendance statutes. It will provide for local option in dealing with this matter. This bill if enacted will not become operative in any locality except upon the concurrence of two affirmative steps. First, it must be recommended by resolution of the local school board. Second, only after such recommendation may it be adopted by the governing body in the same manner applicable to local ordinances.

There is a wide divergence of sentiment among our people relating to this subject.

This proposal permitting local determination with adequate safeguards should serve to allay misapprehensions and place each locality in position to determine, in the light of local experience, the salutary and constructive course to pursue. Certainly, a given locality should not seek to impose its solution of a local condition on another area, but should accord that tolerance and understanding which it seeks for itself. I recommend the enactment of this bill into law.

MINIMUM OF PUPILS

The State Board of Education is directed by law to prescribe by regulation the minimum number of pupils necessary to form or maintain a lawful public school.

Such minimum standards are now extant. The flexibility of these standards enables their application to a variety of practical situations. It is the conclusion of the Commission that additional legislation is not needed on this subject at this time. I join in this conclusion.

SCHOLARSHIPS—AID TO EDUCATION

In my judgment the Commission has greatly improved and reinforced the status of grants in aid of education. It has endeavored and, I believe, succeeded in evolving sound tuition grant procedure. The scope has been broadened to provide scholarships to all children entitled to attend the public free schools who prefer to attend private rather than public schools. The State and localities would participate jointly. The locality's share would be the same percentage as its contribution to the cost of operating public schools.

The Commission gave attention to the matter of tuition charges relating to a child attending school in another locality. It is recommended that such tuition be limited to the total per capita cost of education, excluding debt service and capital outlay, of the public schools of the locality to which the child is admitted.

Creditable information was considered by the Commission to the effect that there have been instances in which local authorities have evinced an attitude of obstruction towards private plans and efforts to secure existing building facilities for the purpose of conducting private schools. The fundamental right of freedom of enterprise to promote and operate private schools and the even more fundamental right of parents to exercise their freedom of choice to educate their children through the means of private facilities, without undue interference from any source, must be respected and made secure. I recommend to your favorable consideration the bill relating to this subject.

REPEAL OF LAW

I urge favorable consideration of the recommendations of the Commission relating to the repeal of laws. We must do everything proper and appropriate to strengthen our position as we prepare for the future by removing from our statutes that which those who oppose our way of life may use as a virus to contaminate that upon which we must depend.

TEACHERS

The loyalty and dedication of the overwhelming majority of our teachers to their profession, the interest of their pupils, and the welfare of the Commonwealth invokes our highest commendation.

I am sure that a Resolution commending the teachers of Virginia will receive the unanimous approbation of the Assembly.

PERROW COMMISSION

I take occasion to express my profound sense of gratitude for the loyal and dedicated services of each member of the Commission on Education which has labored so faithfully in honest endeavor to serve the best interests of the people of Virginia.

CONCLUSION

For the purpose of emphasizing the irrefutable truth which it embodies and

the unanswered challenge which it lays down, I repeat this statement from the report of the Commission:

"The Commission is opposed to integration and offers the program set out herein because it thinks it is the best that can be devised at this time to avoid integration and preserve our public schools. If anyone suggests at any time in the future a better plan, it will be welcomed and supported with all the vigor at our command."

I subscribe to this statement in all sincerity and without equivocation.

I repeat here the statement in my address to the Joint Assembly on January 28:

"If any of them knows the way through the dark maze of judicial aberration and constitutional exploitation, I call upon them to shed the light for which Virginia stands in dire need in this her dark and agonizing hour. No fair-minded person would be so unreasonable as to seek to hold me responsible for failure to exercise powers which the State is powerless to bestow."

The Commission invited the views of all who had any contribution to make towards a rational solution. Some declined because the Commission was representative of the State at large. I would say to them that the problem confronting us is a state-wide problem of concern to citizens of every district, and not to one section alone.

The record permits me to state that I have fought as long and as hard to prevent this calamity as any man in Virginia's public service today, and yet no man has been subjected to more insulting calumny.

I harbor no ill will or bitterness. I have prayed that God would not permit it to fester in my being. The traditional dignity of the high office which I hold does not foreclose the right of the Governor of Virginia to defend his name, his honor and his character against those who would destroy those attributes as a shield to their own impotency.

If we have failed to prevent integration in the schools of Virginia, it is not because we have not tried. It is not because we have not invoked every resource known to the institutions of the system under which we live. It is because we do not possess the power to override the supremacy of federal force. It is because we are not in position to introduce and secure an amendment to the Constitution of the United States. It is because we cannot secure through the Congress legislation limiting the appellate jurisdiction of the Supreme Court of the United States.

Many of you joined with me in pledging to the people of Virginia that no child would be compelled to attend a racially mixed school. It is the design and purpose of the program recommended to keep inviolate that pledge.

Contrary to the knowingly false statements of some, I have never stated—nor have any of you to my knowledge—that no Negro child would ever enter a white school in Virginia. I did pledge with most of you that we would do everything within our power consistent with honor and within the framework of law to prevent it. That pledge has been kept.

The program recommended by the Commission is not one of defeatism or surrender. It may be that we have witnessed Gettysburg, but if we unite and work together for the best interests of Virginia there will be no Appomattox.