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Petitioner, Bache and Co., Inc., was employed by Arch A. Moore, Jr., Governor of the State of West Virginia, to act as financial advisor in the sale of road bonds in the amount of $90,000,000 during the fiscal year ending June 30, 1970. Bache was to receive 90 cents for each $1,000 of principal of the bonds sold. Pursuant to this agreement the petitioner, after providing extensive advice, submitted to the Governor a statement of its charge for the services—$81,000. The statement was transferred to the State Road Commissioner, who upon instructions from the Governor, submitted it to the defendant, the Honorable Denzil L. Gainer, Auditor of the State of West Virginia, with a requisition of the State Treasury for payment from the State Road Fund. Defendant refused to issue a warrant, claiming that the charge was not a necessary expense within the meaning of the applicable statutes, [Chapter 125 and 126, Acts of the Legislature, Regular Session, 1969] and, that the advisor's agreement lacked the required approval of the Director of Purchasing and the Attorney General of the State, and the signature of the Commissioner of Finance and Administration, as provided in Chapter 5A, Article 3, Code, 1931, as amended.

The Governor again submitted the statement to the Commissioner of the Department of Highways (formerly State Road Commissioner), stating that the charge was a necessary expense incurred in the execution by the Governor of the Acts of the Legislature and was payable out of the State Road Fund. However, defendant again refused to issue his warrant upon the Commissioner's requisition. The petitioner then instituted an original mandamus proceeding, seeking a writ to require the defendant to issue a warrant upon the State Treasurer for payment for its services.

Held, writ awarded. The Court said that the charge for petitioner's services was a necessary expense within the meaning of Chapters 125 and 126, Acts of the Legislature, Regular Session, 1969, and held that when there are funds available in the State Treasury to pay such expense, it is the responsibility of the Auditor to honor the requisition. The Court further held that Section 13 of each statute impliedly empowered the Governor to determine what expenses incurred in the sale of the bonds were necessary
expenses, and that such determination was not subject to review or approval by any other officer or governmental department. *Bache and Co., v. Gainer* 177 S.E.2d 10 (W. Va. 1970).

In the past the Court has been somewhat reluctant to use mandamus to coerce state officials to act because of the wide range of discretion available to executive officials in discharging their duties. But in recent years the Court has relaxed its views, and today mandamus has become a popular judicial device to secure individual rights vis-a-vis the state. *See Davis, Mandamus to Review Administrative Action in W. Va. 60 W. Va. L. Rev. 1, (1957). See also, Annot., 91 A.L.R. 1497 (1934).*

**Criminal Law—Jurisdiction To Revoke Probation**

In February, 1965, defendant represented by counsel pleaded guilty to a charge of forgery and in March was sentenced to a term of one to ten years in the state penitentiary. However, the sentence was suspended and the defendant was placed on probation for three years. Then in February, 1967, defendant pleaded guilty to a misdemeanor and was sentenced to the county jail for six months. The circuit court, vested with supervisory authority over the defendant, revoked the defendant’s probation and ordered him to serve the suspended sentence in the state penitentiary. The defendant was without counsel at the revocation of probation hearing.

In April, 1968, after the probationary period had expired, the defendant instituted a habeas corpus proceeding in the circuit court alleging that the revocation of his probation was unlawful and void because he had been without counsel at the revocation of probation hearing. The circuit court agreed, and he was released. However, the same circuit court ordered a second revocation of probation hearing to be conducted and at that hearing ruled that the defendant had violated the terms of the probation. While incarcerated in the state penitentiary, the defendant appealed this second revocation of probation. *Held*, circuit court’s ruling reversed. The circuit court did not have jurisdiction to revoke defendant’s probation after the period of probation had expired. *State v. Shawyer*, 177 S.E.2d 25 (W. Va. 1970).

In West Virginia once the probationary period has expired, a court cannot revoke the defendant’s probation. *State v. Reel*, 152 W.Va. 646, 165 S.E.2d 813 (1969). Generally a revocation of pro-