

266 Va 333

IN THE
Supreme Court of Virginia

RECORD NO. 022578



J. CHRIS ALDERSON, et al.,

Appellants,

v.

COUNTY OF ALLEGHANY,

Appellee.

JOINT APPENDIX

William A. Parks, Jr.
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Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON
D.H. SCOTT, JR.
ELAINE S. SHAFLEY
SANDRA H. HARTLEY
ELLEN P. SIMMONS RAY
MICHAEL E. SIMMONS
PATRICIA R. HAYMAKER

PLAINTIFFS

V.

ANNA L. FOX, TREASURER
ALLEGHANY COUNTY, VIRGINIA
9212 WINTERBERRY AVENUE
COVINGTON, VIRGINIA 24426
and
SHERRY W. STULL
COMMISSIONER OF THE REVENUE
ALLEGHANY COUNTY, VIRGINIA
9212 WINTERBERRY AVENUE
COVINGTON, VIRGINIA 24426
and

CH 01-247

THE COUNTY OF ALLEGHANY, VIRGINIA

DEFENDANTS

Serve:

Michael McHale Collins, Esq.
County Attorney, Alleghany County, Virginia
275 W. Main Street
Covington, Virginia 24426

Tammy D. Stephenson
County Administrator
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Covington, Virginia 24426

Cletus W. Nicely, Chairman and Member
Alleghany County Board of Supervisors
302 Morgan Drive
Clifton Forge, Virginia 24422

Charles C. Jeffries, Sr., Vice-Chairman and Member
Alleghany County Board of Supervisors
713 Dolly Ann Drive
Covington, Virginia 24426

Stephen A. Bennett, Member
Alleghany County Board of Supervisors
6800 Rich Patch Road
Covington, Virginia 24426

Rickey D. May, Member
Alleghany County Board of Supervisors
118 Landis Drive
Hot Springs, VA 24445

H.E. Eddie" Hall
Alleghany County Board of Supervisors
804 Summit Drive
Covington, Virginia 24426

BILL OF COMPLAINT
and
APPLICATION FOR CORRECTION
AND INVALIDATION OF TAXES ON
TANGIBLE PERSONAL PROPERTY

TO: THE HONORABLE DUNCAN M. BYRD, JR., JUDGE OF SAID COURT:

Come now your Plaintiffs, J. Chris Alderson, D.H. Scott, Jr., Elaine S. Shafley,
Sandra H. Hartley, Ellen P. Simmons Ray and Michael E. Simmons, by Counsel, and
respectfully represents that:

(1) On January 1, 2001, each of your Plaintiffs was a resident of the
City of Clifton Forge, Virginia and owned one or more motor vehicles physically located
and normally garaged in the city of Clifton Forge, Virginia and subject to taxation as
tangible or personal property pursuant to § 58.1-3500 et seq of the 1950 Code of
Virginia, as amended, only.

(2) On July 1, 2001, the City of Clifton Forge reverted to Town status pursuant to § 15.2-4000 et seq of the 1950 Code of Virginia, as amended.

(3) The Defendant, Sherry W. Stull, has assessed your Plaintiffs for the entire calendar year 2001 for tangible personal property taxes upon the motor vehicles described in paragraph (1) hereof.

(4) The Defendant, Anna L. Fox, has billed your Plaintiffs for the entire calendar year of 2001 for the tangible personal property upon the motor vehicles described in paragraph (1) hereof.

(5) Your Plaintiffs fully paid the assessments and taxes described in paragraph (3) and (4) hereof on or before December 5, 2001 in a timely manner in order to avoid the penalties and interest assessable on late payments of taxes.

(6) Between January 1, 2001 and December 31, 2001 (or July 1, 2001), the County of Alleghany had no authority, whether by statute, ordinance, or the Constitution of Virginia to tax any personal property physically located and normally garaged in the City of Clifton Forge, Virginia.

(7) All assessments for taxes upon tangible personal property physically located and normally garaged in the City of Clifton Forge, Virginia, between January 1, 2001 and December 31, 2001 (or July 1, 2001) are invalid, illegal, without legislative authority and violate Article X, Section 4 of the Constitution of Virginia and §§ 58.1-3000, -3500, -3511, and -3515.

(8) None of the motor vehicles owned by Plaintiffs and assessed for taxes as stated in paragraphs (1), (3) and (4) were normally garaged or physically located in Alleghany County, Virginia on "Tax Day," that is, January 1, 2001; accordingly the

County of Alleghany had and has no authority to assess, levy and/or collect taxes on tangible personal property physically located in Clifton Forge, Virginia, until January 1, 2002.

(8) This application is made pursuant to § 58.1-3987 of the 1950 Code of Virginia as amended. Plaintiffs sue in equity on their own behalf and on behalf of all others similarly situated.

WHEREFORE, your Plaintiffs respectfully and humbly pray that this honorable Court:

(a) Find that all assessments on tangible personal property physically located and normally garaged within the City of Clifton Forge, Virginia on January 1, 2001, by the County of Alleghany, Virginia be declared invalid, unlawful, and unconstitutional;

(b) Order the Defendants, Anna L. Fox, Treasurer of Alleghany County, and the County of Alleghany, Virginia to refund all payments of such taxes on tangible personal property located in the City of Clifton Forge on January 1, 2001 to all persons who have paid such taxes, in full, or so much thereof as the Court deems just, together with such penalties and interest as the Court and County, by ordinance may provide;

(c) Enjoin and restrain any and all further efforts the Defendants Sherry W. Stull and the County of Alleghany, Virginia, to bill, collect, and receive taxes on tangible personal property physically located and normally garaged in

the City of Clifton Forge prior to January 1, 2002 or such date as the Court may determine; and

(d) Award the Plaintiffs their costs and attorney's fees, taking into consideration the benefits to Plaintiffs and others similarly situated resulting from this Application.

RESPECTFULLY SUBMITTED

J. Chris Alderson
D.H. Scott, Jr.
Elaine S. Shafley
Sandra H. Hartley
Ellen P. Simmons Kay
Michael E. Simmons
Patricia R. Haymaker

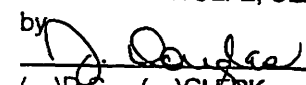
BY: 

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Attorney at Law
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Counsel for Plaintiffs

FILED THE 18th DAY OF December, 20 01 at 2:39 pm
IN THE CLERK'S OFFICE OF THE
ALLEGHANY COUNTY CIRCUIT COURT. TESTE:

CLERK'S FEE: 50.00 MICHAEL D. WOLFE, CLERK
WRIT TAX: 5.00 by 
MISC. FEES: 93.00
TOTAL PAID: 148.00 (☒ D.C. (☐) CLERK



COMMONWEALTH of VIRGINIA

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804 - 786 - 2071
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March 14, 2002

The Honorable Sherry W. Stull
Commissioner of the Revenue for Alleghany County
9212 Winterberry Avenue
Covington, Virginia 24426

Dear Ms. Stull:

You ask several questions regarding the enactment by the 2002 Session of the General Assembly of Chapter 78¹ and its impact on the taxation of tangible personal property in the City of Clifton Forge for the first six months of 2001, and for the last six months of 2001 after the city's reversion to town status. As the commissioner of the revenue for Alleghany County, you have assessed tangible personal property located within the town at the county rate for the entire tax year 2001.

You first ask whether Chapter 78 requires the county commissioner of the revenue to assess the tangible personal property tax imposed by the City of Clifton Forge for the first six months of 2001, and whether the city's tax rate, reduced by one-half, equals \$1.675 per \$100.

Section 1, paragraph 2 of Chapter 78 provides:

The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be deemed to have been assessments made by the commissioner of the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001[.]

¹2002 Va. Acts ch. 78 (approved Mar. 4, 2002) (providing for tangible personal property taxes for City and Town of Clifton Forge and Alleghany County for tax year beginning January 1, 2001)

FILED
3/15/02

17

33

The Honorable Sherry W. Stull
March 14, 2002
Page 2

Chapter 78 clearly establishes that your assessments are deemed to have been made by the commissioner of the revenue for the City of Clifton Forge and requires that the tax be levied at one-half of the rate set by the city to reflect the short tax year from January 1 through June 30, 2001.

The Clifton Forge City Council adopted an ordinance on June 19, 2001,² setting the tax rate on tangible personal property as follows:

For the calendar year beginning January 1, 2001 and ending December 31, 2001, upon all tangible personal property of every kind and description not exempt from local taxation, there shall be a tax of Six Dollars and Seventy Cents (\$6.70) for every One Hundred Dollars (\$100.00) of assessed value and at an assessment ratio of 50%.⁽³⁾

In instances when a request requires an interpretation of a local ordinance, the Attorney General historically has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control.⁴ The entity that enacted this ordinance, however, ceased to exist on July 1, 2001,⁵ and cannot correct any mistakes or misinterpretations of its ordinance. Furthermore, the primary question is the interpretation of an act of the General Assembly as it applies to this ordinance. Under these circumstances, I conclude that an exception to this Office's policy is warranted.

The nominal rate is \$6.70, and Chapter 78 clearly requires this to be reduced to \$3.35. The question is whether the nominal rate should also be reduced by the fifty percent assessment ratio. Technically, an assessment ratio reduces the assessed value, not the nominal rate. Mathematically, however, a fifty percent assessment ratio results in an effective tax rate that is fifty percent of the nominal rate.

An argument could be made that the city's fifty percent assessment ratio, enacted in contemplation of its reversion to town status, was, in effect, a proration of the tax to reflect a short tax year. I cannot accept this interpretation for the following reasons: First, the language of the ordinance itself states that the fifty percent tax assessment ratio is imposed for the entire 2001 calendar year. Second, § 1, paragraph 2 of Chapter 78 requires the tangible personal property tax to be "levied" at the rate in effect in the city on January 1, 2001, but then reduced by one-half to reflect the six-month tax year beginning the same date. "The assessment ratio is an integral part of the tax levy."⁶

² See CLIFTON FORGE, VA., ORDINANCE (2001) (providing that City of Clifton Forge will revert to town status on July 1, 2001).

³ *Id.* § 1(C) (imposing and levying tangible personal property taxes within Town of Clifton Forge).

⁴ See Op. Va. Atty Gen.: 1999 at 69, 69; 1995 at 240, 241; 1991 at 30, 31; 1986-1987 at 347, 348; 1981-1982 at 471, 472; 1976-1977 at 17.

⁵ See ordinance and accompanying parenthetical information cited *supra* note 2.

⁶ *Wise County Bd. of Supervisors v. Wilson*, 250 Va. 482, 485, 463 S.E.2d 630, 632 (1995).

The Honorable Sherry W. Stull
March 14, 2002
Page 3

Therefore, it is my view that Chapter 78 requires you, as commissioner of the revenue, to levy the tangible personal property tax at the nominal rate and assessment ratio set by the City of Clifton Forge, and reduce the tax amount by one-half to reflect the short tax year. Under the facts presented, this would result in an effective tax rate of \$1.675⁷ for the six-month tax year beginning January 1, 2001.

Next, you ask whether the Alleghany County net effective tax rate for an entire year is \$4.65, i.e., one-half the nominal rate in Alleghany County of \$5.95 plus \$1.65.

You state that Alleghany County assesses taxes on tangible personal property located in the Town of Clifton Forge at the rate of \$5.95. Section 1, ¶ 3 of Chapter 78 ratifies the imposition of this tax at the county tax rate, but requires you to reduce the amount of tax by one-half to reflect the short six-month tax year beginning July 1, 2001. The result of converting the deemed city tax and the actual county tax is that the total effective tax rate on the assessed value of tangible personal property in the town is \$1.675 plus one-half of \$5.95, or \$4.65.

You next ask whether the result of the Act would be to issue a refund or abatement of \$1.30 per \$100 of the Alleghany County tax assessed on property located within the Town of Clifton Forge.

Since the county initially imposed the tangible personal tax at a rate of \$5.95, the net result is a refund or abatement of \$5.95 minus \$4.65, i.e., \$1.30 per \$100 of assessed value.

Finally, you ask whether the two local governing bodies may continue to negotiate a mutually agreeable sharing or distribution of the funds between themselves.

Chapter 78 affects only the imposition of tax on property located within the City and the Town of Clifton Forge. It has no effect on the ability of Alleghany County and the town to share revenue. Revenue sharing agreements between localities are subject to constitutional and statutory constraints as noted in prior opinions of this Office.⁸ The most significant constraint is that a revenue sharing agreement constitutes a long-term financial obligation. Article VII, § 10(b) of the Constitution of Virginia prohibits counties from contracting debt or establishing a fixed contractual obligation to make payments in future years, unless the proposed debt is authorized by general law and approved by the qualified voters of the county in a duly authorized referendum.⁹

Alternatively, if the revenue sharing agreement is a one-time transfer merely to adjust for the unique events related to the city's reversion to town status and the tax revenues affected by Chapter 78, such agreement would not be a long-term financial obligation. Accordingly, the county and town may treat such an agreement as they would any other financial obligation in the budget process for the fiscal year.¹⁰

⁷ E.g., $\$6.70 \times 50\% = \$3.35 \times 50\% = \$1.675$.

⁸ See Op. Va. Att'y Gen.: 1990 at 48; 1984-1985 at 96.

⁹ 1990 Op. Va. Att'y Gen., *supra*, at 49.

¹⁰ In view of the responses above, it is not necessary to answer your question regarding administration of the tangible personal property tax to be levied on residents of the Town of Clifton Forge for tax year 2001.

The Honorable Sherry W. Stull
March 14, 2002
Page 4

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Cavedo', with a long horizontal flourish extending to the right.

Bradley B. Cavedo
Deputy Attorney General

5:525; 1:690; 54/02-023i

SB 246 Tangible personal property tax in Alleghany County.**Patron - Malfourd W. Trumbo (all patrons) notes***Summary as passed Senate: (all summaries)*

Tangible personal property tax in Alleghany County. Authorizes Alleghany County to retain one-half of the tangible personal property taxes collected, or due and owing, from residents of the town of Clifton Forge for tax year 2001. The remaining one-half shall be exonerated. If the taxpayer has already paid more than one-half of such taxes, any overpayment shall be refunded and shall include interest as provided under applicable law. Alleghany County levied its 2001 tangible personal property tax on residents of the town of Clifton Forge, but on January 1, 2001, such persons were still residents of the independent City of Clifton Forge. The city reverted to town status effective July 1, 2001. Because the tangible personal property tax levied by Alleghany County on Clifton Forge residents was for the entire 2001 tax year, the bill prorates the tax levied and requires an exoneration for that portion of the tax attributable to the period from January 1, 2001, through June 30, 2001. The County may retain that portion of the tax prorated for the period from July 1, 2001, through December 31, 2001. The bill contains an emergency clause.

Full text:

01/09/02 Senate: Pres. & ord. printed w/emg. clause pref.01/08/02 023104548 (impact statement)
 01/30/02 Senate: Committee substitute printed 023139548-S1 (impact statement)
 02/22/02 Senate: Enrolled bill text (SB246ER) (impact statement)

Status:

01/09/02 Senate: Pres. & ord. printed w/emg. clause pref.01/08/02 023104548
 01/09/02 Senate: Referred to Committee on Finance
 01/14/02 Senate: Fiscal impact statement from TAX (SB246)
 01/30/02 Senate: Reported from Finance with substitute (16-Y 0-N)
 01/30/02 Senate: Committee substitute printed 023139548-S1
 01/31/02 Senate: Constitutional reading dispensed (39-Y 0-N)
 01/31/02 Senate: VOTE: CONST. RDG. DISPENSED R (39-Y 0-N)
 02/01/02 Senate: Read second time
 02/01/02 Senate: Reading of substitute waived
 02/01/02 Senate: Committee substitute agreed to 023139548-S1
 02/01/02 Senate: Emergency clause added
 02/01/02 Senate: Engrossed by Senate - committee substitute 023139548-S1
 02/04/02 Senate: Read third time and passed Senate (40-Y 0-N)
 02/04/02 Senate: VOTE: PASSAGE R (40-Y 0-N)
 02/04/02 Senate: Communicated to House
 02/05/02 House: Placed on Calendar
 02/05/02 House: Read first time
 02/05/02 House: Referred to Committee on Finance
 02/11/02 Senate: Fiscal impact statement from TAX (SB246S1)
 02/18/02 House: Reported from Finance (22-Y 0-N)
 02/19/02 House: Read second time
 02/20/02 House: Read third time
 02/20/02 House: Passed House (99-Y 0-N)
 02/20/02 House: VOTE: PASSAGE EMERGENCY (99-Y 0-N)
 02/22/02 Senate: Fiscal impact statement from TAX (SB246ER)
 02/22/02 Senate: Enrolled bill text (SB246ER)

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act providing for tangible personal property taxes for the City of Clifton Forge, Alleghany*
3 *County, and the Town of Clifton Forge for the period January 1, 2001, through December 31,*
4 *2001.*

5 [S 246]

6 Approved

7 Be it enacted by the General Assembly of Virginia:

8 1. § 1. Notwithstanding any other provision of law, any assessment of tangible personal property as of
9 January 1, 2001, for tangible personal property located in the Town of Clifton Forge, with such
10 assessment being made by the commissioner of the revenue of Alleghany County, shall be valid,
11 regardless that residents of the Town of Clifton Forge were residents of an independent city, the City
12 of Clifton Forge, on January 1, 2001. In addition, the levy or imposition of tangible personal
13 property taxes for the entire 2001 tax year based upon such assessments shall also be valid subject to
14 the following:

15 1. Such assessments upon the residents of the Town of Clifton Forge shall be deemed to have been
16 assessments made to levy all tangible personal property taxes upon such persons for a period
17 covering two separate tax years, the first beginning January 1, 2001, through 12:00 p.m. on June 30,
18 2001, and the second beginning July 1, 2001, through 12:00 p.m. on December 31, 2001;

19 2. The tangible personal property assessments by the county commissioner of the revenue on the
20 residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001, through
21 12:00 p.m. on June 30, 2001, shall be deemed to have been assessments made by the commissioner of
22 the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes
23 imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of
24 Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the
25 Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax
26 year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible
27 personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the
28 amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1,
29 2001, through 12:00 p.m. on June 30, 2001; and

30 3. The tangible personal property assessments by the county commissioner of the revenue on the
31 residents of the Town of Clifton Forge applicable to the tax year beginning July 1, 2001, through
32 12:00 p.m. on December 31, 2001, shall be deemed to have been assessments made by the county
33 commissioner of the revenue on the residents of the Town of Clifton Forge who also became residents
34 of the county on July 1, 2001. The tangible personal property taxes levied by Alleghany County based
35 upon such assessments shall be levied at the tangible personal property tax rates in effect in
36 Alleghany County as of January 1, 2001, but the amount of tax due shall be reduced by one-half to
37 reflect the short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.

38 § 2. Any tangible personal property taxes levied by the Town of Clifton Forge upon town residents
39 for the tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001, shall be valid.
40 However, the amount of tax due shall be determined using tangible personal property tax rates in
41 effect in the town as of July 1, 2001, and the amount of tax due shall be reduced by one-half to
42 reflect a short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.

43 2. That an emergency exists and this act is in force from its passage.

**DEPARTMENT OF TAXATION
2002 Fiscal Impact Statement**

1. **Patron** Trumbo

2. **Bill Number** SB 246

3. **Committee** Passed Senate and House

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. **Title** Tangible Personal Property Tax:
Authorizing a County to Prorate the Tax
When an Independent City Becomes a
Town

Second House:

☐ In Committee

☐ Substitute

☒ Enrolled

5. **Summary/Purpose:**

This bill would validate a tangible personal property tax imposed by Alleghany County on the residents of the Town of Clifton Forge on January 1, 2001, while it was still a city transitioning to town status. The transition became final July 1, 2001.

Current law provides that all taxable tangible personal property must have situs within a jurisdiction on January 1 of the tax year. This bill provides an exception because of the change in status of Clifton Forge. For tax year 2001, both the town and the county may impose a tangible personal property on all property with situs within the town on July 1, 2001 at the rates in effect July 1, 2001. The bill also provides that the taxes imposed by the county on the residents of Clifton Forge while it was still a city be levied at the tangible personal property rate in effect for the city as of January 1, 2001. In both instances, the amount of tax due would be reduced by one-half to reflect the short tax years established by this bill.

This bill contains an emergency clause and is in effect from the date of its passage.

6. **Fiscal Impact Estimates are:** Unknown (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

This bill would have no impact on state revenues. It would increase Alleghany County's revenues from one-half year's tangible personal property taxes levied on the residents of Clifton Forge.

9. **Specific agency or political subdivisions affected:**

SB 246 - Enrolled

-1-

2/22/02

Alleghany County, the Town of Clifton Forge.

10. Technical amendment necessary: No.

11. Other comments:

Counties may not impose tangible personal property taxes on residents of independent cities, but they may impose such taxes on the residents of towns. Towns may also impose tangible personal property taxes on their residents. The effect of this bill would be to allow Alleghany County to retain the taxes imposed on Clifton Forge after it changed its status from a city to a town on July 1, 2001.

As an independent city, Clifton Forge imposed its own tangible personal property tax on its residents. This bill validates any tangible personal property taxes levied by the Town of Clifton Forge after it transitioned to town status effective July 1, 2001.

Under current law, tax day is considered to be January 1 of any tax year for purposes of the tangible personal property tax. This bill would create a limited exemption for Clifton Forge for tax year 2001 only, when its status changed from city to town on July 1, 2001.

cc: Secretary of Finance

Date: 2/22/02/SLR

Document: \\TAXOFFICE\LEGISDIR\2002leg\WorkInProcess\OTPwork\SB246FENR161.doc

VIRGINIA:

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON
D.H. SCOTT, JR.
ELAINE S. SHAFLEY
SANDRA H. HARTLEY
ELLEN P. SIMMONS RAY
MICHAEL E. SIMMONS
PATRICIA R. HAYMAKER,

Plaintiffs

v.

ANNA L. FOX, TREASURER
SHERRY W. STULL, COMMISSIONER
OF THE REVENUE
and
THE COUNTY OF ALLEGHANY, VIRGINIA

ORDER SUSTAINING DEMURRER
WITH LEAVE TO AMEND

THIS MATTER came to be heard on the 15th day of March, 2002, upon the demurrers of all three defendants, and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing that there is an adequate remedy at law pursuant to §58.1-3984 of the Code of Virginia, and it further appearing that §58.1-3984 of the Code of Virginia would prohibit the maintenance of a suit for the purpose of restraining the assessment or collection of any tax, and that the Treasurer and the Commissioner of the Revenue are not necessary parties hereto, it is hereby ADJUDGED, ORDERED and DECREED as follows:

M. M. COLLINS
ATTORNEY AT LAW

—
COVINGTON, VIRGINIA

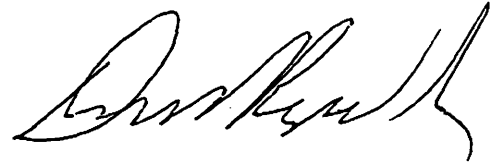
1. The demurrer of the County of Alleghany is sustained for the aforementioned reasons, and plaintiffs are granted leave to file an amended application against defendant Alleghany County on the law side of the court pursuant to §58.1-3984 of the Code of Virginia.

2. The County of Alleghany shall file such responsive pleadings to such amended petition as it may be advised on or before 21 days from the date of entry of this order.

3. The demurrers of Anna L. Fox, Treasurer, and Sherry W. Stull, Commissioner of the Revenue, are sustained, and the this matter is dismissed with prejudice as to those two defendants.

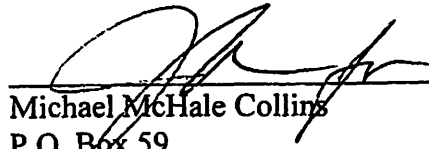
The Clerk is directed to mail certified copies of this Order to all counsel of record.

ENTER:




DATE:

4/3/02


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 (540) 962-6181
Counsel for Defendant Alleghany County

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ATTORNEY AT LAW

COVINGTON, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON
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PETITIONERS,

V

THE COUNTY OF ALLEGHANY

RESPONDENT,

**AMENDED APPLICATION FOR CORRECTION
AND INVALIDATION OF TAXES ON
TANGIBLE PERSONAL PROPERTY**

TO: THE HONORABLE DUNCAN M. BYRD, JR., JUDGE OF SAID COURT:

Come now your Petitioners J. Chris Alderson, D.H. Scott, Jr., Elaine S. Shafley, Sandra H. Hartley, Ellen P. Simmons Ray and Michael E. Simmons, by Counsel, and respectfully represent that:

1. On January 1, 2001, each of your Petitioners was a resident of the City of Clifton Forge, Virginia and owned one or more motor vehicles physically located and normally garaged in the City of Clifton Forge, Virginia and subject to taxation as tangible or personal property pursuant to §58.1-3500 et seq of the 1950 Code of Virginia, as amended, only.

2. On July 1, 2001, the City of Clifton Forge reverted to Town status pursuant to §15.2-4000 et seq of the 1950 Code of Virginia, as amended.

FILED/CLERK'S OFFICE/ALLEGHANY COUNTY
CIRCUIT COURT ON 4/4/02 AT 4:05 PM
MICHAEL D. WOLFE, CLERK
TESTE: [Signature] 4/4/02
() CLERK () DEP. CLK. DATE

3. Respondent has assessed your Petitioners the entire calendar year 2001 for tangible personal property taxes upon the motor vehicles described in paragraph (1) hereof.

4. Respondent has billed your Petitioners for the entire calendar year of 2001 for the tangible personal property taxed upon the motor vehicles described in paragraph (1) hereof.

5. Your Petitioners fully paid the assessments and taxes described in paragraph (3) and (4) hereof on December 5, 2001 in a timely manner in order to avoid the penalties and interest assessable on late payments of taxes or have paid such taxes late and incurred such penalties and interest.

6. Between January 1, 2001 and December 31, 2001 (or July 1 2001), the County of Alleghany had no authority, whether by statute, ordinance, or the Constitution of Virginia to tax any personal property physically located and normally garaged in the City of Clifton Forge, Virginia.

7. All assessments for taxes upon tangible personal property physically located and normally garaged in the City of Clifton Forge, Virginia, between January 1, 2001 and December 31, 2001 (or July 2001) are invalid, illegal, without valid legislative authority and violate Article X of the Constitution of Virginia and §§58.1-3000, - 3511, and - 3515.

8. None of the motor vehicles owned by Petitioners and assessed for taxes as stated in paragraphs (1), (3) and (4) were normally garaged or physically located in Alleghany County, Virginia on "Tax Day", that is, January 1, 2002; accordingly the County of Alleghany had and has no authority to assess, levy

and/or collect taxes on tangible personal property physically located in Clifton Forge, Virginia, until January 1, 2002.

9. This application is made pursuant to §§58.1-3984 of the 1950 Code of Virginia, as amended.

WHEREFORE, your Petitioners respectfully and humbly pray that this honorable Court:

(A) Find that all assessments on tangible personal property physically located and normally garaged within the City of Clifton Forge, Virginia on January 1, 2001, by the County of Alleghany, Virginia be declared invalid, unlawful, and unconstitutional;

(B) Order the Respondent the County of Alleghany, Virginia to refund all payments of such taxes on tangible personal property located in the City of Clifton Forge on January 1, 2001, to all persons who have paid such taxes, in full, or so much thereof as the Court deems just, together with such penalties and interest as the Court and County, by ordinance may provide; and award the Petitioners their costs and attorneys fees, taking into consideration the benefits to Petitioners and others similarly situated resulting from this Application;

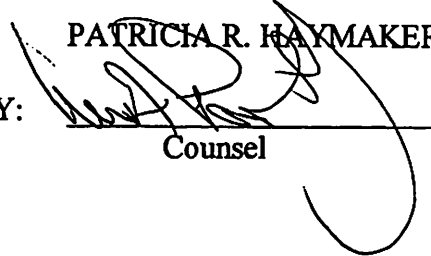
(C) Award of attorneys fees and the costs of this proceeding.

RESPECTFULLY SUBMITTED

J. CHRIS ALDERSON
D.H. SCOTT, JR.
ELAINE S. SHAFLEY
SANDRA H. HARLTEY
ELLEN P. SIMMONS RAY
MICHAEL E. SIMMONS

PATRICIA R. HAYMAKER

BY:


Counsel

William A. Parks, Jr.
Attorney at Law
301 West Main Street
P.O. Box 1175
Covington, Virginia 24426
540-962-2222
540-962-2234(fax)

Counsel for Petitioners

CERTIFICATE OF MAILING

I hereby certify that I have mailed and telefaxed a true copy of the foregoing Amended Application for Correction and Invalidation of Taxes on Tangible Personal Property to Michael McHale Collins, Esquire, 275 West Main Street, P.O. Box 59 Covington, Virginia 24426 this 14th day of April, 2002.


Counsel

VIRGINIA:

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON
D.H. SCOTT, JR.
ELAINE S. SHAFLEY
SANDRA H. HARTLEY
ELLEN P. SIMMONS RAY
MICHAEL E. SIMMONS
PATRICIA R. HAYMAKER,

Plaintiffs

v.

THE COUNTY OF ALLEGHANY, VIRGINIA

GROUND OF DEFENSE and DEMURRER

Comes now the County of Alleghany and files this its Grounds of Defense and Demurrer to the Amended Application for Correction and Invalidation of Taxes on Tangible Personal Property in support which alleges the following:

DEMURRER

Plaintiff's Application is made pursuant to §58.1-3984 of the *Code of Virginia*, as amended (see paragraph 9 of the Amended Application for Correction and Invalidation of Taxes on Tangible Personal Property).

§58.1-3984 provides the taxpayer with the right to apply for relief of the Circuit Court to challenge the assessment made by the Commissioner of Revenue. That Section specifically places the burden on the taxpayer to show that the property in question is valued at more than

M. M. COLLINS
ATTORNEY AT LAW

COVINGTON, VIRGINIA

its fair market value or that the assessment is not uniform in its application or that the assessment is otherwise invalid or illegal.

The plaintiff has not alleged that the property was valued at more than the fair market value, or that the assessment is not uniform in its application. The plaintiff alleges that the assessment is otherwise invalid or illegal in that property being assessed was located in the City of Clifton Forge on January 1, 2001 (the tax day) and not subject to Alleghany County taxation.

Chapter 78 of the *Acts of the Assembly* (Senate Bill 246) signed into law by the Governor of Virginia on March 6, 2002, specifically provides that assessments made by the County Commissioner of Revenue for tangible personal property as of January 1, 2001 shall be valid regardless that the residents of the Town of Clifton Forge were residents of the independent City of Clifton Forge on January 1, 2001.

WHEREFORE, respondent respectfully alleges that the plaintiff has failed to state a cause of action upon which relief can be granted under §58.1-3500 et.seq. of the *Code of Virginia*.

GROUNDS OF DEFENSE

1. Respondent admits allegations contained in paragraph 1, 2, 3, 4, 5 and 9 of the Amended Application.
2. Alleghany County has not adopted a proration statute which would allow the Commissioner of Revenue to prorate personal property taxes for motor vehicles based upon the number of months the vehicle was located in the County. The scheme of taxation employed by Alleghany County is to tax all vehicles that are garaged in the County on January

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1, 2001. Thus anyone purchasing a vehicle after January 1, 2001 would pay no tax on the new vehicle but would, nonetheless, pay the full tax for the "entire year" on the vehicle owned on January 1, 2001. In this context it is appropriate to say that the petitioners were taxed for the entire year as is alleged in paragraphs 3 and 4.

3. The respondent denies the allegations in paragraph 6 and paragraph 8, and alleges specifically that Chapter 78 of the *Acts of the Assembly* (Senate Bill 246) did authorize the County Commissioner of the Revenue to assess the personal property and motor vehicles garaged in the City of Clifton Forge on January 1, 2001.

4. The respondent denies the allegations in paragraph 7 and alleges specifically that the aforesaid legislation has validated the assessments.

5. The aforesaid legislation has directed the County to reduce the taxes collected by one-half, thus those taxpayers who have paid the tax in full prior to the enactment of the aforesaid legislation have overpaid and are entitled to a refund of one-half of the tax paid plus interest. Alleghany County is attempting to develop a procedure to make such refunds.

WHEREFORE, respondent respectfully prays that the Court determine that the assessments are proper, that the County is complying with the mandates of Chapter 78 of the *Acts of Assembly* by processing a refund of one-half of the taxes collected with interest; and that an award of attorney's fees and cost of proceeding be denied; and this matter be dismissed from the docket.

M. M. COLLINS
ATTORNEY AT LAW

—
COVINGTON, VIRGINIA

THE COUNTY OF ALLEGHANY

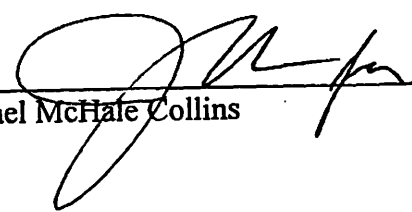
By: 

Attorney for Respondent

Michael McHale Collins
P. O. Box 59
275 W. Main Street
Covington, VA 24426

CERTIFICATE OF SERVICE

I, Michael McHale Collins, hereby certify that I have this 17th day of April, 200
mailed a true and correct copy of the foregoing Grounds of Defense and Demurrer to William
A. Parks, Jr., P. O. Box 1175, Covington, Virginia 24426, counsel for Petitioners.



Michael McHale Collins

M. M. COLLINS
ATTORNEY AT LAW

COVINGTON, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON, et als

Petitioners

v.

THE COUNTY OF ALLEGHANY VIRGINIA

Respondent,

ORDER

This cause came on the 5th day of June 2002 to be heard upon the demurrer of the Respondent; upon the appearance of the parties by counsel; and was argued by counsel.

And it appearing to the court that the Respondent has demurred upon the grounds that Chapter 78 of the Acts of Assembly (Senate Bill 246) signed into law by the Governor of Virginia on March 6, 2002 specifically provides that assessments made by the County Commissioner of Revenue for tangible personal property as of January 1, 2001 shall be valid regardless that the residents of the Town of Clifton Forge were residents of the independent city of Clifton Forge on January 1, 2001.

And it further appearing that the Respondent has no objection.


Upon consideration whereof, it is accordingly ADJUGED, ORDERED AND DECREED that the Amended Petition should be and it is hereby deemed to allege that said Chapter 78 of the Acts of Assembly (Senate Bill 246) is unconstitutional.

The demurrer of the Respondent remains under advisement.

The Clerk is directed to provide certified copies of this Order to counsel of record herein.

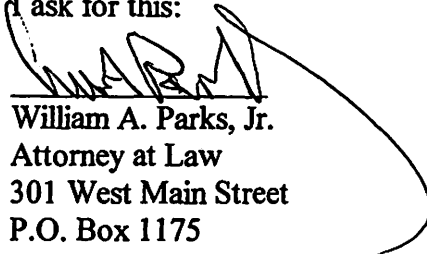
And this cause is continued.

Enter this the 11 day of June 2002.



Judge


I ask for this:



William A. Parks, Jr.
Attorney at Law
301 West Main Street
P.O. Box 1175
Covington, Virginia 24426
540-962-2222
540-962-2234(fax)

Counsel for Petitioner

Seen:



Michael McHale Collins, Esquire
Attorney at Law
P.O. Box 59
Covington, Virginia 24426

Attorney for Respondent

VIRGINIA:

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALTERSON, ET AL,)	
)	
Petitioners,)	
)	
v.)	Chancery No.: CH01-000247
)	
THE COUNTY OF ALLEGHANY,)	
VIRGINIA,)	
)	
Respondent.)	

REPLY MEMORANDUM OF ALLEGHANY COUNTY

A. Introduction

This Memorandum replies to the arguments raised by the Petitioners in their Trial Memorandum dated May 31, 2002. The Respondent County of Alleghany (the "County") has not restated the arguments made in its Memorandum of Respondent dated June 5, 2002. The County relies on the authorities and arguments stated in its prior Memorandum for those matters addressed in the prior Memorandum.

The Petitioners Trial Memorandum argues that Chapter 78, 2002 Va. Acts (Senate Bill 246) ("Chapter 78") is unconstitutional. See Petitioners Trial Memorandum, pp. 7-11. The Petitioners argue that Chapter 78 is a "special law" applicable only to Alleghany County and Clifton Forge and therefore in violation of Article IV, § 14 of the Constitution of Virginia (1971).

The Petitioners argument fails because Chapter 78 is a "special act" providing for the organization, government and powers of a county and a city (now a town) authorized by Article VII, § 2 of the Constitution of Virginia (1971). The express grant of power in Article VII, § 2

overrides the restrictions provided in Article IV, § 14. The constitutional argument asserted by the Petitioners overlooks the controlling provisions of Article VII, § 2.

The validating provisions of Chapter 78 are a valid exercise of the legislative power to provide for local government powers, including the powers of taxation and assessment, under Article VII, § 2. The statutory arguments asserted on pages 2 – 7 of the Petitioners' Trial Memorandum, therefore, are simply wrong. The controlling issue is how to implement the provisions of Chapter 78. The general law provisions set out in Title 58.1 of the Code of Virginia do not apply because of the validating provisions of Chapter 78.

B. Chapter 78

Chapter 78 provides that, notwithstanding any other provision of law, any assessment of tangible personal property as of January 1, 2001, for tangible personal property located in the Town of Clifton Forge, with such assessment being made by the Commissioner of the Revenue of Alleghany County, shall be valid regardless that residents of the Town of Clifton Forge were residents of the independent city, the City of Clifton Forge, on January 1, 2001. See § 1, Chapter 78. A copy of Chapter 78 is attached as Exhibit 1 to this Memorandum for easy reference.

The structure of Chapter 78 includes the following elements:

1. The first sentence of § 1 validates the tangible personal property assessment by the County Commissioner of the Revenue as of January 1, 2001, for the residents of the City/Town of Clifton Forge.
2. The second sentence of § 1 validates the imposition of tangible personal property tax by the City, the Town, and the County subject to the provisions of §§ 1 through 3 of §1.
3. Paragraph 1 of § 1 establishes two separate short tax years: the January - June 2001 tax year and the July – December 2001 tax year.
4. Paragraph 2 of § 1 validates the City tangible personal property tax but reduces the amount of taxes by one-half to reflect the short tax year.

5. Paragraph 3 of § 1 validates the County's tangible personal property tax but reduces the amount of taxes by one-half to reflect the short tax year.
6. Section 2 of Chapter 78 validates the Town's tangible personal property tax but reduces the amount of taxes by one-half to reflect the short tax year.

Chapter 78 accomplishes four specific objects:

1. It validates the City tangible personal property tax at the City tax rate for the short January – June 2001 tax year.
2. It validates the Town's tangible personal property tax at the Town's tax rate for the short July – December 2001 tax year.
3. It validates the County's tangible personal property tax at the County tax rate for the short July – December 2001 tax year.
4. It validates the assessment by the County Commissioner of the Revenue as the assessment underlying the tangible personal property tax levies of the City, the Town, and the County.

Chapter 78 is a complicated and confusing statute. The complexity results from the already accomplished billing and collection of tangible personal property taxes by Clifton Forge and the County for 2001. Despite its complicated provisions, however, Chapter 78 must be interpreted to accomplish the legislative intent. Chapter 78 expressly validates the assessment of tangible personal property in the City/Town of Clifton Forge by the County Commissioner of the Revenue for all of 2001. Chapter 78 also validates the imposition of tangible personal property taxes for short tax years by the City, the Town, and the County. Chapter 78 has the effect of reducing the taxes that would be due to the City, the Town, and the County by one-half to reflect the short tax year for each jurisdiction. All of these validating and implementing provisions were enacted in the context of the City's reversion to Town status.

Chapter 78 was adopted as an emergency statute. The Senate of Virginia approved Chapter 78 on a 40 - 0 vote and the House of Delegates approved Chapter 78 on a 99 - 0 vote. A

copy of the Bill Tracking Report recording the House and Senate votes is attached as Exhibit 2 to this Memorandum.

C. Constitutional Provisions

Article VII, § 2 of the Constitution of Virginia (1971) provides that the General Assembly may provide by “special act” for the organization, government and powers of any county, city and town “including such powers of legislation, taxation and assessment as the General Assembly may determine.” (Emphasis added).

Article VII, § 1(6) defines “special act” as a law applicable to a county, city or town and for enactment requiring an affirmative vote of two-thirds of the members elected to each House of the General Assembly.

Article VII, § 2, therefore, expressly authorizes the General Assembly to provide by “special act” for a county, city or town’s powers of taxation and assessment.

Article IV, § 14 includes the general grant of legislative powers to the General Assembly. Article IV, § 14 also restricts the power of the General Assembly by providing that the General Assembly shall not enact any local, special or private law for the assessment and collection of taxes, extending the time for the assessment or collection of taxes, exempting property from taxation, or remitting or diminishing any obligation of any person to any political subdivision. See Article IV, § 14(5), (6), (7), and (8). Pursuant to the restriction imposed by Article IV, § 14(5), therefore, the General Assembly may not enact any local or special law for the assessment and collection of taxes.

D. Decisions of the Supreme Court of Virginia Applying Constitutional Provisions Governing the Grant of Powers to Local Governments

The question presented in this instance is whether Chapter 78 is a special act addressing the powers of taxation and assessment of Alleghany County and the City/Town of Clifton Forge

authorized by Article VII, § 2, notwithstanding the restrictions on special laws for the assessment and collection of taxes provided by Article IV, § 14(5).

The Supreme Court of Virginia has analyzed the interaction between the constitutional predecessors to Article VII, § 2 and Article IV, § 14.

1. Predecessor Provisions in the 1902 Constitution of Virginia.

The predecessor to Article IV, § 14 of the 1971 Constitution of Virginia is § 63 of the 1902 Constitution. Section 63 set forth twenty specific categories in which special legislation was prohibited, including subsection 5 which listed the assessment and collection of taxes. Section 64 of the 1902 Constitution provided that in all cases enumerated in § 63, the General Assembly was required to enact general laws. The 1971 counterpart to § 64 is Article IV, § 15.

Article VII, § 2 of the 1971 Constitution provides that the General Assembly may provide by special act for the powers of any county, city or town including the powers of taxation and assessment. The counterpart to Article VII, § 2 in the 1902 Constitution was § 117.

Section 117 of the 1902 Constitution provided that the General Assembly was required to enact general laws for the organization and government of cities and towns and that no special act could be passed in relation thereto except by a recorded vote of two-thirds of the members elected to each house.

Section 117 of the 1902 Constitution, therefore, was the counterpart to Article VII, § 2 of the 1971 Constitution. Article VII, § 2, however, is broader than former § 117 because it applies to counties as well as to cities and towns. Also, Article VII, § 2 expressly refers to the powers of taxation and assessment as within those powers subject to granting by special act.

The text of §§ 63, 64 and 117 of the 1902 Constitution is attached as Exhibit 3. The text of Article IV, §§ 14 and 15 and Article VII, §§ 1 and 2 are attached as Exhibit 4.

2. **Fallon Florist v. City of Roanoke**

In Fallon Florist v. City of Roanoke, 190 Va. 564 (1950), the Supreme Court of Virginia affirmed the validity of certain taxes imposed by the City of Roanoke pursuant to the provisions of its charter. The taxes were challenged on the ground that since no general law authorized their imposition, the charter provisions, being special legislation, were unconstitutional pursuant to §§63(5) (prohibiting the enactment of special laws for the assessment and collection of taxes) and 64 of the 1902 Constitution. The Court held that if the charter was enacted pursuant to the authority granted in § 117(a) of the 1902 Constitution, then the law would not be subject to a constitutional challenge on the basis of §§ 63 or 64. 190 Va. at 572-3, 575.

3. **Pierce v. Dennis**

In Pierce v. Dennis, 205 Va. 478 (1964), the Supreme Court considered whether a city charter provision adopted under § 117 of the 1902 Constitution authorizing federal employees to serve in city offices violated the restrictions against special legislation in §§ 63 and 64 of the 1902 Constitution. In its analysis, the Supreme Court specifically noted the “apparent repugnancy” between the grant of power under § 117 (now Article VII, § 2) and the restriction on the General Assembly’s power under § 64 (now Article IV, § 15). The Court noted that if a law was analyzed just in light of the restrictions imposed by §§ 63 and 64 (now Article IV, §§ 14 and 15), the law was prohibited special legislation. On the other hand, if the law was analyzed just under § 117 (now Article VII, § 2), it was an expressly authorized special act.

The Court noted that § 117 (now Article VII, § 2) was more specific and dealt specifically with the enactment of local government charters and imposed the safeguard of the two-third majority vote requirement. 205 Va. at 483. The Court held, therefore, that the more

specific authorizing provision of § 117 (now Article VII, § 2) must control over the more general restrictions in §§ 63 and 64 (now Article VII, §§ 14 and 15). Id.

The Court continued its analysis and held that the power of the General Assembly under § 117 (now Article VII, § 2) included the power to enact special acts in direct derogation of a general statute on the same subject. 205 Va. at 484. The Court stated that:

Laws for the organization and government of cities and towns were specially provided for in § 117, and that section, and not § 64, must be looked to when the validity of such laws is questioned.

205 Va. at 485.

The Court's opinion in Pierce v. Dennis also analyzed the court's prior decision in Fallon Florist v. City of Roanoke. The Court stated:

Although there is no separate discussion in the opinion concerning the relationship of § 64 to § 117, the opinion states 'There is, we think, a complete answer to appellants' argument in § 117(a) of the Constitution, as interpreted by the previous decisions of this court.' The discussion which follows makes it crystal clear that the court was holding that when an act for the organization and government of a city or town is adopted in the manner prescribed by and pursuant to the authority of § 117, its validity is unassailable upon the grounds of unconstitutionality either under § 63 or § 64.

205 Va. at 483. (Emphasis added).

4. County Board Supervisors v. American Trailer Co.

The Petitioners' Trial Memorandum relies heavily on the Supreme Court's decision in County Board of Supervisors v. American Trailer Co., 193 Va. 72 (1951). This decision, decided under the old 1902 Constitution, is no longer good law given the provisions of Article VII, § 2 which differ from § 117 of the 1902 Constitution.

In the American Trailer Co. decision, the Court held that a license tax by a county on trailer lots was invalid because the enabling statute was a special act applicable only to Fairfax

County for the assessment and collection of taxes and thereby prohibited by §§ 63(5) and 64 of the 1902 Constitution. 193 Va. at 77-78.

Section 117 of the 1902 Constitution was not applied or analyzed because § 117 was limited by its express terms to powers granted to cities and towns. Article VII, § 2 of the 1971 Constitution, on the other hand, expressly applies to counties and further expressly authorizes the General Assembly to provide for the powers of taxation and assessment of counties by special act.

The Court's holding in the American Trailer Co. decision, therefore, simply has no application given the provisions of Article VII, § 2 of the 1971 Constitution.

5. Commentaries on the 1971 Constitution.

Article VII, § 2 of the 1971 Constitution was drafted to allow the General Assembly to provide by special act for the powers of Virginia local governments, including counties, addressing taxation and assessment. The leading commentator on the 1971 Constitution is A. E. Dick Howard. Professor Howard reviews the issue as follows:

The General Assembly, in fashioning section 2, took a straight-forward approach to the use of special acts. Section 2 expressly authorizes special acts to be passed, on two-thirds vote, providing for the organization, government, and powers of counties, as well as cities and towns. This makes unnecessary the traditional drafting games that legislators were forced to play under the 1902 Constitution. Where the present Constitution does require general laws – notably for boundary changes – they must be based on “reasonable classifications.” There is no doubt that the ends for which special legislation may be enacted are much enlarged under the Constitution of 1971, especially as regards counties. Counties and cities are now more nearly on the same plane than was the case in the Constitution of 1902.

A detailed discussion of special acts appears in the commentary on Article IV, section 14, but the matter may usefully be reviewed here in the context of local government.

* * *

Apart from the difficulties inherent in defining special legislation, it is also necessary to reconcile the apparent conflicts between the special legislation prohibitions of Article IV, section 14 and the more permissive language found in the Local Government article. The problem is like that once faced under the Constitution of 1902, where section 63 (regarding special legislation) might have been thought to limit section 117. In a long series of cases, the Supreme Court of Appeals decided that the sections of the 1902 Constitution were not actually in conflict and that special acts which technically fell within one of the categories of old section 63 could still be enacted under section 117. The reasoning behind these decisions was that section 63 was general and would apply only to cases not otherwise provided for. Section 117, on the other hand, dealt with a specific subject, the enactment and amendment of municipal charters; therefore, it prevailed over the general language of section 63.

II A. E. Dick Howard, Commentaries on the Constitution of Virginia, 807-809 (1974) (Emphasis added). A copy of the relevant pages of Professor Howard's Commentaries is attached as Exhibit 5.

**E. Chapter 78 is a Special Act Within the
Grant of Authority Under Article VII, § 2**

As noted above, the grant of authority to the General Assembly with respect to special acts addressing the powers of local governments under Article VII, § 2 is even broader than the power granted by § 117 of the 1902 Constitution. The grant of power under § 117 was limited to special acts for the organization of cities and towns. Counties were not mentioned. Article VII, § 2, on the other hand, specifically authorizes special acts for the powers of counties as well as cities and towns. In addition, Article VII, § 2 specifically refers to the powers of taxation and assessment as those powers for which special acts were authorized.

Chapter 78 validates the assessment of tangible personal property as of January 1, 2001, for the tangible personal property located in the City/Town of Clifton Forge, with such assessment being made by the Alleghany County Commissioner of the Revenue. Chapter 78 further validates the imposition of tangible personal property taxes by the City of Clifton Forge,

the Town of Clifton Forge and the County, but reduces the amount of tax due to each jurisdiction to reflect the short tax years involved. Chapter 78, therefore, provides directly for the powers of taxation and assessment of the County and the City/Town of Clifton Forge in the context of the reversion of the City of Clifton Forge to Town status.

Chapter 78 is law applicable to Alleghany County and the City/Town of Clifton Forge. Chapter 78 was enacted by the affirmative votes of more than two-thirds of the members of the House of Delegates and Senate of Virginia. Chapter 78, therefore, is a special act providing for the powers of taxation and assessment within the County and the City/Town of Clifton Forge authorized by Article VII, § 2.

The restriction imposed by Article IV, § 14 on special laws do not apply to laws enacted by the General Assembly by special act providing for the powers of Virginia local governments.

F. Uniformity and Representation Issues.

1. Uniformity.

The Petitioners' Trial Memorandum argues that the effect of Chapter 78 will result in a County levy of tangible personal property tax that is not "uniform". Under the proper application of Chapter 78, the residents of Clifton Forge will pay: the validated City tax on tangible personal property for January – June 2001 (Chapter 78, § 1, ¶ 2); the validated Town tax on tangible personal property for July – December 2001 (Chapter 78, § 2); and the validated County tax on tangible personal property for July – December 2001 (Chapter 78, § 1, ¶ 3). This tax structure is based on the reasonable classification that Clifton Forge residents pay a City tangible personal property tax for the period prior to reversion to Town status (January – June 2001) and pay Town and County tangible personal property tax for the period after reversion (July – December 2001). This structure takes into account the reversion of the City of Clifton

Forge to Town status and the changing status of Clifton Forge residents. Clifton Forge residents will pay County tangible personal property taxes for the period in which they were County residents and will not pay County taxes for the period in which they were City residents.

The provisions of Chapter 78 validating the tangible personal property assessments by the County Commissioner of the Revenue for purposes of both City and County taxation allows compliance with the mandate that all property be taxed as stated in Article X, § 1 of the 1971 Constitution. The tax structure imposed by Chapter 78 implements the uniformity principles of Article X, § 1.

2. Representation

The Petitioners argue that Chapter 78 is unconstitutional because it allows the taxation of tangible personal property of Town of Clifton Forge residents by the County for the period July – December 2001 during which Town residents had not participated in the election in the County's Board of Supervisors.

The brief and temporary period during which the new County residents were not represented on the Board of Supervisors is not a constitutional violation. Rather, the situation simply reflects Clifton Forge's reversion to Town status and the reasonable accommodation of that change. Federal courts have rejected claims based on theories of lack of representation on the local governing body resulting from annexations where the lack of representation issue was temporary and self-correcting and resulted from a change in local government structure. See Citizens Committee to Oppose Annexation v. City of Lynchburg, 400 F. Supp. 68, 75 (W.D. Va. 1975); affirmed in part and rev'd in part, 528 F.2d 816 (4th Cir. 1975); Duncan v. Town of Blacksburg, 364 F. Supp. 643, 646 (W.D. Va. 1973). The situation presented with respect to the

Town of Clifton Forge is directly analogous to the holdings of the U. S. District Court in the Lynchburg and Blacksburg cases.

Conclusion

For the reasons stated above and in the County's prior Memorandum, the County of Alleghany respectfully requests that this matter be dismissed with prejudice.

Respectfully submitted,

COUNTY OF ALLEGHANY, VIRGINIA



Of Counsel

Michael McHale Collins (VSB No. 03342)
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Roanoke, Virginia 24022-0013
(540) 983-9300 (telephone)
(540) 983-9400 (facsimile)

Counsel for County of Alleghany Virginia

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Reply Memorandum of Alleghany County was served by First-Class Mail, postage prepaid, on the following:

William A. Parks
P. O. Box 1175
Covington, Virginia 24426

this 2ND day of July, 2002.



Counsel

2002 SESSION

ENROLLED

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act providing for tangible personal property taxes for the City of Clifton Forge, Alleghany*
3 *County, and the Town of Clifton Forge for the period January 1, 2001, through December 31,*
4 *2001.*

5

[S 246]

6

Approved

7 Be it enacted by the General Assembly of Virginia:

8 1. § 1. Notwithstanding any other provision of law, any assessment of tangible personal property as of
9 January 1, 2001, for tangible personal property located in the Town of Clifton Forge, with such
10 assessment being made by the commissioner of the revenue of Alleghany County, shall be valid,
11 regardless that residents of the Town of Clifton Forge were residents of an independent city, the City
12 of Clifton Forge, on January 1, 2001. In addition, the levy or imposition of tangible personal
13 property taxes for the entire 2001 tax year based upon such assessments shall also be valid subject to
14 the following.

15 1. Such assessments upon the residents of the Town of Clifton Forge shall be deemed to have been
16 assessments made to levy all tangible personal property taxes upon such persons for a period
17 covering two separate tax years, the first beginning January 1, 2001, through 12:00 p.m. on June 30,
18 2001, and the second beginning July 1, 2001, through 12:00 p.m. on December 31, 2001;

19 2. The tangible personal property assessments by the county commissioner of the revenue on the
20 residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001, through
21 12:00 p.m. on June 30, 2001, shall be deemed to have been assessments made by the commissioner of
22 the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes
23 imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of
24 Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the
25 Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax
26 year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible
27 personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the
28 amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1,
29 2001, through 12:00 p.m. on June 30, 2001; and

30 3. The tangible personal property assessments by the county commissioner of the revenue on the
31 residents of the Town of Clifton Forge applicable to the tax year beginning July 1, 2001, through
32 12:00 p.m. on December 31, 2001, shall be deemed to have been assessments made by the county
33 commissioner of the revenue on the residents of the Town of Clifton Forge who also became residents
34 of the county on July 1, 2001. The tangible personal property taxes levied by Alleghany County based
35 upon such assessments shall be levied at the tangible personal property tax rates in effect in
36 Alleghany County as of January 1, 2001, but the amount of tax due shall be reduced by one-half to
37 reflect the short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.

38 § 2. Any tangible personal property taxes levied by the Town of Clifton Forge upon town residents
39 for the tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001, shall be valid.
40 However, the amount of tax due shall be determined using tangible personal property tax rates in
41 effect in the town as of July 1, 2001, and the amount of tax due shall be reduced by one-half to
42 reflect a short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.

43 2. That an emergency exists and this act is in force from its passage.

EXHIBIT

1

SB 246 Tangible personal property tax in Alleghany County.

Patron - Malfourd W. Trumbo (all patrons) notes

Summary as passed Senate: (all summaries)

Tangible personal property tax in Alleghany County. Authorizes Alleghany County to retain one-half of the tangible personal property taxes collected, or due and owing, from residents of the town of Clifton Forge for tax year 2001. The remaining one-half shall be exonerated. If the taxpayer has already paid more than one-half of such taxes, any overpayment shall be refunded and shall include interest as provided under applicable law. Alleghany County levied its 2001 tangible personal property tax on residents of the town of Clifton Forge, but on January 1, 2001, such persons were still residents of the independent City of Clifton Forge. The city reverted to town status effective July 1, 2001. Because the tangible personal property tax levied by Alleghany County on Clifton Forge residents was for the entire 2001 tax year, the bill prorates the tax levied and requires an exoneration for that portion of the tax attributable to the period from January 1, 2001, through June 30, 2001. The County may retain that portion of the tax prorated for the period from July 1, 2001, through December 31, 2001. The bill contains an emergency clause.

Full text:

01/09/02 Senate: Pres. & ord. printed w/cmg. clause pref.01/08/02 023104548 (impact statement)
01/20/02 Senate: Committee substitute printed 023139548-S1 (impact statement)
02/22/02 Senate: Enrolled bill text (SB246ER) (impact statement)

Status:

01/09/02 Senate: Pres. & ord. printed w/emg. clause pref.01/08/02 023104548
01/09/02 Senate: Referred to Committee on Finance
01/14/02 Senate: Fiscal impact statement from TAX (SB246)
01/30/02 Senate: Reported from Finance with substitute (16-Y 0-N)
01/30/02 Senate: Committee substitute printed 023139548-S1
01/31/02 Senate: Constitutional reading dispensed (39-Y 0-N)
01/31/02 Senate: VOTE: CONST. RDG. DISPENSED R (39-Y 0-N)
02/01/02 Senate: Read second time
02/01/02 Senate: Reading of substitute waived
02/01/02 Senate: Committee substitute agreed to 023139548-S1
02/01/02 Senate: Emergency clause added
02/01/02 Senate: Engrossed by Senate - committee substitute 023139548-S1
02/04/02 Senate: Read third time and passed Senate (40-Y 0-N)
02/04/02 Senate: VOTE: PASSAGE R (40-Y 0-N)
02/04/02 Senate: Communicated to House
02/05/02 House: Placed on Calendar
02/05/02 House: Read first time
02/05/02 House: Referred to Committee on Finance
02/11/02 Senate: Fiscal impact statement from TAX (SB246S1)
02/18/02 House: Reported from Finance (22-Y 0-N)
02/19/02 House: Read second time
02/20/02 House: Read third time
02/20/02 House: Passed House (99-Y 0-N)
02/20/02 House: VOTE: PASSAGE EMERGENCY (99-Y 0-N)
02/22/02 Senate: Fiscal impact statement from TAX (SB246ER)
02/22/02 Senate: Enrolled bill text (SB246ER)

EXHIBIT

2

Section 63 of the Constitution provides in part:
"The General Assembly shall not enact any local, special or private law in the following cases:

"5. For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests."

Section 64 provides in part: "In all cases enumerated in the last section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws."

EXHIBIT

3

Art. IV, § 14

§ 14. Powers of General Assembly; limitations. — The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

The General Assembly's power to define the accrual date for a civil action based on an intentional tort committed by a natural person against a person who, at the time of the intentional tort, was a minor shall include the power to provide for the retroactive application of a change in the accrual date. No natural person shall have a constitutionally protected property right to bar a cause of action based on intentional torts as described herein on the ground that a change in the accrual date for the action has been applied retroactively or that a statute of limitations or statute of repose has expired.

The General Assembly shall not enact any local, special, or private law in the following cases:

- (1) For the punishment of crime.
- (2) Providing a change of venue in civil or criminal cases.
- (3) Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.
- (4) Changing or locating county seats.
- (5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.
- (6) Extending the time for the assessment or collection of taxes.
- (7) Exempting property from taxation.
- (8) Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association to the Commonwealth or to any political subdivision thereof.
- (9) Refunding money lawfully paid into the treasury of the Commonwealth or the treasury of any political subdivision thereof.
- (10) Granting from the treasury of the Commonwealth, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.
- (11) For registering voters, conducting elections, or designating the places of voting.
- (12) Regulating labor, trade, mining, or manufacturing, or the rate of interest on money.
- (13) Granting any pension.
- (14) Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.
- (15) Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.
- (16) Affecting or regulating fencing or the boundaries of land, or the running at large of stock.
- (17) Creating private corporations, or amending, renewing, or extending the charters thereof.
- (18) Granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.
- (19) Naming or changing the name of any private corporation or association.
- (20) Remitting the forfeiture of the charter of any private corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and the laws passed in pursuance thereof.

The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

EXHIBIT

§ 15. General laws. — In all cases enumerated in the preceding section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of enactment of, a special, private, or local law.

No general or special law shall surrender or suspend the right and power of the Commonwealth, or any political subdivision thereof, to tax corporations and corporate property, except as authorized by Article X. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall a general law's operation be suspended for the benefit of any private corporation, association, or individual.

ARTICLE VII.

LOCAL GOVERNMENT.

§ 1. Definitions. — As used in this article (1) "county" means any existing county or any such unit hereafter created, (2) "city" means an independent incorporated community which became a city as provided by law before noon on the first day of July, nineteen hundred seventy-one, or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law, (3) "town" means any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law, (4) "regional government" means a unit of general government organized as provided by law within defined boundaries, as determined by the General Assembly, (5) "general law" means a law which on its effective date applies alike to all counties, cities, towns, or regional governments or to a reasonable classification thereof, and (6) "special act" means a law applicable to a county, city, town, or regional government and for enactment shall require an affirmative vote of two-thirds of the members elected to each house of the General Assembly.

The General Assembly may increase by general law the population minima provided in this article for cities and towns. Any county which on the effective date of this Constitution had adopted an optional form of government pursuant to a valid statute that does not meet the general law requirements of this

article may continue its form of government without regard to such general law requirements until it adopts a form of government provided in conformity with this article. In this article, whenever the General Assembly is authorized or required to act by general law, no special act for that purpose shall be valid unless this article so provides.

§ 2. Organization and government. — The General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments. The General Assembly may also provide by general law optional plans of government for counties, cities, or towns to be effective if approved by a majority vote of the qualified voters voting on any such plan in any such county, city, or town.

The General Assembly may also provide by special act for the organization, government, and powers of any county, city, town, or regional government, including such powers of legislation, taxation, and assessment as the General Assembly may determine, but no such special act shall be adopted which provides for the extension or contraction of boundaries of any county, city, or town.

Every law providing for the organization of a regional government shall, in addition to any other requirements imposed by the General Assembly, require the approval of the organization of the regional government by a majority vote of the qualified voters voting thereon in each county and city which is to participate in the regional government and of the voters voting thereon in each part of a county or city where only the part is to participate.

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Commentaries on the Constitution of Virginia

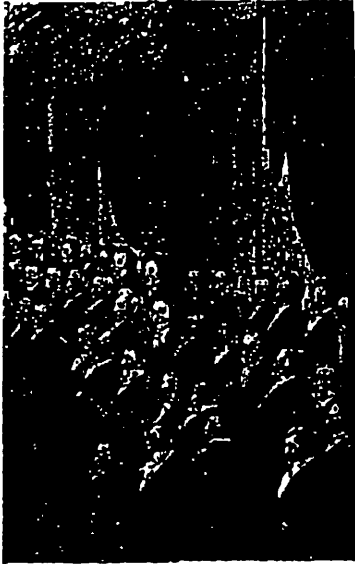
A. E. Dick Howard

Professor of Law, University of Virginia

Executive Director

Virginia Commission on Constitutional Revision

Volume II



Watercolor by George Catlin, 1830 (copy). This preliminary watercolor, depicting the Virginia Constitutional Convention, contains more accurate details of the delegates' clothing and positions. The members shown are James Madison (standing), and clockwise from Marshall (18th, 1st row), John Marshall (18th, 1st row), John Marshall (18th, 1st row), Chapman Johnson (18th, 1st row), James Branch Giles (1st, 1st row), and Upshur (19th, 2d row).

University Press of Virginia
Charlottesville

EXHIBIT

5

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Article VII

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Local Government

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legislative courtesy and custom have dictated the ready passage of the vast majority of local bills.¹¹

The Commission on Constitutional Revision, seeking to eliminate much of the necessity for special legislation, proposed that counties of over 25,000 population and cities be allowed to adopt and amend their own charters without additional action by the General Assembly. The Assembly, however, rejected this proposal and seemed in general not to view special legislation as burdensome.¹²

The General Assembly, in fashioning section 2, took a straight-forward approach to the use of special acts. Section 2 expressly authorizes special acts to be passed, on two-thirds vote, providing for the organization, government, and powers of counties, as well as cities and towns. This makes unnecessary the traditional drafting games that legislators were forced to play under the 1902 Constitution. Where the present Constitution does require general laws—notably for boundary changes—they must be based on "reasonable classifications."¹³ There is no doubt that the ends for which special legislation may be enacted are much enlarged under the Constitution of 1971, especially as regards counties.¹⁴ Counties and cities are now more nearly on the same plane than was the case in the Constitution of 1902.¹⁵

A detailed discussion of special acts appears in the commentary on Article IV, section 14,¹⁶ but the matter may usefully be reviewed here in the context of local government. The courts and commentators have never succeeded in establishing satisfactory criteria for defining special as opposed to general legislation. The Supreme Court of Appeals examined the subject in detail in *Martin's Executors*

¹¹ The requirement of § 51 that special bills first go to a standing joint committee proved little more than a troublesome extra step and was repealed in 1948. See Acts of Assembly, 1948, ch. 333; House Journal, 1950 Sess., pp. 23-24; Senate Journal, 1950 Sess., pp. 1-5.

¹² Compare CCR, pp. 224-26, with House Debates, p. 305 (R.M. Smith).

¹³ At the 1969 session the House of Delegates sought to omit any reference to "reasonable" when referring to a class of counties, cities, or towns. House Debates, p. 305 (R.M. Smith). The Senate, however, strongly opposed such a move, believing that general laws should be truly general. Senate Debates, pp. 339-40, 429-30 (Parkerson, Hopkins). Neither house, however, accepted the Commission's proposal to add the further requirement that a general law apply to at least two governmental units. See CCR, pp. 223-24.

¹⁴ Under § 2, the General Assembly may give power to named localities to adopt a sales tax, if done by the two-thirds vote required for special acts. 1970-71 *Op. Va. Att'y Gen.* 390.

¹⁵ Virginia's Constitution allows freer use of special acts for local government than do the constitutions of many states. See Citizens' Conference on State Legislatures, *State Constitutional Provisions Affecting Legislatures* (Kansas City, Mo., 1967), p. 37.

¹⁶ *Supra* pp. 341-45.

*v. Commonwealth*¹⁷ and after an exhaustive review of the case law determined that each act must be read in light of its own circumstances. The Court said that there was no wholly satisfactory definition of special legislation but cited a New Jersey case as advancing the best short test: "A law is 'special' in a constitutional sense when by force of an inherent limitation it arbitrarily separates some persons, places or things from those upon which, but for such separation, it would operate."¹⁸ The Court has conceded wide discretion to the Legislature in establishing classifications of local units and enacting general laws applicable to those classes.¹⁹ In accord with the definition advanced in *Martin's Executors*, however, it has required that the classification be "reasonable" and not arbitrary. The Court has struck down classifications that could not be rationally shown to encompass all localities with similar problems.²⁰

Apart from the difficulties inherent in defining special legislation, it is also necessary to reconcile the apparent conflicts between the special legislation prohibitions of Article IV, section 14 and the more permissive language found in the Local Government article. The problem is like that once faced under the Constitution of 1902, where section 63 (regarding special legislation) might have been thought to limit section 117. In a long series of cases, the Supreme Court of

¹⁷ 126 Va. 603, 102 S.E. 77 (1920).

¹⁸ 126 Va. at 610, quoting *Budd v. Hancock*, 66 N.J.L. 133, 48 A. 1023 (1901).

¹⁹ For a decision upholding an act which applied to a limited class of towns whose corporate limits were located partly in one county and partly in another, see *Town of Falls Church v. County Bd. of Arlington*, 166 Va. 192, 184 S.E. 459 (1936).

Other cases holding that acts were general legislation even though they applied to a limited class of localities include *Candy v. County of Elizabeth City*, 179 Va. 340, 19 S.E.2d 97 (1942) (act giving powers of city council to county boards in counties adjoining a city of over 125,000 and to counties adjoining such a county); *City of Newport News v. Elizabeth City County*, 189 Va. 805, 35 S.E.2d 56 (1949) (act prohibiting annexation of county land unless at least 60 square miles of land remained in the county after annexation).

²⁰ E.g., *Green v. County Bd. of Arlington*, 193 Va. 284, 68 S.E.2d 516 (1952), which struck down a classification based on county land area; the Court noted that many counties with problems similar to those in Arlington were excluded arbitrarily by the limits imposed. Other cases striking down legislative acts as being unconstitutional special legislation are *Quentinberry v. Hull*, 159 Va. 270, 165 S.E. 382 (1932) (act permitting popular election of trial justice in Carroll County); *Shelton v. Sydnor*, 126 Va. 625, 102 S.E. 83 (1920) (act providing different compensation schedule for supervisors in 15 named counties); *Shulman & Co. v. Sawyer*, 167 Va. 386, 189 S.E. 344 (1937) (act exempting cities with a population between 125,000 and 150,000 from operation of a law applicable to all other cities); *County Board v. American Trailer Co.*, 193 Va. 72, 68 S.E.2d 113 (1952) (act requiring licensing of trailer parks in all counties adjoining counties with a population density of over 1,000 per square mile); and *Dean v. Padicelli*, 194 Va. 219, 72 S.E.2d 506 (1952) (act permitting federal government employees to hold county office also in counties having a population density of over 300 per square mile).

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haustive review of the case law read in light of its own circumstance was no wholly satisfactory it cited a New Jersey case as well as 'special' in a constitutional limitation it arbitrarily separates those upon which, but for such The Court has conceded wide abolishing classifications of local applicable to those classes.¹⁸ In *Martin's Executors*, however, the Court held that the classification be "reasonable" and not classifications that could not be reconciled with similar problems.²⁰ In defining special legislation, apparent conflicts between Article IV, section 14 and the more local Government article. The Constitution of 1902, where the Court might have been thought of cases, the Supreme Court of

¹⁶ N.J.L. 133, 48 A. 1023 (1901).

¹⁷ As to a limited class of towns whose corporate territory is wholly in another, see *Town of Falls Church v. Town of Fairfax*, 145 Va. 459 (1936).

¹⁸ Legislation even though they applied to a class of towns, see *City of Elizabeth City v. Board of Supervisors*, 179 Va. 340, 19 S.E.2d 316 (1952); *County Boards in counties adjoining a city of county*; *City of Newport News v. Elizabeth City*, 145 Va. 459 (1936) (prohibiting annexation of county land to the county after annexation).

¹⁹ *City of Norfolk v. Board of Supervisors*, 128 Va. 572, 105 S.E. 82 (1920); *City of Portsmouth v. Weiss*, 145 Va. 341, 133 S.E. 781 (1926); *Fallon Florist, Inc. v. City of Roanoke*, 190 Va. 564, 58 S.E.2d 316 (1950); *Pierce v. Dennis*, 205 Va. 478, 138 S.E.2d 6 (1964).
²⁰ See generally Bohannon, "Local Bills—Some Observations," 42 Va. L. Rev. 843 (1956).
²¹ See *Davis v. Duch*, 205 Va. 676, 683-84, 139 S.E.2d 25 (1964): "Beginning with *Miller v. Pulaski*, 109 Va. 137, 63 S.E. 880, and continuing through *Pierce v. Dennis*, [205 Va. 478, 138 S.E.2d 6] we have consistently upheld special legislation applicable to cities and towns, enacted pursuant to [the Constitution] which was at variance with other provisions of Article VIII [now Article VII] of the Constitution and with general statutes antedating such special legislation. See *Fallon Florist v. City of Roanoke*, 190 Va. 564, 58 S.E.2d 316; *City of Portsmouth v. Weiss*, 145 Va. 341, 133 S.E. 781; *Town of Narrows v. Giles County*, 128 Va. 572, 105 S.E. 82; *Chambers v. City of Roanoke*, 114 Va. 766, 78 S.E. 407."

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Appeals decided that the sections of the 1902 Constitution were not actually in conflict and that special acts which technically fell within one of the categories of old section 63 could still be enacted under section 117.²¹ The reasoning behind these decisions was that section 63 was general and would apply only to cases not otherwise provided for. Section 117, on the other hand, dealt with a specific subject, the enactment and amendment of municipal charters; therefore, it prevailed over the general language of section 63.²² The Virginia rule is that a special act enacted subsequent to a general law will be controlling as to the locality affected and will be seen as qualifying the general law.²³ Similarly, where the general law is enacted subsequent to the special, the special law will normally remain in force and not be construed to be repealed by implication.²⁴

Powers. Section 2 states that the General Assembly shall provide by general law or special act for the powers that will be granted to local governments. No express constitutional provision is necessary to authorize the General Assembly to confer powers upon local governments, since the Legislature has all legislative powers not denied it by the Constitution. Hence constitutional provisions regarding powers of local government typically are concerned with placing limits on the power of the General Assembly to deal with local governments (e.g., section 2's prohibition against creating regional governments save as approved by popular vote in the counties and cities affected), with limiting the powers that may be exercised by

²¹ E.g., *Miller v. Town of Pulaski*, 109 Va. 137, 63 S.E. 880 (1909); *Town of Narrows v. Board of Supervisors*, 128 Va. 572, 105 S.E. 82 (1920); *City of Portsmouth v. Weiss*, 145 Va. 341, 133 S.E. 781 (1926); *Fallon Florist, Inc. v. City of Roanoke*, 190 Va. 564, 58 S.E.2d 316 (1950); *Pierce v. Dennis*, 205 Va. 478, 138 S.E.2d 6 (1964).

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²⁴ See Va. Code Ann. § 15.1-1 (1973): "Except when otherwise specially provided, the provisions of this title shall in no way repeal, amend, impair or affect any other power, right or privilege conferred on cities and towns by charter or any other provisions of general law." See also *City of South Norfolk v. City of Norfolk*, 190 Va. 591, 601-02, 58 S.E.2d 32 (1950). But cf. *City of Danville v. Ragland*, 173 Va. 27, 7 S.E.2d 121 (1940), where there was direct conflict between the charter and a general law, and the more recent expression of legislative will found in the general law was said to prevail.

*v. Commonwealth*¹⁷ and after an exhaustive review of the case law determined that each act must be read in light of its own circumstances. The Court said that there was no wholly satisfactory definition of special legislation but cited a New Jersey case as advancing the best short test: "A law is 'special' in a constitutional sense when by force of an inherent limitation it arbitrarily separates some persons, places or things from those upon which, but for such separation, it would operate."¹⁸ The Court has conceded wide discretion to the Legislature in establishing classifications of local units and enacting general laws applicable to those classes.¹⁹ In accord with the definition advanced in *Martin's Executors*, however, it has required that the classification be "reasonable" and not arbitrary. The Court has struck down classifications that could not be rationally shown to encompass all localities with similar problems.²⁰

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¹⁷ 126 Va. 603, 102 S.E. 77 (1920).

¹⁸ 126 Va. at 610, quoting *Budd v. Hancock*, 66 N.J.L. 153, 48 A. 1029 (1901).

¹⁹ For a decision upholding an act which applied to a limited class of towns whose corporate limits were located partly in one county and partly in another, see *Town of Falls Church v. County Bd. of Arlington*, 155 Va. 192, 184 S.E. 459 (1936).

Other cases holding that acts were general legislation even though they applied to a limited class of localities include *Gandy v. County of Elizabeth City*, 179 Va. 940, 19 S.E.2d 97 (1942) (act giving powers of city council to county boards in counties adjoining a city of over 125,000 and to counties adjoining such a county); *City of Newport News v. Elizabeth City County*, 189 Va. 803, 53 S.E.2d 36 (1949) (act prohibiting annexation of county land unless at least 60 square miles of land remained in the county after annexation).

²⁰ E.g., *Green v. County Bd. of Arlington*, 193 Va. 284, 68 S.E.2d 516 (1952), which struck down a classification based on county land area; the Court noted that many counties with problems similar to those in Arlington were excluded arbitrarily by the limits imposed. Other cases striking down legislative acts as being unconstitutional special legislation are *Queenberry v. Hull*, 159 Va. 270, 165 S.E. 382 (1932) (act permitting popular election of trial justice in Carroll County); *Shelton v. Sydnor*, 125 Va. 623, 102 S.E. 83 (1920) (act providing different compensation schedule for supervisors in 15 named counties); *Shulman & Co. v. Sawyer*, 167 Va. 386, 189 S.E. 344 (1937) (act exempting cities with a population between 125,000 and 150,000 from operation of a law applicable to all other cities); *County Board v. American Trailer Co.*, 193 Va. 78, 68 S.E.2d 113 (1951) (act requiring licensing of trailer parks in all counties adjoining counties with a population density of over 1,000 per square mile); and *Dean v. Padellini*, 193 Va. 219, 72 S.E.2d 306 (1952) (act permitting federal government employees to hold county office also in counties having a population density of over 900 per square mile).

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Article VII

haustive review of the case law read in light of its own circumstance was no wholly satisfactory it cited a New Jersey case as w is 'special' in a constitutional imitation it arbitrarily separates those upon which, but for such the Court has conceded wide blishing classifications of local applicable to those classes.¹⁹ In in *Martin's Executors*, however, ion be "reasonable" and not classifications that could not be alities with similar problems.²⁰ t in defining special legislation, apparent conflicts between the cle IV, section 14 and the more ocal Government article. The the Constitution of 1902, where ion) might have been thought of cases, the Supreme Court of

6 N.J.L. 133, 48 A. 1023 (1901). to a limited class of towns whose corporate ly in another, see *Town of Falls Church* 139 (1936).

islation even though they applied to a of Elizabeth City, 179 Va. 340, 19 S.E.2d nry boards in counties adjoining a city of nty); *City of Newport News v. Elizabeth* et prohibiting annexation of county land the county after annexation).

.. 284, 68 S.E.2d 318 (1952), which struck he Court noted that many counties with uded arbitrarily by the limits imposed. f unconstitutional special legislation are 932) (act permitting popular election of , 126 Va. 625, 102 S.E. 23 (1920) (act rvisors in 13 named counties); *Shulman*: (act exempting cities with a population w applicable to all other cities); *County* 22d 113 (1951) (act requiring licensing h a population density of over 1,000 per , 70 S.E.2d 306 (1952) (act permitting e also in counties having a population

Local Government

809

Appeals decided that the sections of the 1902 Constitution were not actually in conflict and that special acts which technically fell within one of the categories of old section 63 could still be enacted under section 117.²¹ The reasoning behind these decisions was that section 63 was general and would apply only to cases not otherwise provided for. Section 117, on the other hand, dealt with a specific subject, the enactment and amendment of municipal charters; therefore, it prevailed over the general language of section 63.²² The Virginia rule is that a special act enacted subsequent to a general law will be controlling as to the locality affected and will be seen as qualifying the general law.²³ Similarly, where the general law is enacted subsequent to the special, the special law will normally remain in force and not be construed to be repealed by implication.²⁴

Powers. Section 2 states that the General Assembly shall provide by general law or special act for the powers that will be granted to local governments. No express constitutional provision is necessary to authorize the General Assembly to confer powers upon local governments, since the Legislature has all legislative powers not denied it by the Constitution. Hence constitutional provisions regarding powers of local government typically are concerned with placing limits on the power of the General Assembly to deal with local governments (*e.g.*, section 2's prohibition against creating regional governments save as approved by popular vote in the counties and cities affected), with limiting the powers that may be exercised by

²¹ *E.g.*, *Miller v. Town of Pulaski*, 103 Va. 137, 63 S.E. 880 (1909); *Town of Narrows v. Board of Supervisors*, 128 Va. 372, 103 S.E. 82 (1920); *City of Portsmouth v. Weiss*, 143 Va. 94, 133 S.E. 781 (1926); *Fallon Florist, Inc. v. City of Roanoke*, 190 Va. 364, 58 S.E.2d 316 (1950); *Pierce v. Dennis*, 205 Va. 478, 138 S.E.2d 6 (1964).

²² See generally Bohannon, "Local Bills—Some Observations," 42 *Va. L. Rev.* 845 (1956).

²³ See *Davis v. Dusch*, 205 Va. 676, 683-84, 139 S.E.2d 25 (1954): "Beginning with *Miller v. Pulaski*, 103 Va. 137, 63 S.E. 880, and continuing through *Pierce v. Dennis*, [205 Va. 478, 138 S.E.2d 6] we have consistently upheld special legislation applicable to cities and towns, enacted pursuant to [the Constitution] which was at variance with other provisions of Article VIII (now Article VII) of the Constitution and with general statutes antedating such special legislation. See *Fallon Florist v. City of Roanoke*, 190 Va. 364, 58 S.E.2d 316; *City of Portsmouth v. Weiss*, 143 Va. 94, 133 S.E. 781; *Town of Narrows v. Giles County*, 128 Va. 372, 103 S.E. 82; *Chambers v. City of Roanoke*, 114 Va. 766, 78 S.E. 407."

²⁴ See Va. Code Ann. § 15.1-1 (1973): "Except when otherwise specially provided, the provisions of this title shall in no way repeal, amend, impair or affect any other power, right or privilege conferred on cities and towns by charter or any other provisions of general law." See also *City of South Norfolk v. City of Norfolk*, 190 Va. 391, 601-02, 58 S.E.2d 32 (1950). But cf. *City of Danville v. Ragland*, 173 Va. 27, 7 S.E.2d 121 (1940), where there was direct conflict between the charter and a general law, and the more recent expression of legislative will found in the general law was said to prevail.

VIRGINIA: IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON, et als

Petitioners,

v.

THE COUNTY OF ALLEGHANY, VIRGINIA

Respondents,

**PETITIONERS' RESPONSE
TO RESPONDENT'S REPLY MEMORANDUM**

This Memorandum is presented to the Court in response to the Respondents' Reply Memorandum.

In this Memorandum, Petitioners argue that S.B. 246 is unconstitutionally vague and that Article X and Article VII §7 trump the Legislative powers asserted by the County in support of S.B. 246.

I. UNCONSTITUTIONAL VAGUENESS

Since the Court heard oral argument in this matter, the Respondent has filed a Petition for Writ of Mandamus against the County Commissioner of Revenue for enforcement of S.B. 246 to refund one-half (1/2) of tangible personal property taxes assessed and collected from Clifton Forge taxpayers in 2001.

Meanwhile the Commissioner of Revenue has notified Clifton Forge taxpayers that their refund under S.B. 246 will be \$1.30 per hundred dollars of assessed value. The County has asserted that the amount of the refund should be \$1.67 per hundred dollars of assessed value, since the rate used by the County on Clifton Forge was \$3.35 in assessed value.

Alleghany County Virginia Circuit Court
In the Clerk's Office.

This document was filed as a copy and, not being an original, is not to be issued as a certified copy nor accepted for any purpose for which an original or certified copy is required.

Michael D. Wolfe, Clerk

CLERK'S OFFICE/ALLEGHANY COUNTY
CIRCUIT COURT ON 7/17/12 AT 4:25 PM
MICHAEL D. WOLFE, CLERK
DATE: Carol Wolfe 7/17/12
() CLERK () DEP. CLK. DATE

In its Petition, the County seeks a refund based upon a tax rate of \$4.65 per hundred.

In the instant case, the County has demurred to the Petition upon the grounds that this cause is barred by S.B. 246, which "validates" the County's assessment but provides that "such assessments shall be reduced by one-half to reflect a short tax year."

See attached copy of April 25, 2002 "Dear Clifton Forge taxpayers" letter; see attached copy of March 14, 2002 letter from Bradley B. Cavedo, Deputy Attorney General.

While S.B. 246 provides for reduction "by one-half to reflect a short tax year," the Attorney General's Office has recognized that "An argument could be made that the City's fifty percent assessment ratio, enacted in contemplation of its reversion to town status, was, in effect a pro-ration to reflect a short tax year." Elsewhere the same letter calculates an effective tax refund rate of \$1.65 per hundred and yet later calculates a refund rate of \$1.30 per \$100.00 of assessed value.

In its Petition for Writ of Mandamus, the County admits that the County's assessment of Clifton Forge tangible personalty "was flawed in that the property was not located in t he County on the tax day" and seems to request the Court "to re-instate the correct Alleghany County tax rate of \$5.95 per hundred," which would result in a refund of \$2.97 per hundred.

Thus, we are presented with S.B. 246, which has been interpreted by reasonable persons to mean:

1. That Clifton Forge and Alleghany County taxes are to be reduced by one-half because they are applicable only to the

two "short tax years" involved resulting in no refund. (Interestingly S.B. 246 does not contain any language regarding refunds.);

2. That the County should refund Clifton Forge personal property taxpayers at the rate of \$1.30 per hundred;

3. That the County should refund Clifton Forge Taxpayers at the rate of \$1.67 per hundred; and

4. That the County should refund Clifton Forge Taxpayers at the rate of \$2.97 per hundred; and

Naturally, if one is paying taxes for a six-month period, one pays only one-half of the tax for a 12-month year. This interpretation, reasonable on its face, results in no refund.

The County argues that the Legislature intended to permit a refund of one-half of the taxes assessed and collected by the County for each "short tax year" of six months. S.B. 246 provides no refunds, either substantively or procedurally.

As the County states in its Mandamus Petition, "Chapter 78 is a complicated and confusing statuette."

Some of the confusion arises from the reality that a taxpayer should be taxed for only half the annual tax, for a six-month "short tax year." Six months is after all, half of a real calendar year.

Thus, we have a number of presumably rational persons litigating over the interpretation of S.B. 246.

The prime requisite of statutes, that they be expressed with certainty and clarity, is especially true when applied to tax statutes. Commonwealth v. Jones, 194 Va. 727, 74 S.E. 2d 817 (1953).

An act imposing a tax must be certain, clear and unambiguous, especially as to the subject of taxation and the amount of the tax. Williams v. City of Richmond, 177 Va. 477, 14 S.E. 2d 287 (1941).

The present controversy between Alleghany County and its Commissioner of Revenue clearly demonstrates the vagueness, overbreadth, indefiniteness, and, ultimately, the unconstitutionality of S.B. 246. See eq. City of Waynesboro v. Keiser 213 Va. 229 (1972)

II UNCONSTITUTIONAL EXTRA-TERRITORIALITY

Further, the Respondent, in its Reply Memorandum, fails to apprehend the Petitioners' position that the Legislature has no authority to correct the unlawful and unconstitutional levy of a tax.

Art. 7, §2 contains no language authorizing the General Assembly to correct or validate the unlawful, unauthorized, illegal and unconstitutional levy and collection of taxes imposed upon the residents of one particular locality by the governing body of another. See Article 10, §1.

As has been pointed out previously, Article X, §1 permits taxation of tangible personal property "within the territorial limits of the authority levying the tax."

In Robinson v. City of Norfolk, 108 Va. 14, 60 S.E. 762 (1908), the Supreme Court of Appeals was confronted with a tax ordinance adopted by the City of Norfolk to tax "circuses or menageries within the City or within one mile of the boundary thereof."

In finding the ordinance unconstitutional while interpreting the words "territorial limits", which remain in the currEnt Constitution, the court said:

The payment of this tax is resisted by the defendant as an unwarranted and invalid exercise of the taxing power by the city of Norfolk.

For the purposes of taxation, the Constitution has divided the state into counties and magisterial districts, cities, and towns. Each of these subdivisions has its territorial limits fixed; each being distinct and separate from the other. What is meant by the words "territorial limits," in section 168 of the Constitution [Va. Code 1904, p.cclxii], is the actual boundaries of each of such subdivisions, as the same are fixed by law.

....

The circus in question was being exhibited in Norfolk County. The territorial limits of the county embraced the whole county, and it cannot be seriously contended that the Legislature can create a taxing district in a county from which a city shall raise revenue for the exclusive benefit of such city.

The principle that one territory cannot be taxed for the benefit of another is fundamental and well recognized by the authorities on the subject. It does not rest alone upon the theory of taxation without representation, but upon the principle that private property cannot be taken for anything but a public use. Cooley on Taxation (2d ED.) c.5, p.140 et seq., and cases cited.

60 S.E. supra, at p.763

Thus, the County's taxation of property outside it territorial limits is unconstitutional.

It would seem to follow that the Legislature cannot cure the unconstitutional acts of a County and its elected officials.

In violation of Article 4, §2 of the State Constitution, S.B. 246 is a local and special law which provides for the assessment and collection of taxes, extends the time for the assessment and collection of taxes (by “validating” the invalid assessments), and remits (according to the County’s interpretation) the obligation and liability of taxes on Clifton Forge taxpayers by one-half.

By “validating” the unlawful collection and assessment of unlawful taxes, the General Assembly has determined (“validate”) unlawful and extra-territorial taxation by the County and (according to the County) reduced the amount so “validated” by one-half.

In other words, the General Assembly, having recognized the County’s unlawful and unconstitutional assessment of Clifton Forge tangible personal property, has “validated” the unconstitutional assessment and collection of those taxes, authorized the collection of such invalid taxes, set the tax rate by validating the unlawful assessments, and then, according to the County and the Commissioner of Revenue and the Attorney General, cut those taxes, thereby setting the amount of the “collection” of taxes.

S.B. 246 sets the rate and then cuts it in half. This is unconstitutional special and local legislation providing “for the assessment and collection of taxes”, and remitting the obligation i.e. the “validated” tax in the amount of one-half (according to the County, the Attorney General and the Commissioner of Revenue).

Article 7, §2 does not authorize the General Assembly to violate the constitution or to validate acts undertaken in violation of Article 4, §14(5) and (8) and Article 10, §4

(local taxation) of the State Constitution as well as the multiple statutory violations already mentioned in Petitioners' Trial Memorandum.

Further, Article VII, §2, gives the General Assembly no authority to validate acts which the General Assembly itself recognizes as invalid, and to validate unlawful acts already undertaken. This was directly recognized in the case of *Wright v. Norfolk Electoral Board*, 223 Va. 149, 286 S.E. 2d 227, 229 (1982):

The power of the commonwealth to create and control municipal corporations is limited by the State Constitution. Thus, while Article VII, §2, provides that the General Assembly may grant to local governments the powers of legislation, taxation and assessment, the taxing power is constrained by the provisions of Article X. See *Fallon Florist v. City of Roanoke*, 190 Va. 564, 58 S.E.2d 316 (1950); *Powers v. Richmond*, 122 Va. 328, 94 S.E. 803 (1918), appeal dismissed 251 U.S. 539, 40 S.Ct. 118, 64 L.Ed. 404 (1919). Similarly, Section 7 of Article VII mandates how certain of the powers mentioned in Section 2 are to be exercised.

....

Sections 2 and 7 of Article VII, when read together, limit the power of the General Assembly in establishing municipal corporations. In order to insure fiscal responsibility, while at the same time providing for the smooth functioning of city operations, Section 7 establishes the procedures that must be followed in setting taxes at the local level. The use of any other procedure, even if sanctioned by the General Assembly, would be violative of the Constitution.

86 S.E.2d, *supra* at p.228 (Emphasis added)

In other words, Article X and Article VII, §7, trump Article VII, §2.

According to the principles enunciated in Wright, supra, the ONLY governing body which had any constitutional right to tax tangible personal property normally kept and garaged in the City of Clifton Forge on the "tax day", January 1, 2001 was the City of Clifton Forge.

No amount of special, local or emergency legislation can overcome the foregoing bedrock constitutional principles.

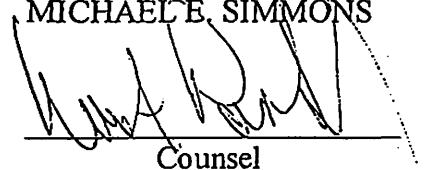
The County's assessment, levy, and collection of taxes upon vehicles normally kept and garaged in the City of Clifton Forge on January 1, 2001 invaded the constitutionAL and legal province of Clifton Forge. The County had no constitutional authority to tax any vehicles garaged and kept in the City of Clifton Forge as of January 1, 2001 at any time during calendar year 2001.

For the foregoing reasons, your Petitioners again respectfully submit that all taxes collected by respondent on tangible personal property located in the City of Clifton Forge for the tax year 2001 are invalid, unauthorized, unconstitutional, and subject to immediate refund pursuant to Code §58.1-3987.

Respectfully Submitted,

J. CHRIS ALDERSON
D.H. SCOTT, Jr.
SANDRA H. HARTLEY
ELLEN P. SIMMONS RAY
MICHAEL E. SIMMONS

By:



Counsel


William A. Parks, Jr.
Attorney at Law
301 West Main Street

P.O. Box 1175
Covington, Virginia 24426
540-962-2222
540-962-2234(fax)

Counsel for Petitioner

CERTIFICATE

I hereby certify that a true copy of the foregoing Petitioners' Response to Respondents' Reply Memorandum was delivered to Michael McHale Collins, Esquire, Attorney at Law, 275 West Main Street, P.O. Box 59, Covington, Virginia 24426 this 15th day of July, 2002.



Counsel



SHERRY W. STULL, C.C.R.
CERTIFIED COMMISSIONER OF THE REVENUE

OFFICE OF
COMMISSIONER OF THE REVENUE

Allegheny County

GOVERNMENTAL COMPLEX

9212 Winterberry Avenue
Covington, Virginia 24426



TELEPHONE: (540) 863-6640
FACSIMILE: (540) 863-6640

April 25, 2002

Dear Clifton Forge Taxpayer:

Enclosed please find "Correction of Tax" forms for the 2001 tax year. These forms represent the recalculation of any personal property tax for which you were assessed by Allegheny County. This recalculation is pursuant to Chapter 78 of the 2002 Acts of Assembly signed by Governor Mark Warner on March 4, 2002. It is also pursuant to an informal Attorney General Opinion dated March 14, 2002 received from Deputy Attorney General Bradley Cavedo. Direct quotations from both of these documents are included on the back of this letter for your review.

The forms enclosed represent the actual tax refund you should receive (based on current computer programming) if taxes have been paid. Please note any forms you receive for any qualifying "PPTRA" property with a fair market value of \$1,000 or less will not show a taxpayer refund portion because the State paid 100%. Also, please note this amount does not include any penalty or interest which may be due and payable. It is my understanding County officials are still conferring with various State and computer programming personnel to determine how they wish to proceed. Therefore, the amount of your actual refund will be determined and processed by County officials as they deem appropriate at a future date. However, the recalculation of your taxes based on the revised rate of \$4.65 per \$100 of assessed value completes my duties pursuant to Chapter 78 as interpreted by the Attorney General's Office.

Should you have any concerns regarding the enclosed forms, please call our office at (540)863-6640. Either my staff or I will be happy to answer any questions you might have regarding this complex tax issue.

Sincerely,

Sherry W. Stull
Commissioner of the Revenue

Chapter 78 of the 2002 Acts of Assembly as Approved by Governor Mark Warner on March 4, 2002
(Only comments in italics within parentheses are not part of official Act)

An Act providing for tangible personal property taxes for the City of Clifton Forge, Alleghany County and the Town of Clifton Forge for the period January 1, 2001, through December 31, 2001.

Section 1 *(Provisions pertaining to Alleghany County)*

Notwithstanding any other provision of law, any assessment of tangible personal property as of January 1, 2001 for tangible personal property located in the Town of Clifton Forge, with such assessment being made by the commissioner of the revenue of Alleghany County, shall be valid, regardless that residents of the Town of Clifton Forge were residents of an independent city, the City of Clifton Forge, on January 1, 2001. In addition, the levy or imposition of tangible personal property taxes for the entire 2001 tax year based upon such assessments shall also be valid subject to the following:

1. Such assessments upon the residents of the Town of Clifton Forge shall be deemed to have been assessments made to levy tangible personal property taxes upon such persons for a period covering two separate tax years, the first beginning January 1, 2001 through 12:00 p.m. June 30, 2001, and the second beginning July 1, 2001 through 12:00 p.m. December 31, 2001.
2. The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001 through 12:00 p.m. on June 30, 2001, shall be deemed to have been assessments made by the commissioner of the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1, 2001 through 12:00 p.m. June 30, 2001; and
3. The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning July 1, 2001 through 12:00 p.m. on December 31, 2001 shall be deemed to have been assessments made by the county commissioner of the revenue on the residents of the Town of Clifton Forge who also became residents of the county on July 1, 2001. The tangible personal property taxes levied by Alleghany County based upon such assessments shall be levied at the tangible personal property tax rates in effect in Alleghany County as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2001 through 12:00 p.m. on December 31, 2001.

Section 2 *(Provisions pertaining to Town of Clifton Forge)*

Any tangible personal property taxes levied by the Town of Clifton Forge upon town residents for the tax year beginning July 1, 2001 through 12:00 p.m. on December 31, 2001, shall be valid. However, the amount of tax due shall be determined using tangible personal property tax rates in effect in the town as of July 1, 2001, and the amount of tax due shall be reduced by one-half to reflect a short tax year beginning July 1, 2001 through 12:00 p.m. on December 31, 2001.

Excerpts from March 14, 2002 Informal Opinion of the Attorney General's Office

Chapter 78 clearly establishes that your assessments are deemed to have been made by the commissioner of the revenue for the City of Clifton Forge and requires that the tax be levied at one-half of the rate set by the city to reflect the short tax year from January 1 through June 30, 2001.

The Clifton Forge City Council adopted an ordinance on June 19, 2001 setting the tax rate on tangible personal property. In instances when a request requires an interpretation of a local ordinance, the Attorney General historically has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the governing body has control. The entity that enacted this ordinance, however, ceased to exist on July 1, 2001, and cannot correct any mistakes or misinterpretations of its ordinance. Furthermore, the primary question is the interpretation of an act of the General Assembly as it applies to this ordinance. Under these circumstances, I concluded that an exception to this Office's policy is warranted.

Therefore, it is my view that Chapter 78 requires you, as commissioner of the revenue, to levy the tangible personal property tax at the nominal rate and assessment ratio set by the City of Clifton Forge, and reduce the tax amount by one-half to reflect the short tax year. This would result in an effective tax rate of \$1.675 for the six-month tax year beginning January 1, 2001.

The result of converting the deemed city tax and the actual county tax is that the total effective tax rate on the assessed value of tangible personal property in the town is \$1.675, plus one-half of \$5.95, or \$4.65.

Since the county initially imposed the tangible personal tax at a rate of \$5.95, the net result is a refund or abatement of \$5.95 minus \$4.65, i.e., \$1.30 per \$100 of assessed value.

Finally, you ask whether the two local governing bodies may continue to negotiate a mutually agreeable sharing of distribution of funds between themselves. Chapter 78 affects only the imposition of tax on property located within the City and the Town of Clifton Forge. It has no effect on the ability of Alleghany County and the town to share revenue.....subject to constitutional and statutory provisions as noted in prior opinions of this Office.

04/22/2002

ALLEGANY COUNTY
VIRGINIA PERSONAL PROPERTY V6.1
CORRECTION REPORT FOR TAX YEAR 2001

ACCOUNT # 100000062

PROPERTY TYPE: 1HV

PROPERTY # 1

ORIGINAL BILL # 30

OWNER

CO-OWNER

CLIFTON FORGE, VA 24422

	ASSESSMENT	TOTAL ASSESSED TAX	STATE PORTION	TAXPAYER PORTION
ORIGINAL:		\$5.95	\$5.95	\$0.00
CORRECTED:		\$4.65	\$4.65	\$0.00
DIFFERENCE:		-\$1.30	-\$1.30	\$0.00

CERTIFIED BY: SHERRY M. STILL / ss1

DATE: 04/22/2002



COMMONWEALTH of VIRGINIA

Office of the Attorney General
Richmond 23219

Jerry W. Kilgore
Attorney General

900 East Main Street
Richmond, Virginia 23219
804 - 788 - 2071
804 - 371 - 8848 TDD

March 14, 2002

The Honorable Sherry W. Stull
Commissioner of the Revenue for Alleghany County
9212 Winterberry Avenue
Covington, Virginia 24426

Dear Ms. Stull:

You ask several questions regarding the enactment by the 2002 Session of the General Assembly of Chapter 78¹ and its impact on the taxation of tangible personal property in the City of Clifton Forge for the first six months of 2001, and for the last six months of 2001 after the city's reversion to town status. As the commissioner of the revenue for Alleghany County, you have assessed tangible personal property located within the town at the county rate for the entire tax year 2001.

You first ask whether Chapter 78 requires the county commissioner of the revenue to assess the tangible personal property tax imposed by the City of Clifton Forge for the first six months of 2001, and whether the city's tax rate, reduced by one-half, equals \$1.675 per \$100.

Section 1, paragraph 2 of Chapter 78 provides:

The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be deemed to have been assessments made by the commissioner of the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001[.]

¹2002 Va. Acts ch. 78 (approved Mar. 4, 2002) (providing for tangible personal property taxes for City and Town of Clifton Forge and Alleghany County for tax year beginning January 1, 2001)

The Honorable Sherry W. Snell
March 14, 2002
Page 2

Chapter 78 clearly establishes that your assessments are deemed to have been made by the commissioner of the revenue for the City of Clifton Forge and requires that the tax be levied at one-half of the rate set by the city to reflect the short tax year from January 1 through June 30, 2001.

The Clifton Forge City Council adopted an ordinance on June 19, 2001,² setting the tax rate on tangible personal property as follows:

For the calendar year beginning January 1, 2001 and ending December 31, 2001, upon all tangible personal property of every kind and description not exempt from local taxation, there shall be a tax of Six Dollars and Seventy Cents (\$6.70) for every One Hundred Dollars (\$100.00) of assessed value and at an assessment ratio of 50%.³

In instances when a request requires an interpretation of a local ordinance, the Attorney General historically has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control.⁴ The entity that enacted this ordinance, however, ceased to exist on July 1, 2001,⁵ and cannot correct any mistakes or misinterpretations of its ordinance. Furthermore, the primary question is the interpretation of an act of the General Assembly as it applies to this ordinance. Under these circumstances, I conclude that an exception to this Office's policy is warranted.

The nominal rate is \$6.70, and Chapter 78 clearly requires this to be reduced to \$3.35. The question is whether the nominal rate should also be reduced by the fifty percent assessment ratio. Technically, an assessment ratio reduces the assessed value, not the nominal rate. Mathematically, however, a fifty percent assessment ratio results in an effective tax rate that is fifty percent of the nominal rate.

An argument could be made that the city's fifty percent assessment ratio, enacted in contemplation of its reversion to town status, was, in effect, a proration of the tax to reflect a short tax year. I cannot accept this interpretation for the following reasons: First, the language of the ordinance itself states that the fifty percent tax assessment ratio is imposed for the entire 2001 calendar year. Second, § 1, paragraph 2 of Chapter 78 requires the tangible personal property tax to be "levied" at the rate in effect in the city on January 1, 2001, but then reduced by one-half to reflect the six-month tax year beginning the same date. "The assessment ratio is an integral part of the tax levy."⁶

² See CLIFTON FORGE, VA., ORDINANCE (2001) (providing that City of Clifton Forge will revert to town status on July 1, 2001).

³ *Id.* § 1(C) (imposing and levying tangible personal property taxes within Town of Clifton Forge).

⁴ See Op. Va. Att'y Gen.: 1999 at 69, 69; 1995 at 240, 241; 1991 at 30, 31; 1986-1987 at 347, 348; 1981-1982 at 471, 472; 1976-1977 at 17.

⁵ See ordinance and accompanying parenthetical information cited *supra* note 2.

⁶ *Wise County Bd. of Supervisors v. Wilson*, 250 Va. 482, 485, 463 S.E.2d 630, 632 (1995).

The Honorable Sherry W. Stull
March 14, 2002
Page 3

Therefore, it is my view that Chapter 78 requires you, as commissioner of the revenue, to levy the tangible personal property tax at the nominal rate and assessment ratio set by the City of Clifton Forge, and reduce the tax amount by one-half to reflect the short tax year. Under the facts presented, this would result in an effective tax rate of \$1.675⁷ for the six-month tax year beginning January 1, 2001.

Next, you ask whether the Alleghany County net effective tax rate for an entire year is \$4.65, i.e., one-half the nominal rate in Alleghany County of \$5.95 plus \$1.65.

You state that Alleghany County assesses taxes on tangible personal property located in the Town of Clifton Forge at the rate of \$5.95. Section 1, ¶ 3 of Chapter 78 ratifies the imposition of this tax at the county tax rate, but requires you to reduce the amount of tax by one-half to reflect the short six-month tax year beginning July 1, 2001. The result of converting the deemed city tax and the actual county tax is that the total effective tax rate on the assessed value of tangible personal property in the town is \$1.675 plus one-half of \$5.95, or \$4.65.

You next ask whether the result of the Act would be to issue a refund or abatement of \$1.30 per \$100 of the Alleghany County tax assessed on property located within the Town of Clifton Forge.

Since the county initially imposed the tangible personal tax at a rate of \$5.95, the net result is a refund or abatement of \$5.95 minus \$4.65, i.e., \$1.30 per \$100 of assessed value.

Finally, you ask whether the two local governing bodies may continue to negotiate a mutually agreeable sharing or distribution of the funds between themselves.

Chapter 78 affects only the imposition of tax on property located within the City and the Town of Clifton Forge. It has no effect on the ability of Alleghany County and the town to share revenue. Revenue sharing agreements between localities are subject to constitutional and statutory constraints as noted in prior opinions of this Office.⁸ The most significant constraint is that a revenue sharing agreement constitutes a long-term financial obligation. Article VII, § 10(b) of the Constitution of Virginia prohibits counties from contracting debt or establishing a fixed contractual obligation to make payments in future years, unless the proposed debt is authorized by general law and approved by the qualified voters of the county in a duly authorized referendum.⁹

Alternatively, if the revenue sharing agreement is a one-time transfer merely to adjust for the unique events related to the city's reversion to town status and the tax revenues affected by Chapter 78, such agreement would not be a long-term financial obligation. Accordingly, the county and town may treat such an agreement as they would any other financial obligation in the budget process for the fiscal year.¹⁰

⁷ E.g., $\$6.70 \times 50\% = \$3.35 \times 50\% = \$1.675$.

⁸ See Op. Va. Att'y Gen.: 1990 at 48; 1984-1985 at 96.

⁹ 1990 Op. Va. Att'y Gen., *supra*, at 49.

¹⁰ In view of the responses above, it is not necessary to answer your question regarding administration of the tangible personal property tax to be levied on residents of the Town of Clifton Forge for tax year 2001.

The Honorable Sherry W. Stull
March 14, 2002
Page 4

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Cavedo', with a long horizontal flourish extending to the right.

Bradley B. Cavedo
Deputy Attorney General

5:525; 1:690; 54/02-023i

Commonwealth of Virginia

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TWENTY-FIFTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF
COUNTY OF ALLEGHANY
COUNTY OF AUGUSTA
COUNTY OF BATH
COUNTY OF BOTETOURT
COUNTY OF CRAIG
COUNTY OF HIGHLAND
COUNTY OF ROCKBRIDGE
CITY OF BUENA VISTA
CITY OF CLIFTON FORGE
CITY OF STAUNTON
CITY OF WAYNESBORO

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RE: J. Chris Alderson, et als v. The County of Alleghany Virginia

This matter was heard by the Court on June 5, 2002. At the conclusion of the evidence, the Court reserved judgment pending a review of the law and evidence. Counsel for the petitioner concedes that if Senate Bill 246 is constitutional, then their case becomes moot and the demurrer should be sustained and the petition dismissed.

The issue presented is whether respondent had the authority to tax any tangible personal property of petitioner located in the town of Clifton Forge. For reasons which follow, the Court concludes that the 2002 Acts of the General Assembly of the Commonwealth of Virginia Chapter 78 (Senate Bill 246) is constitutional, thus giving Alleghany County the right to have taxed tangible personal property located in the town of Clifton Forge.

The Court will adopt the statement of the case and the statement of facts from petitioners' memorandum. Accordingly, the Court will not restate them.

Chapter 78 provides in part that, notwithstanding any other provision of law, any assessment of tangible personal property as of January 1, 2002, for tangible personal property located in the town of Clifton Forge, with such assessment being made by the Commissioner of the Revenue of Alleghany County, shall be valid regardless that residents of the Town of Clifton Forge were residents of the independent city, the City of Clifton Forge, on January 1, 2002. See Section 1, 2002 Va. Acts Ch. 78. The argument petitioners raise is that Chapter 78 is unconstitutional on its face, relying on Article IV, Section 14 of the Constitution of Virginia which states in part:

The General Assembly shall not enact any local, special or private law in the following cases:

...

(5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interest.

(6) Extending time or the collection of taxes....

Id.

At first glance Article IV, Section 14(5) seems to clearly solve any dispute as to the constitutionality of Chapter 78. It seems clear from Article IV, Section 14 that Chapter 78 is unconstitutional. However, we must look beyond Article IV to solve the issue of constitutionality.

Article VII, Section 2 of the Constitution of Virginia (1971) states in part:

... The General Assembly may ... provide by special act for the organization, government, and powers of any county, city, town or regional government, including such powers of any county, city, town or regional government, including such powers of legislation, taxation, and assessment as the General Assembly may determine. ...

Id.

"Special act" as defined by Article VII, Section 1 (6) "means a law applicable to a county, city, town or regional government and for enactment shall require an affirmative vote of two-third [2/3] of the members elected to each house of the General Assembly". In this case Chapter 78 was passed as an emergency statute, the bill passed the Senate of Virginia by a 40-0 margin and passed the House of Delegates by a 99-0 margin.

Chapter 78 was passed because of the reversion of Clifton Forge from City to Town status. Chapter 78 clearly is a "special act." The question is whether Chapter 78 was passed entirely "for the assessment and collection of taxes" in which case it would most likely be unconstitutional, or whether Chapter 78 was "for the organization, government, and powers" of Alleghany County, in which case it would be constitutional.

Sections 63 and 64 of the 1902 Constitution are basically the same as Article IV Sections 14 and 15, respectively, under the 1971 Constitution, and section 117 of the 1902 Constitution is more or less the same as Article VII, Section 2 of the 1971 Constitution. Past courts looked at the relation between sections 63, 64 and 117 and the following conclusion was consistent in all related cases:

Sections 63 and 64 must be read in connection with section 117, which was designated to enable municipal corporations, because of their peculiar problems, to care for their special interests and that usually this could be done by general laws, but the convention realized that there might be cases where it would be desirable to confer special powers, or special privileges.

Fallon Florist v. City of Roanoke, 190 Va. 564, 568, 58 S.E.2d 314 (1950), citing Portsmouth v. Wiess, 145 Va. 94, 133 S.E. 781.

Our current case is certainly a special case, resulting in the need for special attention from the State Legislature. Time was not something readily available. Forcing the Legislature to play drafting games in order to have Chapter 78 be general in nature, thus in full compliance with Article 4, Section 14, would not have been an efficient use of their time and may have resulted in no action at all by them.

Article VII, Section 2 allows for the General Assembly to pass special laws for the organization, government and powers of any county, city, town or regional government including such powers as taxation. In this case it seems appropriate to side with the action of the General Assembly in passing a specific law for the taxing privileges of Alleghany County on citizens of Clifton Forge during Clifton Forge's transition from City to Town status. Chapter 78 clearly related to the powers of Alleghany County to tax these residents, while Clifton Forge went through the unique and special circumstances of reverting to town status. The burden of proof weighs heavily on the side of a party challenging an act of the General Assembly. In this case petitioners have not met this burden. Petitions, in their response to respondent's memorandum, try to argue that Article VII, Section 7 "trumps" Article VII, Section 2. See Pet'r Resp. Mem. at 1. This is not the case and should be given no weight when looking at this issue.

Accordingly, this Court concludes that Chapter 78 of the 2002 Virginia Acts is constitutional, therefore making the taxes collected by Alleghany County for the 2001 year valid, authorized and not subject to refund except in accordance with Chapter 78.

For the foregoing reasons, the Demurrer should be sustained and the petition dismissed. Mr. Collins is directed to prepare an Order consistent with this letter opinion.

August 5, 2002


Duncan M. Byrd, Jr., Judge

DMBJr/jc

VIRGINIA

IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. C. ALDERSON, et als.,

Plaintiff,

v.

ORDER

THE COUNTY OF ALLEGHANY, VIRGINIA,

Defendant.

This matter brought on by petitioners seeking the Court to declare assessments for personal property taxes by The County of Alleghany as erroneous came to be heard on the 5th day of June, 2002, on The County's Demurrer, alleging that Chapter 78 of the 2002 Acts of the General Assembly of the Commonwealth of Virginia (Senate Bill 246) had validated all such assessments; upon leave granted the petitioners to amend their Petition to allege that Chapter 78 was unconstitutional; and upon submission of Memorandum of Law and Authorities by all parties.

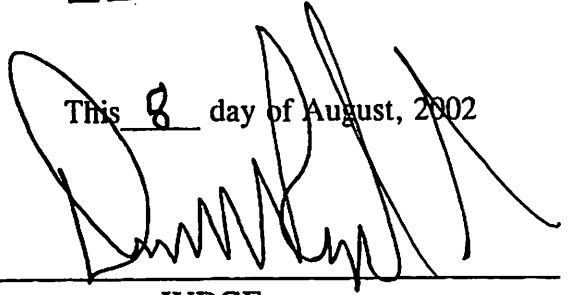
Whereupon, for the reasons set forth in the Court's Letter Opinion of August 5, 2002, which is incorporated herein by reference, it is the judgment of this Court that Chapter 78 is constitutional and that the taxes collected by Alleghany County for the year of 2001 are valid, authorized, and not subject to refund except in accordance with Chapter 78. Accordingly, the Demurrer of the County is sustained and the Petition is dismissed.

M. M. COLLINS
ATTORNEY AT LAW

—
COVINGTON, VIRGINIA

ENTER:

This 8 day of August, 2002



JUDGE

I ASK FOR THIS:



MICHAEL MCHALE COLLINS

SEEN AND OBJECTED TO FOR THE
REASONS MORE FULLY SET FORTH
IN THE RECORD:



WILLIAM A. PARKS, JR.

M. M. COLLINS
ATTORNEY AT LAW

COVINGTON, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF ALLEGHANY COUNTY

J. CHRIS ALDERSON, et als

Petitioners,

v.

TRIAL MEMORANDUM

THE COUNTY OF ALLEGHANY, VIRGINIA

Respondents,

TO: THE HONORABLE DUNCAN M. BYRD, JR, JUDGE OF SAID COURT

Come now your Petitioners, J. Chris Alderson, D.H. Scott, Jr., Sandra H. Hartley, Ellen P. Simmons Ray, and Michael E. Simmons, by counsel, and submit this, their trial memorandum, in support of their Petition.

I FACTS

On January 1, 2001, and continuing to the present time, each of your Petitioners was and remains a resident of the City (now Town) of Clifton Forge, Virginia.

Since January 1, 2001, each of your Petitioners owned and continues to own one or more motor vehicles physically located and normally garaged in the City (now Town) of Clifton Forge, Virginia, and subject to taxation as tangible personal property pursuant to §§ 58.1-3500 et seq of the 1950 Code of Virginia, as amended.

On July 1, 2001, the City of Clifton Forge reverted to Town status pursuant to §§ 15.2-4000 et seq of the 1950 Code of Virginia, as amended.

The County of Alleghany has assessed and collected from your Petitioners tangible personal property taxes upon each of the motor vehicles owned by the Petitioners.

Petitioners have fully paid the assessments and taxes so levied upon their motor vehicles.

Don Byrd
FILED
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OK
PRD
TU
8/8/01

The Respondent, Alleghany County, filed its Grounds of Defense admitting the foregoing facts.

The Respondent further admits it has not adopted a pro-rata ordinance, which would allow the Commissioner of Revenue to prorate personal property taxes for motor vehicles based upon the number of months the vehicle was located in the locality. See Code §58.1-3516; Grounds of Defense 912.

The Respondent also demurred, citing Chapter 78 of the Acts of Assembly (Senate Bill 246).

ARGUMENTS

For the benefit of the Court a copy of each statute and Constitutional Provision applicable to this case is appended to this memorandum, as well as SB 246 and the "Reversion Agreement".

ARGUMENT I

BETWEEN JANUARY 1, 2001 AND DECEMBER 31, 2001, THE COUNTY HAD NO AUTHORITY, WHETHER BY STATUTE OR ORDINANCE, TO TAX ANY TANGIBLE PERSONAL PROPERTY PHYSICALLY LOCATED AND NORMALLY GRAGED IN THE CITY (NOW TOWN) OF CLIFTON FORGE, VIRGINIA.

§58.1-3000 of the 1950 Code of Virginia, as amended (hereafter "Code"), segregates tangible personal property "subject to local taxation only". (Emphasis added)(P.17,infra)

The County Board of Supervisors "shall, at its regular meeting in the month of January in each year, or as soon thereafter as *practicable* no later than a called meeting in June, fix the amount of the county and district taxes for the year." Code §58.1-3001(P.17,infra)

Petitioners know of no meeting held by the Alleghany County Board of Supervisors between January 1 and June 30, 2001, to fix any amount of taxes on tangible personal property located in Clifton Forge during that period.

Indeed, the City of Clifton Forge was a distinct political subdivision during the entire period during which the Supervisors had the authority to “fix the amount for the current year.”

From its Grounds of Defense, it is apparent that the County has not adopted an ordinance to levy taxes on a fiscal year basis. Code §58.1-3010; §58.1-3011 Respondents Grounds of Defense, ¶2(P.18,infra)

Tangible personal property is segregated for and made subject to local taxation only pursuant to Article 10, § 4 of the Constitution of Virginia.(P.16,infra)

“The situs for the assessment and taxation of tangible personal property ... shall in all cases be the county, town or city in which such personal property may be located on the tax day. However, the situs for purposes of assessment of motor vehicles, travel trailers, boats, and airplanes as personal property, shall be the county, district, town or city where the vehicle is normally garaged, docked or parked ... In the event that it cannot be determined where such personal property, described herein, is normally garaged, docked or parked, the situs shall be the domicile of the owner of such personal property.” Code §58.1-3511. (Emphasis added)(P.18,infra)

“[T]angible personal property ... shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day.” Code §58.1-3515,(P.19,infra)

“All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.”

Constitution of Virginia, Article 10, Section 1(P.15,infra)

From January 1 through June 30, 2001, the “territorial limits” of Alleghany County did not, could not and cannot be imagined to have included the territorial limits of the City of Clifton Forge.

This situs of the tangible personal property as of the “tax day” determines the jurisdiction empowered to tax the property. *County Board of Arlington County v. Stull*, 217 Va. 238, 227 S.E.2d 698 (1976)

In its Grounds of Defense Respondent states:

The scheme of taxation employed by Alleghany County is to tax all vehicles that are garaged in the County on January 1, 2001. Thus anyone purchasing a vehicle after January 1, 2001 would pay no tax on the vehicle, but would, nonetheless, pay the full tax for “the entire year on the vehicle owned on January 1, 2001. (Emphasis added)

Grounds of Defense ¶2

Following the County’s own “scheme of taxation,” Petitioners’ vehicles were not “garaged in the County on January 1, 2001.”

The County could hardly argue, since it has no pro-ration ordinance, that a person moving from, say, Bath County to Alleghany County on July 1, 2001, along with his or her automobile, would then become immediately subject to personal property taxation by Alleghany County by reason of that move. Indeed, people purchasing their first car after January 1 pay no tax for the calendar year of that purchase.

In effect, Petitioners and others similarly situated, “moved into” Alleghany County on July 1, 2001, Clifton Forge city windshield stickers and all.

Accordingly, the County's taxation of tangible personal property owned by residents of Clifton Forge on January 1, 2001, discriminates against those residents as opposed to persons who moved into Alleghany County from yet another jurisdiction with the vehicles they owned prior to January 1, 2001, and those county residents purchasing new vehicles during the tax year, but after January 1.

This is neither uniform nor equal treatment. As of July 1, 2001, the residents of Clifton Forge should have been treated no differently from persons moving to the County from any other Virginia (or foreign) locality.

"All taxes . . . shall be uniform upon the same subjects within the territorial limits of the authority levying the tax" Article 10, §1, Constitution of Virginia. (P.15,infra)

In summary, Clifton Forge residents have not been treated uniformly; they have been subject to taxation from which individuals entering Alleghany County from other jurisdictions or purchasing new vehicle exempt during the tax year are exempt. See Grounds for Defense ¶2

"The voluntary settlement of Town Status issues between the City of Clifton Forge and the County of Alleghany" could have addressed this issue but did not.(See PP.25-42,infra)

In summary, Alleghany County was without authority to assess, levy, and collect tangible personal property taxes on Petitioners' motor vehicles in 2001, because:

1. Those vehicles were not in Alleghany County until July 1, 2001;
2. The County Board of Supervisors did not fix the amount of taxes for Clifton Forge taxpayers (Code §58.1-3001) between

January and June of 2001, because Clifton Forge personal property was not then located in Alleghany County.

3. Alleghany County does not tax on a fiscal year basis. (Code §58.1-3010; §58.1-3011)(P.18,infra)
4. Alleghany County had no authority to impose an “effective date of taxation” on the “tax day” (January 1) upon motor vehicles outside its territorial limits. (Code §58.1-3511)(P.18,infra)
5. Alleghany County had no authority to tax tangible personal property outside its territorial limits. (Constitution of Virginia, Article 10, §1; (P.15,infra)
6. Alleghany County’s own “scheme of taxation” taxes vehicles “garaged in the County on January 1, 2001.” None of the Petitioners vehicles were “garaged in the County on January 1”;
7. Petitioners have been unconstitutionally taxed while others entering the County or purchasing a vehicle after the “tax day” have been exempt from taxes. (Constitution of Virginia, Article 10, §1.

Finally, the taxes imposed upon the motor vehicle owners of Clifton Forge were imposed, levied and collected by public officials for whom Petitioners did not and could not vote.

Not one of the Petitioners had any right or opportunity to elect the County Commissioner of Revenue, the County Treasurer, or any member of the Board of Supervisors who have acted to impose taxes on these Clifton Forge citizens during the year 2001. Those county officials for whom citizens of Clifton Forge could vote were elected on November 6, 2001, and assumed office on January 1, 2002.

Thus, The County's officials are attempting to extract and retain a tax from citizens who had no say in the selection of those officials who assessed, levied, and collected such taxes.

ARGUMENT II

CHAPTER 78 OF THE ACTS OF ASSEMBLY (SENATE BILL 246) IS UNCONSTITUTIONAL.

Article 4, §14 of the Constitution of Virginia provides:

The General Assembly shall not enact any local, special, or private law in the following cases:

-
- (5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the forming interest.
- (6) Extending the time for the collection of taxes.
-
- (7) Remitting, releasing, postponing, or diminishing any obligation or liability of any person or to any political subdivision thereof.
- (8) Refunding money lawfully paid into the Treasury of the Commonwealth or the Treasury of any political subdivision thereof. (P14,*infra*)

A statue prohibiting the operation of a trailer camp in a county adjoining any county having a density of population in excess of 1,000 per square mile until operator first obtains a permit and license from governing board of the county, and authorizing the county board to impose the license tax, in view of the fact that the statue, in operation, applied to only one

county in state, and fact that, by general law, the General Assembly had provided for regulation of trailer camps in other parts of the state, was a special or local act in violation of the Constitution. County Board of Supervisors of Fairfax County v. American Trailer Company, 193 Va. 72, 68 S.E.2d 115 (1951).

In County Board of Supervisors of Fairfax County v. American Trailer Co, supra, 193 Va. At 68 S.E.2d at 120-121, the Court explained:

[W]e have held to be special or local, and therefore unconstitutional: An act providing that the trial justice of Carroll county should be elected by the people instead of being appointed by the judge as in other counties, Quesinberry v. Hull, 159 Va. 270, 165 S.E. 382; act providing compensation for supervisors in 15 named counties different from that provided for those in other counties classified according to population, Shelton & Luck v. Sydnor, 126 Va. 625, 102 S.E. 83; an act providing for a change of venue for prohibition officers, Farmer v. Christian, 154 Va. 48, 152 S.E. 382; and an act excepting cities having a population of not less than 125,000 and not more than 150,000 from the operation of the act giving the right to proceed by a motion before civil and police justices and others, Shulman Company v. Sawyer, 167 Va. 386, 189 S.E. 344.

[9] We are clearly of opinion that chapter 443, Acts 1942, under review, falls within the type of legislation involved in the last named cases and is purely a special or local act.

By the passage of chapter 256, Acts 1942, amended by chapter 308, Acts 1946, supra, the General Assembly provided by general law for the regulation of trailer camps by local ordinances in the counties of the State, permitting a license and license tax based upon the maximum number of trailers accommodated at such camps, under which the amount of the tax must be related to the cost of enforcement. It thereby necessarily declared the subject to be one, which "may be provided for by general laws." Constitution §64.

But by chapter 443, Acts 1942, it provided different and special powers for Fairfax County, in effect excepting it from the of the operation general law, separating it from the other counties of the State-not by name, it is true, but just as definitely by description-and according to it special privileges not available to other counties. One of those exclusive privileges is authority to levy a tax up to \$100 per trailer lot. The Constitution says this shall not be done by special law, but by general law. The 99 other counties of the State are limited by the general law, chapters 256 and 308, supra, to a regulatory license

and a tax related to the cost of its enforcement, to be imposed on a different basis from that provided for Fairfax County in chapter 443.

It is hard to imagine a more “special act” than chapter 78. (P.22,infra)

Its very title is special:

An Act providing for tangible personal property taxes for the City of Clifton Forge, Alleghany County, and the Town of Clifton Forge for the period January 1, 2001, through December 31, 2001.

So the Act is limited to two named localities.

The Act “validates” the actions of particular elected officials.

The Act “validates” the unlawful and unconstitutional act of the County Commissioner of Revenue in making tangible personal property tax assessment upon individuals and their tangible personal property beyond the territorial limits of the County, i.e., the City of Clifton Forge by “deeming” such assessments to have been made by the City Commissioner of Revenue.

The Act then goes on to dictate the City and County’s tax rates and to dictate the amount to be refunded.

The Act fails to cure the County’s violation of Article 10, §4 of the Virginia Constitution, argued supra. (P.16,infra)

The Act has no general application.

The Act further ignores cases decided under Article 1, §9 of the Virginia Constitution, which provides:

[T]he General Assembly shall not pass . . . any *ex post facto* law.

Retrospective laws are not favored, and a statute is always to be construed as acting prospectively, unless a contrary intent is manifest; but the Legislature may in its discretion pass retrospective or curative laws, provided they do not partake of the nature of what are

typically called *ex post facto* laws, and do not impair the obligation of constraints, or disturb vested rights; and provided further, they are of such nature as the legislature might have passed in the first instance to act prospectively. Whitlock v. Hawkins, 105 Va. 242, 53 S.E. 401 (1906)

“It is well settled that the mere retroactivity of a statute affecting taxation does not render it unconstitutional. Such a statute is valid if it is not arbitrary and does not disturb vested rights, impair contractual obligations, or violate due process.” Colonial Pipeline v. Commonwealth, 206 Va.

In Colonial Pipeline, the Court found an amendment to the tax code adopted by the General Assembly on March 10, 1964, which authorized assessment of intangible personal property taxes owned by the taxpayer on January 1, 1964 to be “reasonable”.

Colonial Pipeline is as far as the Court has gone in permitting retroactive tax legislation.

In Commonwealth v. United Cigarette Machine Company, 120 Va. 835, 92 S.E. 901 (1917), the Court declined to apply retroactively a statutory amendment allowing the addition of interest in all cases of omitted taxes, where the original statute forbade the charge of interest on taxes omitted through no fault of the taxpayer.

Senate Bill 246 was adopted on February 22, 2002, more that two months after the Petition was filed in the instant case.

The “Summary/Purpose appended to the Bill exposes just how “special” and “retroactive” this legislation is”;

This bill would validate a tangible personal property tax imposed by Alleghany County on the residents of the Town of Clifton Forge on January 1, 2001, while it was still a city

transitioning to town status. The transition became final July 1, 2001.

Current law provides that all taxable tangible personal property must have situs within a jurisdiction on January 1 of the tax year. This bill provides an exception because of the change in status of Clifton Forge. For tax year 2001, both the town and the county may impose a tangible personal property on all property with situs within the town on July 1, 2001 at the rates in effect July 1, 2001. The bill also provides that the taxes imposed by the county on the residents of Clifton Forge while it was still a city be levied at the tangible personal property rate in effect for the city as of January 1, 2001. In both instances, the amount of tax due would be reduced by one-half to reflect the short tax years established by this bill. (Emphasis added)(P.23,infra)

Further, this bill attempts to validate the County's unconstitutional acts of its officials in imposing taxes on a separate political subdivision over which it had no jurisdiction. Clifton Forge residents were unrepresented on the County Board of Supervisors until January 1, 2002.

In Summary, then, Senate Bill 246 is unconstitutional upon the following grounds:

1. It is "special legislation in violation of Article 4, §14 of the Virginia Constitution; (P.14,infra)
2. It attempts to validate the unconstitutional acts of the County in taxing intangible personal property outside the County's territorial limits in violation of Article 10, §1, of the Virginia Constitution. (P.15,infra)
3. It rises to the level of an *ex post facto* law by violating the rights of the citizens of the City (now Town) to be free of County taxation of their tangible personal property until the next tax year, just like anyone else moving into the County or purchasing a new vehicle after January 1, 2001 with a vehicle owned before that date, when their own elected members of the County's Board of Supervisors would be acting on issues affecting them as new County citizens.

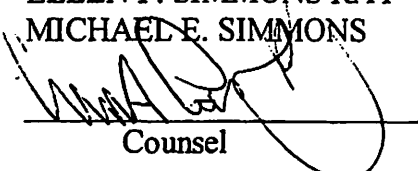
CONCLUSION

For the following reasons, your Petitioners respectfully submit that all taxes collected by respondent on tangible personal property located in the City of Clifton Forge for the tax year 2001 are invalid, unauthorized, unconstitutional, and subject to immediate refund pursuant to Code §58.1-3987.(P.20,infra).

Respectfully Submitted

J. CHRIS ALDERSON
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By:


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CERTIFICATE

I hereby certify that a true copy of the foregoing Trial Memorandum was delivered to Michael McHale Collins, Esquire, Attorney at Law, 275 West Main Street, P.O. Box 59, Covington, Virginia 24426 this 31st day of May 2002.


Counsel

Art. 1, § 9

**Prohibition of excessive bail and fines, cruel and unusual punishment,
suspension of habeas corpus, bills of attainder, and ex post facto laws**

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder, or any ex post facto law.

Art. 4, § 14

§ 14. Powers of General Assembly; limitations

The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a subject shall not work a restriction of its authority upon the same or any other subject. The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

The General Assembly's power to define the accrual date for a civil action based on an intentional tort committed by a natural person against a person who, at the time of the intentional tort, was a minor shall include the power to provide for the retroactive application of a change in the accrual date. No natural person shall have a constitutionally protected property right to bar a cause of action based on intentional torts as described herein on the ground that a change in the accrual date for the action has been applied retroactively or that a statute of limitations or statute of repose has expired.

The General Assembly shall not enact any local, special, or private law in the following cases:

- (1) For the punishment of crime.
- (2) Providing a change of venue in civil or criminal cases.
- (3) Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.
- (4) Changing or locating county seats.
- (5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.
- (6) Extending the time for the assessment or collection of taxes.
- (7) Exempting property from taxation.

ARTICLE X

TAXATION AND FINANCE

§ 1. Taxable property; uniformity; classification and segregation

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. Such differences in the rate of taxation shall bear a reasonable relationship to differences between nonrevenue producing governmental services giving land urban character which are furnished in one or several areas in contrast to the services furnished in other areas of such unit of government.

The General Assembly may by general law and within such restrictions and upon such conditions as may be prescribed authorize the governing body of any county, city, town or regional government to provide for differences in the rate of taxation imposed upon tangible personal property owned by persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law who are deemed by the General Assembly to be bearing an extraordinary tax burden on said tangible personal property in relation to their income and financial worth.

The General Assembly may define and classify taxable subjects. Except as to classes of property herein expressly segregated for either State or local taxation, the General Assembly may segregate the several classes of property so as to specify and determine upon what subjects State taxes, and upon what subjects local taxes, may be levied.

Art. 10, § 4

§ 4. Property segregated for local taxation; exceptions

Real estate, coal and other mineral lands, and tangible personal property, except the rolling stock of public service corporations, are hereby segregated for, and made subject to, local taxation only, and shall be assessed for local taxation in such manner and at such times as the General Assembly may prescribe by general law.

§ 58.1-3000. Real estate, mineral lands, tangible personal property and merchants' capital subject to local taxation only

All taxable real estate, all taxable coal and other mineral lands, and all taxable tangible personal property and the tangible personal property of public service corporations, except rolling stock of corporations operating railroads, and also the capital of merchants are hereby segregated and made subject to local taxation only.

§ 58.1-3001. When boards of supervisors to fix and order county and district taxes; funds not available, allocated, etc., until appropriated

The governing body of each county shall, at its regular meeting in the month of January in each year, or as soon thereafter as practicable not later than a regular or called meeting in June, fix the amount of the county and district taxes for the current year. Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon.

The imposition of taxes or the collection of such taxes shall not constitute an appropriation nor an obligation or duty to appropriate any funds for any purpose, expenditure or contemplated expenditure. No part of the funds raised by the general county taxes shall be considered available, allocated or expended for any purpose until there has been an appropriation of funds for that expenditure or purpose by the governing body either annually, semiannually, quarterly, or monthly. There shall be no mandatory duty upon the governing body of any county to appropriate any funds raised by general county taxes except to pay the principal and interest on bonds and other legal obligations of the county or district and to pay obligations of the county or its agencies and departments arising under contracts executed or approved by the governing body, unless otherwise specifically provided by statute. Any funds collected and not expended in any fiscal year shall be carried over to the succeeding fiscal years and shall be available for appropriation for any governmental purposes in those years.

§ 58.1-3010. Counties, cities and towns may levy taxes on fiscal year basis of July 1 through June 30, and change rate of levy during fiscal year.

Notwithstanding any other provision of law, special or general, to the contrary, the governing body of any county, city or town may by ordinance provide that taxes on real estate, tangible personal property and machinery and tools be levied and imposed on a fiscal year basis of July 1 to June 30. Such locality is authorized and empowered to change the rate of any such levy during any fiscal year.

§ 58.1-3511. Situs for assessment; nonresident exception; refund of tax paid to city or county; apportioned assessment

A. The situs for the assessment and taxation of tangible personal property, merchants' capital and machinery and tools shall in all cases be the county, district, town or city in which such property may be physically located on the tax day. However, the situs for purposes of assessment of motor vehicles, travel trailers, boats and airplanes as personal property shall be the county, district, town or city where the vehicle is normally garaged, docked or parked; however, the situs for vehicles with a weight of 10,000 pounds or less registered in Virginia but normally garaged, docked or parked in another state shall be the locality in Virginia where registered. Any person domiciled in another state whose motor vehicle is principally garaged or parked in this Commonwealth during the tax year, shall not be subject to a personal property tax on such vehicle upon a showing of sufficient evidence that such person has paid

personal property tax on the vehicle in the state in which he is domiciled. In the event it cannot be determined where such personal property, described herein, is normally garaged, stored or parked, the situs shall be the domicile of the owner of such personal property. However, in the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile. Any person who shall pay a personal property tax on a motor vehicle to a county or city in this Commonwealth and a similar tax on the same vehicle in the state of his domicile, or in the state where such vehicle is normally garaged, docked, or parked, may apply to such county or city for a refund of such tax payment. Upon a showing of sufficient evidence that such person has paid the tax for the same year in the state in which he is domiciled, the county or city may refund the amount of such payment.

B. The assessment of motor vehicles, travel trailers, boats or airplanes operating over interstate routes, in the rendition of a common, contract or other private carrier service which are subject to property taxation in any other state on the basis of an apportioned assessment, shall be apportioned in the same percentage as the total number of miles traveled in the Commonwealth by such vehicle bears to the total number of miles traveled by such vehicle.

§ 58.1-3515. Tax day January 1

Except as provided under § 58.1-3010, and except as provided by ordinance or special act in localities authorized to tax certain property on a proportional monthly or quarterly basis, tangible personal property, machinery and tools and merchants' capital shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day. The status of all persons, firms, corporations and other taxpayers liable for taxation on any of such property shall be fixed as of the date aforesaid in each year and the value of all such property shall be taken as of such date, except that any county, city or town may permit a taxpayer to return as merchants' capital the average amount of capital employed in his business on such date and on the next preceding August first.

§ 58.1-3516. Proration of personal property tax

A. The governing body of any county, city or town may provide by ordinance for the levy and collection of personal property tax on motor vehicles, trailers, semitrailers, and boats which have acquired a situs within such locality after the tax day for the balance of the tax year. Such tax shall be prorated on a monthly basis. Such ordinance may exclude boats or motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce, or both, from the property subject to proration of the personal property tax. For purposes of proration, a period of more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted.

Such ordinance shall also provide for relief from tax and a refund of the appropriate amount of tax already paid, which shall be prorated on a monthly basis, where any motor vehicle, trailer, semitrailer, or boat loses its situs within such locality after the tax day or after the day on which it acquires a situs (hereafter "situs day"). No refund shall be made if the motor vehicle, trailer, semitrailer, or boat acquires a situs within the Commonwealth in a nonprorating locality. When any person sells or otherwise transfers title to a motor vehicle, trailer, semitrailer, or boat with a situs in the locality after the tax day or situs day, the tax shall be relieved, prorated on a monthly basis, and the appropriate amount of tax already paid shall be refunded or credited, at the option of the taxpayer, against the tax due on any motor vehicle, trailer, semitrailer, or boat owned by the taxpayer during the same tax year by the treasurer of such locality. Such refund shall be made within thirty days of the date such tax is relieved. No refund of less than five dollars shall be issued to a taxpayer, unless specifically requested by the taxpayer. When any person, after the tax day or situs day, acquires a motor vehicle, trailer, semitrailer, or boat with a situs in the locality, the tax shall be assessed on the motor vehicle, trailer, or boat for the portion of the tax year during which the new owner owns the motor vehicle, trailer, semitrailer, or boat and it has a situs within the locality.

§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law, (i) within three years from the last day of the tax year for which any such assessment is made, (ii) within one year from the date of the assessment, (iii) within one year from the date of the Tax Commissioner's final determination under § 58.1-3703.1 A 5 or

§ 58.1-3983.1 D, or (iv) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made. The proceedings shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.

B. In the event it comes or is brought to the attention of the commissioner of the revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, and he is not able to correct it under § 58.1-3981, the commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.

§ 58.1-3987. Action of court

If the court is satisfied from the evidence that the assessment is erroneous and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law, the court may order that the assessment be corrected and that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid. If the tax has been paid, the court shall order that it be refunded to the taxpayer, with interest at the rate provided by § 58.1-3918 or in the ordinance authorized by § 58.1-3916, or as otherwise authorized in that section.

If, in the opinion of the court, any property is valued for taxation at more than fair market value, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved. If, in the opinion of the court, the assessment be less than fair market value, the court shall order it increased to what in its opinion is the fair market value of the property involved and shall order that the applicant pay the proper taxes.

For the purpose of reducing or increasing the assessment and adjusting the taxes the court shall have all the powers and duties of the authority which made the assessment complained of, as of the time when such assessment was made, and all powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard.

Acts 1984, c. 675; Acts 1999, c. 631.

SB 246 Tangible personal property tax in Alleghany County.

Patron - Malfourd W. Trumbo (all patrons) notes

Summary as passed Senate: (all summaries)

Tangible personal property tax in Alleghany County. Authorizes Alleghany County to retain one-half of the tangible personal property taxes collected, or due and owing, from residents of the town of Clifton Forge for tax year 2001. The remaining one-half shall be exonerated. If the taxpayer has already paid more than one-half of such taxes, any overpayment shall be refunded and shall include interest as provided under applicable law. Alleghany County levied its 2001 tangible personal property tax on residents of the town of Clifton Forge, but on January 1, 2001, such persons were still residents of the independent City of Clifton Forge. The city reverted to town status effective July 1, 2001. Because the tangible personal property tax levied by Alleghany County on Clifton Forge residents was for the entire 2001 tax year, the bill prorates the tax levied and requires an exoneration for that portion of the tax attributable to the period from January 1, 2001, through June 30, 2001. The County may retain that portion of the tax prorated for the period from July 1, 2001, through December 31, 2001. The bill contains an emergency clause.

Full text:

01/09/02 Senate: Pres. & ord. printed w/emg. clause pref.01/08/02 023104548 (impact statement)

01/30/02 Senate: Committee substitute printed 023139548-S1 (impact statement)

02/22/02 Senate: Enrolled bill text (SB246ER) (impact statement)

Status:

01/09/02 Senate: Pres. & ord. printed w/emg. clause pref.01/08/02 023104548

01/09/02 Senate: Referred to Committee on Finance

01/14/02 Senate: Fiscal impact statement from TAX (SB246)

01/30/02 Senate: Reported from Finance with substitute (16-Y 0-N)

01/30/02 Senate: Committee substitute printed 023139548-S1

01/31/02 Senate: Constitutional reading dispensed (39-Y 0-N)

01/31/02 Senate: VOTE: CONST. RDG. DISPENSED R (39-Y 0-N)

02/01/02 Senate: Read second time

02/01/02 Senate: Reading of substitute waived

02/01/02 Senate: Committee substitute agreed to 023139548-S1

02/01/02 Senate: Emergency clause added

02/01/02 Senate: Engrossed by Senate - committee substitute 023139548-S1

02/04/02 Senate: Read third time and passed Senate (40-Y 0-N)

02/04/02 Senate: VOTE: PASSAGE R (40-Y 0-N)

02/04/02 Senate: Communicated to House

02/05/02 House: Placed on Calendar

02/05/02 House: Read first time

02/05/02 House: Referred to Committee on Finance

02/11/02 Senate: Fiscal impact statement from TAX (SB246S1)

02/18/02 House: Reported from Finance (22-Y 0-N)

02/19/02 House: Read second time

02/20/02 House: Read third time

02/20/02 House: Passed House (99-Y 0-N)

02/20/02 House: VOTE: PASSAGE EMERGENCY (99-Y 0-N)

02/22/02 Senate: Fiscal impact statement from TAX (SB246ER)

02/22/02 Senate: Enrolled bill text (SB246ER)

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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act providing for tangible personal property taxes for the City of Clifton Forge, Alleghany County, and the Town of Clifton Forge for the period January 1, 2001, through December 31, 2001.

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[S 246]

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Approved

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Be it enacted by the General Assembly of Virginia:

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1. § 1. Notwithstanding any other provision of law, any assessment of tangible personal property as of January 1, 2001, for tangible personal property located in the Town of Clifton Forge, with such assessment being made by the commissioner of the revenue of Alleghany County, shall be valid, regardless that residents of the Town of Clifton Forge were residents of an independent city, the City of Clifton Forge, on January 1, 2001. In addition, the levy or imposition of tangible personal property taxes for the entire 2001 tax year based upon such assessments shall also be valid subject to the following:

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1. Such assessments upon the residents of the Town of Clifton Forge shall be deemed to have been assessments made to levy all tangible personal property taxes upon such persons for a period covering two separate tax years, the first beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, and the second beginning July 1, 2001, through 12:00 p.m. on December 31, 2001;

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2. The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be deemed to have been assessments made by the commissioner of the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001; and

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3. The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001, shall be deemed to have been assessments made by the county commissioner of the revenue on the residents of the Town of Clifton Forge who also became residents of the county on July 1, 2001. The tangible personal property taxes levied by Alleghany County based upon such assessments shall be levied at the tangible personal property tax rates in effect in Alleghany County as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.

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§ 2. Any tangible personal property taxes levied by the Town of Clifton Forge upon town residents for the tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001, shall be valid. However, the amount of tax due shall be determined using tangible personal property tax rates in effect in the town as of July 1, 2001, and the amount of tax due shall be reduced by one-half to reflect a short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.

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2. That an emergency exists and this act is in force from its passage.

**DEPARTMENT OF TAXATION
2002 Fiscal Impact Statement**

1. Patron Trumbo

2. Bill Number SB 246

3. Committee Passed Senate and House

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. Title Tangible Personal Property Tax:
Authorizing a County to Prorate the Tax
When an Independent City Becomes a
Town

Second House:

☐ In Committee

☐ Substitute

☒ Enrolled

5. Summary/Purpose:

This bill would validate a tangible personal property tax imposed by Alleghany County on the residents of the Town of Clifton Forge on January 1, 2001, while it was still a city transitioning to town status. The transition became final July 1, 2001.

Current law provides that all taxable tangible personal property must have situs within a jurisdiction on January 1 of the tax year. This bill provides an exception because of the change in status of Clifton Forge. For tax year 2001, both the town and the county may impose a tangible personal property on all property with situs within the town on July 1, 2001 at the rates in effect July 1, 2001. The bill also provides that the taxes imposed by the county on the residents of Clifton Forge while it was still a city be levied at the tangible personal property rate in effect for the city as of January 1, 2001. In both instances, the amount of tax due would be reduced by one-half to reflect the short tax years established by this bill.

This bill contains an emergency clause and is in effect from the date of its passage.

6. Fiscal Impact Estimates are: Unknown (See Line 8.)

7. Budget amendment necessary: No.

8. Fiscal implications:

This bill would have no impact on state revenues. It would increase Alleghany County's revenues from one-half year's tangible personal property taxes levied on the residents of Clifton Forge.

9. Specific agency or political subdivisions affected:

Alleghany County, the Town of Clifton Forge.

10. Technical amendment necessary: No.

11. Other comments:

Counties may not impose tangible personal property taxes on residents of independent cities, but they may impose such taxes on the residents of towns. Towns may also impose tangible personal property taxes on their residents. The effect of this bill would be to allow Alleghany County to retain the taxes imposed on Clifton Forge after it changed its status from a city to a town on July 1, 2001.

As an independent city, Clifton Forge imposed its own tangible personal property tax on its residents. This bill validates any tangible personal property taxes levied by the Town of Clifton Forge after it transitioned to town status effective July 1, 2001.

Under current law, tax day is considered to be January 1 of any tax year for purposes of the tangible personal property tax. This bill would create a limited exemption for Clifton Forge for tax year 2001 only, when its status changed from city to town on July 1, 2001.

cc: Secretary of Finance

Date: 2/22/02/SLR

Document: \\TAXOFFICE\LEGISDIR\2002leg\WorkInProcess\OTPwork\SB246FENR161.doc

VOLUNTARY SETTLEMENT OF TOWN STATUS ISSUES BETWEEN THE CITY OF CLIFTON FORGE AND THE COUNTY OF ALLEGHANY

This AGREEMENT is made and entered into this 24 day of April 2000, and executed in quintuplicate originals (each executed copy constituting an original) by and between the **CITY OF CLIFTON FORGE, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "City"), and the **COUNTY OF ALLEGHANY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County").

WHEREAS, the City and the County have reached this Agreement, pursuant to Title 15.2, Chapter 34 of the Virginia Code, providing for the reversion of the City to town status, the allocation of governmental services following that change in governmental structure, and for other matters; and

WHEREAS, the City seeks to establish a traditional town/county relationship with the County, with the same rights, powers and responsibilities as are granted to existing towns by the Code of Virginia; and

WHEREAS, the reversion of the City to town status within the County would further the interest of the State in promoting strong and viable units of local government;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree with each other as follows:

SECTION 1. DEFINITIONS

The parties hereto agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.01 City: "City" shall mean the City of Clifton Forge, Virginia.
- 1.02 Town: "Town" shall mean the new Town of Clifton Forge, Virginia.
- 1.03 Code: "Code" shall mean the Code of Virginia of 1950, as amended.
- 1.04 Commission: "Commission" shall mean the Commission on Local Government.
- 1.05 County: "County" shall mean the County of Alleghany, Virginia.
- 1.06 Court: "Court" shall mean the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, §15.2-3000 of the Code.
- 1.07 Section: Subsection: "Section" or "subsection" refers to parts of this Agreement unless the context indicates that the reference is to parts of the Code.

SECTION 2. TRANSITION TO TOWN STATUS

2.01 Transition to Town Status: The City and the County agree that, upon the date specified in Section 5.03, the City shall make a transition from an independent city to a town located within and constituting part of Alleghany County. The Town shall possess all powers and have such authority as granted by general law to other towns in the Commonwealth and such other powers and authority as granted by charter or other special acts of the General Assembly.

SECTION 3. TERMS AND CONDITIONS

3.01 **Allocation of Governmental Services:** Upon the effective date of town status, the parties agree that governmental services provided to residents of the Town shall be allocated between the County and Clifton Forge as set forth below:

A. Alleghany County shall be responsible for providing the following governmental services within the Town in the same manner as it provides such services to other residents of the County including the Town of Iron Gate: (a) public education; (b) judicial administration; (c) property assessment and collection of County taxes; (d) elections; (e) health and mental health services; (f) social services; (g) solid waste collection, disposal and recycling; (h) building inspection services, including the issuance of permits and the collection of all associated fees; and (i) economic development to benefit both the Town and the County. The County shall be entitled to receive all funding, be it federal, state, local, or other, which is distributed or collected in connection with its provision of the above services to residents of the Town of Clifton Forge. To the extent authorized by general law, the Town shall pay for the costs of Town elections.

B. To the extent desired by its citizens, the Town shall be responsible for providing at an appropriate level those urban services traditionally provided by towns, including: (a) police protection; (b) fire protection; (c) water treatment and distribution; (d) sewage collection and treatment; (e) public planning, subdivision regulation and zoning; (f) public library services; (g) street lighting; (h) street maintenance and related services; (i) town manager and accounting services; (j) cemetery maintenance; (k) animal control; (l) senior citizens services; and (m) recreation activities. The cessation of any of the foregoing services by the Town shall not obligate the County to continue, maintain, or otherwise provide such services. Residents of Clifton Forge

shall have use of all services provided by the County to its residents on the same basis as other County residents.

3.02 Solid Waste Collection and Disposal: The County currently provides solid waste collection and disposal services to its residents, in accordance with Chapter 50 entitled SOLID WASTE of the Alleghany County Code, the expenses of which are paid exclusively from general tax revenues collected in the County without the imposition of any separate user fees, other than certain user fees imposed upon commercial customers. On and after the effective date of town status, the County agrees that it will not charge the Town or its residents, businesses, and institutions any fee for the provision of such services other than such fees for commercial customers as are currently being imposed, unless the County begins assessing all County residents a direct user fee specifically established for the provision of those services. In that case, the County will impose the direct fee on users of those services within the Town on the same basis as other County residents, businesses, and institutions.

3.03 Westvaco Revenue Sharing: By agreement dated August 23, 1984, the City and the County agreed to make certain property available to Westvaco Corporation and to share equally, in perpetuity, the property and gross receipts taxes collected from the facilities constructed on such property. Upon the effective date of town status, the City agrees that the County's obligations to share the tax revenues from such property shall be terminated forever.

3.04 Joint Contracts: As a result of the allocation of governmental services agreed to by the parties in Section 3.01 of this Agreement, the parties agree that it is necessary to dissolve or modify certain agreements between the parties:

A. Joint School Contract: Alleghany County and the City of Clifton Forge began operating a joint school system in 1982. Currently, the localities jointly support the school system pursuant to the terms of the Amended and Restated Joint School Agreement ("Amended Joint School Agreement"), dated September 21, 1988, and the Addendum thereto dated March 27, 2000 (the "Addendum"). The Amended Joint School Agreement requires that each locality make an annual pro rata contribution for operating expenses of the joint school system. As a result of the City's transition to town status, the County shall assume full responsibility for the provision of public education and the operation of the school system. Accordingly, the Amended Joint School Agreement shall be dissolved.

B. Regional Jail Contract: On April 15, 1997, the City entered into a Regional Contract for Cooperative Jailing of Offenders between Alleghany County, Bath County, and the Cities of Covington and Clifton Forge ("Regional Jail Contract"). As a town, Clifton Forge will no longer have a separate sheriff or circuit court, and therefore the County sheriff shall assume responsibility for housing all prisoners committed by the courts or other authorities of the County, including those convicted of offenses that occur within the Town. As a result of its reversion to town status, the Town will no longer have a need for the jail services to which it is entitled, as a city, under the Regional Jail Contract. The parties agree that the Regional Jail Contract should be modified to remove the City of Clifton Forge as a party to that contract and to terminate all of the City's responsibilities and obligations under that contract as of its reversion to town status. The City agrees to be responsible for working with the City of Covington, Bath County and Alleghany County to obtain such modifications. The parties agree that such modifications will be contingent upon the City's reversion to town status and will have no effect on the City's obligations under

the Regional Jail Contract until the effective date of reversion. If, for any reason, such modifications to the Regional Jail Contract are not made before the City's reversion to town status, the County agrees that as of the effective date of reversion it will assume all of the Town's obligations under the Regional Jail Contract. In the event a determination is made that the County's assumption of such obligations under the Regional Jail Contract constitutes long-term debt under the Virginia Constitution, then the County's agreement to assume these obligations is subject to the annual appropriation of sufficient funds by the County Board of Supervisors.

3.05 Existing School Debt: In accordance with the terms of the Amended Joint School Agreement, upon its reversion to town status, the Town will retain responsibility for the school debt incurred by the City prior to entering into a joint school agreement on July 30, 1982. This debt consists of the following debt issue: State Literary Fund Loan issued on August 15, 1982, \$42,500 maturing annually with interest payable annually, bonds bearing interest at 3 % maturing August 15, 2002, in the total outstanding amount of \$212,500 as of June 30, 1998.

3.06 Future School Debt: On October 6, 1998, pursuant to the Amended Joint School Agreement, the City Council of Clifton Forge and the Board of Supervisors of Alleghany County each adopted resolutions authorizing the Alleghany Highlands School System to proceed with plans to construct two new schools and affirming that they would assume the obligation for the repayment of those loans and bonds based on the funding formula set forth in the Amended Joint School Agreement. The parties' respective obligations were later amended by the Addendum. Because citizens of the Town will participate in paying the County's school debt through payment of County taxes, the issuance of all necessary school debt by the County will avoid the double taxation of Town residents to pay for public education. Therefore, upon the effective date of town

status, the County shall be responsible for the repayment of all debt associated with the construction of the new schools.

3.07 School Property: After entering into a joint school agreement in 1982, the City retained title to the Clifton Forge Middle School, the Clifton Forge Elementary School East located at A and Main Streets, and the Clifton Forge Elementary School West located on Jefferson Avenue. The Alleghany Highlands School Division anticipates that, after the construction of the new elementary and middle schools is completed, it will no longer use the three Clifton Forge facilities for school purposes. Upon reversion to town status, the Town will retain ownership of those three facilities, and at such time as the Alleghany County School System ceases to use them for school purposes, the Town shall have the right to use the three properties as it may desire, or to sell, transfer or otherwise dispose of the properties.

3.08 City-Owned Landfills: The parties agree that, as a result of town status, the County will not incur any liability in connection with the operation of the City's closed landfill located on Route 60 behind the Garten Ford Dealership or in connection with the City's closed landfill on Muddy Pike Road (the "City Landfills") beyond such liability, if any, that it may already have incurred under federal and state law as a result of its prior disposal of waste at the City Landfills.

3.09 Peters Mountain Landfill: The City of Covington owns and operates the Peters Mountain Landfill ("Peters Mountain"), a portion of which is in the process of being closed. In certain previous years, the City and the County used that portion of the Landfill for the disposal of solid waste and are parties to a Supplemental Landfill Agreement dated June 30, 1996 ("the Closure Agreement"). The portion of the Landfill previously used by the City and the County is

hereafter referred to as "Peters Mountain". The Closure Agreement establishes certain obligations of the City and the County with respect to the closure and monitoring of Peters Mountain and the future correction of environmental deficiencies, if any should occur. The parties agree that the City shall remain liable for, and shall pay, its share of such expenses based on documented invoices presented to the City prior to the effective date of town status, but the Town shall not be liable for, and shall not be required to pay, any such expenses based on documented invoices presented after the effective date of town status. No later than 30 days after the City of Covington accepts a bid for the Peters Mountain closure work, the City and the County shall deposit in an interest bearing escrow account their respective percentages, as computed in the Closure Agreement, of the costs that will be incurred for the closure work based on the bid accepted by the City of Covington. The escrow account shall be under the joint supervision of the City and the County and shall be used exclusively for closure and associated expenses of each locality in accordance with the Closure Agreement. In the event the City's share of closure expenses exceeds its contribution to the escrow fund, based on documented invoices presented prior to the effective date of town status, it shall be responsible for paying its share of such additional closure expenses in accordance with the Closure Agreement. In the event the City's share of closure expenses is less than its contribution to the escrow account, based on documented invoices presented prior to the effective date of town status, its share of the unused escrow funds shall be used after the effective date of town status exclusively for additional closure and post-closure expenses incurred in accordance with the Closure Agreement. Following the effective date of town status, the County shall be solely responsible for administering the escrow account and shall assume and be responsible for the Town's share of all additional closure and post-closure expenses, subject to

annual appropriations of sufficient funds by the County Board of Supervisors to satisfy such obligations. The parties recognize that the reversion to town status provided for in this Agreement requires the approval of the Court and the voters of the City. In the event the City should fail to revert to town status, the unexpended portion of the escrow funds contributed by the City and the County, including any interest earned, shall be returned to the originating party within 30 days after town status is rejected by the Court or by City voters.

3.10 Mental Health Services: The Alleghany Highlands Community Services Board ("CSB") currently provides mental health services to residents of Clifton Forge, Covington, and Alleghany County. In Clifton Forge, the CSB rents office space in a building owned by the City, pursuant to a 20-year lease entered into by the parties in June 1988. In lieu of making rental payments to the City, the CSB gives the City an annual credit equal to the rental value of the lease towards the City's annual contribution amount. Upon Clifton Forge's reversion to town status, the County will be responsible for the Town's share of local funding for the CSB. The Town will allow the CSB to continue to use the Town building during the duration of the lease in such a manner as will permit the County to receive the benefit of such annual credit.

3.11 Election Districts: The parties acknowledge that the existing election districts for the County's Board of Supervisors must be redrawn to encompass the Clifton Forge area. The County agrees to increase the membership of the Board of Supervisors from five to seven members. If reversion of the City to town status becomes effective on July 1, 2001, as provided for in §5.03, the County agrees to redraw its election districts to encompass the territory within Clifton Forge, as part of its decennial redistricting plan, and to submit its new redistricting plan to the United States Justice Department and such other governmental agencies as may be required

in order to have the districts approved. If the districts cannot be properly redrawn and approved for use at the November 2001 election, the County agrees to appoint two interim supervisors, selected from a list of at least five qualified individuals submitted by the Town Council of Clifton Forge, to serve until the following November 2003 general election, at which time two additional members of the Board of Supervisors will be elected. As provided in §24.2-219 of the Code, the County Electoral Board shall assign a two-year or four-year term of office for each of the two new districts so as to maintain as equal as practicable the number of members of the Board of Supervisors to be elected at each biennial election.

3.12 School Board Membership: The County Board of Supervisors currently appoints five members to the Alleghany Highlands School Board, and such members serve staggered, four-year terms. The City currently elects three members to the School Board. Upon the effective date of reversion, the terms of the City members on the School Board shall expire, and the County shall increase the number of County-appointed members from five to seven. When appointing the two additional School Board members, the County shall assign a shorter or longer term of office so as to maintain as equal as practicable the number of members of the School Board appointed every two years.

3.13 Transfer of Records and Equipment: As a result of the City's reversion to town status, the responsibilities of the City's constitutional officers will be assumed by the County's constitutional officers. The parties agree that all necessary records currently maintained by the City's constitutional officers and all necessary office equipment currently used by the City's constitutional officers will be transferred to the County's constitutional officers no later than the

effective date of the reversion. Any records or equipment not needed by the County's constitutional officers will remain the property of the Town.

3.14 Limited Waiver of Annexation Rights: The City agrees that, upon assuming the status of a town, it will not institute any proceeding for the annexation of territory in the County and will reject any annexation initiated by petition by voters, pursuant to Title 15.2, Chapter 32 (§§15.2-3200 et seq.) of the Code of Virginia, for a period of 12 years following the effective date of town status, unless the County consents to a boundary adjustment.

3.15 Extension of Hold Harmless Statute: Virginia Code §15.2-1302 provides that, for a period of five years following a governmental consolidation as a result of city-to-town reversion, the Commonwealth will continue to distribute state funds to the county for programs or functions in an amount that will not be less than the total amount that would have been distributed to the county and the city if the consolidation had not occurred. The City and the County agree that they will contact their General Assembly representatives to request that this so-called "hold harmless" provision be amended to extend for a period no less than 15 years following reversion to town status. The City and the County agree to use their "best efforts" to obtain this legislative amendment.

3.16 Composite Index of Local Ability-to-Pay: The City and the County agree that they will contact their General Assembly representatives to request that, for purposes of distribution of State educational aid to the County school system, the State Board of Education will use the composite index of either the City or the County, whichever is the lowest, for a period no less than 15 years following reversion to town status. The City and the County agree to use their "best efforts" to obtain this legislative amendment.

3.17 Referendum and Town Council: The parties agree that a special referendum election will be held to take the sense of the qualified voters of the City on the question whether the City should become a town. The special referendum election shall be held no less than sixty days from the date of the court order granting town status and as soon as practicable following that date. If a majority of those voting approve a transition to town status, the City shall become a town in accordance with this agreement. The mayor and members of the City council shall continue to serve as officers of the Town until the expiration of the terms to which they were elected. At the May general election immediately preceding the expiration of their terms, their successors shall be elected for the terms provided by the Town's charter.

SECTION 4. COMMISSION AND COURT APPROVAL

4.01 Commission Approval: The City and the County agree to initiate the steps necessary and required by Title 15.2, Chapter 34 of the Code (in particular §15.2-3400, paragraphs 3, 4, 5 and 6 of the Code) and Title 15.2, Chapter 29 of the Code (§15.2-2900 et seq.) to obtain a review of this Agreement by the Commission.

4.02 Submission to Court: Following the issuance of the report of findings and recommendations by the Commission, the City and the County agree that they will submit this Agreement in its present form to the Court for approval, as required by Title 15.2, Chapter 34 of the Code (in particular §15.2-3400, paragraphs 3, 4, 5 and 6 of the Code), unless both parties agree to any change in this Agreement as hereinafter provided.

4.03 Termination if Agreement Modified: The City and County agree that if this Agreement is not affirmed without modification by the Court, this Agreement shall immediately

terminate. However, the parties may waive termination by mutually agreeing to any recommended modifications.

SECTION 5. MISCELLANEOUS PROVISIONS

5.01 **Binding on Future Governing Bodies:** This Agreement shall be binding upon and inure to the benefit of the City and the County, and each of the future governing bodies of the City and the County, and upon any successor to either the City or the County.

5.02 **Amendments to Agreement:** This Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the City (or the Town) and the County, by a written document of equal formality and dignity, duly executed by the authorized representative of the City (or the Town) and the County.

5.03 **Effective Date of Reversion:** The City's reversion to town status shall be effective on July 1, 2001. If reversion is not effective on July 1, 2001, then reversion will become effective on the 1st day of January or on the 1st day of July following the date of the entry of such order, whichever date is earlier.

WITNESS the following signatures and seals.

CITY OF CLIFTON FORGE, VIRGINIA, a
municipal corporation of the Commonwealth of
Virginia

By: B. M. [Signature]
Mayor

ATTEST:

Nellie D. Friel
Clerk

COUNTY OF ALLEGHANY, VIRGINIA, a
political subdivision of the Commonwealth of
Virginia

By: Clayton W. [Signature]
Chairman

ATTEST:

Melissa A. Landis
Clerk

ANNOTATED INDEX

The following is an annotated listing of all documents, exhibits, and other materials submitted by the City of Clifton Forge and Alleghany County to the Commission on Local Government:

NOTICE	Required Notice to Commission on Local Government.
RESOLUTIONS	Resolutions of the City of Clifton Forge and Alleghany County approving the Agreement and authorizing the initiation of this proceeding.
SETTLEMENT AGREEMENT	Voluntary Settlement Of Town Status Issues Between The City Of Clifton Forge And The County Of Alleghany, which provides for the reversion of Clifton Forge to town status within Alleghany County, for the waiver of certain town annexation rights, and for other terms and conditions.
LOCAL GOVERNMENTS NOTIFIED	Listing of local governments and officials receiving Notice, Resolutions, Agreement and Annotated Index.

Materials previously submitted by the City in the contested proceeding, which are incorporated by reference to the extent applicable:

INTRODUCTION	Narrative description of the town reversion statute and the background proceedings regarding consolidation.
GOVERNMENTAL SERVICES	Narrative and tabular descriptions of public services and functions provided in the existing City in comparison to that proposed for Clifton Forge after reversion to town status including: <ol style="list-style-type: none">1. Public Education2. Judicial Administration3. Commissioner of Revenue4. Treasurer

5. Board of Elections
6. Department of Social Services
7. Health Services
8. Mental Health Services
9. Solid Waste Disposal
10. Urban Services.

INTERESTS OF THE PARTIES AND STATE:

1. Impact on County A narrative and tabular description
of the impact of the proposed reversion to town status
on Alleghany County
2. Interests of the Parties A narrative description of the interests
of Clifton Forge and Alleghany County and the people
of the entire community respecting the status of
Clifton Forge as an independent city compared to
Clifton Forge as a town in Alleghany County.
3. Interests of the State A narrative description of the interests
of the Commonwealth in terms of the status of Clifton
Forge as an independent city compared to Clifton
Forge as a town in Alleghany County.

TERMS AND CONDITIONS A narrative description of the terms and conditions
which the City proposed as part of its transition to
town status in Alleghany County.

ANNOTATED INDEX This index.

ADDENDUMS:

- A. General Data Tabular description of Clifton Forge and Alleghany
County with statistical information regarding land
areas, populations, public schools, tax values, tax rates,
revenues, indebtedness and construction activity.
- B. Financial
Statements Copies of the City's and the County's
audited financial statements of revenues and
expenditures (budget and actual) for fiscal year ended
June 30, 1998.

C. Intergovernmental Agreements Copies of intergovernmental agreements between the City and the County, which pertain to schools, prisons, and mental health services.

D. Reports Copy of Task Force 2000 Final Report.

MAP EXHIBITS Map showing the City of Clifton Forge, and a map showing the cities of Clifton Forge and Covington in relation to the County of Alleghany.

Materials previously submitted by the County in the contested proceeding, which are incorporated by reference to the extent applicable:

INTRODUCTION

GOVERNMENTAL SERVICES Narrative description of public services and functions provided by the County before and after the City's reversion to Town status.

1. Public Education
2. Judicial Administration
3. Health Services
4. Solid Waste Disposal
5. Urban Services.

ENHANCED 911 SERVICE (E-911) Narrative description of the impact of the proposed reversion on Alleghany County.

REAL ESTATE TAXES Narrative description of the impact of the proposed reversion on Alleghany County.

REAL ESTATE REASSESSMENT Narrative description of the impact of the proposed reversion on Alleghany County.

ECONOMIC DEVELOPMENT AUTHORITY Narrative description of the impact of the proposed reversion on Alleghany County.

ANNEXATION

Narrative description of the impact of the proposed reversion on Alleghany County.

INTERESTS OF THE PARTIES AND STATE

A narrative description of the interests of Clifton Forge, Alleghany County and the Commonwealth respecting the State of Clifton Forge as an independent city compared to Clifton Forge as a town in Alleghany County.

EXHIBITS

- A. Analysis prepared by Robinson, Farmer, Cox Associates
- B. Financing strategies prepared by Davenport & Company
- C. Report prepared by Cole and King

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ASSIGMENTS OF ERROR

I. The Court below erred in finding that Alleghany County had the authority to tax tangible personal property physically located and normally garaged in the City (now Town) of Clifton Forge, Virginia during calendar year 2001.

II. The Court below erred in holding Senate Bill 246 constitutional;

III. The Court below erred in hold Senate Bill 246 to be a constitutional "Special Act."

IV. The Court below erred in holding that "Forcing the Legislature to play drafting games in order to have Chapter 78 [S.B. 246] be general in nature, thus in full compliance with Article 4, Section 14, of the State Constitution would not have been an efficient use of their time and may have resulted in no action at all by them."

V. The Court below erred in failing to hold that Article 7, Section 7 "trumps" Article 7, Section 2.