ADMINISTRATIVE LAW SECTION *Newsletter*

Published by the Virginia State Bar Section
On Administrative Law for Distribution to its Members

Volume VIII, Number 1 December, 1988

VIRGINIA STATE BAR ADMINISTRATIVE LAW SECTION NEWSLETTER

In This Issue Page

I. Board of Governors 3

II. Message from the Chairman 3

III. Note: Roanoke Circuit Court Invalidates Water Quality Standards; SWCB Repromulgates Them as Emergency Regulations. by George B. Wickham & James E. Ryan, Jr. 5

IV. Decisions of Note

A. Supreme Court of Virginia 8
B. Industrial Commission of Virginia 10

V. SCC Commissioner Lacy Appointed to Virginia Supreme Court 14

VI. SCC Grants Conditional Approval to VNG Pipeline 15

VII. SCC Proposes Major Change Affecting Rate Filings of Virginia 500 Property/Casualty Insurance Writers 17

VIII. SCC Orders Workers' Compensation Premium Level Increase Effective November 1, 1988 19

IX. Securities Division Registers 500 Investment Advisor Firms and 6,000 Agents In First Year of Law 20

X. SCC Grants Criteria-Based Exemption to Securities Listed on NASDAQ/National Market System 21

XI. Recent Publications 24

XII. Membership Application 25

I. BOARD OF GOVERNORS

The Board of Governors for 1987-88 is chaired by Stephen J. Horvath, III. Hullihen W. Moore serves as Vice-Chairman and James E. Ryan is the Secretary/Treasurer. The other members of the Board are:

Hon. Elizabeth B. Lacy
Robert T. Adams
Robert N. Baldwin
H. Allen Glover, Jr.
John S. Graham, III
Eric M. Page
Judith Williams Jagdmann

The Board met on October 5, 1988, November 9, 1988, and December 8, 1988 in Richmond. The next meeting of the Board of Governors is scheduled for January of 1989.

II. MESSAGE FROM THE CHAIRMAN

The Administrative Law Section has enjoyed a steady growth in its membership and breadth of programs since it achieved section status in 1979. The Section presently has 176 members.

During the year ending July 30, 1988, the Section sponsored two educational programs, the National Regulatory Conference (co-sponsored by the State Corporation Commission and the Marshall-Wythe School of Law) and a program at the annual meeting of the Virginia State Bar (co-sponsored with the Antitrust Section). The Section also continued its publishing efforts through the "Newsletter" and an issue of the Virginia Bar

News featuring administrative law, as well as undertaking a revision of the Administrative Law and Practice Handbook. The Section also participated in a Task Force chaired by Secretary of Administration Carolyn J. Moss examining the use of hearing officers by state agencies.

The Board of Governors of the Section has met to review past projects and establish an agenda for fiscal year 1988-89. The Section's goals for the coming year are to build upon our successful past to develop new programs focused on the needs of administrative lawyers in the Commonwealth; to continue sponsorship of those programs that have proven to be of value to the Bar and the Commonwealth; to seek sustained growth in Section membership; and to expand the core of active members to include a more significant portion of our total membership.

The specific programs selected by the Board of Governors to implement these goals are outlined below:

> The Section will co-sponsor with the State Corporation Commission and the Marshall-Wythe School of Law the seventh National Regulatory Conference. The Conference will be held in March at William and Mary. The topic this year will focus on the changing regulatory environment in telecommunications.
>
> The Section plans to present a program at the annual meeting of the Virginia State Bar on a topic to be selected later. We will be discussing co-sponsorship of this program with the Health Law Section.
>
> The Section will continue to publish its Newsletter on a quarterly schedule.

The Administrative Law and Practice Handbook revision will be completed for publication this fall.

The Section will continue to work with the Hearing Officer Task Force, focusing on possible legislative proposals to improve the quality and efficiency of the hearing officer system. The Section also will continue to monitor the administrative law matters brought before the 1989 Session of the General Assembly. We will encourage proponents and opponents of bills that affect administrative law to discuss their proposals with the Section's Board of Governors so that we can review them in detail and inform our members.

The Section has been approached by the City Attorney of Richmond for assistance in evaluating avenues for improvement of the City's hearing system. Once we have had an opportunity to determine how the Section can be of assistance, we plan to seek the assistance of other Sections and lawyer groups (particularly municipal attorneys) as appropriate.

The Board of Governors anticipates a busy year for the Section, consistent with our active and successful past. Of course, our agenda always is open to pursue any projects in which the membership requests our assistance.

III. NOTE: ROANOKE CIRCUIT COURT INVALIDATES WATER QUALITY STANDARDS; SWCB REPROMULGATES THEM AS EMERGENCY REGULATIONS. by George E. Wickham & James E. Ryan, Jr.

The State Water Control Board ("SWCB") amended its water quality standards in September, 1987, to prohibit chlorine in discharges to streams inhabited by trout or threatened or endangered species.

Appalachian Power Company ("APCO"), which uses chlorine as an anti-fouling agent at its Clinch River plant in Southwest Virginia, appealed the regulations to the Roanoke Circuit Court in December, 1987.

On August 17, 1988 the court ruled that the regulations had not been validly promulgated because the SWCB had failed to conduct a formal evidentiary hearing as required by the State Water Control Law, and the Virginia Administrative Process Act ("VAPA").

In so holding, the Circuit Court approved APCO's argument that the State Water Control Law, Va. Code § 62.1-44.15(3a), required the SWCB to conduct a "hearing" prior to revising water quality standards. This section provides that:

> The Board shall. . .at least once every three years, hold hearings as hereinafter provided for the purpose of reviewing [water quality standards].

Va. Code § 62.1-44.15(3a). The following section, Va. Code § 62.1-44.15(3b), states that water quality standards are to be adopted in accordance with the VAPA.

The VAPA defines a "hearing" as an "opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8. . ." Va. Code § 9-6.14:4(E). Section 9-6.14:8 provides in part:

> Where an agency proposes . . .to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public evidential proceeding; and the aency shall always do so where the basic law requires a hearing.

Thus, argued APCO, the regulations were invalid because the SWCB conducted no formal evidentiary hearing. The SWCB argued that a hearing meant only the "opportunity" for a hearing and that because APCO had the opportunity to request a formal hearing, but did not, the regulations were validly promulgated.

The Roanoke Circuit Court agreed with APCO. It held that:

> 1. The State Water Control was obligated to conduct formal, evidential hearings pursuant to Va. Code § 9-6.14:8 when it promulgated the challenged regulations...
>
> 2. The failure to conduct such hearings constitutes an error of law... [and]
>
> 3. Such failure was not harmless error.

The Court declared that the challenged standard was void, and remanded it to the SWCB for further proceedings "not inconsistent with this Order and as it deems appropriate."

At its September 1988 meeting, the SWCB repromulgated the regulations under the VAPA provisions authorizing adoption of regulations without hearings in "emergency" situations, and made them effective September 29, 1988. No hearings were held and there was no communication with the Roanoke Circuit Court. The Board announced that an emergency existed because:

> These regulations are now without force as to Appalachian Power Company and significantly more open to challenge by other owners. The inability of the State Water Control Board to enforce these regulations on Appalachian Power Company and possibly other owners statewide poses an unacceptable threat to the environment.

According to representatives of the parties, the SWCB has appealed the Circuit Court's invalidation of the standards to the Virginia Court of Appeals. APCO has challenged this appeal as moot in light of the "emergency" regulation and has also appealed the "emergency" regulation to the Roanoke Circuit Court. No post-promulgation hearings on the "emergency" regulation are scheduled. No other party joined APCO in its initial appeal and no one else can appeal the regulation except in a defense of an enforcement action initiated by the SWCB or in an appeal of a permit issuance or amendment. No enforcement action or permit dispute was pending or threatened, to the knowledge of the SWCB, as of the SWCB's September meeting.

IV. DECISIONS OF NOTE

A. Supreme Court of Virginia

(1) Wrongful Discharge

An employer's motivation for discharging the plaintiff-employee was beyond the plaintiff-employee's realm of knowledge and was an expression of an opinion. Massie v. Firmstone, 134 Va. 450 (1922), has never been expanded to apply to expressions of opinion based on facts beyond the realm of the party's knowledge. Thus the plaintiff-employee was not bound by her statement that she was fired for refusing to sign a waiver applicable to future disability claims because the statement was not one of fact. The trial court erred in setting aside the jury's verdict for the plaintiff-employee which found the

employer wrongfully terminated her because she intended to file a compensation claim. The other evidence justified the jury's conclusion that the employer violated Virginia Code § 65.1-40.1. Reversed and remanded. Charlton v. Craddock-Terry Shoe Corp., 235 Va. 485 (1988).

(2) Exclusive Remedy

Decedent's own uninsured motorist policy allowed for recovery, by "the insured or his legal representative," of all damages to which he was "legally entitled." However, because worker's compensation afforded the exclusive remedy against decedent's employer and fellow employees for his accidental death, his statutory beneficiaries were not "legally entitled" to recover damages against them. Thus decedent's widow could not recover damages under decedent's uninsured motorist policy for his death in a motor vehicle accident in the course of, and arising out of, decedent's employment. Aetna Casualty & Surety Co. v. Dodson, 235 Va. 346 (1988).

(3) Due Process

The Plaintiff, a licensed physician, appealed the judgment of the trial court that affirmed the decision of the State Health Commissioner terminating the contract under which the Plaintiff acted as a physician-provider to medicaid patients under the Virginia Medical Assistance Program. The Supreme Court affirmed and held that the physician's due process rights were not violated in the administrative hearing even though the Attorney General's Office had the dual role of advising the

hearing officer and prosecuting the case, and the hearing officer was an official of the agency which had investigated and presented the case against the physician. The Supreme Court found that an official of the agency involved could serve as the decisionmaker even if he had some prior involvement in the case before him, provided he had not particiated in making the determination under review. The Supreme Court noted that there is a presumption that public officials have acted correctly, which may be overcome by evidence of bias or improper conduct, but no such evidence was presented in the present case.

The Supreme Court further held that by assigning separate assistants to prosecute the case and to advise the hearing officer on procedure, the Attorney General's Office avoided violating the physician's due process rights. The Supreme Court also noted that because the physician presented no showing of bias or improper conduct on the part of the assistants, the Supreme Court would assume that the assistants' conduct was proper and that the impartiality of the tribunal was unimpaired. Affirmed. Hlayds v. Commonwealth, 325 Va. 145 (1988).

B. Industrial Commission of Virginia

(1) Employment Related Injury

Compensation benefits were denied to the claimant who was injured when the rental car she was getting into was struck by another vehicle while out of town on a business assignment. The Commission found that the injury did not arise

out of the employment inasmuch as the claimant, who had approximately nine hours of free time between the adjournment of a meeting and her airline flight, rented a car at her own expense for a personal sightseeing trip. While the sightseeing trip was to include dinner, the Commission, after noting that travel to and from eating places during a business trip may be compensable, found that there were dining facilities available in the hotel and the claiment's primary purpose was to sightsee. McLain v. American Red Cross, I. C. File No. 129-50-30 (October 25, 1988).

(2) Willful Misconduct

In awarding compensation benefits the Commission found that the claimant's operation of a motor vehicle without a driver's license was a willful failure to perform a duty required by statute and a basis for denying compensation under § 65.1-38 (4), Code of Virginia. However, the claimant was not barred from receiving compensation benefits because the employer failed to establish that the claimant's willful misconduct in driving without a valid license was the cause of the accident in which he was injured. The Commission found that the claimant's falling asleep while driving the vehicle was the proximate cause of the injury and the absence of an operator's license did not contribute to the accident. Carter v. American Cleaning Services, I.C. File No. 129-81-62 (October 25, 1988).

(3) Hearing Loss

In denying the claimant's application for hearing loss as a result of noise exposure in his employment, the

Commission found that the evidence failed to establish that the cause of the hearing loss was work related. The Commission further found that the conclusive presumption of injurious exposure set forth in § 65.1-52, Code of Virginia, does not relate to hearing loss and is limited only to the causative hazards of pneumoconiosis. Dawson v. R B J Coal Co., Inc., I. C. File No. 134-23-94 (October 27, 1988).

(4) Vocational Rehabilitation Refusal

Compensation benefits were suspended to the claimant, a tractor-trailer driver, who had partial capacity for employment on the ground that he refused to keep vocational rehabilitation appointments. In rejecting the claimant's contention that he was justified in his refusal inasmuch as the position currently available to him would not immediately decrease the employer's compensation liability, the Commission found that there was future potential for reduction of the employer's liability in that payments for partial incapacity are limited to 500 weeks from the date of accident as opposed to temporary total benefits which are for a total of 500 weeks of disability. In addition, when an employee is on temporary partial, an employer is not required to pay cost-of-living benefits under § 65.1-55, Code of Virginia. The Commission, therefore, found that the claimant's refusal of potential employment within his physical capacity because the potential positions were not sufficiently remunerative was not a justifiable reason for refusing to cooperate with vocational

rehabilitation. Dehart v. Safeway Stores, Inc., I. C. File No. 125-64-38 (October 27, 1988).

(5) Asbestosis

In denying compensation benefits to a claimant who was medically disabled from his employment with a diagnosis of asbestosis, the Commission found that compensation benefits for asbestosis are payable only pursuant to § 65.1-5 (20), Code of Virginia, which requires that it be classified as a particular stage. Compensation benefits are not payable for asbestosis for temporary total or temporary partial work incapacity even though the disability may be related to the disease. After finding that the medical evidence failed to establish at least a first stage asbestosis, compensation benefits were denied. Woody v. Charles E. Smith Companies, I. C. File Nos. 124-2618 and 130,06-92 (October 31, 1988).

(6) Carpal Tunnel Syndrome

In awarding compensation benefits to a claimant who suffered a bilateral carpal tunnel syndrome as a result of the use of a sewing machine in her employment, the Commission found that the evidence met the requirements of § 65.1-46 and § 65.1-46.1, Code of Virginia. The Commission specifically found that the medical evidence established that it was at least more probable than not that the claimant's condition arose out of and in the course of her employment. The Commission refused to accept the employer's proposition that because no other employees had ever contracted carpal tunnel syndrome while

performing the same work as the claimant that the disease could not be characteristic of the employment and caused by conditions peculiar to the employment. Lonas v. Wrangler, I. C. File No. 133-44-80 (October 27, 1988).

V. SCC COMMISSIONER LACY APPOINTED TO VIRGINIA SUPREME COURT

Commissioner Elizabeth B. Lacy, a member of the State Corporation Commission (SCC), has been appointed to serve on the Virginia Supreme Court. Governor Gerald L. Baliles chose Judge Lacy to fill a vacancy created by the retirement of Supreme Court Justice Richard H. Poff. Her appointment is effective on January 1, 1989.

Commissioner Lacy joined the SCC on April 1, 1985. She was appointed by Governor Charles S. Robb to fill a vacancy on the Commission, and was subsequently elected by the General Assembly to a term which expires in 1990. She was the first woman to serve on the SCC and will be the first woman to serve on the Virginia Supreme Court.

Judge Lacy served on the Executive Committee of the National Associatoin of Regulatory Utility Commissioners (NARUC), is vice-chair of NARUC's Committee on Gas, is president of the Southeastern Association of Regulatory Utility Commissioners (SEARUC), and serves on the Board of Governors for the Administrative Law Section of the Virginia State Bar. She also is a member of the Great Lakes Conference of Public Utility Commissioners, and the Advisory Council of the Gas Research Institute.

SCC Chairman Preston C. Shannon says, "In the four years Judge Lacy has served on the SCC, I have found her to be a person of utmost integrity, high character, and sound legal knowledge. We will miss her here at the Commission, and we wish her well in her new endeavor."

VI. SCC GRANTS CONDITIONAL APPROVAL TO VNG PIPELINE

The State Corporation Commission (SCC) has conditionally approved an application by Virginia Natural Gas, Inc. (VNG), to construct a $50 million natural gas pipeline. A majority of the three-member commission found that the pipeline is in the public interest as long as the company, and not its ratepayers, assume the bulk of the risk associated with building the facility.

The 120-mile intrastate pipeline would begin near the Fauquier County-Prince William County boundary, extending southward along the Interstate 95 corridor to Hanover County, and then eastward paralleling Interstate 64 to James City County. VNG's pipeline will interconnect with Consolidated Gas Transmission Corporation, an interestate pipeline company. Consolidated's proposal currently is pending before federal energy regulators.

In a 16-page order, Commissioners Elizabeth B. Lacy and Thomas P. Harwood, Jr., stated, "A certificate should be issued on a satisfactory showing that VNG's present ratepayers will be insulated from unreasonable risk accompanying the facility,

particularly any portion of VNG's joint-use segment not utilized by its distribution operations."

VNG proposes to enter into contracts with various industrial customers along the pipeline route. Those customers would provide payment of a fixed portion of the costs and operating expenses of the joint-use segment. The construction would constitute approximately $31 million of the $50 million total cost.

Lacy and Harwood found the pipeline to be in the public interest because it will enhance competition in the natural gas industry in the state. The Commissioners said, "The proposed facilities will offer alternatives, thereby allowing competition in the marketplace to provide lower prices and efficient reliable service."

Commission Chairman, Preston C. Shannon, in a dissenting opinion, stated, "If competitive concerns of the type expressed by the majority are sufficient reason to justify this project, I can see no reason why we should not, in the future, approve applications to build competing electric distribution lines down opposite sides of the same street."

Shannon also expressed concern with the uncertainty indicated by the majority regarding the pipeline's economic viability. He stated, "If public convenience and necessity is established, the ratepayers should pay for it; if not established, the application should be denied."

With regard to environmental issues, the Commission majority concluded that the river crossing concept proposed by VNG will result in the minimal possible environmental impact and should be allowed.

The Commission also imposed a condition that the pipeline may not exceed the capacity design of 220,000 Decatherms per day. Should VNG wish to expand its facility, further Commission approval will be necessary.

VII. SCC PROPOSES MAJOR CHANGE AFFECTING RATE FILINGS OF VIRGINIA'S 500 PROPERTY/CASUALTY INSURANCE WRITERS

Competition in the business of writing property and casualty insurance in Virginia would be enhanced by a change in how rate service organizations file rates with the State Corporation Commission's Bureau of Insurance. A proposal by SCC Commissioner of Insurance, Steven T. Foster, if enacted into law, would radically alter the manner in which commercial insurance rates are made in the Commonwealth.

The SCC's Bureau of Insurance will propose to the Joint Subcommittee studying the availability and affordability of liability insurance (HJR 120) that rate service organizations no longer be allowed to file average expense factors for use by insurers. Rate service organizations compile industry-wide loss and expense information and file advisory insurance rates for various lines of property and casualty insurance. Insurance companies writing those lines in Virginia either file their own rates or use those filed by a rate service organization.

Under the proposal, each insurer would have to develop its own average expense factor which would be applied to a base rate when determining the final rate charged to an insured. The Commission and the Bureau of Insurance believe that competition will be enhanced by allowing only actual expenses incurred by each insurer to be passed along to policyholders. Insurance Commissioner Foster says, "The goal is to have the rate reflect the actual expenses of each insurer. As a result, competition in all commercial lines of insurance should be improved."

The proposal also includes a recommendation that insurers continue to be permitted to pool loss information published by rate service organizations in order to develop a statistically credible data base. The sharing of loss information permits small and medium size insurers which individually would not have enough data for rate making purposes to compete against larger insurers.

While the sharing of loss information enhances competition, the SCC's Bureau of Insurance believes that each insurer can determine its own expenses and that the sharing of expense information is not required.

The Bureau's proposal would require the 1989 General Assembly to amend existing insurance law. Similar approaches to make the cost of insurance more equitable recently have been adopted in California and Louisiana.

VIII. SCC ORDERS WORKERS' COMPENSATION PREMIUM LEVEL INCREASE EFFECTIVE NOVEMBER 1, 1988

The State Corporation Commission (SCC) has denied motions by Attorney General Mary Sue Terry and the National Council on Compensation Insurance regarding a previously approved increase in the overall premium levels insurers charge Virginia employers for workers' compensation insurance. The SCC order means that worker's compensation premium levels for new and renewal coverage will increase 5.7 percent beginning November 1, 1988.

On September 30, 1988, the Commission suspended implementation of the rate increase which was originally scheduled to take effect October 1. The action was taken by the Commission to allow interested parties to cross-examine an SCC Bureau of Insurance witness regarding a correction of mathematical error in information used to calculate the proper premium level.

Since the Commission heard no significant challenge to the corrected information at an October 7 public hearing, the SCC has dismissed the Attorney General's motion to suspend the rate increase pending her appeal to the Virginia Supreme Court.

In addition, the Commission has denied a motion by the National Council on Compensation Insurance (NCCI) asking the SCC to reconsider its order approving the 5.7 percent increase. NCCI was seeking an increase of 25.2 percent. The Council represents insurance companies that sell the special coverage to employers. The insurance pays an allowance to cover wages due to injury or death on the job.

The premium levels approved by the Commission are maximum rates from which insurers may choose to decrease by filing deviations. State law requires the Commission to determine whether rates for workers' compensation insurance are excessive, inadequate, or unfairly discriminatory.

IX. SCC SECURITIES DIVISION REGISTERS 500 INVESTMENT ADVISOR FIRMS AND 6,000 AGENTS IN FIRST YEAR OF LAW

Approximately 500 firms and more than 6,000 agents are registered to do business as investment advisors/financial planners in Virginia. Since July 1, 1987, investment advisors and their representatives have had to register with the State Corporation Commission's Division of Securities and Retail Franchising as required by the Virginia Securities Act.

Investment advisors give professional advice to clients in return for a fee. Virginia was the first state to adopt the North American Securities Administrators Association (NASAA) model law regulating the financial planning industry. Investment advisors are subject to the Commonwealth's Securities Act, including its anti-fraud provisions.

In 1987 and 1988, enforcement action was taken against three financial planners operating in Virginia. They were responsible for losses of approximately $2.2 million dollars to at least 19 investors. In addition, the division has been receiving numerous inquiries from investors about their financial planner's professional background and experience.

SCC Securities Division Director, Lewis W. Brothers, Jr., says, "It's pleasing to know that Virginians are taking steps to protect themselves from fraud and abuse because of the new law." Recognizing there are many honest, skilled people doing excellent work as financial planners, he adds, "It's always best to check to reduce the odds of dealing with an unethical promoter."

The national organization of state securities administrators will introduce next year a uniform financial planner examination to test a person's knowledge of the investment world. At that time, the State Corporation Commission will decide whether to include the exam as one of the requirements for registering as an investment advisor representative in Virginia.

The SCC's Securities Division can be reached by calling (804) 786-7751 in Richmond, or toll-free from anywhere in the state, 1-800-552-7945. Both numbers are equipped with a tele-communications device for the deaf (TDD).

X. SCC GRANTS CRITERIA-BASED EXEMPTION TO SECURITIES LISTED ON NASDAQ/NATIONAL MARKET SYSTEM

Certain securities listed on the National Association of Securities Dealers Automated Quotations National Market System (NASDAQ/National Market System) have been exempt from state registration since September 1, 1988. The Virginia State Corporation Commission (SCC) approved a rule identifying specific criteria that issuers must comply with before their securities can qualify for the exemption.

The National Association of Securities Dealers, Inc. (NASD), requested the SCC to provide NASDAQ listed securities the same exemption in Virginia enjoyed by securities listed on the New York Stock Exchange (NYSE), the American Stock Exchange (AMEX), and the Midwest Stock Exchange. A public hearing was held earlier this year.

The Commission concluded that, "With sufficient standards to assure continued protection for Virginia investors, a rule exempting from the registration requirements certain securities which have been designated on the NASDAQ/National Market System would be in the public interest." Such a rule, according to the SCC, would provide investors with easier access to a broader range of investment products, including the securities of Virginia issuers.

The NASD oversees the 4,800 companies traded over-the-counter on the NASDAQ. Approved by the Securities and Exchange Commission (SEC) in 1982, the national market system lists approximately 2,600 companies including 66 companies which are headquartered in Virginia.

The Commission indicated it was not prepared to grant the exemption without specifying required standards. The Commission is concerned wiht the current mood among investors resulting from the October 1987 market crash. The Commission said, "When investor confidence is extremely low, as it is now, regulatory authority over a market place should not be delegated to the industry. Investors may view this as being analogous to delegating the protection of a henhouse to a fox."

The SCC also recognized the intensity of competition among the NASD, the exchanges, and the publishers of securities manuals for the right to list publicly traded securities. The Commission wrote, "Such competition could create a great 'race to the bottom' with each competitor lowering its listing criteria to a point where economic concerns may override investor protection considerations."

NASDAQ/National Market System initial public offerings (IPOs) will not be exempted from the Securities Act registration requirements. The Commission said, "The risks involved with IPOs are greater, as are the opportunities for fraud and other illegal activities. We feel that, for investor protection, it is necessary that SCC staff review NASDAQ IPOs before they are offered for sale or are sold to Virginia investors because the staff provides the only completely independent, objective analysis of such offerings."

The SCC's Division of Securities and Retail Franchising points out that anyone using the new exemption assumes the responsibility of assuring that the issuer of the securities meets the criteria established by the Commission. The responsibility also includes determining that the securities are listed on the NASDAQ/National Market System and the investment is suitable for each purchaser.

XI. RECENT PUBLICATIONS

Whittaker, "Conservation and Unregulated Utility Profits: Redefining the Conservation Market", Pub. Util. Fort., July 7, 1988, at 18.

Frye, "The Constitutionality of the Federal Energy Regulatory Commission's Annual Charges Regulations", 40 Ad. L. Rev. 251 (1988).

Cady, "Marginal Demand Analysis: A Response to Competition", Pub. Util. Fort., May 26, 1988, at 34.

XII. MEMBERSHIP APPLICATION

The Administrative Law Section presently has 177 members. We constantly strive to increase our membership rolls, so if you know of any potential members, please give them the following application. Annual dues are $15.00.

I desire membership in the Administrative Section of the Virginia State Bar.

____
(name)

____
(address)

____
(city)

Mail application to: Virginia State Bar, Ross Building, 10th Floor, 801 East Main Street, Richmond, Virginia, 23219.

Administrative Law Section Newsletter, c/o B. Gayle Morgan and Judith Williams Jagdmann, Editors, P. O. Box 1197, Richmond, Virginia, 23209.