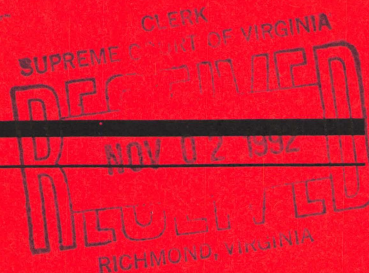


245 VA 143



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IN THE

# Supreme Court of Virginia

AT RICHMOND

---

Record No. 920776

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COUNTY OF GREENSVILLE, et al.

Appellants,

v.

CITY OF EMPORIA, et al.

Appellees.

---

JOINT APPENDIX

---

C. Richard Cranwell, Esquire  
James E. Buchholtz, Esquire  
Cranwell & Moore  
P. O. Box 11804  
Roanoke, VA 24022-1804  
(703) 344-1000

Counsel for Appellants

Carter Glass, IV, Esquire  
Anthony F. Troy, Esquire  
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P. O. Box 1122  
Richmond, VA 23208-1122  
(804) 697-1339

Counsel for Appellees

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IN THE

**Supreme Court of Virginia**

AT RICHMOND

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Record No. 920776  
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Appellants,

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**JOINT APPENDIX**  
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P. O. Box 1122  
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(804) 697-1339

Counsel for Appellees

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VIRGINIA:

IN THE CIRCUIT COURT OF GREENSVILLE COUNTY

CITY OF EMPORIA, WILLIAM H. LIGON,  
GEORGE B. LIGON, JR., SAMUEL W. ADAMS, III,  
JULIA L. JONES, NANCY B. SQUIRE,  
JOHN R. WHITE, F. WOODROW HARRIS,  
JAMES A. CAREY, and RONNIE L. WHITE

Plaintiffs,

v.

COUNTY OF GREENSVILLE

SERVE: Russell O. Slayton, Jr.  
Attorney for the County of Greenville  
411 South Hicks Street  
Lawrenceville, Virginia

and

BOARD OF SUPERVISORS OF  
GREENSVILLE COUNTY,

SERVE: Peggy R. Wiley, Chairman  
Route 3, Box 252  
Emporia, Virginia

James E. Ewing, Jr., Vice-Chairman  
115 Walnut Circle  
Emporia, Virginia

Garland P. Faison  
Route 1, Box 112  
Emporia, Virginia

Michael W. Ferguson  
HC 1, Box 205  
Emporia, Virginia

Defendants.

BILL OF COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, City of Emporia ("City" or "Emporia"),  
William H. Ligon, George B. Ligon, Jr., Samuel W. Adams, III,  
Julia L. Jones, Nancy B. Squire, John R. White, F. Woodrow Harris,

000001

James A. Carey, and Ronnie L. White, by counsel, for their Bill of Complaint for Declaratory Judgment represent unto the Court as follows:

1. Plaintiff City is a municipal corporation of the Commonwealth of Virginia, existing and organized as a city of the second class pursuant to general law and a charter granted by the General Assembly.

2. Plaintiff William H. Ligon is the Mayor of the City of Emporia. Plaintiffs George B. Ligon, Jr., Samuel W. Adams, III, Julia L. Jones, Nancy B. Squire, John R. White, F. Woodrow Harris, James A. Carey and Ronnie L. White currently serve as members of the City Council, which is the governing body of the City of Emporia, and they are registered voters and taxpayers of Emporia.

3. Defendant County of Greenville ("County" or "Greenville") is a county of the Commonwealth of Virginia, and the defendant Board of Supervisors of Greenville County ("County Board") is the governing body of the County.

4. Emporia was formerly a town that constituted part of Greenville County. On July 31, 1967, Emporia became an independent city pursuant to a court decree entered in a town-to-city transition proceeding authorized by Chapter 623 of the 1962 Acts of Assembly, and its municipal boundaries are now surrounded by, and contiguous with, the boundaries of the County.

5. As a city of the second class, Emporia remains within the jurisdiction of the Circuit Court of Greenville County, and thus the City and the County are served by a single

circuit court. Likewise, the Commonwealth's Attorney, the Clerk of the Circuit Court, and the Sheriff of Greenville County each serve the City and the County, and the qualified voters of Emporia participate in the election of those officers.

6. The courthouse and clerk's office of the Circuit Court of Greenville County are located at 337 South Main Street in Emporia.

7. As required by Chapter 623 of the 1962 Acts of Assembly, Emporia and Greenville currently share certain costs and expenses of the Circuit Court courthouse and clerk's office in proportion to the population that each bears to the aggregate population of both localities.

8. On January 9, 1991, the County Board adopted Resolution No. 91-59 ("Resolution"), which directed the County Administrator to proceed with all planning necessary to relocate the Circuit Court courthouse from its present location to a six-acre site located along U.S. Highway 301 within the County, which land is not contiguous with the present site of the Circuit Court courthouse. The Resolution also invited Emporia to join with Greenville in the construction of the new Circuit Court courthouse at that location along with a new jail facility. A copy of the Resolution is attached as Exhibit A.

9. In a letter dated January 16, 1991 from Tedd E. Povar, City Manager of Emporia, to K. David Whittington, County Administrator of Greenville, the City Council advised the County Board that (1) it was opposed to the removal of the Circuit Court courthouse from its present site; that (2) the enlargement and



renovation of the existing Circuit Court courthouse, rather than the building of a new structure at a different site, would be in the best interests of the citizens of Emporia and Greenville; and that (3) the removal of the Circuit Court courthouse would require referendum approval of the voters of Emporia and Greenville before the Board could take such action. A copy of the letter is attached as Exhibit B.

10. In a letter dated January 22, 1991 from K. David Whittington to Tedd E. Povar, the County Board advised Emporia that if it did not wish to join Greenville in the construction of a courthouse at the new site, Greenville proposed to (1) proceed with the construction of the new Circuit Court courthouse to accommodate the Greenville caseload and (2) to lease the existing Circuit Court courthouse to Emporia for its caseload, contingent upon Emporia bearing all renovation costs necessary to bring the courthouse up to required standards. A copy of the letter is attached as Exhibit C.

11. In a letter dated January 24, 1991 from Tedd E. Povar to K. David Whittington, Emporia rejected the proposal of the County Board. A copy of the letter is attached as Exhibit D.

12. Upon information and belief, the County Board, in accordance with the Resolution, intends to undertake the following actions: (1) to relocate, in part, the Circuit Court courthouse by construction of a second courthouse building at the new site along U.S. Highway 301 to accommodate Greenville's caseload; (2) to continue operating the present Circuit Court courthouse in Emporia to handle the City's caseload; and (3) to move the Circuit

Court clerk's office to the new courthouse with a satellite office remaining at the present courthouse site.

13. Chapter 623 of the 1962 Acts of Assembly states that there shall be only one circuit court courthouse and clerk's office for any city of the second class and the county with which it shares circuit court courthouse facilities. Likewise, the Charter of the City of Emporia, which is set forth in Chapter 78 of the 1968 Acts of Assembly, states that there shall be only one circuit court courthouse and clerk's office for Emporia and Greenville.

14. The construction and operation of a second Circuit Court courthouse by the County Board, pursuant to the Resolution, would violate both the 1962 Acts of Assembly, Chapter 623, and the 1968 Acts of Assembly, Chapter 78.

15. Virginia Code § 15.1-559 requires that referendum approval be obtained by a board of supervisors before the removal of a circuit court courthouse to another location. Where the circuit court courthouse is shared by a city and a county, the referendum must be held in both localities.

16. A referendum on the question of removal has not been held in the City and the County, and therefore the partial relocation of the Greenville County Circuit Court courthouse, pursuant to the Resolution, would violate Virginia Code § 15.1-559.

17. Because of the actions taken by the County Board, an actual controversy exists between the plaintiffs and the defendants involving an antagonistic assertion and denial of

rights involving the statutory authority of the County Board to operate two courthouses and clerk's offices for the Circuit Court and to construct a new Circuit Court courthouse at a site in the County without first obtaining referendum approval.

18. The plaintiffs have no adequate remedy at law.

WHEREFORE, the plaintiffs respectfully request that, pursuant to § 8.01-184 et seq. of the Virginia Code, this Court:

a. Declare that the construction and operation of two courthouses and clerk's offices for the Greensville County Circuit Court would violate the 1962 Acts of Assembly, Chapter 623, and the 1968 Acts of Assembly, Chapter 78;

b. Declare that the County Board may not construct a new Circuit Court courthouse at a site in the County without first obtaining referendum approval of the qualified voters of the County and the City pursuant to Virginia Code § 15.1-559; and

c. Enjoin defendants (1) from constructing and operating two courthouses and clerk's offices for the Circuit Court and (2) from removing the Circuit Court courthouse from its present location without obtaining referendum approval from the qualified voters in Emporia and Greensville on the question of removal.



CITY OF EMPORIA, WILLIAM H. LIGON,  
GEORGE B. LIGON, JR., SAMUEL W. ADAMS, III,  
JULIA L. JONES, NANCY B. SQUIRE,  
JOHN R. WHITE, F. WOODROW HARRIS,  
JAMES A. CAREY, and RONNIE L. WHITE

By Carter Glass IV  
Of Counsel

Anthony F. Troy  
Carter Glass, IV  
Harold E. Greer, III  
Mays & Valentine  
1111 East Main Street  
P. O. Box 1122  
Richmond, Virginia 23208-1122

#91-59

A RESOLUTION OF THE BOARD OF SUPERVISORS  
OF GREENSVILLE COUNTY, VIRGINIA, AUTHORIZING  
THE EXECUTION OF AN OPTION ON A SITE FOR  
A JOINT COURT FACILITY AND JAIL

WHEREAS, the Judges of the Circuit Court of Greenville County, Virginia, by ORDERS entered May 8, 1990, and June 22, 1990, directed that the Board of Supervisors of Greenville County and the City Council of the City of Emporia show cause why the Circuit Courthouse and the Jail should not be made secure, put in good repair and/or rendered otherwise sufficient; and

WHEREAS, the Board of Supervisors pursuant to such orders has proceeded with the review process of both facilities to the point that it now deems it feasible to secure an option on a site of sufficient size to permit the construction of a new court facility and a new jail of sufficient size to meet current space needs of the courts and the jail and with sufficient space to accommodate future expansion of both facilities and to locate the jail away from the density of population in the City; and

WHEREAS, there is no suitable site of sufficient size in the City to accommodate the current and future space requirements of the court facilities and jail.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Greenville County, Virginia, at a meeting held on January 9, 1991;

1) That the Board hereby accepts from the Greenville County Water and Sewer Authority transfer of its rights under an option contract dated January 7, 1991, which grants to the Authority a six month option to purchase 6.00 acres of land located on U. S. Highway 301 in Greenville County for the use as a site for the construction of a new court facility and jail to accommodate the current and future needs of the County and City for a Circuit Court, General District Court, Juvenile and Domestic Relations District Court and Jail; and

2) That the County Administrator is directed to proceed expediently to complete all planning necessary to effect the construction of the new court facility and new jail on such site; and

3) That the City of Emporia be notified of the Board's decision on this issue and be specifically invited to join with the County in the construction of a new joint court facility and jail of sufficient size and character to accommodate the current and future court and jail space needs of the County and City; and

4) That the County Administrator, Special Legal Counsel and Consultants are directed to take all such action or actions as may be necessary to accomplish the objectives set forth herein; and

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5) That the Board shall, throughout the course of all proceedings related to the court facilities and jail, continue to work toward an amicable resolution of such matters with the appropriate officials of the City of Emporia and the Commonwealth of Virginia as party plaintiffs for the Honorable Robert G. O'Hara, Jr., and W. Park Lemmond, Jr., Judges of the Circuit Court of Greenville County, Virginia.

ROLL CALL VOTE	AYE	NAY
1) Peggy R. Wiley, Chairman	<u>X</u>	<u>    </u>
2) James E. Ewing, Jr., Vice-Chairman	<u>X</u>	<u>    </u>
3) Garland P. Faison	<u>X</u>	<u>    </u>
4) Michael W. Ferguson	<u>    </u>	<u>X</u>

IN WITNESS WHEREOF, the Board of Supervisors of Greenville County has caused this RESOLUTION to be executed on its behalf by its Chairman and attested by its Clerk.

  
\_\_\_\_\_  
Peggy R. Wiley, Chairman  
Greenville County Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
K. David Whittington, Clerk  
Greenville County Board of Supervisors

Adopted this 9th day of January, 1991.

000003





# **CITY OF EMPORIA**

January 16, 1991

K. David Whittington  
County Administrator  
County of Greensville  
301 South Main Street  
Emporia, VA 23847

**RE: Courthouse Resolution**

Dear Mr. Whittington:

We have received a copy of Resolution No. 91-59, dated January 9, 1991, by which the Board of Supervisors has invited the City of Emporia to join with the County in the construction of a new court facility and jail at a six-acre site located on U. S. Highway 301 in Greensville County.

I am authorized to inform you that the City opposes the construction of such a courthouse complex at a new site. The City Council continues to believe that the enlargement and renovation of the current County Courthouse, rather than the building of a new structure at a different site, will be in the best interests of the citizens of the City and County. By making use of the existing facility, the County and City could save substantial funds and could retain the many advantages of the present site which is at the geographical center of both localities.

In addition, even if the City were willing to support a movement of the Courthouse to a new location, we have been advised that Virginia law requires referendum approval by voters of the City and County before the Board of Supervisors could take such action.

Please let me know what alternative the Board of Supervisors will pursue in light of the City's position on this matter.

Very truly yours,

Tedd E. Povar  
City Manager

cc. City Attorney

000010





# County of Greensville

Peggy R. Wiley  
Chairman

James E. Ewing, Jr.  
Vice Chairman

K. David Whittington  
County Administrator

Russell C. Slayton, Jr.  
County Attorney

January 22, 1991

Mr. Tedd E. Povar  
City Manager  
City of Emporia  
P. O. Box 511  
Emporia, Virginia 23847

RE: Courthouse/Jail

Dear Mr. Povar:

I am in receipt of your letter dated January 17, 1991. I appreciate your prompt response. Please be advised that is the County's intention to pursue the construction of a new courthouse and jail in the County pursuant to recommendations of its consultants. If it is not the desire of the City to pursue such a joint venture with the County, we would recommend the following plan which is acceptable to the County:

1. The County will construct a new Circuit Court and General District Court to accommodate the County caseload as it currently exists with sufficient space to accommodate growth for the next 10 to 15 years;
2. The County will construct a jail of sufficient size to accommodate the current prisoner population and the projected growth of the County over the next 10 to 15 years;
3. The court and the jail will be constructed on the 6 acre site located on U. S. Highway 301 in Greensville County;
4. The County will lease the existing Courthouse facility located in the City to the City of Emporia for its Circuit Court and General District Court caseload, contingent upon Emporia bearing all costs necessary to bring that facility up to standards imposed by the Judges or pursuant to the pending court proceeding;

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Mr. Povar  
Page 2  
January 22, 1991

5. Because the existing jail facility is so deficient and inadequate, the County will not assume liability for its continued use, and accordingly, will not lease or sell that facility. However, County does hereby renew its invitation that the City join with it in construction of a new regional jail adequate to satisfy the needs of both localities;
6. Please be advised that the County would expect to relocate the Clerk of the Circuit Court to the facility located in Greensville County with sufficient space to provide a satellite Clerk's Office in the City.
7. The County is not opposed to, and would support, City efforts to obtain legislative approval to establish its own Circuit Court separate and apart from the County Circuit Court so the City can have its own Clerk.

You should also note that we have been advised by our legal counsel that the Court facility can be relocated without the necessity of a referendum, as we would not be moving the County Administration facilities, the Commission of the Revenue, the Treasurer, or the Commonwealth's Attorney's Office. The only constitutional offices that would be relocated would be that of Sheriff and Clerk which would move to the new facility. The County recognized that were it to seek to move the seat of government, the law does require voter approval in a referendum.

You should note that the County is committed to relocating the Courthouse and Jail as expressed by resolution number 91-59 dated January 9, 1991. You should also know that if none of the alternatives expressed in this letter are acceptable to the City, we are probably at a point to where nothing short of litigation will resolve the difference between the City and the County.

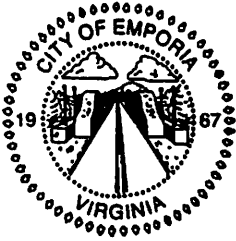
Sincerely,

  
K. David Whittington  
County Administrator

KDW/lw

000012





# CITY OF EMPORIA

January 24, 1991

K. David Whittington  
County Administrator  
County of Greensville  
301 South Main Street  
Emporia, VA 23847

RE: Courthouse Proposal

Dear Mr. Whittington:

I have received your letter dated January 22, 1991, in which you described, on behalf of the Board of Supervisors, an alternative plan regarding the construction of a new courthouse facility.

Specifically, among other items you proposed (a) that the County construct a new courthouse at a site on U. S. Highway 301 in Greensville County to accommodate the County's caseload and (b) that the City lease the existing courthouse from the County to handle Emporia's caseload.

Such a proposal is not satisfactory to the City Council because it would result in duplicative courthouse facilities and would, therefore, increase the capital and operating expenses for both localities. We do not believe that such a result would be in the best interests of the citizens of either the City or the County. Accordingly, the City must reject your alternative.

With the City's rejection of the two options that you have presented, it is my understanding that the Board of Supervisors nevertheless intends to proceed with the relocation, in part, of its courthouse facilities by constructing a new courthouse at the U. S. Highway 301 site within Greensville County to accommodate the County's caseload in the Circuit Court and General District Court. At the same time, the Board intends to continue to operate the existing courthouse located within Emporia to handle the City's caseload in the Circuit Court. Also, the principal offices of the Clerk of the Court will be relocated to the new courthouse facility with a satellite office remaining at the present courthouse site.

I would appreciate it if you could promptly confirm my understanding of the course of action that the Board of Supervisors will now pursue.

Very truly yours,

Tedd E. Povar  
City Manager

cc. City Attorney

000013



VIRGINIA:

IN THE CIRCUIT COURT OF GREENSVILLE COUNTY

CITY OF EMPORIA, WILLIAM H. LIGON	:	
GEORGE B. LIGON, JR., SAMUEL W. ADAMS,	:	
III, JULIA L. JONES, NANCY B. SQUIRE,	:	
JOHN R. WHITE, F. WOODRUM HARRIS	:	
JAMES A. CAREY, and RONNIE L. WHITE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
COUNTY OF GREENSVILLE,	:	RESPONSE AND
	:	GROUND OF DEFENSE
	:	Case No.: 3183
and	:	
	:	
BOARD OF SUPERVISORS OF GREENSVILLE	:	
COUNTY,	:	
	:	
Defendants.	:	

Defendants, County of Greenville ("Greenville") and Peggy R. Wiley, Chairman, James E. Ewing, Jr., Vice-Chairman, Garland P. Faison and Michael W. Ferguson, the Board of Supervisors and governing body of the County of Greenville (the "Board") files this their Response and Grounds of Defense to the Bill of Complaint for Declaratory Judgment (the "Complaint") filed against them on February 7, 1991, and would show unto the Court as follows:

1) The allegations contained in paragraphs 1 through 4 of the Complaint are admitted.

2) The allegations contained in paragraph 5 of the Complaint are admitted insofar as the City of Emporia ("Emporia") is a part of the same judicial circuit as Greenville and that several of the same Constitutional Officers serve both Emporia and

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Greensville as made and provided by law all other allegations in paragraph 5 of the Complaint are denied.

3) The allegations contained in paragraph 6 of the Complaint are admitted insofar as the court facility of the Circuit Court of Greensville County is so located, all other allegations or inferences in paragraph 6 are denied.

4) The allegations contained in paragraph 7 of the Complaint are denied.

5) The allegations contained in paragraph 8 of the Complaint are admitted. In further answer, the County and Board of Supervisors of Greensville County would state that all actions of the County and Board are necessitated by the show cause proceedings initiated by Circuit Court Judges O'Hara and Lemmond.

6) The allegations contained in paragraph 9 of the Complaint are admitted insofar as a letter dated January 16, 1991, from Tedd E. Povar was sent to K. David Whittington but Greensville denies conclusions (2) and (3) of paragraph 9 expressed by the City of Emporia are accurate legal conclusions.

7) The allegations contained in paragraph 10 and 11 of the Complaint are admitted.

8) The allegations contained in paragraph 12 of the Complaint are denied insofar as it is alleged that Greensville intends to relocate the Circuit Court courthouse, it being the intent of Greensville to build a new court facility of adequate size to accommodate current and future case loads of the County and leave the old court facility in the City for its use at its present

location. In further answer, the County and Board of Supervisors would specifically state that the current law permits multiple circuit courts facilities.

9) The allegations contained in paragraphs 13 and 14 of the Complaint are denied inasmuch as the statutory and charter provisions protect a second class city from being compelled to construct a separate courthouse, but in no wise prevent a county from constructing an additional court facility as is specifically provided by law.

10) The allegations contained in paragraph 15 of the Complaint are denied because Virginia Code §15.1-559 requires that a referendum be held to remove or relocate a "County Seat" and not simply a courthouse facility, and Greenville does not now nor has it ever proposed to move the seat of County government.

11) The allegations contained in paragraph 16 of the Complaint are denied because a referendum is not required to build an additional court facility on a new site.

12) The allegations contained in paragraph 17 of the Complaint are denied inasmuch as Greenville's assertion of the right to construct an additional court facility without referendum on a site in the County does not antagonistically deny Emporia any right.

13) The allegations contained in paragraph 18 of the Complaint are denied.

WHEREFORE, the Defendants having fully answered respectfully move this Court to dismiss this proceeding with their costs allowed.

COUNTY OF GREENSVILLE and BOARD OF  
SUPERVISORS OF GREENSVILLE COUNTY

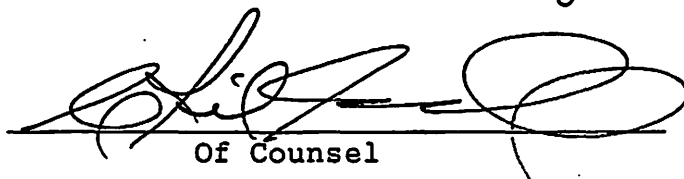
By: 

Of Counsel

C. Richard Cranwell, Esquire  
Tyler M. Moore, Esquire  
James E. Buchholtz, Esquire  
CRANWELL & MOORE  
P. O. Box 11804  
Roanoke, Virginia 24022-1804

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Response and Grounds of Defense was mailed or delivered to: Carter Glass, IV, Esquire, Mays & Valentine, P. O. Box 1122, Richmond, Virginia 23208-1122 on the 25<sup>th</sup> day of February, 1991.

  
Of Counsel

**VIRGINIA:**

IN THE CIRCUIT COURT OF GREENSVILLE COUNTY

CITY OF EMPORIA, WILLIAM H. LIGON,  
GEORGE B. LIGON, JR., SAMUEL W. ADAMS, III,  
JULIA L. JONES, NANCY B. SQUIRE,  
JOHN R. WHITE, F. WOODROW HARRIS,  
JAMES A. CAREY, and RONNIE L. WHITE

Plaintiffs,

**v.**

In Chancery No. 3183

COUNTY OF GREENSVILLE

**and**

BOARD OF SUPERVISORS OF  
GREENSVILLE COUNTY,

**Defendants.**

**JOINT STIPULATION**

For purposes of this suit only, the plaintiffs and the defendants, by counsel, stipulate to the following factual matters:

1. Plaintiff City of Emporia ("City" or "Emporia") is a municipal corporation of the Commonwealth of Virginia, existing and organized as a city of the second class pursuant to general law and a charter granted by the General Assembly.

2. Plaintiff William H. Ligon is the Mayor of the City of Emporia and is a registered voter and taxpayer of the City.

3. Plaintiffs George B. Ligon, Jr., Samuel W. Adams, III, Julia L. Jones, Nancy B. Squire, John R. White, F. Woodrow Harris, James A. Carey, and Ronnie L. White currently serve as members of the City Council, which is the governing body of the

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City of Emporia, and each is a registered voter and taxpayer of Emporia.

4. Defendant County of Greenville ("County" or "Greenville County") is a county of the Commonwealth of Virginia, and defendant Board of Supervisors of Greenville County ("County Board") is the governing body of the County.

5. The City has a total population of 5,306 persons based on the 1990 U.S. Census.

6. The County has a total population of 8,853 persons based on the 1990 U.S. Census.

7. Emporia was formerly a town that constituted part of Greenville County. On July 31, 1967, Emporia became an independent city pursuant to a court decree entered in a town-to-city transition proceeding authorized by Chapter 623 of the 1962 Acts of Assembly, and its municipal boundaries are now surrounded by, and contiguous with, the boundaries of the County.

8. As a city of the second class, Emporia remains within the jurisdiction of the Circuit Court of Greenville County, and thus the City and the County are within the same judicial circuit and are served by the same Circuit Court.

9. The qualified voters of Emporia and Greenville County jointly elect a Commonwealth's Attorney, a Clerk of the Circuit Court, and a Sheriff.

10. The County owns and maintains a two-story courthouse building (the "Courthouse") that serves as the court facility for the Circuit Court, General District Court, and Juvenile and Domestic Relations Court of Greenville County.

Greensville County also owns and maintains a two-story building that houses the County's Administrative Offices, the Greensville County Water and Sewer Authority, and the County Building and Planning Offices, located at 301 South Main Street; a one-story public building used by the Clerk of the Circuit Court, located at 337 South Main Street; a two-story Sheriff's Office and Jail located at 315 South Main Street and a one-story public building used as the Health Department building, located behind the County Administration Building. All five buildings are located on a parcel containing 2.75 acres, more or less, commonly referred to as the Courthouse Square, which is generally bounded to the north and east by Spring Street, to the west by South Main Street, and to the south by Hicksford Avenue. A site plan, attached as Exhibit A, depicts all structures located on Courthouse Square.

11. The second floor of the Courthouse contains the courtroom used by the Greensville County Circuit Court, an office for the Circuit Court judge, a jury room, law library, prisoner holding area, and associated facilities used in connection with the functioning of the Circuit Court. A floor plan depicting the existing uses of the second floor of the Courthouse is attached as Exhibit B. The Courthouse contains the only courtroom in Emporia or Greensville County that is used by the Greensville County Circuit Court.

12. The first floor of the Courthouse contains a courtroom used by the Greensville County General District Court and the Greensville County Juvenile and Domestic Relations District Court, a clerk's office for the District Courts, an

office for the Judges of the District Courts, offices for the Commissioner of Revenue of Greenville County and the Treasurer of Greenville County, and related facilities. A floor plan depicting the existing uses of the first floor of the Courthouse is attached as Exhibit C.

13. As required by law, Emporia reimburses Greenville County for a portion of certain costs and expenses of the Greenville County Circuit Court, the Clerk of the Circuit Court of Greenville County, the Commonwealth's Attorney of Greenville County, and the Sheriff of Greenville County. The amount paid by the City is based on the proportion that the City's population bears to the aggregate population of the City and the County. For the 1989-90 fiscal year, the City paid the County \$188,566.00 as its share of the expenses for the Circuit Court and the constitutional officers shared by the City and the County.

14. The State Compensation Board has authorized the Clerk of the Circuit Court of Greenville County to employ a maximum of two deputy clerks and two assistant clerks in the operation of the Clerk's Office, and the Clerk currently employs two individuals in each of those positions.

15. On January 9, 1991, the County Board adopted Resolution No. 91-59 (the "Resolution"), which directed the County Administrator to proceed with all planning necessary to construct a new court building in Greenville County on a six-acre parcel located along U.S. Highway 301 within the County. This land is not contiguous with the present site of the Courthouse, but rather is located about two and one-quarter miles from the present

Courthouse Square. The Resolution invited Emporia to join with Greensville County in the construction of a new court facility at that location along with a new jail facility. A copy of the Resolution is attached as Exhibit D.

16. In a letter dated January 16, 1991, from Tedd E. Povar, City Manager of Emporia, to K. David Whittington, County Administrator of Greensville County, the City Council advised the County Board that it was opposed to construction of a court building on the County site. A copy of the letter is attached as Exhibit E.

17. In a letter dated January 22, 1991, from K. David Whittington to Tedd E. Povar, the County Board advised Emporia that if it did not wish to join Greensville County in the construction of a new courthouse at the County site, the County proposed to (1) proceed with the construction of a new Circuit Court and General District Court to accommodate the case load of Greensville County and (2) to lease the existing Courthouse to Emporia for its case load, contingent upon Emporia bearing all renovation costs necessary to bring the Courthouse up to required Court standards. A copy of the letter is attached as Exhibit F.

18. In a letter dated January 24, 1991, from Tedd E. Povar to K. David Whittington, Emporia rejected the proposal of the County Board. A copy of the letter is attached as Exhibit G.

19. In accordance with the Resolution, the County Board intends to undertake the following actions:

(a) It will locate and construct a court building at a site in the County which will not be contiguous to the

present Courthouse Square. The court building will include: (i) a courtroom and associated facilities for the Circuit Court of Greenville County, (ii) offices for the Clerk of the Greenville County Circuit Court, (iii) a courtroom and associated facilities for the Greenville County General District Court and the Greenville County Juvenile and Domestic Relations District Court, and (iv) offices for the Clerks of the District Courts;

(b) It will continue to operate and maintain the present Courthouse on the Courthouse Square in Emporia, in which it will provide: (i) a second courtroom and associated facilities for the use of the Circuit Court of Greenville County (ii) offices for the County Treasurer and County Commissioner of Revenue, and (iii) a meeting room for the Board of Supervisors.

(c) It will construct a jail facility on the County site and cease using the building on Courthouse Square currently housing jail facilities.

(d) It will continue to maintain the other three public buildings owned by the County on the Courthouse Square, in which will be provided: (i) an office and associated facilities for the Clerk of the Circuit Court of Greenville County, (ii) offices for the County Administrator, for the County Registrar, and for other County administrative and governmental functions; and (iii) facilities for the Health Department.

(e) Upon the completion of the court building at a site in the County, the County Board will no longer provide at the Courthouse Square in Emporia: (i) any courtroom or associated facilities for the Greenville County General District Court or the Greenville County Juvenile and Domestic Relations District Court, or (ii) offices for the Clerks of the Greenville County District Courts. Those facilities will be provided at the court building in the County.

20. A referendum on the question of the construction of the court facility has not been held in the County or the City, and the County Board does not intend to request that such a referendum election be held.

21. The Circuit Court of Greenville County used the circuit court courtroom in the existing Courthouse on 46 days during the last twelve months, July 1, 1990 through June 30, 1991, or an average of slightly less than one day per week.

CITY OF EMPORIA, WILLIAM H. LIGON,  
GEORGE B. LIGON, JR., SAMUEL W. ADAMS,  
III, JULIA L. JONES, NANCY B. SQUIRE,  
JOHN R. WHITE, F. WOODROW HARRIS,  
JAMES A. CARRY and RONNIE L. WHITE

By

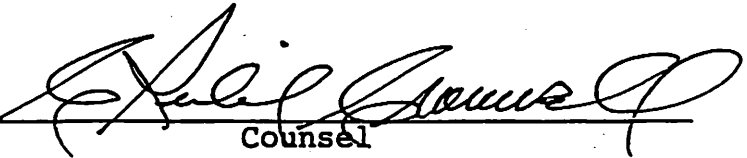
  
Counsel

Anthony F. Troy  
Carter Glass, IV  
Harold E. Greer, III  
Mays & Valentine  
1111 East Main Street  
P. O. Box 1122  
Richmond, Virginia 23208-1122

Counsel for Plaintiffs

COUNTY OF GREENSVILLE AND BOARD OF  
SUPERVISORS OF GREENSVILLE COUNTY

By

  
Counsel

C. Richard Cranwell  
Tyler M. Moore  
James E. Buckholtz  
Cranwell & Moore  
P. O. Box 11804  
Roanoke, Virginia 24022-1804

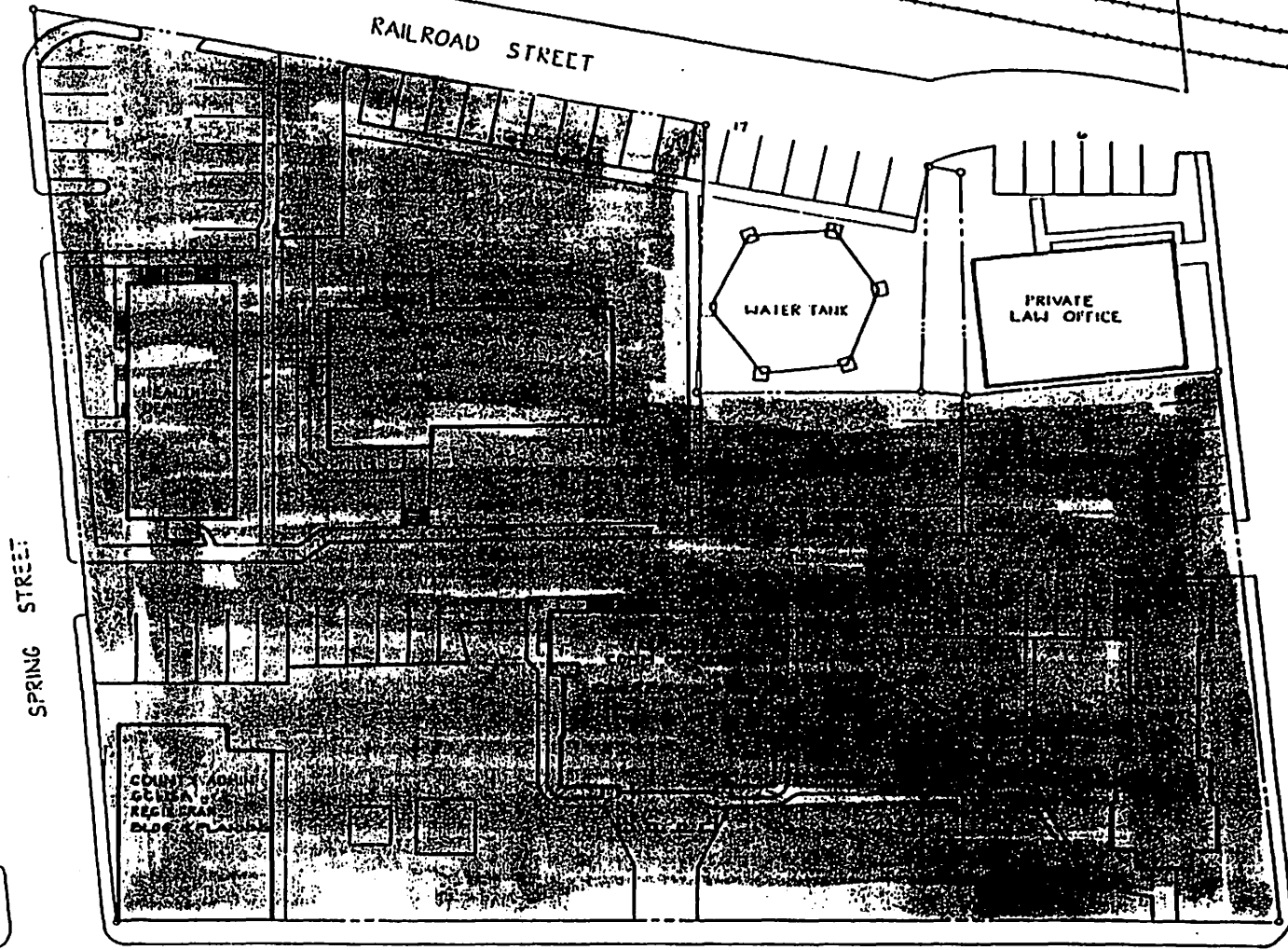
Counsel for Defendants



EXHIBIT "A"

000027

06

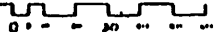


SOUTH MAIN STREET

# GREENSVILLE COUNTY COURTHOUSE SQUARE



SITE PLAN

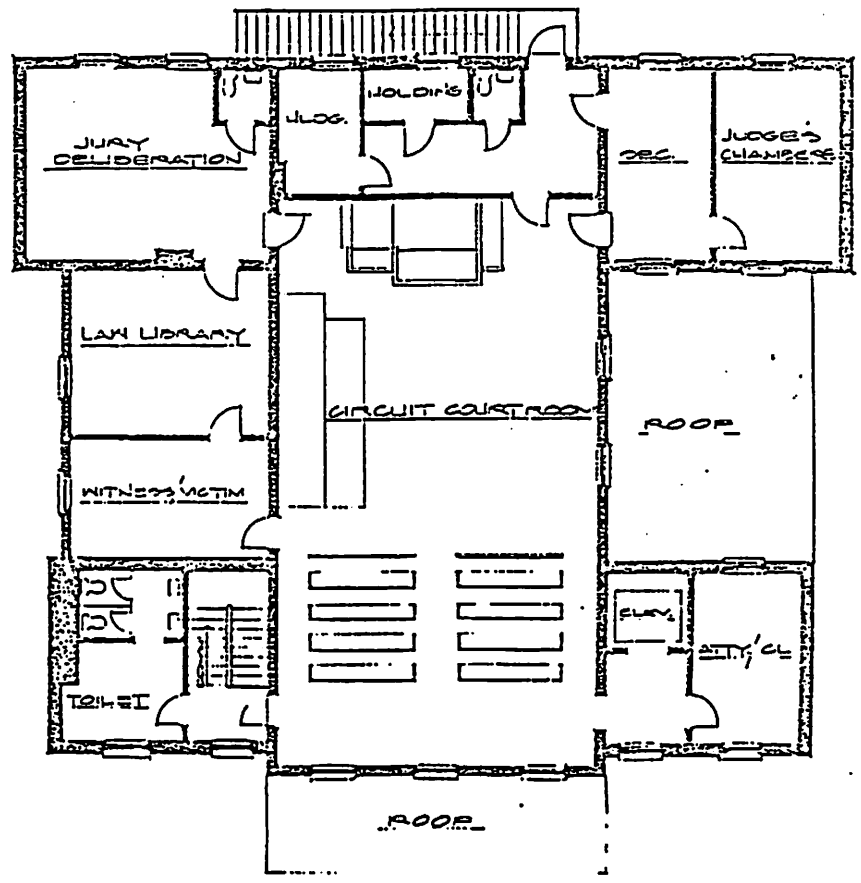


ACRES 2.75

WYLIE R. COOKE AND ASSOCIATES  
Architecture • Planning • Interiors

Monticello Arcade, Norfolk, VA 23510 804/626 0695

EXHIBIT "B"

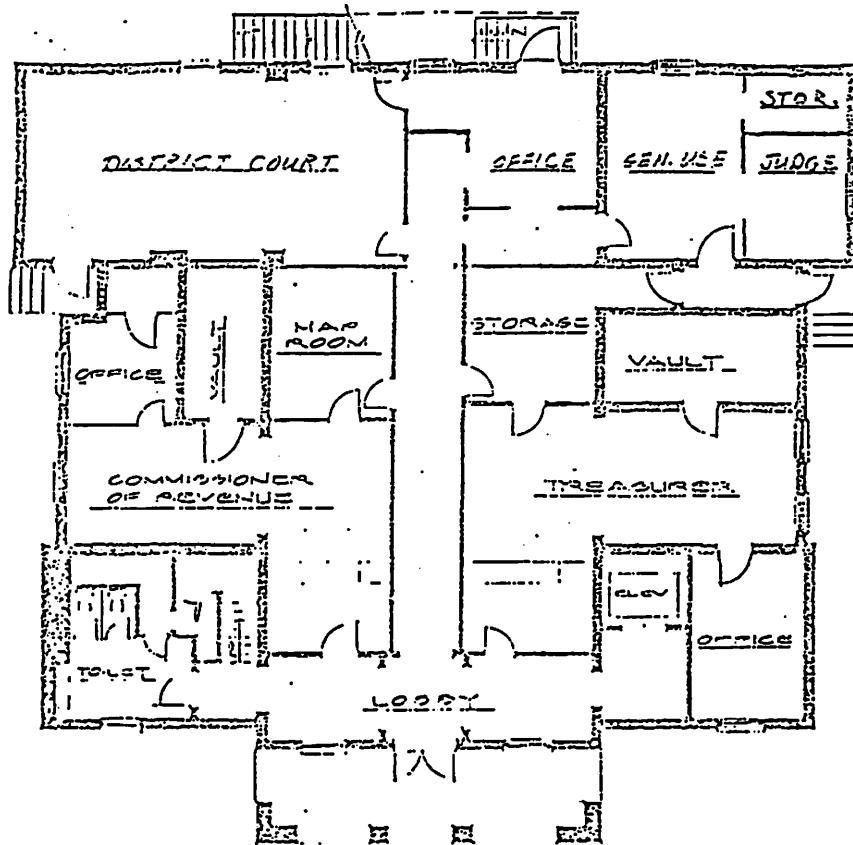


SECOND FLOOR PLAN  
10-1-01

COURTHOUSE

000023

EXHIBIT "C"



FIRST FLOOR PLAN

COURTHOUSE

000029

A RESOLUTION OF THE BOARD OF SUPERVISORS  
OF GREENSVILLE COUNTY, VIRGINIA, AUTHORIZING  
THE EXECUTION OF AN OPTION ON A SITE FOR  
A JOINT COURT FACILITY AND JAIL

WHEREAS, the Judges of the Circuit Court of Greenville County, Virginia, by ORDERS entered May 8, 1990, and June 22, 1990, directed that the Board of Supervisors of Greenville County and the City Council of the City of Emporia show cause why the Circuit Courthouse and the Jail should not be made secure, put in good repair and/or rendered otherwise sufficient; and

WHEREAS, the Board of Supervisors pursuant to such orders has proceeded with the review process of both facilities to the point that it now deems it feasible to secure an option on a site of sufficient size to permit the construction of a new court facility and a new jail of sufficient size to meet current space needs of the courts and the jail and with sufficient space to accommodate future expansion of both facilities and to locate the jail away from the density of population in the City; and

WHEREAS, there is no suitable site of sufficient size in the City to accommodate the current and future space requirements of the court facilities and jail.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Greenville County, Virginia, at a meeting held on January 9, 1991;

1) That the Board hereby accepts from the Greenville County Water and Sewer Authority transfer of its rights under an option contract dated January 7, 1991, which grants to the Authority a six month option to purchase 6.00 acres of land located on U. S. Highway 301 in Greenville County for the use as a site for the construction of a new court facility and jail to accommodate the current and future needs of the County and City for a Circuit Court, General District Court, Juvenile and Domestic Relations District Court and Jail; and

2) That the County Administrator is directed to proceed expediently to complete all planning necessary to effect the construction of the new court facility and new jail on such site; and

3) That the City of Emporia be notified of the Board's decision on this issue and be specifically invited to join with the County in the construction of a new joint court facility and jail of sufficient size and character to accommodate the current and future court and jail space needs of the County and City; and

4) That the County Administrator, Special Legal Counsel and Consultants are directed to take all such action or actions as may be necessary to accomplish the objectives set forth herein; and

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EXHIBIT

D

5) That the Board shall, throughout the course of all proceedings related to the court facilities and jail, continue to work toward an amicable resolution of such matters with the appropriate officials of the City of Emporia and the Commonwealth of Virginia as party plaintiffs for the Honorable Robert G. O'Hara, Jr., and W. Park Lemmond, Jr., Judges of the Circuit Court of Greenville County, Virginia.

ROLL CALL VOTE	AYE	NAY
1) Peggy R. Wiley, Chairman	<u>X</u>	<u>    </u>
2) James E. Ewing, Jr., Vice-Chairman	<u>X</u>	<u>    </u>
3) Garland P. Faison	<u>X</u>	<u>    </u>
4) Michael W. Ferguson	<u>    </u>	<u>X</u>

IN WITNESS WHEREOF, the Board of Supervisors of Greenville County has caused this RESOLUTION to be executed on its behalf by its Chairman and attested by its Clerk.

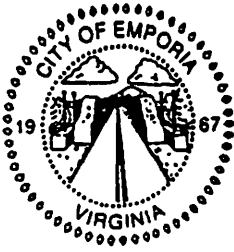
  
\_\_\_\_\_  
Peggy R. Wiley, Chairman  
Greenville County Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
K. David Whittington, Clerk  
Greenville County Board of Supervisors

Adopted this 9th day of January, 1991.

000031



# **CITY OF EMPORIA**

January 16, 1991

K. David Whittington  
County Administrator  
County of Greenville  
301 South Main Street  
Emporia, VA 23847

**RE: Courthouse Resolution**

Dear Mr. Whittington:


We have received a copy of Resolution No. 91-59, dated January 9, 1991, by which the Board of Supervisors has invited the City of Emporia to join with the County in the construction of a new court facility and jail at a six-acre site located on U. S. Highway 301 in Greenville County.

I am authorized to inform you that the City opposes the construction of such a courthouse complex at a new site. The City Council continues to believe that the enlargement and renovation of the current County Courthouse, rather than the building of a new structure at a different site, will be in the best interests of the citizens of the City and County. By making use of the existing facility, the County and City could save substantial funds and could retain the many advantages of the present site which is at the geographical center of both localities.

In addition, even if the City were willing to support a movement of the Courthouse to a new location, we have been advised that Virginia law requires referendum approval by voters of the City and County before the Board of Supervisors could take such action.

Please let me know what alternative the Board of Supervisors will pursue in light of the City's position on this matter.

Very truly yours,

  
Tedd E. Povar  
City Manager

cc. City Attorney

000032

**EXHIBIT**

E

ALL-STATE LEGAL SUPPLY C



# County of Greenville

Piggly H. Wiley  
Chairman

James E. Ewing, Jr.  
Vice Chairman

K. David Whittington  
County Administrator

Russell E. Shyten, Jr.  
County Attorney

January 22, 1991

Mr. Tedd E. Povar  
City Manager  
City of Emporia  
P. O. Box 511  
Emporia, Virginia 23847

RE: Courthouse/Jail

Dear Mr. Povar:

I am in receipt of your letter dated January 17, 1991. I appreciate your prompt response. Please be advised that is the County's intention to pursue the construction of a new courthouse and jail in the County pursuant to recommendations of its consultants. If it is not the desire of the City to pursue such a joint venture with the County, we would recommend the following plan which is acceptable to the County:

1. The County will construct a new Circuit Court and General District Court to accommodate the County caseload as it currently exists with sufficient space to accommodate growth for the next 10 to 15 years;
2. The County will construct a jail of sufficient size to accommodate the current prisoner population and the projected growth of the County over the next 10 to 15 years;
3. The court and the jail will be constructed on the 6 acre site located on U. S. Highway 301 in Greenville County;
4. The County will lease the existing Courthouse facility located in the City to the City of Emporia for its Circuit Court and General District Court caseload, contingent upon Emporia bearing all costs necessary to bring that facility up to standards imposed by the Judges or pursuant to the pending court proceeding;

EXHIBIT

F

ALL-STATE LEGAL SUPPLY CO.

000033



# CITY OF EMPORIA

January 24, 1991

K. David Whittington  
County Administrator  
County of Greensville  
301 South Main Street  
Emporia, VA 23847

RE: Courthouse Proposal

Dear Mr. Whittington:

I have received your letter dated January 22, 1991, in which you described, on behalf of the Board of Supervisors, an alternative plan regarding the construction of a new courthouse facility.

Specifically, among other items you proposed (a) that the County construct a new courthouse at a site on U. S. Highway 301 in Greensville County to accommodate the County's caseload and (b) that the City lease the existing courthouse from the County to handle Emporia's caseload.

Such a proposal is not satisfactory to the City Council because it would result in duplicative courthouse facilities and would, therefore, increase the capital and operating expenses for both localities. We do not believe that such a result would be in the best interests of the citizens of either the City or the County. Accordingly, the City must reject your alternative.

With the City's rejection of the two options that you have presented, it is my understanding that the Board of Supervisors nevertheless intends to proceed with the relocation, in part, of its courthouse facilities by constructing a new courthouse at the U. S. Highway 301 site within Greensville County to accommodate the County's caseload in the Circuit Court and General District Court. At the same time, the Board intends to continue to operate the existing courthouse located within Emporia to handle the City's caseload in the Circuit Court. Also, the principal offices of the Clerk of the Court will be relocated to the new courthouse facility with a satellite office remaining at the present courthouse site.

I would appreciate it if you could promptly confirm my understanding of the course of action that the Board of Supervisors will now pursue.

Very truly yours,

Tedd E. Povar  
City Manager

cc. City Attorney

000031

EXHIBIT

G  
ALL-STATE LEGAL SUPPLY CO.



Mr. Povar

Page 2

January 22, 1991

5. Because the existing jail facility is so deficient and inadequate, the County will not assume liability for its continued use, and accordingly, will not lease or sell that facility. However, County does hereby renew its invitation that the City join with it in construction of a new regional jail adequate to satisfy the needs of both localities;
6. Please be advised that the County would expect to relocate the Clerk of the Circuit Court to the facility located in Greenville County with sufficient space to provide a satellite Clerk's Office in the City.
7. The County is not opposed to, and would support, City efforts to obtain legislative approval to establish its own Circuit Court separate and apart from the County Circuit Court so the City can have its own Clerk.

You should also note that we have been advised by our legal counsel that the Court facility can be relocated without the necessity of a referendum, as we would not be moving the County Administration facilities, the Commission of the Revenue, the Treasurer, or the Commonwealth's Attorney's Office. The only constitutional offices that would be relocated would be that of Sheriff and Clerk which would move to the new facility. The County recognized that were it to seek to move the seat of government, the law does require voter approval in a referendum.

You should note that the County is committed to relocating the Courthouse and Jail as expressed by resolution number 91-59 dated January 9, 1991. You should also know that if none of the alternatives expressed in this letter are acceptable to the City, we are probably at a point to where nothing short of litigation will resolve the difference between the City and the County.

Sincerely,

  
K. David Whittington  
County Administrator

KDW/lw

000035

VIRGINIA:

IN THE CIRCUIT COURT OF GREENSVILLE COUNTY

CITY OF EMPORIA, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Chancery No. 3183
	)	
COUNTY OF GREENSVILLE, et al.	)	
	)	
Defendants.	)	

MOTION FOR SUMMARY JUDGMENT

Plaintiffs City of Emporia, et al., by counsel, move the Court, pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia, to enter summary judgment on their behalf. The parties have entered into a joint stipulation of facts, and there are no material facts genuinely in dispute. For further support of their motion, Plaintiffs rely on the attached memorandum of law.

CITY OF EMPORIA, WILLIAM H. LIGON,  
GEORGE B. LIGON, JR., SAMUEL W.  
ADAMS, III, JULIA L. JONES, NANCY B.  
SQUIRE, JOHN R. WHITE, F. WOODROW  
HARRIS, JAMES A. CAREY, and RONNIE  
L. WHITE

By

Carter Glass IV  
Of Counsel

Anthony F. Troy  
Carter Glass, IV  
Harold E. Greer, III  
Mays & Valentine  
1111 East Main Street  
P. O. Box 1122  
Richmond, Virginia 23208-1122

000033

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion for Summary Judgment was mailed this 11<sup>th</sup> day of November, 1991 to the Honorable C. Richard Cranwell, Esquire, Cranwell & Moore, Post Office Box 11804, Roanoke, Virginia 24022.

Carter Glass IV

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VIRGINIA:

IN THE CIRCUIT COURT OF GREENSVILLE COUNTY

-----X

CITY OF EMPORIA, et al. :

:

:

:

Case No. 3183

vs.

:

:

:

:

COUNTY OF GREENSVILLE :

-----X

BEFORE:

HONORABLE RUDOLPH BUMGARDNER, III

January 10, 1992  
2:00 p.m.

Halasz & Halasz  
Court Reporters  
P. O. Box 223  
Richmond, Virginia 23202  
(804) 741-5200

1 because its clear, plain language in there says that  
2 there can be multiple courthouses. If the intent is  
3 what Mr. Troy says it was, then the subsequent  
4 enactment of the legislature repeals that section  
5 because it says the county can lease the land and  
6 doesn't have to own fee simple title to it.

7 It would seem to me that that is a lot of  
8 legal gymnastics for me to come back and say to you  
9 that the 1986 amendment to 15.1-257 is plain and  
10 unambiguous language and it says that the county can  
11 have multiple courthouses, which means to me you can  
12 have multiple Circuit Courts, multiple General  
13 District Courts, multiple Juvenile and Domestic  
14 Relations Courts and that's what the law says.

15 The only way you can get to some argument  
16 that Mr. Troy makes is if the language is ambiguous,  
17 then you have to start looking for the legislative  
18 history or something to get to the intent.

19 Your Honor, if I could continue to move  
20 along on Mr. Troy's theory about the two  
21 courthouses, he cites 15.1-1005 at the bottom of the  
22 first page of his handout. He says the legislature  
23 would never ever permit you to have multiple  
24 courthouses because what would happen is that  
25 without a vote from the citizens of the City of

000030

1       Emporia the County could force them to have greater  
2       cost and could force them to share proportionately  
3       in that cost. That is what I have got out of his  
4       argument and out of the brief, Your Honor.

5               If the Court would look with me in the  
6       second paragraph in 15.1-1005, the fifth line down,  
7       the cost of any new building erected for joint use  
8       of the city and county shall be provided for in a  
9       like manner. That means you have got to share the  
10      cost if it's a joint use facility.

11              Your Honor, we offered the City of Emporia  
12      the opportunity to make the new facility a joint use  
13      facility and they declined.

14              When I say court facility, I mean as  
15      defined by the Bacon and Egerton decisions. It will  
16      not be a joint use facility so we're not forcing the  
17      taxpayers of Emporia to pay for anything, the  
18      operation or the construction of that new facility  
19      because it will not be a joint use facility.

20              Your Honor, I come now to what I call the  
21      removal issue and I come back to the county's brief  
22      and say to you that clearly a case of first  
23      impression is before you as to whether or not a  
24      removal of the court facilities as defined by the  
25      Supreme Court in the Egerton and Bacon decisions

000040

1                   Unfortunately for this Court the Supreme  
2                   Court denied the writ in the Augusta County case so  
3                   there is no guidance. But I would suggest to you  
4                   that at least what the Supreme Court was saying in  
5                   the Tullidge case, that the relocation of  
6                   facilities, buildings, structures, are not a removal  
7                   of the county seat of such a nature that would  
8                   trigger the referendum requirements of 15.1- 559.

9                   Your Honor, let me just deal with one  
10                  other issue while I'm looking at 559.

11                  Mr. Troy has suggested that the city would  
12                  get to participate in the referendum and the city so  
13                  contends in its brief.

14                  Paragraph A says the courthouse used  
15                  before and after for any city under 30 thousand --  
16                  before and after removal.

17                  I pointed out to the Court earlier that  
18                  the city has opted not to move to the new location  
19                  so it's not going to be used after. The new  
20                  courthouse isn't going to be used after the  
21                  referendum by the city so even if the Court decided  
22                  there was a referendum the City is not going to get  
23                  to participate because they don't want to move.

24                  Your Honor, Mr. Troy was very astute to  
25                  point out to the Court that there is a real conflict

000041

1 make it will be taken to a higher court for review.

2 Since it is important, I'm electing to go  
3 ahead and announce the decision at this point.

4 Although these thoughts may be a little rougher and  
5 less polished than I would like, I think it is more  
6 important to allow the process to continue moving  
7 than to wait while some points or thoughts are  
8 refined.

9 The Court would find that Section 151-599  
10 does require the county to conduct a referendum  
11 before moving the Circuit Court to a location  
12 outside the City of Emporia as proposed. The city  
13 and county are required to have one court and the  
14 proposal to divide the functions between a court  
15 located in the county and one located in the city  
16 would violate those requirements.

17 The word courthouse has at least two  
18 meanings as used in the Code. It can refer to  
19 physical facilities. It also can refer to  
20 institutions of government. The term is used in  
21 both senses throughout the Code.

22 In the Engles and Couk cases, the term  
23 courthouse is interpreted in Statutes that closely  
24 resemble the current Section 151-599. Since that  
25 case there have been changes made to the Statute.

000042



1 Code 1919 deleted the one reference to the term  
2 county seat that appeared in the 1908 Statute, which  
3 was the one interpreted in Couk.

4 1978, paragraph B was added to 151-599,  
5 that being the provision that provides the citizens  
6 in the city are eligible to vote on the question of  
7 relocation if it is a combined court.

8 Also in 1976, Section 151-661 was amended  
9 to provide that relocation to land contiguous to the  
10 current location did not require authorization by  
11 the electorate.

12 As currently enacted, 151-599 uses the  
13 term courthouse in both senses. When used in  
14 paragraph A it's used in the institutional sense as  
15 determined in Engles and Couk and in that regard the  
16 term means county seat. County seat has not been  
17 defined but it would seem that it would have an  
18 ordinary meaning should it be so defined. It would  
19 be the Seat of Government, the place where the  
20 business of the county is conducted.

21 As the Commonwealth expanded new counties  
22 were created. The Courts were often the primary  
23 business of government.

24 At least in the second half of the 20th  
25 century the functions of local government greatly

000043

1 expanded and the branches of government have become  
2 differentiated.

3 The courts and the judicial functions are  
4 no longer the primary business of government but  
5 they remain a vital and essential element of the  
6 business of government of the county.

7 However, the executive/administrative  
8 functions also constitute a vital and a central part  
9 of the business of government.

10 The term courthouse means county seat of  
11 the place where the government of the county is  
12 conducted. The government of the county includes  
13 both judicial and executive functions. If the term  
14 is interpreted to exclude judicial functions, we  
15 would have interpreted the term so it would no  
16 longer carry its primary connotation of referring to  
17 judicial matters.

18 The amendments that have been made to the  
19 removal statute though using the term in the sense of  
20 facilities only makes sense if the term when it's  
21 used in its broader institutional sense encompasses  
22 the judicial functions of government. The removal  
23 of the judicial functions is the removal of such an  
24 essential and basic portion of the business of  
25 government that it is a removal of the county seat.

1           The proposal to operate two courts would  
2       violate the provision that there shall be one court  
3       for the city and the county. The proposal would  
4       split the jurisdiction geographically and create two  
5       separate venues, which is vitally different from  
6       exercising the same jurisdiction within a single  
7       venue though doing it in more than one courtroom in  
8       order to handle the volume of the court business.

9           The proposal divides the court into two  
10       separate institutions, which would be an authority  
11       resting only with the General Assembly.

12           The proposal would attempt to conduct  
13       county business in the county location and city  
14       business in the current location. This would not be  
15       workable. Where would judgments be docketed? If a  
16       judgment is docketed in one courthouse is it noticed  
17       if not docketed in the other? Is a case filed in  
18       the city when it should have been filed in the  
19       county to hold the Statute of Limitations? There  
20       are similar and other problems coming from such a  
21       proposal.

22           The amendments to the Transition Statues  
23       leave earlier acts in effect as they apply to  
24       Emporia to the extent those acts creating the city  
25       affect the county they control the county. It would

000045

1 not possible to say that the city is to have the  
2 same court as the county without meaning also that  
3 the county is to have the same court as the city.

4 In conclusion, the Court would declare  
5 that the referendum is required if the city and  
6 county are to have one Court.

7 The third proposal would request that  
8 there be an injunction entered. I do not think it  
9 would be necessary to have an injunction issue in  
10 order to get compliance with the order once it is  
11 finalized so I don't believe that portion is  
12 necessary.

13 I will ask counsel for the City of Emporia  
14 to prepare a draft order.

15 Gentlemen, we may even want to talk a  
16 little bit in chambers about phasing, what should go  
17 next in these various matters or if anything can be  
18 done in that regard since everybody is here.

19 MR. TROY: Your Honor, I believe that the  
20 Court, in the statement from the bench, referenced  
21 Section 151.661 when perhaps you meant 561,

22 THE COURT: That is correct.

23 MR. TROY: I think the record might have  
24 picked up 661.

25 MR. CRANWELL: Your Honor, I want to

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1 respectfully state for the record the exception of  
2 the County to the Court's ruling.

3 THE COURT: Certainly.

4 We'll stand adjourned.

5 (Hearing adjourned at 4:20 p.m.)  
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ACTS OF ASSEMBLY.

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And provided further, that such toll-bridge over Tanner's creek, if built, shall be commenced within two years and finished within five years from and after the date and passage of this amendment.

And in order to keep in repair such turnpikes and draw-bridges the said company shall have the right to charge and collect moderate tolls, such as are charged by other toll-bridge and turnpike companies in the neighborhood.

2. This act shall be in force from its passage.

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CHAP. 48.—An ACT to authorize and provide for a special election in the county of Pulaski as to the removal of the court-house of said county.

Approved January 22, 1894.

1. Be it enacted by the general assembly of Virginia, That whereas the court-house of Pulaski county has been destroyed by fire, it shall be the duty of the judge of the circuit court of Pulaski county, upon the petition of not less than one hundred qualified voters of said county, to order a special election in the said county, to be held at the several voting precincts thereof, on a day to be designated by him, within thirty days after the presentation of said petition to him for the purpose of taking the sense of the qualified voters of said county whether the county-seat of said county be removed from the town of Newbern at all; and, if so removed, whether to the town of Pulaski, in said county, or to the town of Dublin, in said county.

2. Upon the presentation of said petition the said judge shall, without unnecessary delay, enter an order in vacation ordering such special election to be held on a day designated by him in said order within forty-five days after the entering of said order, but said order shall be entered not less than thirty days prior to said election.

The said order shall be certified by the said judge of the said circuit court to the clerk of said court, to be by him entered in the order book of said county. And the said clerk of said court shall forthwith furnish to the sheriff of said county a copy of the said order, and said sheriff of said county shall proceed without delay to give notice of the time of holding said election by publication, once a week for four successive weeks, in some newspaper published in said county.

3. The said election shall be superintended and held, returns made and certified, votes canvassed, results ascertained and made known under the same penalty and subject to the same regulations as are now prescribed by law for special elections, except that the result of said election shall be certified to the judge of the circuit court of Pulaski county.

4. The electors voting at said election who shall favor removal of said county-seat from the town of Newbern to the town of Pulaski, in said county, shall deposit with the judges of election, at their respective voting precincts, a ballot on which is written or printed, "For the removal of the court-house to the town of Pulaski." And

such electors who favor the removal of the county-seat to Dublin, in said county, shall deposit a ballot as aforesaid, upon which is written or printed the words, "For removal of the court-house to Dublin." And such electors that are opposed to the removal of the court-house from the town of Newbern shall in like manner deposit a ballot upon which is written or printed the words, "Against the removal of the court-house."

Each ballot that shall have written or printed thereon, "For removal of the court-house to the town of Pulaski," shall be counted as a vote for the removal of the court-house and county-seat to the town of Pulaski, in said county. And each ballot on which is written or printed the words, "For removal of the court-house to Dublin," shall be counted as a vote for a removal of the court-house and county-seat to Dublin, in said county. And each ballot on which is written or printed the words, "Against the removal of the court-house," shall be counted as a vote against the removal of the court-house from Newbern. And if three-fifths or more of the votes cast be cast for the removal of the court-house to the town of Pulaski, then the court-house and county-seat shall be removed to the town of Pulaski, in said county, and the county-seat shall be thenceforward at the said town of Pulaski. Or if three-fifths or more of the votes cast be cast for the removal of the court-house to the town of Dublin, in said county, then the court-house shall be removed from the said town of Newbern to the town of Dublin, and the county-seat of said county shall thenceforward be at the said town of Dublin, in said county. But if more than two-fifths of the votes cast be cast against the removal of the court-house, then the county-seat shall remain at the town of Newbern. In the event that three-fifths or more of the votes cast shall not be cast either for the removal of the court-house to Pulaski or to Dublin, but if the combined vote in favor of Pulaski and Dublin shall be three-fifths or more of the votes cast in said election, then and in that event the circuit judge of the county aforesaid shall immediately after the said election, and within twenty days thereafter, enter an order in vacation in the clerk's office of said county ordering another election to be held within forty days after the entering of said order; said election to be held and canvassed and result ascertained in like manner after like notice as the aforesaid election.

At the said second election the electors of the said county of Pulaski voting shall each deposit a ballot with the judges of their respective voting precincts in said county upon which is written or printed the words, "For the town of Pulaski," or "For the town of Dublin, as the case may be, and the town receiving the highest number of votes cast in the said second election between the towns of Pulaski and Dublin shall be thenceforward the county-seat of said Pulaski county, and the said last election shall be returned and certified as provided for in the first election herein provided for, and all necessary orders shall be entered by said circuit judge to carry into effect the result of said election.

5. The said town of Pulaski and certain citizens thereof having proposed, as it and they do now propose, to donate to said county of

Pulaski, in the event of the removal of said court-house to said town of Pulaski, so much land conveniently located in said town of Pulaski as may be necessary for a site for said court-house and jail, and to erect and construct, free of cost to said county, a safe and suitable jail for the convenient accommodation of persons to be confined therein, and to erect and construct free of cost to said county, except as to the insurance money and proceeds of the sale of the court-house lot and jail property in the town of Newbern as herein-after provided, a suitable court-house. Now, before the ordering of the election hereinbefore provided for, there shall be presented to the said judge of said circuit court a good and sufficient bond with good security executed by the said town of Pulaski, or some one for it, payable to the county of Pulaski, approved by the said judge of the circuit court in the penalty of twenty thousand dollars, conditioned that in the event of a removal of said court-house to said town of Pulaski the said town of Pulaski shall convey or cause to be conveyed, by good and sufficient deed in fee simple, so much land conveniently located in said town of Pulaski as may be necessary for a suitable site for said court-house and jail, and shall build and construct, free of cost to said county, a safe and suitable jail for the convenient accommodation of persons to be confined therein, and the court-house aforesaid, said jail to be built upon some portion of the land donated and conveyed to said county as aforesaid. If after a vote in favor of a removal of said court-house to said town of Pulaski the said town of Pulaski convey or cause to be conveyed within a reasonable time to said county, and build or cause to be built as soon as practicable after said vote in favor of such removal of said court-house, free of cost to said county, the jail and court-house as aforesaid, then this bond to be null and void, otherwise to remain in full force and virtue, and said bond shall be filed with the clerk of the circuit court of Pulaski county.

Upon receipt of the certificate of the result of said election, the said judge of the said circuit court shall cause the same to be entered, either in term or vacation, in the order-book of the circuit court for said county, and said judge of said circuit court shall select and appoint three commissioners, one of whom shall be the supervisor of the magisterial district of said county to which said court-house shall be removed, one of whom shall be a citizen of the town to which the same is removed, and the other of whom shall be a citizen of the county outside of said town of Pulaski, whose duty shall be to select a site in said town for said court-house and jail, and the site selected by the said commissioners shall be accepted and adopted as the site for the location of said court-house and jail.

The citizens of the town of Dublin proposing to donate a site, free of cost, to the said county suitable for the court-house and jail in the event that the said court-house be removed to said town of Dublin, therefore, before any such election be held as to the town of Dublin there shall be executed, by some person or persons, a bond in the penalty of one thousand dollars (\$1,000), payable to the county of Pulaski, approved by the circuit judge, conditioned that there be conveyed in fee simple, within a reasonable time after it is deter-



mined that the said court-house be removed to said town of Dublin, to the said county of Pulaski, a good and sufficient lot of land for the aforesaid court-house and jail.

In the event of a removal of the court-house from the town of Newbern to said town of Pulaski, the old jail at Newbern and the lot upon which the same is located, and on which the old court-house stood, shall be sold as provided by law, and the proceeds therefrom and all insurance collected upon any policy of insurance carried by the board of supervisors of said county upon the old court-house shall be applied toward the building of a new court-house for said county at such place as may be determined by the election hereinbefore provided for; and it shall be the duty of the supervisors of said county to provide a suitable place in the town to which the court-house shall have been removed by the vote aforesaid for a courtroom and clerk's office for said county, at which all courts of said county shall be held until a new court-house shall have been built and completed.

6. This act shall be in force from its passage.

CHAP. 49.—An ACT to give John C. Hall, treasurer of Franklin county, and his deputies power of levy and distress to collect certain uncollected tax-tickets now in his hands.

Approved January 22, 1894.

Whereas John C. Hall, treasurer of Franklin county, has in his hands various tax-tickets for which he has accounted to the State and county: therefore,

1. Be it enacted by the general assembly of Virginia, That the said John C. Hall, treasurer as aforesaid, and his deputies shall have the same power of levy and distress as is now possessed by treasurers under the revenue laws until September first, eighteen hundred and ninety-four, to collect the uncollected tax-tickets now in his hands for the years eighteen hundred and ninety and eighteen hundred and ninety-one, for which he has accounted to the proper fiscal agents.

2. This act shall be in force from its passage.

CHAP. 50.—An ACT to amend and re-enact sections 2 and 10 of an act entitled an act to incorporate the Norfolk and Lynnhaven railroad and terminal company, approved February 29, 1892.

Approved January 22, 1894.

1. Be it enacted by the general assembly of Virginia, That the second and tenth sections of an act entitled an act to incorporate the Norfolk and Lynnhaven railroad and terminal company, ap-

**Sec. 60. Lotteries and sale of lottery tickets prohibited.**

No lottery shall hereafter be authorized by law; and the buying, selling, or transferring of tickets or chances in any lottery shall be prohibited.

**Sec. 61. Formation and division of counties.**

No new county shall be formed with an area of less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county be reduced in population below eight thousand. But any county, the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the General Assembly.

**Sec. 62. Power of General Assembly to enact liquor laws.**

The General Assembly shall have full power to enact local option or dispensary laws, or any other laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors.

**Sec. 63. Powers which General Assembly shall confer on courts; cases in which General Assembly shall not enact special laws.**

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sale 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 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 State or to any political subdivision thereof.
9. Refunding money lawfully paid into the treasury of the State or the treasury of any political subdivision thereof.
10. Granting from the treasury of the State, or granting or authorizing to be granted from the treasury of any political subdivision there-

of, any extra compensation to any public officer, servant, agent, or contractor.

11. For 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 or pensions.

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.

**Sec. 64.** General Assembly shall enact general laws in cases mentioned in preceding section, and wherever general laws will apply; amendment or partial repeal of general law shall not enact special law; restrictions as to laws.

In all the 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. 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 the enactment of a special, private, or local law.

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

**Sec. 65.** Powers of local and special legislation may be conferred by General Assembly, by general law, on supervisors and councils.

The General Assembly may, by general laws, confer upon the boards of supervisors of counties, and the councils of cities and towns, such powers of local and special legislation, as it may from time to time

Va. 393, 96 S.E. 819 (1918); *Breckenridge v. County School Bd.*, 146 Va. 1, 135 S.E. 693 (1926).

And the legislature is the sole judge of what shall constitute an emergency which will justify putting an act into immediate effect. Its action is not reviewable by the courts. *City of Roanoke v. Elliott*, 123 Va. 393, 96 S.E. 819 (1918).

**Distinction between emergencies.** — The emergency which makes it necessary for a law to take effect sooner than 90 days after the adjournment of the legislature (now the first day of the fourth month after the month of adjournment) is entirely different from the emergency which must exist in order to dispense with reading the bill on three different calendar days in each house (see § 11 of this article). The first is provided for by this section and by its express terms the emergency must be expressed in the body of the bill. *Couk v. Skeen*, 109 Va. 6, 63 S.E. 11 (1908).

Until the time arises for a statute to take effect all acts purporting to have been done under it are void. *Burks v. Commonwealth*, 126 Va. 763, 101 S.E. 230 (1919).

**Acts without special clauses.** — An act which contained no emergency clause did not take effect until the lapse of 90 days after the adjournment of the General Assembly (now the first day of the fourth month after the month of adjournment), but became effective immediately upon the expiration of the suspension period. *Burks v. Commonwealth*, 126 Va. 763, 101 S.E. 230 (1919).

**Computation of effective date.** — An event which took place June 1, 1914, occurred "seventeen days before" an act approved March 20, 1914, "took effect," the session of the

General Assembly having adjourned sine die March 20, 1914. *Burks v. Commonwealth*, 126 Va. 763, 101 S.E. 230 (1919), decided under this section as it appeared in the Constitution of 1902, making acts effective 90 days after adjournment of the General Assembly.

An act approved March 3, 1932, the 1932 session of the General Assembly having adjourned sine die March 22, 1932, became law on June 21, 1932. *Allen v. Mottley Constr. Co.*, 160 Va. 875, 170 S.E. 412 (1933), decided under this section as it appeared in the Constitution of 1902.

**County supervisors may adopt and ratify bill before effective date.** — Chapter 151 of the Acts of 1914, forbidding the catching of fish by gill nets or seines in Rockbridge County, provided that the act should be and become effective and in force only after the board of supervisors of Rockbridge County should have adopted and ratified the same. The act contained no emergency clause, and therefore did not take effect until the lapse of 90 days after the adjournment of the session of the General Assembly at which it was passed. But the board of supervisors could validly adopt and ratify the act before the same actually took effect as a law, there being nothing in the act to indicate any intention on the part of the legislature to require the board to wait until the law would inevitably become effective before signifying approval of its terms. *Burks v. Commonwealth*, 126 Va. 763, 101 S.E. 230 (1919), decided under this section as it appeared in the Constitution of 1902, making acts effective 90 days after adjournment of the General Assembly.

Applied in *Fletcher v. Tarasidis*, 219 Va. 658, 250 S.E.2d 739 (1979).

**§ 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 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.

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(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.

**Cross reference.** — As to property held for religious purposes, see §§ 57-7 through 57-17.

**Law Review.** — For article on local bills, see 42 Va. L. Rev. 845 (1956). For note on "Special Legislation in Virginia," see 42 Va. L. Rev. 860 (1956). For discussion of the constitutionality of medical malpractice review panels, see 34 Wash. & Lee L. Rev. 1179 (1977).

Virginia Constitution contains no equal protection clause as such; equal protection rights are guaranteed by the antidiscrimination clause in Art. I, § 11, and the prohibitions against special legislation in this section. Neither clause provides stronger protection than

the equal protection clause of the Fourteenth Amendment to the United States Constitution. *Boyd v. Bulala*, 647 F. Supp. 781 (W.D. Va. 1986).

**Purpose of section.** — It is apparent from this section, that one of the objects of the convention which framed the Constitution was to get rid of special legislation in the creation and government of corporations, and to provide for the incorporation, both of municipal and other corporations, and their government, by general laws as far as practicable. *Winfree v. Riverside Cotton Mills*, 113 Va. 717, 75 S.E. 309 (1912).

to take and to hold, by gift, purchase, grant, devise or bequest, any property—real, personal, or mixed—and the same to dispose of at pleasure; provided, however, that no such corporations shall, in its corporate capacity, hold real estate the yearly income derived from which shall exceed the sum of fifty thousand dollars. In addition, such corporation shall exercise any corporate powers necessary to the purposes above enumerated and given, and shall have all the general powers and be subject to all the general restrictions and liabilities conferred and imposed by this act, and by the general laws of this State applicable thereto, not in conflict with this act. Any failure on the part of such clerk to comply with the provisions of this section shall subject him to a fine of not less than ten dollars nor more than one hundred dollars to be imposed by the State corporation commission.

§8 (chapter 4).—Whenever the principal objects and purposes for which any such corporation was formed has failed, or the management of the corporation has been abandoned by its trustees, directors, or managers, it shall be lawful for the circuit court of the county, or the circuit or other court having jurisdiction in the city wherein the principal office of such corporation is located, sitting in chancery, to wind up and dissolve such corporation, and to make such disposition of its assets as may be just and equitable in a suit brought by a creditor or by one-fifth in number of the active members of such corporation; provided, however, that in the distribution of the assets of any such corporation the court shall, after providing for the payment of all taxes, fees and penalties due by it, and then for the payment of its debts, if any, if there be no organization, or person or persons equitably entitled to any such surplus, or any part thereof, direct the payment of such surplus, or any part thereof, to which there is no equitable claim as aforesaid, to be paid into the literary fund of this State. Within thirty days from such dissolution, the clerk of the court entering such decree of dissolution shall certify that fact, together with the style of the case and the date of the decree to the State corporation commission. Any failure of such clerk so to do shall subject him to a fine of not less than ten dollars nor more than one hundred dollars to be imposed by the State corporation commission.

CHAP. 336.—An ACT to provide for submitting the question of the removal of the court-house of any county to the qualified voters of such county, and in the event such removal is voted, to authorize the board of supervisors to acquire necessary land and erect buildings.

Approved March 14, 1908.

1. Be it enacted by the general assembly of Virginia, That whenever one-third of the qualified voters of any county, of whom at least one-half must be free-holders, shall in term time or vacation, petition the judge of the circuit court of such county for a special election in such county on the question of the removal of the courthouse to one or more places specified in said petition which shall also state the amount to be

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appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court or judge shall within ten days after the receipt of said petition, issue a writ of election, in which shall be fixed the day of holding such election, directed to the sheriff of the county whose duty it shall be forthwith to post a notice of said election at each voting precinct in said county. He shall also give notice to the officers charged with the duty of conducting other elections in said county; but no election shall be held under this act within thirty days of the posting of such notices as aforesaid.

Said election shall be held and conducted as other special elections are held and conducted, except there shall be at each precinct two ballot boxes, one to contain the ballots of freeholders only, and the other to contain ballots of those qualified voters who are not freeholders.

If it shall appear from the abstracts and returns that a majority of the votes cast, or a plurality, should there be more than two places voted for, one-fourth of whom are freeholders of said county, are for the removal of the courthouse to one of the places specified in the petition, the result shall be certified to the board of supervisors of the said county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements, and if the vote shall be for removal the said board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements. And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of said county, who shall, after sixty days' notice, to be published in a newspaper in said county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in said county, and shall direct the sheriff to post up notices at all of the public places, order his court to be held in the new location. Provided that no location of a county seat shall be changed unless a majority of the freeholders of the county voting on said question shall be in favor of the change of said location.

2. It shall be lawful for any town, village or individual, to donate to the county the land necessary for its uses at any of the locations named in the petition which shall not be less than one acre, and to offer as an inducement for said removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any order of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county if the location stated in the deed or offer of money shall be selected by the voters, and the treasurer shall record said deed and collect and place said fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed.

3. If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the

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bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition, and the proceeds of said bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, the buildings erected and improvements made. But if the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them, but the amount expended shall not exceed the amount named in the petition and authorized by the voters.

4. The ballots used in said election shall be respectively as follows: For removal of courthouse to \_\_\_\_\_, and permitting the supervisors to spend \$\_\_\_\_\_ therefor; \_\_\_\_\_ for removal of courthouse to \_\_\_\_\_, and permitting the supervisors to spend \$\_\_\_\_\_ therefor; and against removal. The manner of receiving and canvassing the ballots, and making returns and abstracts thereof, shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the \_\_\_\_\_ day of \_\_\_\_\_, nineteen \_\_\_\_\_, upon the question of removing the courthouse to \_\_\_\_\_, and permitting the expenditure of \$\_\_\_\_\_ for the purpose, \_\_\_\_\_ votes which includes \_\_\_\_\_ freeholders were cast; for removal to \_\_\_\_\_, and permitting the expenditure of \$\_\_\_\_\_ for the purpose, \_\_\_\_\_ votes, which includes \_\_\_\_\_ freeholders were cast, and \_\_\_\_\_ votes, which includes \_\_\_\_\_ freeholders were cast against removal."

5. The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal which shall include the freeholders voting and authorizing the expenditure of the amount stated in the petition and against removal, one of said certificates to be filed with the clerk and the other with the judge of the circuit court.

6. Contesting elections for removal of the courthouse.—Returns in such elections shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest, and if any votes were improperly received or rejected, shall give a list of said votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in said county, and by publishing it once a week for two successive weeks in some newspaper published in said county, or if there be none so published, then in some newspaper having circulation in said county. If it is desired to take depositions, the time and place of taking the same shall be stated in said notice, which shall entitle the

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parties giving the same to take the depositions to be read as evidence in said contest. Said complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the said election, file in said clerk's office an answer to said complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of said election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in said complaint, and a list of the votes he or they will dispute. And if said respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing said complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from said election, shall proceed to pass upon said complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof, and decide the same on the Constitution and laws, and according to the right of the case, and enter such order as will carry its decision into full and complete effect. And the judgment of the said court shall be final.

7. After an election has been held in any county upon the question of the removal of its courthouse, no other election shall be held under this act within ten years.

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CHAP. 337.—An ACT to amend and re-enact section 1017a, in relation to powers and duties of the police force of the cities and towns of an act entitled an act to amend and re-enact chapter 44 of the Code of Virginia, 1887, in relation to cities and towns, and to repeal sections 1030 and 1040 of the Code of Virginia, and section 1043 of the Code of Virginia, as amended and re-enacted by an act approved March 4, 1896, and as attempted to be repealed by an act approved March 7, 1900, and to repeal an act approved March 7, 1900, entitled an act to provide for local assessments in cities and towns, approved May 20, 1903.

Approved March 14, 1908.

1. Be it enacted by the general assembly of Virginia, That section one thousand and seventeen a, in relation to powers and duties of the police force of cities and towns of an act entitled an act to amend and re-enact chapter forty-four of the Code of Virginia, eighteen hundred and eighty-seven, in relation to cities and towns, and to repeal sections one thousand and thirty-nine and one thousand and forty of the Code of Virginia, and section one thousand and forty-three of the Code of Virginia, as amended and re-enacted by an act approved March fourth, eighteen hundred and ninety-six, and as attempted to be repealed by an act approved March seventh, nineteen hundred, and to repeal an act approved March seventh, nineteen hundred, entitled an act to provide

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## Ch. 109]

## BOARDS OF SUPERVISORS

§2745

tants of their respective counties not inconsistent with the general laws of this State.

For carrying into effect these and their other powers, the boards of supervisors may make ordinances and by-laws and prescribe fines and other punishment for violation thereof, which shall be enforced by proceedings before a justice of the peace in like manner and with like right of appeal as if such violations were misdemeanors. Such fines, however, shall in no case exceed fifty dollars, and if imprisonment in the county jail be prescribed in any case, such imprisonment shall not exceed thirty days.

No such ordinance or by-law shall be passed until after notice of an intention to propose the same for passage shall have been published for two successive weeks prior to its passage in some newspaper published in the county, or if there be none such, in some newspaper published in an adjoining county or nearby city and having a general circulation in the county of said board, and no such ordinance or by-law shall become effective until after it shall have been published in full for two successive weeks in a like newspaper.

**Revisors' Note.**—This section is new, and was inserted in obedience to a joint resolution of the General Assembly agreed to March 10, 1915 (H. J., p. 1050). In preparing the section some constitutional difficulties were encountered, and it was also found that many of the powers contemplated by the resolution had already been conferred by other sections of the Code. It was necessary, therefore, that the new section should be limited.

**Sec. 2744.** To provide for signing the records of the board of supervisors, where the chairman may have died, resigned or removed from his district, etc., before signing the orders.—When the chairman of any board of supervisors who should have signed the records of the proceedings of any meeting of the board, shall have died, removed from the county, completed his term of office, or for any other reason become incapacitated to perform the duties of his office without such records being signed, it shall be the duty of the board to have such records read at a regular meeting, and if no error therein is shown, to direct its then chairman to sign such record; and it shall enter on its records the fact of such reading and signing, and a reference to such last order shall be noted at the place where such signing is done, and such records, when so signed, shall be as valid as if they had been signed by the chairman who presided at the time when such order or orders were made. (1906, p. 30.)

**Sec. 2745.** Petition for special election on question of removal of courthouse; when judge to issue writ of election.—Whenever one-third of the qualified voters of any county, of whom at least one-half must be freeholders, shall in term time or vacation, petition the judge of the circuit court of such county for a special election (1067)

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in such county on the question of the removal of the courthouse to one or more places specified in said petition which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court or judge shall, within ten days after the receipt of said petition, issue a writ of election in which shall be fixed the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of said election at each voting precinct in said county. He shall also give notice to the officers charged with the duty of conducting other elections in said county; but no election shall be held under this and the ten following sections within thirty days of the posting of such notices as aforesaid. (1908, p. 594.)

**Sec. 2746. How election held and conducted.**—Said election shall be held and conducted as other special elections are held and conducted, except there shall be at each precinct two ballot boxes, one to contain the ballots of freeholders only, and the other to contain ballots of those qualified voters who are not freeholders. (1908, p. 594.)

**Sec. 2747. Certification of result of election to supervisors; publication of notice of change of location.**—If it shall appear from the abstracts and returns that a majority of the votes cast, and a majority of the freeholders voting at such election, or a plurality, should there be more than two places voted for, are for the removal of the courthouse to one of the places specified in the petition, the result shall be certified to the board of supervisors of said county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements, and if the vote shall be for removal the said board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements. And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of said county, who shall, after sixty days' notice, to be published in a newspaper in said county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in said county, and shall direct the sheriff to post up notices at all of the public places, order his court to be held in the new location. (1908, p. 594.)

**Revisors' Note.**—This section now plainly provides that there must be a majority of all the votes cast, and a majority of the freeholders voting at such election, or a plurality, should there be more than two places voted for, in favor of the removal of the courthouse, before the courthouse shall be removed. This may have been the meaning of the

language used in the paragraph of the act from which this section is taken, but it was confusing and subject to doubt.

**Sec. 2748. Donation of land and money.**—It shall be lawful for any town, or individual, to donate to the county the land necessary for its uses at any of the locations named in the petition which shall not be less than one acre, and to offer as an inducement for said removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record said deed and collect and place said fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (1908, p. 594; 1912, p. 86.)

**Sec. 2749. Town may issue bonds; election.**—When any town shall desire to donate to the county any land or sums of money as an inducement for such removal, and such town has not sufficient funds in its treasury as it may desire to offer, it shall be lawful for such town to borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located, or the judge thereof in vacation, for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bond issue shall be used, and the amount of such issue, the circuit court, or judge thereof in vacation, shall, within ten days after receiving said petition, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in said town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in said town. Said election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except the certificate of the judges shall be as follows:

"We hereby certify that at the election held in the town of ....., on the ..... day of ....., nineteen hundred ....., upon the question of a bond issue of ..... dollars, to be used as a donation to ..... county as an inducement for removal of the courthouse of said county to said town, ..... votes were cast for bond issue and ..... votes were cast against bond issue."

The ballots used in said election shall be as follows:

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"For bond issue to the amount of ..... dollars to be used as donation to ..... county, as an inducement for the removal of courthouse; and against bond issue."

The proper canvassers shall certify in duplicate the vote cast in such elections, for and against bond issue, one of said certificates to be filed with the clerk and the other with the judge of said circuit court.

Such election shall be subject to inquiry in the manner provided by section twenty-seven hundred and fifty-four. (Id.)

**Sec. 2750. When and how council of town to issue bonds; payment of interest; sinking fund.**—In case a majority of the voters in said town taking part in such election shall vote in favor of such bond issue, it shall be lawful for the council of such town to issue its bonds to the amount set out in said petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by section twenty-seven hundred and forty-nine. The council of said town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on said bonds and to provide a sinking fund for the redemption of said bonds by special levy or otherwise. (Id.)

**Sec. 2751. When supervisors may issue bonds of county.**—If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition, and the proceeds of said bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, the buildings erected and improvements made. But if the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them, but the amount expended shall not exceed the amount named in the petition and authorized by the voters. (1908, p. 594.)

**Sec. 2752. Form of ballots and certificate of judges.**—The ballots used in said election shall be respectively as follows: For removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor; ..... for removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor; and against removal. The manner of receiving and canvassing the ballots, and making returns and abstracts thereof, shall conform in all respects to the requirements

of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the.....day of ....., nineteen .....; upon the question of removing the courthouse to ....., and permitting the expenditure of \$..... for the purpose, ..... votes which includes ..... freeholders were cast; for removal to ....., and permitting the expenditure of \$..... for the purpose ..... votes, which includes ..... freeholders were cast, and ..... votes, which include ..... freeholders were cast against removal." (Id.)

**Sec. 2753. Canvassing returns.**—The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal which shall include the freeholders voting and authorizing the expenditure of the amount stated in the petition and against removal, one of said certificates to be filed with the clerk and the other with the judge of the circuit court. (Id.)

**Sec. 2754. Contests; how made.**—Returns in such elections shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest, and if any votes were improperly received or rejected, shall give a list of said votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in said county, and by publishing it once a week for two successive weeks in some newspaper published in said county, or, if there be none so published, then in some newspaper having circulation in said county. If it is desired to take depositions, the time and place of taking the same shall be stated in said notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in said contest. Said complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the said election, file in said clerk's office an answer to said complaint, in which any of the allegations of the same may be denied, and any

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statement made going to show the regularity of said election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in said complaint, and a list of the votes he or they will dispute. And if said respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing said complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from said election, shall proceed to pass upon said complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof, and decide the same on the Constitution and laws, and according to the right of the case, and enter such order as will carry its decision into full and complete effect. And the judgment of the said court shall be final. (Id.)

Sec. 2755. No other election held for ten years.—After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Id.)

Sec. 2756. Providing for audit of accounts of certain officers, boards and commissions in certain counties.—Whenever, upon a petition filed in the circuit court of any county in this State, which alone constitutes a separate judicial circuit, by at least fifty freeholders of said county, it is believed by the judge of said court that the public interests will be promoted by an audit or examination of the whole or any part or parts of the financial transactions of any county or district officer, board or commission, of said county, the said judge shall have authority to appoint one or more certified public accountants to make, and report to the court the result of, such audit or examination, and the said court shall fix the compensation therefor and certify the same to the board of supervisors of said county, which shall forthwith make provisions for the compensation of said accountant or accountants. (1914, p. 87.)

Sec. 2757. Board of supervisors permitted to establish and maintain public sewers.—The board of supervisors of any county shall have power to establish and maintain, or to cause to be established and maintained, public sewers in any incorporated town, village or suburbs of any city where the same shall be necessary to protect the public health, and the owners of adjacent lands shall have the

§ 2743a. Powers of boards of counties adjoining certain cities; laws must be approved by judge of circuit court; annexation proceedings not affected.—The boards of supervisors of counties adjoining and abutting a city, within or without this State, with a population of one hundred and twenty-five thousand, or more inhabitants, as determined by the United States census, be, and they are, hereby vested with the same powers and authority as are now vested or which may hereafter be vested in the councils of cities and towns by virtue of the Constitution of the State of Virginia or the acts of the assembly passed or which may hereafter be passed, in pursuance thereof, "Provided, however, that no ordinance shall be enacted under authority of this act regulating the equipment, operation, lighting, or speed or (of) motor propelled vehicles operated on public highways of such county, unless the same be uniform with general laws of this State regulating such equipment, operation, lighting or speed and with the regulations of the State highway commission enacted pursuant to such general laws."

Provided, that all laws enacted by boards of supervisors under authority of this act shall be submitted to and approved by the judge of the circuit court of the respective counties, after hearing testimony of all parties desiring to be heard to be taken as in common law cases, showing the necessity of such laws and police regulations, or in opposition thereto. This act shall not affect any annexation proceedings now or hereafter instituted by any city to annex the territory or any part thereof of any county coming under the provisions of this act. (1920, p. 106; 1924, p. 29.)

§ 2744. To provide for signing the records of the board of supervisors, where the chairman may have died, resigned or removed from his district, etc., before signing the orders.—When the chairman of any board of supervisors who should have signed the records of the proceedings of any meeting of the board, shall have died, removed from the county, completed his term of office, or for any other reason become incapacitated to perform the duties of his office without such records being signed, it shall be the duty of the board to have such records read at a regular meeting, and if no error therein is shown, to direct its then chairman to sign such record; and it shall enter on its records the fact of such reading and signing, and a reference to such last order shall be noted at the place where such signing is done, and such records, when so signed, shall be as valid as if they had been signed by the chairman who presided at the time when such order or orders were made. (1906, p. 30.)

§ 2745. Petition for special election on question of removal of courthouse; when judge to issue writ of election.—Whenever one-third of the qualified voters of any county, of whom at least one-half must be freeholders, shall in term time or vacation, petition the judge of the circuit court of such county for a special election in such county on the question of the removal of the courthouse to one or more places specified in said petition which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at

the new location, such court or judge shall, within ten days after the receipt of said petition, issue a writ of election in which shall be fixed the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of said election at each voting precinct in said county. He shall also give notice to the officers charged with the duty of conducting other elections in said county; but no election shall be held under this and the ten following sections within thirty days of the posting of such notices as aforesaid. (1908, p. 594.)

§ 2746. How election held and conducted.—Said election shall be held and conducted as other special elections are held and conducted, except there shall be at each precinct two ballot boxes, one to contain the ballots of freeholders only, and the other to contain ballots of those qualified voters who are not freeholders. (1908, p. 594.)

§ 2747. Certification of result of election to supervisors; publication of notice of change of location.—If it shall appear from the abstracts and returns that a majority of the votes cast, and a majority of the freeholders voting at such election, or a plurality, should there be more than two places voted for, are for the removal of the courthouse to one of the places specified in the petition, the result shall be certified to the board of supervisors of said county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements, and if the vote shall be for removal the said board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has been donated, and to erect the necessary buildings and improvements. And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of said county, who shall, after sixty days' notice, to be published in a newspaper in said county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in said county, and shall direct the sheriff to post up notices at all of the public places, order his court to be held in the new location. (1808, p. 594.) ☒

§ 2748. Donation of land and money.—It shall be lawful for any town, or individual, to donate to the county the land necessary for its uses at any of the locations named in the petition which shall not be less than one acre, and to offer as an inducement for said removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record said deed and collect and place said fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (1908, p. 594; 1912, p. 86.)

§ 2749. Town may issue bonds; election.—When any town shall desire to donate to the county any



land or sums of money as an inducement for such removal, and such town has not sufficient funds in its treasury as it may desire to offer, it shall be lawful for such town to borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located or the judges thereof in vacation, for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bonds issue shall be used, and the amount of such issue, the circuit court, or judge thereof in vacation, shall, within ten days after receiving said petition, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in said town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in said town. Said election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except the certificate of the judges shall be as follows:

"We hereby certify that at the election held in the town of ..... on the ..... day of ....., nineteen hundred ..... upon the question of a bond issue of ..... dollars, to be used as a donation to ..... county as an inducement for removal of the courthouse of said county to said town, ..... votes were cast for bond issue and ..... votes were cast against bond issue."

The ballots used in said election shall be as follows:

"For bond issue to the amount of ..... dollars to be used as donation to ..... county, as an inducement for the removal of courthouse; and against bond issue."

The proper canvassers shall certify in duplicate the vote cast in such elections, for and against bond issue, one of said certificates to be filed with the clerk and the other with the judge of said circuit court.

Such election shall be subject to inquiry in the manner provided by section twenty-seven hundred and fifty-four. (Id.)

§ 2750. When and how council of town to issue bonds; payment of interest; sinking fund.—In case a majority of the voters in said town taking part in such election shall vote in favor of such bond issue, it shall be lawful for the council of such town to issue its bonds to the amount set out in said petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by section twenty-seven hundred and forty-nine. The council of said town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on said bonds and to provide a sinking fund for the redemption of said bonds by special levy or otherwise. (Id.)

§ 2751. When supervisors may issue bonds of county.—If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land

shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition, and the proceeds of said bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, the buildings erected and improvements made. But if the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them, but the amount expended shall not exceed the amount named in the petition and authorized by the voters. (1908, p. 594.)

#### § 2752. Form of ballots and certificate of judges.

—The ballots used in said election shall be respectively as follows: For removal of courthouse to ..... and permitting the supervisors to spend \$..... therefor; ..... for removal of courthouse to ..... and permitting the supervisors to spend \$..... therefor; and against removal. The manner of receiving and canvassing the ballots, and making returns and abstracts thereof, shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the ..... day of ....., nineteen .....; upon the question of removing the courthouse to ..... and permitting the expenditure of \$..... for the purpose, ..... votes which includes ..... freeholders were cast; for removal to ..... and permitting the expenditure of \$..... for the purpose ..... votes, which includes ..... freeholders were cast, and ..... votes, which include ..... freeholders were cast against removal." (Id.)

§ 2753. Canvassing returns.—The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal which shall include the freeholders voting and authorizing the expenditure of the amount stated in the petition and against removal, one of said certificates to be filed with the clerk and the other with the judge of the circuit court. (Id.)

§ 2754. Contests; how made.—Returns in such elections shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest, and if any votes were improperly received or rejected, shall give a list of said votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating

that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in said county, and by publishing it once a week for two successive weeks in some newspaper published in said county, or if there be none so published, then in some newspaper having circulation in said county. If it is desired to take depositions, the time and place of taking the same shall be stated in said notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in said contest. Said complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the said election, file in said clerk's office an answer to said complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of said election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in said complaint, and a list of the votes he or they will dispute. And if said respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing said complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from said election, shall proceed to pass upon said complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof, and decide the same on the Constitution and laws, and according to the right of the case, and enter such order as will carry its decision into full and complete effect. And the judgment of the said court shall be final. (Id.)

§ 2755. No other election held for ten years.—After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Id.)

§ 2756. Providing for audit of accounts of certain officers, boards and commissions in certain counties.—Whenever, upon a petition filed in the circuit court of any county in this State by at least fifty freeholders of said county, it is believed by the judge of said court that the public interests will be promoted by an audit or examination of the whole or any part or parts of the financial transactions of any county or district officer, board or commission, of said county, the said judge shall have authority to appoint one or more certified public accountants to make, and report to the court the result of such audit or examination, and the said court shall fix the compensation therefor and certify the same to the board of supervisors of said county, which shall forthwith make provisions for the compensation of said ac-

countant or accountants. (1914, p. 87; 1930, p. 689.)

§ 2757. Board of supervisors permitted to establish and maintain public sewers.—The board of supervisors of any county shall have power to establish and maintain, or to cause to be established and maintained, public sewers along the streets, alleys and public highways in any incorporated town, village or suburbs of any city where the same shall be necessary whether the title to said streets, alleys and public highways be vested in the board of supervisors or not, to protect the public health, and the owners of adjacent lands shall have the right to connect their premises with such sewers on such terms as the board of supervisors shall prescribe; provided, that upon the failure or refusal of the board of supervisors to establish and maintain, or cause to be established and maintained, public sewers as herein provided for, any landowner shall have the right to establish and maintain a sewer from his land along any street, alley or public highway to the nearest natural water course; provided, such landowner shall first deposit with the board of supervisors a bond with security in such penalty as the board shall prescribe, not in excess of the cost of constructing such sewer, conditioned to keep such sewer in a proper condition to carry off such sewerage as may be emptied therein, and provided, further, that the sewer proposed to be established by such landowner shall be approved by the State board of health and with the consent of the city or town council by ordinance or resolution.

The action of the board of supervisors under this act shall be subject to review by the circuit court of the county upon a petition setting forth the proceedings before such board being filed by any person in interest within thirty days from the date of the final action of the board in any proceeding under this act. (1914, p. 714; 1924, p. 640.) ☒

§ 2757a. Payment for improvement by levies or assessment.—The board of supervisors for and in such counties of Virginia as constitute a separate judicial circuit, and in such counties as have a density of population as shown by the last preceding United States census of at least three hundred inhabitants per square mile, are hereby empowered and directed, whenever petitioned by a majority of the property owners of a section or district of the county, to order to be made such public improvements as sewers, water systems, including mains and pumping units, garbage disposal plants, drainage, fire protection apparatus, and fire mains and plugs, street paving, and mosquito eradication; to let contracts to the lowest competent bidders for such work; to issue assessment anticipation warrants, bearing legal interest to cover the cost of preliminary surveys, actual construction work, and the cost of spreading and collecting assessments; and to spread the total cost of such improvements and their expenses, justly and proportionately, according to benefits upon the real properties concerned, by special assessments, payable to the county treasurer, in installments bearing legal interest; such special assessments to be a similar lien on said real property as the heretofore authorized annual taxes, and to be

man of any board of supervisors who should have signed the records of the proceedings of any meeting of the board, shall have died, removed from the county, completed his term of office, or for any other reason become incapacitated to perform the duties of his office without such records being signed, it shall be the duty of the board to have such records read at a regular meeting, and if no error therein is shown, to direct its then chairman to sign such record; and it shall enter on its records the fact of such reading and signing, and a reference to such last order shall be noted at the place where such signing is done, and such records, when so signed, shall be as valid as if they had been signed by the chairman who presided at the time when such order or orders were made. (1906, p. 30.)

§ 2745. Petition for special election on question of removal of courthouse; when judge to issue writ of election.—Whenever one-third of the qualified voters of any county, of whom at least one-half must be freeholders, shall in term time or vacation, petition the judge of the circuit court of such county for a special election in such county on the question of the removal of the courthouse to one or more places specified in said petition which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court or judge shall, within ten days after the receipt of said petition, issue a writ of election in which shall be fixed the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of said election at each voting precinct in said county. He shall also give notice to the officers charged with the duty of conducting other elections in said county; but no election shall be held under this and the ten following sections within thirty days of the posting of such notices as aforesaid. (1908, p. 594.)

§ 2746. How election held and conducted.—Said election shall be held and conducted as other special elections are held and conducted, except there shall be at each precinct two ballot boxes, one to contain the ballots of freeholders only, and the other to contain ballots of those qualified voters who are not freeholders. (1908, p. 594.)

§ 2747. Certification of result of election to supervisors; publication of notice of change of location.—If it shall appear from the abstracts and returns that a majority of the votes cast, and a majority of the freeholders voting at such election, or a plurality, should there be more than two places voted for, are for the removal of the courthouse to one of the places specified in the petition, the result shall be certified to the board of supervisors of said county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements, and if the vote shall be for removal the said board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements. And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge

of the circuit court of said county, who shall, after sixty days' notice, to be published in a newspaper in said county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in said county, and shall direct the sheriff to post up notices at all of the public places, order his court to be held in the new location. (1908, p. 594.)

§ 2748. Donation of land and money.—It shall be lawful for any town, or individual, to donate to the county the land necessary for its uses at any of the locations named in the petition which shall not be less than one acre, and to offer as an inducement for said removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record said deed and collect and place said fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (1908, p. 594; 1912, p. 86.)

§ 2749. Town may issue bonds; election.—When any town shall desire to donate to the county any land or sums of money as an inducement for such removal, and such town has not sufficient funds in its treasury as it may desire to offer, it shall be lawful for such town to borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located or the judges thereof in vacation, for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bonds issue shall be used, and the amount of such issue, the circuit court, or judge thereof in vacation, shall, within ten days after receiving said petition, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in said town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in said town. Said election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except the certificate of the judges shall be as follows:

"We hereby certify that at the election held in the town of ....., on the ..... day of ....., nineteen hundred ....., upon the question of a bond issue of ..... dollars, to be used as a donation to ..... county as an inducement for removal of the courthouse of said county to said town, ..... votes were cast for bond issue and ..... votes were cast against bond issue."

The ballots used in said election shall be as follows:

"For bond issue to the amount of ..... dollars to be used as donation to ....."

county, as an inducement for the removal of courthouse; and against bond issue."

The proper canvassers shall certify in duplicate the vote cast in such elections, for and against bond issue, one of said certificates to be filed with the clerk and the other with the judge of said circuit court.

Such election shall be subject to inquiry in the manner provided by section twenty-seven hundred and fifty-four. (Id.)

§ 2750. When and how council of town to issue bonds; payment of interest; sinking fund.—In case a majority of the voters in said town taking part in such election shall vote in favor of such bond issue, it shall be lawful for the council of such town to issue its bonds to the amount set out in said petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by section twenty-seven hundred and forty-nine. The council of said town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on said bonds and to provide a sinking fund for the redemption of said bonds by special levy or otherwise. (Id.)

§ 2751. When supervisors may issue bonds of county.—If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition, and the proceeds of said bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, the buildings erected and improvements made. But if the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them, but the amount expended shall not exceed the amount named in the petition and authorized by the voters. (1908, p. 594.)

§ 2752. Form of ballots and certificate of judges.—The ballots used in said election shall be respectively as follows: For removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor; ..... for removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor; and against removal. The manner of receiving and canvassing the ballots, and making returns and abstracts thereof, shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the ..... day of ....., nineteen ....., upon the question of removing the courthouse to ....., and permitting the expenditure of \$..... for the purpose, ..... votes which includes ..... freeholders were cast; for removal to ....., and permitting the expenditure of \$..... for the purpose

..... votes, which includes ..... freeholders were cast, and ..... votes, which include ..... freeholders were cast against removal." (Id.)

§ 2753. Canvassing returns.—The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal which shall include the freeholders voting and authorizing the expenditure of the amount stated in the petition and against removal, one of said certificates to be filed with the clerk and the other with the judge of the circuit court. (Id.)

§ 2754. Contests; how made.—Returns in such elections shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest, and if any votes were improperly received or rejected, shall give a list of said votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in said county, and by publishing it once a week for two successive weeks in some newspaper published in said county, or if there be none so published, then in some newspaper having circulation in said county. If it is desired to take depositions, the time and place of taking the same shall be stated in said notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in said contest. Said complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the said election, file in said clerk's office an answer to said complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of said election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in said complaint, and a list of the votes he or they will dispute. And if said respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing said complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from said election, shall proceed to pass upon said complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testi-

mony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof, and decide the same on the Constitution and laws, and according to the right of the case, and enter such order as will carry its decision into full and complete effect. And the judgment of the said court shall be final. (Id.)

Stated in *Cundiff v. Jeter*, 172 Va. 470, 2 S. E. (2d) 436.

§ 2755. No other election held for ten years.—After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Id.)

§ 2756. Providing for audit of accounts of certain officers, boards and commissions in certain counties.—Whenever, upon a petition filed in the circuit court of any county in this State by at least fifty freeholders of said county, it is believed by the judge of said court that the public interests will be promoted by an audit or examination of the whole or any part or parts of the financial transactions of any county or district officer, board or commission, of said county, the said judge shall have authority to appoint one or more certified public accountants to make, and report to the court the result of such audit or examination, and the said court shall fix the compensation therefor and certify the same to the board of supervisors of said county, which shall forthwith make provisions for the compensation of said accountant or accountants. (1914, p. 87; 1930, p. 889.)

§ 2757. Board of supervisors permitted to establish and maintain public sewers, and public water mains.—The board of supervisors of any county shall have power to establish and maintain, or to cause to be established and maintained, public sewers and public water mains along the streets, alleys and public highways in any incorporated town, village or suburbs of any city where the same shall be necessary whether the title to said streets, alleys and public highways be vested in the board of supervisors or not, to protect the public health, and the owners of adjacent lands shall have the right to connect their premises with such sewers and water mains on such terms as the board of supervisors shall prescribe; provided, that upon the failure or refusal of the board of supervisors to establish and maintain, or cause to be established and maintained, public sewers as herein provided for, any landowner shall have the right to establish and maintain a sewer from his land along any street, alley or public highway to the nearest natural water course; provided, such landowner shall first deposit with the board of supervisors a bond with security in such penalty as the board shall prescribe, not in excess of the cost of constructing such sewer, conditioned to keep such sewer in a proper condition to carry off such sewerage as may be emptied therein, and provided, further, that the sewer proposed to be established by such landowner shall be approved by the State Board of Health and with the consent of the city or town council by ordinance or resolution.

And the board of supervisors of any county shall, with the consent of the council or other governing body of any city adjacent to such county,

have the power to establish and maintain or cause to be established and maintained public sewers and public water mains along the streets, alleys and public highways in such city where the same shall be necessary for the purpose of connecting with any public sewerage system or public water system in said county, whether the title to said streets, alleys and public highways be vested in said city or not, to protect the public health, and the owners of the adjacent lands or lots shall have the right to connect their premises with such sewers and water mains within the corporate limits of such city on such terms as the council or other governing body of such city shall prescribe.

The action of the board of supervisors under this act shall be subject to review by the circuit court of the county upon a petition setting forth the proceedings before such board being filed by any person in interest within thirty days from the date of the final action of the board in any proceeding under this act. (1914, p. 714; 1924, p. 640; 1936, p. 327.) ☒

Effect of Amendment of 1936.—The amendment of 1936 made this section applicable to the establishment and maintenance of public water mains as well as to public sewers. It also added the next to the last paragraph of the section.

Editor's Note.

For act authorizing and requiring counties having a population greater than seven hundred and fifty (750) inhabitants per square mile, as shown by the last preceding United States census, and towns lying wholly or partly within such counties under certain conditions to co-operate in the construction, maintenance, and care of a sewerage system or systems within the two jurisdictions, see Acts 1934, p. 312.

This section contains no delegation of authority by the General Assembly to a county to prohibit the emptying of sewage into a tidal stream. *Old Dominion Land Co. v. Warwick County*, 172 Va. 160, 200 S. E. 619.

§ 2757a. Payment for improvement by levies or assessment.—The board of supervisors for and in such counties of Virginia as constitute a separate judicial circuit, and in such counties as have a density of population as shown by the last preceding United States census of at least three hundred inhabitants per square mile, are hereby empowered and directed, whenever petitioned by a majority of the property owners of a section or district of the county, to order to be made such public improvements as sewers, water systems, including mains and pumping units, garbage disposal plants, drainage, fire protection apparatus, and fire mains and plugs, street paving, and mosquito eradication; to let contracts to the lowest competent bidders for such work; to issue assessment anticipation warrants, bearing legal interest to cover the cost of preliminary surveys, actual construction work, and the cost of spreading and collecting assessments; and to spread the total cost of such improvements and their expenses, justly and proportionately, according to benefits upon the real properties concerned, by special assessments, payable to the county treasurer, in installments bearing legal interest; such special assessments to be a similar lien on said real property as the heretofore authorized annual taxes, and to be subject to the same penalties for non-payment. (1920, p. 266; 1922, p. 68; 1926, pp. 510, 511.)

Effect of Amendment of 1926.—The provision as to counties having 300 inhabitants per square mile was inserted by the amendment of 1926. Water systems including mains and pumping units were added to the list of improvements. Minor changes are found in phraseology.

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boundary line so in doubt or dispute. Such petition shall describe, with reasonable certainty, the location contended for and shall state the grounds of such contention. A plat, showing the location contended for, filed with the petition, may serve the purposes of such description. The petitioner shall make the other of such counties the party defendant and the case shall be commenced by serving a copy of the petition upon the Commonwealth's attorney of such county. No formal plea or answer to the petition shall be necessary but the defendant shall state its grounds of defense in writing, if any it has, describing, with the same degree of certainty required of the petitioner, the line as contended for by the defendant and the county shall be deemed to be at issue, which issue shall be the true location of the boundary line so in doubt or dispute.

The case shall be heard and decided by a court, without a jury, held and presided over by three judges as follows: The judge of the circuit court of the petitioning county, the judge of the circuit court of the defendant county, and a judge of some circuit court in this state remote from the counties, to be designated by the Governor. When both such counties are within the same circuit, the Governor shall designate a third judge from an adjoining circuit. Such court shall hear the case upon the evidence introduced in the manner in which evidence is introduced in common law cases and shall ascertain and establish the true boundary line by a majority decision, and shall give judgment accordingly. Costs shall be awarded as the court shall determine. The judgment of the court shall be recorded in the common law order book and in the current deed book of the court and indexed in the names of the counties, and, unless reversed, shall forever settle, determine, designate and establish the true boundary line. An appeal may be granted by the Supreme Court of Appeals, or any Justice thereof, to either party from the judgment of the court, and the costs of such appeal shall be awarded to the party substantially prevailing. (Code 1919, § 2685; 1932, p. 774.)

### CHAPTER 3.

#### REMOVAL OF COURTHOUSE.

Sec.	Sec.
15-43. Petition for removal of courthouse; writ of election.	15-50. When supervisors may issue bonds of county.
15-44. How election held and conducted.	15-51. Form of ballots for county election on removal and appropriation: certificate of judges.
15-45. Certification of result to supervisors: procuring land and buildings.	15-52. Canvassing returns.
15-46. Removal of court.	15-53. Contests; how made.
15-47. Donation of land and money.	15-54. No other election held for ten years.
15-48. Town may issue bonds; election.	
15-49. When and how council to issue bonds: payment of interest; sinking fund.	

§ 15-43. Petition for removal of courthouse; writ of election.—Whenever one-third of the qualified voters of any county, of whom at least one-half must be freeholders, shall, in term time or vacation, petition the judge of the circuit court of such county for a special election in such county on the question of the removal of the courthouse to one or more places specified in the petition which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court or judge shall, within ten days after the receipt of the petition, issue a writ of election in which shall be fixed the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of the election at each voting precinct in the county. He shall also give notice to the officers charged with the duty of conducting other elections in the county; but no election

shall be held under this and the eleven following sections within thirty days of the posting of such notices as aforesaid. (Code 1919, § 2745.)

§ 15-44. **How election held and conducted.**—Such election shall be held and conducted as other special elections are held and conducted, except that there shall be at each precinct two ballot boxes, one to contain the ballots of freeholders only and the other to contain ballots of those qualified voters who are not freeholders. (Code 1919, § 2746.)

§ 15-45. **Certification of result to supervisors; procuring land and buildings.**—If it shall appear from the abstracts and returns that a majority of the votes cast and a majority of the freeholders voting at such election, or a plurality should there be more than two places voted for, are for the removal of the courthouse to one of the places specified in the petition, the result shall be certified to the board of supervisors of the county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements. If the vote shall be for removal the board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements. (Code 1919, § 2747.)

§ 15-46. **Removal of court.**—And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of the county, who shall, after sixty days' notice, to be published in a newspaper in the county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in the county, and to be posted up by the sheriff at all of the public places, order his court to be held in the new location. (Code 1919, § 2747.)

§ 15-47. **Donation of land and money.**—Any town or individual may donate to the county the land necessary for its uses at any of the locations named in the petition, which shall not be less than one acre, and may offer as an inducement for such removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record the deed and collect and place the fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (Code 1919, § 2748.)

§ 15-48. **Town may issue bonds; election.**—When any town shall desire to donate to the county any land or sums of money as an inducement for such removal and such town has not sufficient funds in its treasury as it may desire to offer, such town may borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located or the judges thereof in vacation, for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bond issue shall be used, and the amount of such issue, the circuit court, or judge thereof in vacation, shall, within ten days after receiving the petition, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in the town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in the town. The election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify that at the election held in the town of ..... on the ..... day of ..... nineteen hundred ....., upon the question of a bond issue of ..... dollars, to be used as a donation to ..... county as an inducement for removal of the courthouse of said county to said town, ..... votes were cast for the bond issue and ..... votes were cast against the bond issue."

The ballots used in the election shall be as follows:

☐ For bond issue to the amount of ..... dollars to be used as donation to ..... county, as an inducement for the removal of courthouse;

☐ Against bond issue.

The proper canvassers shall certify in duplicate the vote cast in such elections, for and against the bond issue, one of such certificates to be filed with the clerk and the other with the judge of the circuit court.

Such election shall be subject to inquiry in the manner provided by § 15-53. (Code 1919, § 2749.)

**§ 15-49. When and how council to issue bonds; payment of interest; sinking fund.**—In case a majority of the voters in the town taking part in such election shall vote in favor of such bond issue, the council of such town may issue its bonds to the amount set out in the petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by § 15-48. The council of the town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds by special levy or otherwise. (Code 1919, § 2750.)

**§ 15-50. When supervisors may issue bonds of county.**—If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition and the proceeds of the bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, and the buildings erected and improvements made. If the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them. But the amount expended shall not exceed the amount named in the petition and authorized by the voters. (Code 1919, § 2751.)

**§ 15-51. Form of ballots for county election on removal and appropriation; certificate of judges.**—The ballots used in the election required by § 15-43 shall be respectively as follows:

☐ For removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor;

☐ For removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor;

☐ Against removal.

The manner of receiving and canvassing the ballots and making returns and abstracts thereof shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the ..... day of ..... nineteen ....., upon the question of removing the courthouse to ..... and permitting the expenditure of \$..... for the purpose, ..... votes, which include ..... votes of freeholders, were cast; for removal to ....., and permitting the expenditure of \$..... for the purpose, ..... votes,



which include ..... votes of freeholders, were cast: and ..... votes, which include ..... votes of freeholders, were cast against removal." (Code 1919, § 2752.)

§ 15-52. **Canvassing returns.**—The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal which shall include the freeholders voting and authorizing the expenditure of the amount stated in the petition and against removal, one of the certificates to be filed with the clerk and the other with the judge of the circuit court. (Code 1919, § 2753.)

§ 15-53. **Contests; how made.**—Returns in such elections shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest and if any votes were improperly received or rejected shall give a list of such votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in the county, and by publishing it once a week for two successive weeks in some newspaper published in the county or, if there be none so published, then in some newspaper having circulation in the county. If it is desired to take depositions, the time and place of taking the same shall be stated in the notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in the contest. The complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the election, file in the clerk's office an answer to the complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of the election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in the complaint, and a list of the votes he or they will dispute. And if the respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing the complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from the election, shall proceed to pass upon the complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof and decide the same on the Constitution and laws and according to the right of the case and enter such order as will carry its decision into full and complete effect. And the judgment of the court shall be final. (Code 1919, § 2754.)

§ 15-54. **No other election held for ten years.**—After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Code 1919, § 2755.)

## APPENDIX

§ 15-43

CODE OF VIRGINIA

§ 15-44

designated by the Governor. When both such counties or cities are within the same circuit, the Governor shall designate a third judge from an adjoining circuit. Such court shall hear the case upon the evidence introduced in the manner in which evidence is introduced in common law cases and shall ascertain and establish the true boundary line by a majority decision, and shall give judgment accordingly. Costs shall be awarded as the court shall determine. The judgment of the court shall be recorded in the common law order book and in the current deed book of the court and indexed in the names of the counties and cities, and, unless reversed, shall forever settle, determine, designate and establish the true boundary line. An appeal may be granted by the Supreme Court of Appeals, or any Justice thereof, to either party from the judgment of the court, and the costs of such appeal shall be awarded to the party substantially prevailing. (Code 1919, § 2685; 1932, p. 774; 1954, c. 536.)

The 1954 amendment inserted references to "corporation courts", "city" and "cities".

## CHAPTER 3.

## REMOVAL OF COURTHOUSE.

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|---|---|
| <p>Sec.<br/>15-43. Petition for removal of courthouse; writ of election.<br/>15-44. How election held and conducted.<br/>15-45. Certification of result to supervisors; procuring land and buildings.<br/>15-46. Removal of court.<br/>15-47. Donation of land and money.<br/>15-48. Town may issue bonds; election.<br/>15-49. When and how council to issue bonds; payment of interest; sinking fund.</p> | <p>Sec.<br/>15-50. When supervisors may issue bonds of county.<br/>15-51. Form of ballots for county election on removal and appropriation; certificate of judges.<br/>15-52. Canvassing returns.<br/>15-53. Contests; how made.<br/>15-54. No other election held for ten years.</p> |
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§ 15-43. Petition for removal of courthouse; writ of election.—Whenever one-third of the qualified voters of any county, of whom at least one-half must be freeholders, shall, in term time or vacation, petition the judge of the circuit court of such county, or whenever the governing body of any county by resolution duly adopted request the judge of the circuit court of such county, for a special election in such county on the question of the removal of the courthouse to one or more places specified in the petition or resolution which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court or judge shall, within ten days after the receipt of the petition or resolution, issue a writ of election in which shall be fixed the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of the election at each voting precinct in the county. He shall also give notice to the officers charged with the duty of conducting other elections in the county; but no election shall be held under this and the eleven following sections within thirty days of the posting of such notices as aforesaid. (Code 1919, § 2745; 1956, c. 95.)

The 1956 amendment inserted the provisions relating to resolution.

§ 15-44. How election held and conducted.—Such election shall be held and conducted as other special elections are held and conducted, except

that there shall be at each precinct two ballot boxes, one to contain the ballots of freeholders only and the other to contain ballots of those qualified voters who are not freeholders. (Code 1919, § 2746.)

§ 15-45. Certification of result to supervisors; procuring land and buildings.—If it shall appear from the abstracts and returns that a majority of the votes cast and a majority of the freeholders voting at such election, or a plurality should there be more than two places voted for, are for the removal of the courthouse to one of the places specified in the petition or resolution, the result shall be certified to the board of supervisors of the county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements. If the vote shall be for removal the board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements. (Code 1919, § 2747; 1956, c. 95.)

The 1956 amendment inserted the words  
"or resolution" in line four.

§ 15-46. Removal of court.—And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of the county, who shall, after sixty days' notice, to be published in a newspaper in the county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in the county, and to be posted up by the sheriff at all of the public places, order his court to be held in the new location. (Code 1919, § 2747.)

§ 15-47. Donation of land and money.—Any town or individual may donate to the county the land necessary for its uses at any of the locations named in the petition, which shall not be less than one acre, and may offer as an inducement for such removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record the deed and collect and place the fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (Code 1919, § 2748.)

§ 15-48. Town may issue bonds; election.—When any town shall desire to donate to the county any land or sums of money as an inducement for such removal and such town has not sufficient funds in its treasury as it may desire to offer, such town may borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located or the judges thereof in vacation, for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bond issue shall be used, and the amount of such issue, the circuit court, or judge thereof in vacation, shall, within ten days after receiving the petition, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in the town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in the town. The election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify that at the election held in the town of ....., on the ..... day of ....., nineteen hundred ....., upon the question of a bond issue of ..... dollars, to be used as a donation to ..... county as an inducement for removal of the courthouse of said county to said town, ..... votes were cast for the bond issue and ..... votes were cast against the bond issue."

The ballots used in the election shall be as follows:

- ☐ For bond issue to the amount of .....dollars to be used as donation to ..... county, as an inducement for the removal of courthouse;  
☐ Against bond issue.

The proper canvassers shall certify in duplicate the vote cast in such elections, for and against the bond issue, one of such certificates to be filed with the clerk and the other with the judge of the circuit court.

Such election shall be subject to inquiry in the manner provided by § 15-53. (Code 1919, § 2749.)

§ 15-49. When and how council to issue bonds; payment of interest; sinking fund.—In case a majority of the voters in the town taking part in such election shall vote in favor of such bond issue, the council of such town may issue its bonds to the amounts set out in the petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by § 15-48. The council of the town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds by special levy or otherwise. (Code 1919, § 2750.)

§ 15-50. When supervisors may issue bonds of county.—If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition and the proceeds of the bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, and the buildings erected and improvements made. If the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them. But the amount expended shall not exceed the amount named in the petition and authorized by the voters. (Code 1919, § 2751.)

§ 15-51. Form of ballots for county election on removal and appropriation; certificate of judges.—The ballots used in the election required by § 15-43 shall be respectively as follows:

- ☐ For removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor;  
☐ For removal of courthouse to ....., and permitting the supervisors to spend \$..... therefor;  
☐ Against removal.

The matter of receiving and canvassing the ballots and making returns and abstracts thereof shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the ..... day of ....., nineteen ....., upon the question of removing the courthouse to ....., and permitting the expenditure of \$ ..... for the purpose, ..... votes,

which include ..... votes of freeholders, were cast; for removal to ....., and permitting the expenditure of \$...... for the purpose, ..... votes, which include ..... votes of freeholders, were cast; and ..... votes, which include ..... votes of freeholders, were cast against removal." (Code 1919, § 2752.)

§ 15-52. Canvassing returns.—The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal which shall include the freeholders voting and authorizing the expenditure of the amount stated in the petition and against removal, one of the certificates to be filed with the clerk and the other with the judge of the circuit court. (Code 1919, § 2753.)

§ 15-53. Contests; how made.—Returns in such elections shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest and if any votes were improperly received or rejected shall give a list of such votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in the county, and by publishing it once a week for two successive weeks in some newspaper published in the county or, if there be none so published, then in some newspaper having circulation in the county. If it is desired to take depositions, the time and place of taking the same shall be stated in the notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in the contest. The complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the election, file in the clerk's office an answer to the complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of the election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in the complaint, and a list of the votes he or they will dispute. And if the respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing the complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from the election, shall proceed to pass upon the complaint without a jury. on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof and decide the same on the Constitution and laws and according to the right of the case and enter such order as will carry its decision into full and complete effect. And the judgment of the court shall be final. (Code 1919, § 2754.)

§ 15-54. No other election held for ten years.—After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Code 1919, § 2755.)

## § 15.1-556

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## § 15.1-559

may demand it a certified copy of any record in his office, or of any account therein, on receiving from such person the fees allowed to the clerk of the circuit court for similar services. (Code 1950, § 15-262; 1962, c. 623.)

**§ 15.1-556. Monthly financial reports of officers and offices.** — The board of supervisors may require monthly financial reports from any officer or office of the county or of any district thereof and may investigate bills and receipts of any county or district officer, and for these purposes may subpoena witnesses, administer oaths and require the production of books, papers and other evidence. In case any witness fails or refuses to obey any such lawful order of the board of supervisors, he shall be deemed guilty of a misdemeanor. (Code 1950, § 15-263; 1962, c. 623.)

**§ 15.1-557. Audit of accounts of certain county officers, boards and commissions.** — Whenever, upon a petition filed in the circuit court of any county in this State by at least fifty freeholders of the county, it is believed by the judge of the court that the public interests will be promoted by an audit or examination of the whole or any part or parts of the financial transactions of any county or district officer, board or commission of the county, the judge may appoint one or more certified public accountants to make and report to the court the result of such audit or examination and the court shall fix the compensation therefor and certify the same to the board of supervisors of the county, which shall forthwith make provision for the compensation of the accountant or accountants. (Code 1950, § 15-264; 1962, c. 623.)

**§ 15.1-558. Settlement of claims against treasurer or former treasurer of county.** — The boards of supervisors may, with the advice and consent of the Commonwealth's attorney of the county, adjust and settle upon equitable principles, without regard to strict legal rules, any judgment, the collection of which is doubtful, which may exist in favor of the county against any treasurer or ex-treasurer of the county and his sureties. But before such adjustment or settlement shall in anywise affect the rights of the county, it shall be submitted to the judge of the circuit court of the county, accompanied by a written statement signed by the chairman of the board of supervisors of the county of the facts and reasons which, in the opinion of the board, render such adjustment and settlement just and proper. When the court shall approve and endorse the same, it shall enter an order in its records of such approval, whereupon it shall become valid and binding.

But notwithstanding the foregoing provisions of this section, or any provisions of any other statute or act to the contrary, when any such judgment or claim shall have been standing for seven years or more and the original principal of the debt or obligation out of which the same grew has been paid, the board, with the consent and approval of the Commonwealth's attorney of the county, may accept in compromise of such judgment or claim, such amount or amounts as such board may deem proper, and under such circumstances such board may adopt and enter of record in its minute book a resolution reciting such compromise and the terms thereof and authorizing the Commonwealth's attorney to accept such settlement on behalf of the county and, upon the payment of the amount so agreed to be accepted, to execute a receipt therefor, in full settlement of such claim, suit or judgment and to dismiss the suit or mark the judgment satisfied of record. (Code 1950, § 15-265; 1962, c. 623.)

## ARTICLE 3.

*Removal of Courthouse.*

**§ 15.1-559. Petition for removal of courthouse; writ of election.** — Whenever one third of the qualified voters of any county shall, in term time or

vacation, petition the judge of the circuit court of such county, or whenever the governing body of any county by resolution duly adopted request the judge of the circuit court of such county, for a special election in such county on the question of the removal of the courthouse to one or more places specified in the petition or resolution which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court or judge shall, within ten days after the receipt of the petition or resolution, issue a writ of election in which shall be fixed the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of the election at each voting precinct in the county. He shall also give notice to the officers charged with the duty of conducting other elections in the county; but no election shall be held under this and the eleven following sections (§§ 15.1-560 to 15.1-570) within thirty days of the posting of such notices as aforesaid. (Code 1950, § 15-43; 1956, c. 95; 1962, c. 623; 1971 Ex. Sess., cc. 42, 245.)

**The 1971 amendments.** — Acts 1971, Ex. Sess., c. 42, deleted “of whom at least one half must be freeholders” following “county” where that word first appears in the section. Acts 1971, Ex. Sess., c. 245, amended c. 42 so as to make it effective at noon, July 1, 1971.

**§ 15.1-560. How election held and conducted.** — Such election shall be held and conducted as other special elections are held and conducted. (Code 1950, § 15-44; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

**The 1971 amendments.** — Acts 1971, Ex. Sess., c. 42, deleted a provision for separate ballot boxes for ballots of freeholders and those of other voters. Acts 1971, Ex. Sess., c. 245, amended c. 42 so as to make it effective at noon, July 1, 1971.

**§ 15.1-561. Certification of result to supervisors; procuring land and buildings.** — If it shall appear from the abstracts and returns that a majority of the votes cast at such election, or a plurality should there be more than two places voted for, are for the removal of the courthouse to one of the places specified in the petition or resolution, the result shall be certified to the board of supervisors of the county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements. If the vote shall be for removal the board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements. (Code 1950, § 15-45; 1956, c. 95; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

**The 1971 amendments.** — Acts 1971, Ex. Sess., c. 42, deleted “and a majority of the freeholders voting” following “votes cast” near the beginning of the first sentence. Acts 1971, Ex. Sess., c. 245, amended c. 42 so as to make it effective at noon, July 1, 1971.

**§ 15.1-562. Removal of court.** — And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of the county, who shall, after sixty days' notice, to be published in a newspaper in the county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in the county, and to be posted up by the sheriff at all of the public places, order his court to be held in the new location. (Code 1950, § 15-46; 1962, c. 623.)

**§ 15.1-563. Donation of land and money.** — Any town or individual may donate to the county the land necessary for its uses at any of the locations named in the petition, which shall not be less than one acre, and may offer as an inducement for such removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to be regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money

shall be selected by the voters, the treasurer shall record the deed and collect and place the fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (Code 1950, § 15-47; 1962, c. 623.)

**§ 15.1-564. Town may issue bonds to finance donation; election on bonds.** — When any town shall desire to donate to the county any land or sums of money as an inducement for such removal and such town has not sufficient funds in its treasury as it may desire to offer, such town may borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located or the judges thereof in vacation, for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bond issue shall be used, and the amount of such issue, the circuit court, or judge thereof in vacation, shall within ten days after receiving the petition, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in the town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in the town. The election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify that at the election held in the town of ..... on the .... day of ....., nineteen hundred ....., upon the question of a bond issue of ..... dollars, to be used as a donation to ..... county as an inducement for removal of the courthouse of said county to said town, ..... votes were cast for the bond issue and ..... votes were cast against the bond issue."

The ballots used in the election shall be as follows:

- ☐ For bond issue to the amount of ..... dollars to be used as donation to ..... county, as an inducement for the removal of courthouse:
- ☐ Against bond issue.

The proper canvassers shall certify in duplicate the vote cast in such elections, for and against the bond issue, one of such certificates to be filed with the clerk and the other with the judge of the circuit court.

Such election shall be subject to inquiry in the manner provided by § 15.1-569. (Code 1950, § 15-48; 1962, c. 623.)

**§ 15.1-565. When and how council to issue bonds; payment of interest; sinking fund.** — In case a majority of the voters in the town taking part in such election shall vote in favor of such bond issue, the council of such town may issue its bonds to the amount set out in the petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by § 15.1-565. The council of the town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds by special levy or otherwise. (Code 1950, § 15-49; 1962, c. 623.)

**§ 15.1-566. When supervisors may issue bonds of county.** — If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition and the proceeds of the bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, and the buildings erected and improvements made. If



the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them. But the amount expended shall not exceed the amount named in the petition and authorized by the voters. (Code 1950, § 15-50; 1962, c. 623.)

**§ 15.1-567. Form of ballots for county election on removal and appropriation; certificate of judges.** — The ballots used in the election required by § 15.1-559 shall be respectively as follows:

- ☐ For removal of courthouse to . . . . ., and permitting the supervisors to spend \$. . . . . therefor;
- ☐ For removal of courthouse to . . . . ., and permitting the supervisors to spend \$. . . . . therefor;
- ☐ Against removal.

The manner of receiving and canvassing the ballots and making returns and abstracts thereof shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the . . . . . day of . . . . . nineteen . . . . ., upon the question of removing the courthouse to . . . . ., and permitting the expenditure of \$. . . . . for the purpose, . . . . . votes were cast; for removal to . . . . . and permitting the expenditure of \$. . . . . for the purpose, . . . . . votes were cast; and . . . . . votes were cast against removal." (Code 1950, § 15-51; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

The 1971 amendments. — Acts 1971, Ex. freeholders. Acts 1971, Ex. Sess., c. 245, Sess., c. 42, revised the form of the certificate amended c. 42 so as to make it effective at noon, so as to eliminate references to votes of July 1, 1971.

**§ 15.1-568. Canvassing returns.** — The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal voting and authorizing the expenditure of the amount stated in the petition and against removal, one of the certificates to be filed with the clerk and the other with the judge of the circuit court. (Code 1950, § 15-52; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

The 1971 amendments. — Acts 1971, Ex. middle of the section. Acts 1971, Ex. Sess., c. 245, amended c. 42 so as to make it effective at noon, July 1, 1971. Sess., c. 42, deleted "which shall include the freeholders" following "for removal" near the

**§ 15.1-569. Contest of election.** — Returns in such election shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest and if any votes were improperly received or rejected shall give a list of such votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in the county, and by publishing it once a week for two successive weeks in some newspaper published in the county or, if there be none so published, then in some newspaper having circulation in the county. If it is desired to take depositions, the time and place of taking the same shall be stated in the notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in the contest. The complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election

may, within thirty days from the election, file in the clerk's office an answer to the complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of the old election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in the complaint, and a list of the votes he or they will dispute. And if the respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing the complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from the election, shall proceed to pass upon the complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof and decide the same on the Constitution and laws and according to the right of the case and enter such order as will carry its decision into full and complete effect. And the judgment of the court shall be final. (Code 1950, § 15-53; 1962, c. 623.)

§ 15.1-570. No other election held for ten years. — After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Code 1950, § 15-54; 1962, c. 623.)

#### ARTICLE 4.

##### *Magisterial Districts.*

§ 15.1-571. Magisterial districts established. — The several magisterial districts in the different counties of this State, with the boundary lines and names thereof respectively as constituted and known on the day before this Code section takes effect, are declared to be the magisterial districts in such counties respectively and shall so continue unless and until the same shall be changed as provided in this title. (Code 1950, § 15-55; 1962, c. 623; 1971, Ex. Sess., c. 200.)

The 1971 amendment inserted "section" following "Code" near the middle of the section and substituted "provided in this title" for "hereinafter provided" at the end of the section.

Magisterial districts are subordinate divisions or precincts of a county, created for political and administrative purposes of

exceedingly limited character. They are without that artificial personality possessed by corporate bodies. They have authority to elect certain officers, but possess no debt-making power. *Moss v. County of Tazewell*, 112 Va. 878, 72 S.E. 945 (1911).

§ 15.1-571.1. Boundaries of magisterial districts. — The several magisterial districts in the different counties of the State, with the boundary lines and names thereof respectively shall be as the governing body of such counties may establish. The districts shall be composed of contiguous and compact territory and be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. Whenever in the opinion of the governing body it is necessary, or whenever the boundaries of such county have been altered, the governing body shall, as may be necessary, redistrict the county in magisterial districts, change the boundaries of existing districts, change the name of any district, or increase or diminish the number of districts.

The governing body of a county may by ordinance provide that the magisterial districts of the county shall remain the same, but that representation on the governing body shall be by election districts, in which event all sections of this Code providing for election or appointment on the

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§ 15.1-557. **Audit of accounts of certain county officers, boards and commissions.** — Whenever, upon a petition filed in the circuit court of any county in this State by at least fifty freeholders of the county, it is believed by the judge of the court that the public interests will be promoted by an audit or examination of the whole or any part or parts of the financial transactions of any county or district officer, board or commission of the county, the judge may appoint one or more certified public accountants to make and report to the court the result of such audit or examination and the court shall fix the compensation therefor and certify the same to the board of supervisors of the county, which shall forthwith make provision for the compensation of the accountant or accountants. (Code 1950, § 15-264; 1962, c. 623.)

§ 15.1-558. **Settlement of claims against treasurer or former treasurer of county.** — The boards of supervisors may, with the advice and consent of the county attorney, adjust and settle upon equitable principles, without regard to strict legal rules, any judgment, the collection of which is doubtful, which may exist in favor of the county against any treasurer or ex-treasurer of the county and his sureties. But before such adjustment or settlement shall in anywise affect the rights of the county, it shall be submitted to the judge of the circuit court of the county, accompanied by a written statement signed by the chairman of the board of supervisors of the county of the facts and reasons which, in the opinion of the board, render such adjustment and settlement just and proper. When the court shall approve and endorse the same, it shall enter an order in its records of such approval, whereupon it shall become valid and binding.

But notwithstanding the foregoing provisions of this section, or any provisions of any other statute or act to the contrary, when any such judgment or claim shall have been standing for seven years or more and the original principal of the debt or obligation out of which the same grew has been paid, the board, with the consent and approval of the county attorney, may accept in compromise of such judgment or claim, such amount or amounts as such board may deem proper, and under such circumstances such board may adopt and enter of record in its minute book a resolution reciting such compromise and the terms thereof and authorizing the county attorney to accept such settlement on behalf of the county and, upon the payment of the amount so agreed to be accepted, to execute a receipt therefor, in full settlement of such claim, suit or judgment and to dismiss the suit or mark the judgment satisfied of record.

If the county has no county attorney, the board may employ a qualified attorney-at-law to represent it in the settlement of such claims. (Code 1950, § 15-265; 1962, c. 623; 1977, c. 584.)

### ARTICLE 3.

#### *Removal of Courthouse.*

§ 15.1-559. **Petition for removal of courthouse; writ of election.** — Whenever one third of the registered voters of any county shall petition the circuit court of such county, or whenever the governing body of any county by resolution duly adopted request the circuit court of such county, for an election in such county on the question of the removal of the courthouse to one or more places specified in the petition or resolution which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court shall issue a writ of election in accordance with § 24.1-165, which shall fix the day of holding such election

directed to the sheriff of the county whose duty it shall be forthwith to post a notice of the election at each voting precinct in the county. He shall also give notice to the officers charged with the duty of conducting other elections in the county.

B. If the courthouse is used before and after removal for any city of under thirty thousand population as well as for the county, then the petition shall be signed by a number of registered voters equal to one third of the total number of registered voters for such county and city and the registered voters of such city shall be eligible to sign the petition. The petition shall state the amounts to be appropriated by both the county and city. The qualified voters of such city shall be eligible to vote in any election on the question of relocating the courthouse. The court shall issue a writ of election to such city the same as issued to and for the county.

The votes of the qualified voters of such city shall be treated as if they were cast by qualified voters of the county for the purposes of this article. (Code 1950, § 15-43; 1956, c. 95; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245; 1975, c. 517; 1978, c. 380.)

§ 15.1-560. How election held and conducted. — Such election shall be held and conducted as other special elections are held and conducted. (Code 1950, § 15-44; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

§ 15.1-561. Certification of result to supervisor; procuring land and buildings; relocation to contiguous land. — If it shall appear from the abstracts and returns that a majority of the votes cast at such election are for the removal of the courthouse to one of the places specified in the petition or resolution, the results shall be certified to the board of supervisors of the county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements. If the vote shall be for removal the board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements.

The relocation of a courthouse to land contiguous with its present location is not such a removal as to require authorization by the electorate. (Code 1950, § 15-45; 1956, c. 95; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245; 1975, c. 59; 1976, c. 497.)

§ 15.1-561.1: Expired.

Editor's note. — This section was enacted by Acts 1976, c. 497, and expired by its own terms Dec. 31, 1978.

§ 15.1-562. Removal of court. — And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of the county, who shall, after sixty days' notice, to be published in a newspaper in the county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in the county, and to be posted up by the sheriff at all of the public places, order his court to be held in the new location. (Code 1950, § 15-46; 1962, c. 623.)

§ 15.1-563. Donation of land and money. — Any town or individual may donate to the county the land necessary for its uses at any of the locations named in the petition, which shall not be less than one acre, and may offer as an inducement for such removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to the regularly executed and placed in the hands of the clerk of the county, and

any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record the deed and collect and place the fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (Code 1950, § 15-47; 1962, c. 623.)

**§ 15.1-564. Town may issue bonds to finance donation; election on bonds.** — When any town shall desire to donate to the county any land or sums of money as an inducement for such removal and such town has not sufficient funds in its treasury as it may desire to offer, such town may borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bond issue shall be used, and the amount of such issue, the circuit court shall, in accordance with § 24.1-165, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in the town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in the town. The election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except that the certificate of the electoral board shall be as follows:

"We hereby certify that at the election held in the town of . . . . . on the . . . . . day of . . . . ., nineteen hundred . . . . ., upon the question of a bond issue of . . . . . dollars, to be used as a donation to . . . . . county as an inducement for removal of the courthouse of said county to said town, . . . . . votes were cast for the bond issue and . . . . . votes were cast against the bond issue."

The ballots used in the election shall be as follows:

"Shall the Town of . . . . . issue bonds to the amount of . . . . . dollars to be used as donation to . . . . . County, as an inducement for the removal of courthouse?

☐ Yes

☐ No."

The electoral board shall certify in duplicate the vote cast in such elections, for and against the bond issue, one of such certificates to be filed with the clerk and the other with the judge of the circuit court.

Such election shall be subject to inquiry in the manner provided by § 15.1-569. (Code 1950, § 15-48; 1962, c. 623; 1975, c. 517.)

**§ 15.1-565. When and how council to issue bonds; payment of interest; sinking fund.** — In case a majority of the voters in the town taking part in such election shall vote in favor of such bond issue, the council of such town may issue its bonds to the amount set out in the petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by § 15.1-565. The council of the town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds by special levy or otherwise. (Code 1950, § 15-49; 1962, c. 623.)

§ 15.1-566. When supervisors may issue bonds of county. — If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition and the proceeds of the bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, and the buildings erected and improvements made. If the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them. But the amount expended shall not exceed the amount named in the petition and authorized by the voters. (Code 1950, § 15-50; 1962, c. 623.)

§ 15.1-567. Form of ballots for county election on removal and appropriation; certificate of judges. — The ballots used in the election required by § 15.1-559 shall be respectively as follows:

Shall the courthouse be removed to . . . . ., and shall the Board of Supervisors be permitted to spend \$. . . . . therefor?

- ☐ Yes  
☐ No

The manner of receiving and canvassing the ballots and making returns and abstracts thereof shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the . . . . . day of . . . . ., nineteen . . . . ., upon the question of removing the courthouse to . . . . ., and permitting the expenditure of \$. . . . . therefor, . . . . . votes were cast Yes; and . . . . . votes were cast No." (Code 1950, § 15-51; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245; 1977, c. 306.)

§ 15.1-568. Canvassing returns. — The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the votes cast for removal voting and authorizing the expenditure of the amount stated in the petition and against removal, one of the certificates to be filed with the clerk and the other with the judge of the circuit court. (Code 1950, § 15-52; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

§ 15.1-569. Contest of election. — Returns in such election shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest and if any votes were improperly received or rejected shall give a list of such votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in the county, and by publishing it once a week for two successive weeks in some newspaper published in the county or, if there be none so published, then in some newspaper having circulation in the county. If it is desired to take depositions, the time and place of taking the same shall be stated in the notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in the contest. The complaint shall be filed and notice given within ten days after the election, otherwise the com-

plaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the election, file in the clerk's office an answer to the complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of the old election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in the complaint, and a list of the votes he or they will dispute. And if the respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing the complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from the election, shall proceed to pass upon the complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof and decide the same on the Constitution and laws and according to the right of the case and enter such order as will carry its decision into full and complete effect. And the judgment of the court shall be final. (Code 1950, § 15-53; 1962, c. 623.)

§ 15.1-570. No other election held for ten years. — After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Code 1950, § 15-54; 1962, c. 623.)

#### ARTICLE 4.

##### *Magisterial Districts.*

§ 15.1-571. Magisterial districts established. — The several magisterial districts in the different counties of this State, with the boundary lines and names thereof respectively as constituted and known on the day before this Code section takes effect, are declared to be the magisterial districts in such counties respectively and shall so continue unless and until the same shall be changed as provided in this title. (Code 1950, § 15-55; 1962, c. 623; 1971, Ex. Sess., c. 200.)

Magisterial districts are subordinate divisions or precincts of a county, created for political and administrative purposes of exceedingly limited character. They are without that artificial personality possessed by

corporate bodies. They have authority to elect certain officers, but possess no debt-making power. *Moss v. County of Tazewell*, 112 Va. 878, 72 S.E. 945 (1911).

§ 15.1-571.1. Boundaries of magisterial districts. — A. The several magisterial districts in the different counties of the State, with the boundary lines and names thereof respectively shall be as the governing body of such counties may establish. The districts shall be composed of contiguous and compact territory and be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. Whenever in the opinion of the governing body it is necessary, or whenever the boundaries of such county have been altered, the governing body shall, as may be necessary, redistrict the county in magisterial districts, change the boundaries of existing districts, change the name of any district, or increase or diminish the number of districts.

B. Whenever redistricting of magisterial or election districts is required as a result of annexation, the governing body of such county shall, within a

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claim, suit or judgment and to dismiss the suit or mark the judgment satisfied of record.

If the county has no county attorney, the board may employ a qualified attorney-at-law to represent it in the settlement of such claims. (Code 1950, § 15-265; 1962, c. 623; 1977, c. 584.)

### ARTICLE 3.

#### *Removal of Courthouse.*

#### § 15.1-559. Petition for removal of courthouse; writ of election. —

A. Whenever one third of the registered voters of any county shall petition the circuit court of such county, or whenever the governing body of any county by resolution duly adopted request the circuit court of such county, for an election in such county on the question of the removal of the courthouse to one or more places specified in the petition or resolution which shall also state the amount to be appropriated by the board of supervisors for the purchase of land, unless the same shall be donated, and for the erection of the necessary buildings and improvements at the new location, such court shall issue a writ of election in accordance with § 24.1-165, which shall fix the day of holding such election directed to the sheriff of the county whose duty it shall be forthwith to post a notice of the election at each voting precinct in the county. He shall also give notice to the officers charged with the duty of conducting other elections in the county.

B. If the courthouse is used before and after removal for any city of under thirty thousand population as well as for the county, then the petition shall be signed by a number of registered voters equal to one third of the total number of registered voters for such county and city and the registered voters of such city shall be eligible to sign the petition. The petition shall state the amounts to be appropriated by both the county and city. The qualified voters of such city shall be eligible to vote in any election on the question of relocating the courthouse. The court shall issue a writ of election to such city the same as issued to and for the county.

The votes of the qualified voters of such city shall be treated as if they were cast by qualified voters of the county for the purposes of this article. (Code 1950, § 15-43; 1956, c. 95; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245; 1975, c. 517; 1978, c. 380.)

§ 15.1-560. How election held and conducted. — Such election shall be held and conducted as other special elections are held and conducted. (Code 1950, § 15-44; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

§ 15.1-561. Certification of result to supervisor; procuring land and buildings; relocation to contiguous land. — If it shall appear from the abstracts and returns that a majority of the votes cast at such election are for the removal of the courthouse to one of the places specified in the petition or resolution, the results shall be certified to the board of supervisors of the county, with the amount authorized to be expended for land, if not donated, and for necessary buildings and improvements. If the vote shall be for removal the board of supervisors shall at once proceed to acquire the necessary land at the new location, if the same has not been donated, and to erect the necessary buildings and improvements.

The relocation of a courthouse to land contiguous with its present location is not such a removal as to require authorization by the electorate. (Code 1950, § 15-45; 1956, c. 95; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245; 1975, c. 59; 1976, c. 497.)



## § 15.1-561.1: Expired.

Editor's note. — This section was enacted by Acts 1976, c. 497, and expired by its own terms Dec. 31, 1978.

§ 15.1-562. Removal of court. — And as soon as the same shall be completed, the board of supervisors shall certify the fact to the judge of the circuit court of the county, who shall, after sixty days' notice, to be published in a newspaper in the county if any, and if none, then in a newspaper published in an adjoining or neighboring county or city which has the largest circulation in the county, and to be posted up by the sheriff at all of the public places, order his court to be held in the new location. (Code 1950, § 15-46; 1962, c. 623.)

§ 15.1-563. Donation of land and money. — Any town or individual may donate to the county the land necessary for its uses at any of the locations named in the petition, which shall not be less than one acre, and may offer as an inducement for such removal such sum or sums of money as may be desired. Any offer to donate the land shall be accompanied by a deed for the same, to the regularly executed and placed in the hands of the clerk of the county, and any offer of money shall be accompanied by a certified check or other satisfactory security to be likewise placed in the hands of the clerk to be delivered by him to the treasurer of the county. If the location stated in the deed or offer of money shall be selected by the voters, the treasurer shall record the deed and collect and place the fund to the credit of the county to be drawn on by the board of supervisors as hereinafter directed. (Code 1950, § 15-47; 1962, c. 623.)

§ 15.1-564. Town may issue bonds to finance donation; election on bonds. — When any town shall desire to donate to the county any land or sums of money as an inducement for such removal and such town has not sufficient funds in its treasury as it may desire to offer, such town may borrow such money and issue its bonds therefor, bearing not more than six per centum interest. And whenever twenty-five per centum of the qualified voters of such town shall petition the circuit court of the county wherein such town is located for an election to be held on such bond issue, in which petition shall be stated the purposes for which the proceeds of such bond issue shall be used, and the amount of such issue, the circuit court shall, in accordance with § 24.1-165, issue a writ of election, ordering a special election upon such bond issue, in which shall be fixed the date of holding such election in the town, and deliver the same to the sheriff of the county, whose duty it shall be to post at least three notices of the time of holding such election in the town. The election shall be held and conducted and the vote canvassed and returns made in accordance with the requirements of the general election law, except that the certificate of the electoral board shall be as follows:

"We hereby certify that at the election held in the town of . . . . . on the . . . . . day of . . . . ., 19. . . . ., upon the question of a bond issue of . . . . . dollars, to be used as a donation to . . . . . county as an inducement for removal of the courthouse of said county to said town, . . . . . votes were cast for the bond issue and . . . . . votes were cast against the bond issue."

The ballots used in the election shall be as follows:

"Shall the Town of . . . . . issue bonds to the amount of . . . . . dollars

to be used as donation to ..... County, as an inducement for the removal of courthouse?

- ☐ Yes  
☐ No."

The electoral board shall certify in duplicate the vote cast in such elections, for and against the bond issue, one of such certificates to be filed with the clerk and the other with the judge of the circuit court.

Such election shall be subject to inquiry in the manner provided by § 15.1-569. (Code 1950, § 15-48; 1962, c. 623; 1975, c. 517.)

§ 15.1-565. When and how council to issue bonds; payment of interest; sinking fund. — In case a majority of the voters in the town taking part in such election shall vote in favor of such bond issue, the council of such town may issue its bonds to the amount set out in the petition, either coupon or registered, signed by its mayor or the president of its council, and attested by the town recorder or clerk, and deliver the same to the clerk of the county as satisfactory security for the obligations imposed by § 15.1-565. The council of the town shall have power to make annual appropriations out of the revenues of the corporation to pay the interest on the bonds and to provide a sinking fund for the redemption of the bonds by special levy or otherwise. (Code 1950, § 15-49; 1962, c. 623.)

§ 15.1-566. When supervisors may issue bonds of county. — If the land shall not be donated, and the fund offered be not sufficient to acquire the land and erect the necessary buildings, or if the land shall be donated and the fund offered be not sufficient for the purposes aforesaid, the board of supervisors shall have authority to issue the bonds of the county, bearing not more than six per centum interest, to an amount which with the fund offered shall be equal to the amount set out in the petition and the proceeds of the bonds with the amount donated shall constitute the fund out of which the land shall be acquired, if not donated, and the buildings erected and improvements made. If the financial condition of the county shall be such as to render the issue of bonds unnecessary the supervisors may decline to issue them. But the amount expended shall not exceed the amount named in the petition and authorized by the voters. (Code 1950, § 15-50; 1962, c. 623.)

§ 15.1-567. Form of ballots for county election on removal and appropriation; certificate of judges. — The ballots used in the election required by § 15.1-559 shall be respectively as follows:

Shall the courthouse be removed to ....., and shall the Board of Supervisors be permitted to spend \$..... therefor?

- ☐ Yes  
☐ No

The manner of receiving and canvassing the ballots and making returns and abstracts thereof shall conform in all respects to the requirements of the general election law, except that the certificate of the judges shall be as follows:

"We hereby certify, that at the election held on the ..... day of ....., 19...., upon the question of removing the courthouse to ....., and permitting the expenditure of \$..... therefor, ..... votes were cast Yes; and ..... votes were cast No." (Code 1950, § 15-51; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245; 1977, c. 306.)

§ 15.1-568. Canvassing returns. — The proper official canvassers of general election returns shall canvass these returns in like manner and at like time as other county election returns, and shall certify in duplicate the

votes cast for removal voting and authorizing the expenditure of the amount stated in the petition and against removal, one of the certificates to be filed with the clerk and the other with the judge of the circuit court. (Code 1950, § 15-52; 1962, c. 623; 1971, Ex. Sess., cc. 42, 245.)

§ 15.1-569. Contest of election. — Returns in such election shall be subject to the inquiry, determination and judgment of the circuit court of the county in which such election is held, upon complaint of fifteen or more qualified voters of such county of an undue election or false return. The complaint shall fully set out the grounds of contest and if any votes were improperly received or rejected shall give a list of such votes, with objections to the action of the judges of election in receiving or rejecting the same. Two of the persons making the complaint shall take and subscribe an oath that the facts therein stated are true to the best of their knowledge and belief. The complaint shall be filed in the office of the clerk of the circuit court of the county in which such election is held. Notice of contest, stating that the complaint has been filed in the clerk's office, shall be given by posting the same at the courthouse door and at two or more public places in the county, and by publishing it once a week for two successive weeks in some newspaper published in the county or, if there be none so published, then in some newspaper having circulation in the county. If it is desired to take depositions, the time and place of taking the same shall be stated in the notice, which shall entitle the parties giving the same to take the depositions to be read as evidence in the contest. The complaint shall be filed and notice given within ten days after the election, otherwise the complaint shall not be valid. Any one or more persons who voted at such removal election may, within thirty days from the election, file in the clerk's office an answer to the complaint, in which any of the allegations of the same may be denied, and any statement made going to show the regularity of the old election, and the propriety of the action of the judges of the election in receiving or rejecting the votes set out in the complaint, and a list of the votes he or they will dispute. And if the respondents desire to take depositions, notice thereof shall be given to any one or more of the persons signing the complaint. If no answer is filed to the complaint within thirty days from the election, no one shall be heard to deny the allegations of the complaint, but the persons making the same shall prove the allegations thereof to the satisfaction of the court. The circuit court of the county in which the election is held, at the next term after the expiration of thirty days from the election, shall proceed to pass upon the complaint without a jury, on such depositions as may have been taken under the notices aforesaid, and upon such other legal testimony as may be adduced by either party at the hearing of the case. In judging of such election and return, the court shall proceed on the merits thereof and decide the same on the Constitution and laws and according to the right of the case and enter such order as will carry its decision into full and complete effect. And the judgment of the court shall be final. (Code 1950, § 15-53; 1962, c. 623.)

§ 15.1-570. No other election held for ten years. — After an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years. (Code 1950, § 15-54; 1962, c. 623.)

§ 15.1-253. Tax for establishment. — The governing bodies may include as a part of an annual tax levy such sum as deemed necessary for the establishment of such fund. (Code 1950, § 15-682; 1962, c. 623.)

§ 15.1-254. What fund includes. — The fund shall include moneys appropriated, transferred or credited thereto by budgetary provisions or otherwise, including the transfer of unobligated surpluses or unexpended balances. (Code 1950, § 15-683; 1962, c. 623.)

§ 15.1-255. Charter provisions not to prevent establishment. — The reserve funds authorized herein may be established, anything in the charter of any city or town to the contrary notwithstanding. (Code 1950, § 15-684; 1962, c. 623.)

§ 15.1-256. Construction of article. — This article shall be liberally construed as in aid of postwar public works programs and plans therefor and in furtherance of and not in limitation of powers now conferred by law on counties, cities and towns. (Code 1950, § 15-685; 1962, c. 623.)

## CHAPTER 8.

### BUILDINGS, MONUMENTS AND LANDS GENERALLY.

- | Sec.  | Sec.  |
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| 15.1-257. County or city governing body to provide courthouse, clerk's office, jail and suitable facilities for attorney for the Commonwealth; acquisition of land. | 15.1-273. Same; joint systems.  |
| 15.1-258. Providing offices for various officers, judges, etc.  | 15.1-274. Same; petition and election for establishment.  |
| 15.1-259. Renting rooms in courthouse.  | 15.1-274.1. Hiking, biking and riding trails.   |
| 15.1-260. Leasing or other use of other buildings.  | 15.1-275. Acquiring property adjoining parks, monuments, streets, etc.; disposal of such property.                  |
| 15.1-261. Leasing county land for swimming pool purposes.   | 15.1-276. Definition of public uses.  |
| 15.1-261.1. Leasing county land.  | 15.1-277. Acquisition of property near parks or other public property.  |
| 15.1-262. Purchase, sale, etc., of real property.   | 15.1-278. Certain counties may operate parks, recreation areas and swimming pools.                                  |
| 15.1-263. Certain conveyances of courthouse grounds validated.  | 15.1-279. Same; other counties.   |
| 15.1-264. Joint acquisition of property for educational purposes by counties and cities; how disposed of.   | 15.1-280. Swimming pools in certain counties.   |
| 15.1-265. Acquisition of property for educational purposes by counties, cities and towns.   | 15.1-281. Acquisition and housing of relics, paintings, carvings, sculpture and other works of art.                 |
| 15.1-266. Building and repairing buildings.   | 15.1-282. Solid and hazardous waste management.   |
| 15.1-267. Circuit courts to order court facilities to be repaired.  | 15.1-283. Drainage; condemnation for drainage systems.  |
| 15.1-268. Providing for armories; assistance to National Guard.   | 15.1-284. Condemnation for stone quarries; sale of crushed stone.   |
| 15.1-269. Armory buildings and stables in certain cities.   | 15.1-285. Title to real estate for public uses either to be approved by attorney-at-law or title insurance; appeal. |
| 15.1-270. Memorials for war veterans.   | 15.1-286. Approval and acceptance of conveyances of real estate to counties.  |
| 15.1-271. Systems of public recreation and playgrounds.   | 15.1-287. [Repealed.]   |
| 15.1-272. Same; how conducted.  | 15.1-288. Insurance of county buildings; providing temporary offices.   |

## Sec.

15.1-289. Permitting visually handicapped persons to operate stands for sale of newspapers, etc.

15.1-290. Governing body may designate member to manage park.

## Sec.

15.1-291. Liability of counties, cities and towns in the operation of recreational facilities.

§ 15.1-257. County or city governing body to provide courthouse, clerk's office, jail and suitable facilities for attorney for the Commonwealth; acquisition of land. — The governing body of every county and city shall provide courthouses with suitable space and facilities to accommodate the various courts and officials thereof serving the county or city, and, within or without such courthouses, a clerk's office the record room of which shall be fireproof, a jail, and, upon request therefor, suitable space and facilities for the attorney for the Commonwealth to discharge the duties of his office. The costs thereof and of the land on which they may be, and of keeping the same in good order, shall be chargeable to the county or city. The fee simple of the lands and of the buildings and improvements thereon utilized for such courthouses shall be in the county or city, and the governing body of the county or city may purchase so much of such property, as, with what it has, may be necessary for the purposes enumerated or for any other proper purpose of the county or city. However, any portion of such property owned by a county and located within a city or town and not actually occupied by the courthouse, clerk's office, or jail, may be sold or exchanged and conveyed to the said city or town to be used for street or other public purposes. Any such sale or exchange by the governing body of a county shall be made in accordance with the provisions of § 15.1-262.

This Act [Chapter 90 of the 1986 Act of Assembly] shall not apply to any city with a population according to the 1980 census of not less than 240,000 nor more than 265,000. (Code 1950, §§ 15-686, 15-688; 1954, cc. 49, 264; 1956, c. 329; 1960, c. 145; 1962, cc. 283, 489, 623; 1964, c. 241; 1986, c. 90.)

Cross references. — As to application of county zoning ordinance to city jail located in county, see note to § 15.1-486.

Editor's note. — Acts 1986, ch. 90, cl. 2 provides that the act is declaratory of existing legislative intent.

Policy is to require cities and counties to furnish clerk's offices. — The policy of the State has been to require the cities and counties to furnish at their own expense offices for the clerks of courts, including the necessary equipment, furniture, and supplies. *Saville v. City of Richmond*, 162 Va. 612, 174 S.E. 828 (1934).

The right to the possession of county property is in the board of supervisors of the county. If the actual possession be in another, the board may acquire possession as other suitors do, or it may acquire possession without resorting to the courts if that can be done without a breach of the peace or other violation of law. *Manly Mfg. Co. v. Broadus*, 94 Va. 547, 27 S.E. 438 (1897).

Board has power and duty to provide public buildings. — The board of supervisors of a county in its corporate capacity has full power to provide public buildings for the

county, and if it fails to do so may be compelled by the circuit court of the county by mandamus to perform its duty. Having power to contract for such buildings, it may make any changes in the contract which it deems proper. *Manly Mfg. Co. v. Broadus*, 94 Va. 547, 27 S.E. 438 (1897).

And for that purpose may condemn land. — The board of supervisors of a county have authority to provide land for building a courthouse, clerk's office and jail, either by purchase or by proceeding to have it condemned in the mode prescribed in the statute. *Board of Supvrs. v. Gorrell*, 61 Va. (20 Gratt.) 484 (1871). See *Board of Supvrs. v. Cox*, 98 Va. 270, 36 S.E. 380 (1900). For statute giving right of condemnation, see § 25-232.01. For provision relating to purchase of land, see § 15.1-262.

Discretion in board in procuring land for public buildings. — It is for the board of supervisors to determine what land they will procure for the public buildings of their county, and whether their discretion is wisely or unwisely exercised in the selection cannot be inquired into in the proceeding instituted to condemn the land. *Board of Supvrs. v. Gorrell*, 61 Va. (20 Gratt.) 484 (1871).

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**Judges have control of courthouse building.** — Under the laws of the State of Virginia, it is abundantly clear the judges maintaining their courts therein have the control over the building. *Dawley v. City of Norfolk*, 159 F. Supp. 642 (E.D. Va. 1958), cert. denied, 359 U.S. 935, 79 S. Ct. 650, 3 L. Ed. 2d 636 (1959).

**Fireproof clerk's office.** — The provision of former § 15-687 that every clerk's office shall be fireproof was mandatory, and if the duty thereby imposed was not observed, it could be enforced by mandamus. *Broadus v. Essex County Supvrs.*, 99 Va. 370, 38 S.E. 177 (1901).

What constitutes a fireproof building involves some element of discretion, and when a board of supervisors have in good faith exercised their discretion, and erected what they intend to be, and believe is, a fireproof clerk's office, they cannot be compelled to erect an-

other to meet the views of others as to what is fireproof. Mandamus will not lie to control the discretion of the board of supervisors in this respect, nor, in any case, to control the discretion of a functionary. *Broadus v. Essex County Supvrs.*, 99 Va. 370, 38 S.E. 177 (1901).

**Office of commissioner of accounts.** — If the legislature had intended that the county be required to provide an office in that part of the building constituting the courthouse for the commissioner of accounts it would have so provided in this section, which mandates the governing body of every county to provide a courthouse with suitable space and facilities to accommodate their courts of record and offices for its clerks. *Board of Supvrs. v. Bacon*, 215 Va. 722, 214 S.E.2d 137 (1975).

Applied in *Egerton v. City of Hopewell*, 193 Va. 493, 69 S.E.2d 326 (1952).

**§ 15.1-258. Providing offices for various officers, judges, etc.** — The governing body of each county and city shall, if there are offices in the courthouses of the respective counties and cities available for such purposes, provide offices for the treasurer, attorney for the Commonwealth, sheriff, commissioner of the revenue, commissioner of accounts and division superintendent of schools for such county or city. Any such governing body may, if there are offices in their respective courthouses available for such purposes, provide offices for the judge of any court sitting in the county or city, and any judge of the Court of Appeals or justice of the Supreme Court who may reside in the county or city, and if such offices are not available in the courthouse, they may be provided by the governing body, if they deem it proper, elsewhere than in the courthouse of the county or city. (Code 1950, § 15-689; 1962, c. 623; 1984, c. 703.)

This section not in conflict with § 58-916 (see now § 58.1-3124). — The provisions of this section authorizing the board of supervisors to provide offices for the treasurer and other named officers in the courthouse if space therein is available, otherwise to provide space elsewhere, are not in conflict with § 58-916 (see now § 58.1-3124), which applies only to the treasurer's office, and requires such office to be maintained at the county seat, unless the board determines that another place is more convenient to a majority of the citizens. *Board of Supvrs. v. Weems*, 194 Va. 10, 72 S.E.2d 378 (1952).

**Court has no authority to assign offices.** — To hold that the court had the authority and power to assign offices to certain county officials in the courthouse building would nullify the provisions of this section, which require the governing body of the county to provide the commissioner and other officials named in the statute with offices in the courthouse, if space is available. *Board of Supvrs. v. Bacon*, 215 Va. 722, 214 S.E.2d 137 (1975).

**Office of commissioner of accounts.** — If

the legislature had intended that the county be required to provide an office in that part of the building constituting the courthouse for the commissioner of accounts it would have so provided in § 15.1-257, which mandates the governing body of every county to provide a courthouse with suitable space and facilities to accommodate their courts of record and offices for its clerks. *Board of Supvrs. v. Bacon*, 215 Va. 722, 214 S.E.2d 137 (1975).

**Only if space available.** — This section reflects the plain intent of the legislature that the commissioner of accounts be entitled to an office in the courthouse only if space is available. *Board of Supvrs. v. Bacon*, 215 Va. 722, 214 S.E.2d 137 (1975).

**City sergeant entitled to same rights as sheriff.** — A city sergeant who performs what would otherwise be the sheriff's duties and is charged with supervision of the jail and safe-keeping of its inmates, is entitled to the same rights under this section that he would be entitled to if he did in fact occupy the office of sheriff. *Egerton v. City of Hopewell*, 193 Va. 493, 69 S.E.2d 326 (1952).

City council has power to require city sergeant to move office. — Under the facts established it was held that city council had the right and power to require city sergeant to vacate and move from an office in city municipal building to an office assigned to him at city jail located in another building. *Egerton v. City of Hopewell*, 193 Va. 493, 69 S.E.2d 326 (1952).

Discretion of council in determining availability of office space. — City municipi-

pal building was not in its entirety a courthouse and determination by the city council of whether or not office space was available for the city sergeant within that portion of the building which constituted the courthouse was, under this section, within its sound discretion and its discretion in that respect could not be set aside or disregarded unless abused. *Egerton v. City of Hopewell*, 193 Va. 493, 69 S.E.2d 326 (1952).

§ 15.1-259. Renting rooms in courthouse. — With the approval of the judge of the circuit court of the county or of the corporation court of the city, any vacant rooms in the courthouse, after furnishing offices to such officers, may be rented for a term of not exceeding one year to other persons for office purposes, and any public room or hall in the building may be hired for compensation for the purpose of giving public entertainments. All moneys received by the counties or cities under this section, shall constitute a fund to maintain and care for such building. (Code 1950, § 15-690; 1962, c. 623.)

§ 15.1-260. Leasing or other use of other buildings. — When the governing body of any county or city, pursuant to § 15.1-257, shall have purchased or may hereafter purchase any land, a part of which has valuable buildings thereon, whether when so purchased or since constructed, and that portion of the land so occupied by such buildings, or the buildings thereon is, in the discretion of such governing body, not required for the purposes mentioned in § 15.1-258, such governing body, if deemed proper by it, may either lease such building or buildings for private or other purposes, or remodel and use the same for a market house or for other public purposes, or both. But such lease or use shall be first approved by the judge of the circuit court of the county, or the corporation court of the city, as the case may be, and such lease or use shall be terminated when, in the opinion of such judge, such building or buildings or the land occupied by the same, is needed for any of the purposes enumerated in § 15.1-257. (Code 1950, § 15-691; 1962, c. 623.)

§ 15.1-261. Leasing county land for swimming pool purposes. — The governing body of any county, in its discretion, may lease to any responsible person, firm or corporation any lands owned or held by such county for the purpose of constructing or erecting thereon a swimming pool and buildings and improvements incident thereto. The terms and provisions of any such lease shall be prescribed by the governing body provided that any such lease shall contain a clause to the effect that at the termination of such lease it shall not be renewed, but the land and all improvements thereon shall revert to the county and shall be free from any encumbrance at the time of such reversion. All moneys received by the counties under this section shall constitute a fund for the development and improvement of recreational facilities within such county. (Code 1950, § 15-691.1; 1954, c. 410; 1962, c. 623.)

§ 15.1-261.1. Leasing county land. — The governing body of any county, in its discretion, may lease to any responsible person, firm or corporation any improved or unimproved lands owned or held by such county for any lawful purpose provided such governing body shall first hold a public hearing after giving at least fifteen days' notice thereof in a newspaper having general circulation in the county. The terms and provisions of any such lease shall be prescribed by the governing body, provided that any such lease shall contain a

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clause to the effect that at the termination of such lease it shall not be renewed if required for any of the purposes mentioned in § 15.1-258, and that upon termination, all improvements erected thereon shall revert to the county and shall be free from any encumbrance at the time of such reversion. All moneys received by such county under this section shall be paid into the treasury of such county. The provision of this section requiring the holding of a public hearing shall not apply to the leasing of such land to another public body, political subdivision or authority of the Commonwealth. (1970, c. 375; 1986, c. 477.)

The term "unused" in this section must be construed according to its plain meaning. *County Bd. v. Brown*, 229 Va. 341, 329 S.E.2d 468 (1985).

Land used for legitimate public purpose does not suddenly become "unused" and susceptible to being leased when the existing use is stopped so construction can begin

for a commercial development. *County Bd. v. Brown*, 229 Va. 341, 329 S.E.2d 468 (1985).

Land which was acquired by the county for public purposes, and which was employed to provide parking facilities for those connected with courthouse complex, was not "unused." *County Bd. v. Brown*, 229 Va. 341, 329 S.E.2d 468 (1985).

**§ 15.1-262. Purchase, sale, etc., of real property.** — The governing body of the county shall have power to sell, at public or private sale, or exchange, lease, mortgage, pledge, subordinate interest in or otherwise dispose of the real property, which includes the superjacent airspace (except airspace provided for in § 15.1-376.1) which may be subdivided and conveyed separate from the subjacent land surface, of the county; to purchase any real estate as may be necessary for the erection of all necessary county buildings; to provide a suitable farm as a place of general reception for the poor of the county; provided that no such land shall be disposed of unless and until the governing body has held a public hearing thereon concerning such disposal thereof.

The governing body of the county shall have the power to acquire by purchase, gift, devise, bequest, grant, lease, or otherwise title to, or any interests or rights of less than fee-simple title in, any real property within its jurisdiction, for any public purposes, including, but not limited to, those purposes set forth elsewhere in this chapter.

This section shall not be construed to deprive the judge of the right to control the use of the courthouse of the county during the term of his court therein. (Code 1950, § 15-692; 1962, c. 623; 1968, c. 418; 1974, c. 282; 1977, c. 269; 1979, c. 431; 1980, cc. 212, 559; 1984, c. 241; 1986, cc. 477, 573.)

**Cross references.** — For the State and Local Government Conflict of Interests Act, see § 2.1-639.1 et seq. See generally § 15.1-257 and note. As to governing body having care of county property, see § 15.1-507.

**Editor's note.** — Acts 1986, c. 292 provides that:

"The board of supervisors in a county having a population between 35,300 and 35,700 is authorized to exchange portions of such county's real property for real property of the United States located in such county's real property for real property of the United States located in such county on such terms and conditions as the board of supervisors deem to be in the public interest.

"However, such exchange shall not occur until the governing body has held a public hearing concerning such exchange."

The board of supervisors of a county has authority to sell the land belonging to the county, on which the courthouse and other buildings once stood. *Board of Supvrs. v. Gorrell*, 61 Va. (20 Gratt.) 484 (1871).

**Grant of less than fee simple title to county land.** — Under the grant of power found in this section, as it read prior to amendment in 1986, a county could sell or exchange and convey realty, could purchase real estate necessary for erection of public buildings, and could acquire less than fee simple title in real property, but nowhere in this section was the power given to counties to grant less than fee simple title to county land. *County Bd. v. Brown*, 229 Va. 341, 329 S.E.2d 468 (1985).

The grant to municipal corporations by § 15.1-847 of a general power to lease govern-



ment property to others, when compared to a restrictive grant to counties to deal with their property under this section, as it read prior to amendment in 1986, demonstrated a clear legislative intent to withhold from counties any power to lease not otherwise specifically granted. *County Bd. v. Brown*, 229 Va. 341, 329 S.E.2d 468 (1985).

**Lien on public buildings.** — Under this section as it read prior to amendment in 1986, board of supervisors could not give a lien on a public building of the county. *Manly Mfg. Co. v. Broadus*, 94 Va. 547, 27 S.E. 438 (1897).

**Power of judge to control courthouse.** — A judge of a circuit court has authority to control the courthouse in which he administers justice, to the extent, at least, of preventing any interference with the discharge of the public business, and of having necessary jury rooms and other conveniences for that purpose, and where there is any such interference by the board of supervisors of a county, or anyone else, the judge certainly has the right to

inquire into it. If in doing so he violates the law or infringes upon the rights of others, his action may be corrected by a writ of error. But it is not a case in which prohibition will lie. *Supervisors of Bedford v. Wingfield*, 68 Va. (27 Gratt.) 329 (1876).

Where the board of supervisors of a county ordered that one of the jury rooms attached to the courthouse should be prepared to be used as a part of the clerk's office of the county court, and this order was approved by the county court, and the judge of the circuit court thereupon made a rule upon the board of supervisors to show cause why they should not be restrained from making the changes in the room, the Supreme Court would not restrain him by prohibition from proceeding under the rule; the board could make their defense in the circuit court, and any error of the judge in that proceeding could be corrected by writ of error to the Supreme Court. *Supervisors of Bedford v. Wingfield*, 68 Va. (27 Gratt.) 329 (1876).

**§ 15.1-263. Certain conveyances of courthouse grounds validated.** — Any other provision of law to the contrary, notwithstanding, any conveyance made prior to January 1, 1954, by a county, of a portion of the county courthouse grounds, to a town to be used for public purposes, shall be in all respects valid. (Code 1950, § 15-692.1; 1954, c. 150; 1962, c. 623.)

**§ 15.1-264. Joint acquisition of property for educational purposes by counties and cities; how disposed of.** — Any two or more counties and cities or combinations thereof, or a board of control established pursuant to this section, may acquire by gift, purchase, condemnation, or otherwise, real property with improvements thereon located in any of such counties or cities, and construct buildings thereon to be used for educational purposes jointly by the political subdivisions acquiring the same. Control of and title to any such property shall be vested in a board chosen in the manner provided under § 22.1-53 provided, however, that all members of such board shall be appointed for terms of four years. Every board so chosen is declared a body corporate under style of the board of control of . . . . . county or counties and city or cities. Property so acquired may be used by such political subdivisions for educational purposes or may be leased on such terms as may be agreed upon to any state-supported institution of higher learning to provide for education beyond high school of residents of such counties and cities. Any such real property may, with the approval of the governing body of each such political subdivision, be conveyed by the board of control to any such institution of higher learning upon such terms and conditions as shall be agreed upon by such governing bodies, and the governing body of the institution, and approved by the Governor. (Code 1950, § 15-692.2; 1956, c. 320; 1958, c. 474; 1962, c. 623; 1968, c. 655; 1980, c. 559.)

**§ 15.1-265. Acquisition of property for educational purposes by counties, cities and towns.** — Any county, city or town or any combination thereof acting jointly may acquire for educational purposes by gift, purchase, condemnation or otherwise real property and any improvements thereon within the county, city, town or combination thereof acquiring the property or within any county or city adjacent to any such county, city or town and may

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construct buildings thereon to be used for educational purposes. The powers of condemnation granted by this section shall be subject to the provisions of § 25-233 of the Code of Virginia to the same extent as though such county, city or town were a corporation possessing the power of eminent domain. Whenever the property is not within a county, city or town acquiring the property, not more than fifty acres may be acquired. Property acquired pursuant to this section shall be under the control of the school board of the county, city or town acquiring it or, in the case of joint action by two or more counties, cities or towns or combinations thereof, control of such property shall be under a board chosen in the manner and for the term provided in § 22.1-53; or such property may be leased on such terms as may be agreed upon to any state-supported institution of higher learning to provide for education beyond high school of residents in the general region of such political subdivisions; or such property may, with the approval of the governing body of each such participating political subdivision, be conveyed to any such institution of higher learning upon such terms and conditions as shall be agreed upon by such governing bodies and the governing body of the institution and approved by the Governor. (Code 1950, § 15-692.3; 1960, c. 534; 1962, c. 623; 1980, c. 559.)

**§ 15.1-266. Building and repairing buildings.** — The governing body of any county shall have power to locate, build and keep in repair county buildings and, in its discretion, may locate and construct a suitable building to be used for a county or regional free library or library system, or office buildings on the same lot on which is located the courthouse, clerk's office, jail or public high school. (Code 1950, § 15-693; 1962, c. 623.)

**§ 15.1-267. Circuit courts to order court facilities to be repaired.** — A. When it shall appear to the circuit court of any county or city, from the report of persons appointed to examine the court facilities, or otherwise, that the court facilities of such county or city are insecure or out of repair, or otherwise insufficient, such court shall enter an order, in the name and on behalf of the Commonwealth against the supervisors of the county, or the members of the council of the city, as the case may be, to show cause why a mandamus should not issue, commanding them to cause the court facilities of such county or city to be made secure, or put in good repair, or rendered otherwise sufficient, as the case may be, and to proceed as in other cases of mandamus, to cause the necessary work to be done. The court shall cause a copy of such order to be served upon each supervisor or member of the council, as the case may be.

B. Upon the entry of such order, as provided in A hereof, the chief judge of the circuit shall forthwith notify the Chief Justice of the Supreme Court of the entry thereof. Upon receipt of such notice, the Chief Justice shall assign a judge of a circuit remote from the circuit wherein the repairs are alleged to be necessary to hear and determine whether the court facilities are in fact insecure or out of repair or otherwise insufficient, and the extent to which repairs, if any, are necessary.

Before a mandamus be issued, if the concerned governing body requests, the circuit court judge hearing the matter shall appoint a five member panel, qualified by training and experience, to review the court facilities in question and make recommendations to the circuit court judge concerning the construction or repairs deemed necessary.

In making their recommendations, the panel shall consider matters such as, but not limited to, the following:

(a) Security provisions to safeguard court personnel, participants and the public;

(b) Efficient layout and circulation patterns to maximize public access, promote efficient operations, and accommodate the diverse users;

(c) The provision of administrative and service areas, judges' chambers, hearing rooms, conference rooms, prison holding areas, and public information areas; and

(d) The comfort, safety and obsolescence of the existing facility or any part thereof.

The existing facilities shall be considered in relationship to their location and the extent of their use, and their failure to meet any of these general considerations shall not necessarily be deemed a cause for determining them inadequate.

In making their recommendations, the panel may consult recognized national standard works in the field.

All costs, fees and expenses of the five member panel, after approval by the appointing judge, shall be paid by the county or city requesting their appointment.

C. If, after hearing, the court shall find that the court facilities are not insecure or out of repair or otherwise insufficient, or having been in such condition, that the necessary repairs have been made, the court shall vacate the order. If the court shall find that the court facilities are insecure or out of repair or otherwise insufficient, it shall issue its mandamus as provided in A hereof.

D. Appeals shall be allowed to the Supreme Court of Virginia as appeals from courts of equity are allowed. (Code 1950, § 15-693.1; 1962, c. 623; 1975, c. 444; 1979, c. 507.)

§ 15.1-268. Providing for armories; assistance to National Guard. — The governing body of any county may appropriate out of the general levy, except the school fund, and expend annually such sums of money as their judgment may warrant to aid and assist in the erection and maintenance of suitable armories for companies of the Virginia National Guard, or otherwise contribute towards the assistance and maintenance of such companies as may have their company stations and existence within the county limits, or within any incorporated town or city of the second class located within the geographical limits of the county. (Code 1950, § 15-694; 1962, c. 623.)

§ 15.1-269. Armory buildings and stables in certain cities. — Chapter 95 of the Acts of 1918, approved March 4, 1918, codified as § 3030a of Michie Code 1942, and continued in effect by § 15-695 of the Code of 1950, relating to the erection and maintenance of armory buildings, stables, etc., in cities having a population of from 65,000 to 100,000, is continued in effect. (Code 1950, § 15-695; 1962, c. 623.)

§ 15.1-270. Memorials for war veterans. — The circuit court of any county may, with the concurrence of the governing body of the county entered of record, authorize and permit the erection of Revolutionary War, War of 1812, Mexican War, Confederate, Spanish-American War, World War I, World War II, Korean War and Viet Nam War monuments or memorials upon the public square of such county at the county seat. If such are erected it shall be unlawful for the authorities of the county, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent the citizens of the county from taking proper measures and exercising proper means for the protection, preservation and care of same.

The governing body may appropriate a sufficient sum or sums of money out of the funds of the county to complete or aid in the erection, in the public square or elsewhere at the county seat, of monuments or memorials to the

county's veterans of such wars. The governing body may also make a special levy to raise the money necessary for the completion of any such monuments or memorials, or the erection of monuments or memorials to such veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, the American Legion or other organizations, for the purpose of building such monuments or memorials; and it may also appropriate, out of any funds of such county, a sufficient sum or sums of money permanently to care for, protect and preserve such monuments or memorials and may expend the same thereafter as other county funds are expended. (Code 1950, § 15-696; 1962, c. 623; 1982, c. 19; 1988, c. 284.)

The 1988 amendment rewrote this section.

§ 15.1-271. Systems of public recreation and playgrounds. — Any city, town or county may establish and conduct a system of public recreation and playgrounds; may set apart for such use any land or buildings owned or leased by it; may acquire land, buildings and other recreational facilities by gift, purchase, lease, condemnation or otherwise and equip and conduct the same; may employ a director of recreation and assistants; and may expend funds for the aforesaid purposes. (Code 1950, § 15-697; 1962, c. 623.)

Applied in *Page v. Commonwealth*, 157 Va. 325, 160 S.E. 33 (1931); *Mayes v. Mann*, 164 Va. 584, 180 S.E. 425 (1935).

§ 15.1-272. Same; how conducted. — The local authorities establishing such system may conduct the same through a department or bureau of recreation or may delegate the conduct thereof to a recreation board created by them or to a school board or to any other appropriate existing board or commission. (Code 1950, § 15-698; 1962, c. 623.)

§ 15.1-273. Same; joint systems. — Any two or more cities, towns or counties may jointly establish and conduct such a system of recreation and may exercise all the powers given by §§ 15.1-271 and 15.1-272. (Code 1950, § 15-699; 1962, c. 623.)

§ 15.1-274. Same; petition and election for establishment. — Whenever a petition signed by at least ten per centum of the qualified voters of any county, city or town shall be filed with the applicable circuit court, the court shall by order entered of record, in accordance with § 24.1-165, require the regular election officials to open a poll and submit to the voters at such election the question of the establishment and conduct of a system of public recreation and playgrounds and to levy a specified annual tax therefor, provided that such tax shall not exceed 2¢ on each \$100 of the assessed valuation of property subject to local taxation.

Upon the adoption of such proposition by a majority of the qualified voters voting in such election, the local authorities shall, by resolution, provide for the establishment and conduct of a system of recreation and playgrounds and for the levy and collection of such tax and shall designate the body to be vested with the powers and duties necessary to the conduct thereof. (Code 1950, § 15-700; 1962, c. 623; 1975, c. 517.)

§ 15.1-274.1. **Hiking, biking and riding trails.** — A. Any county, city, or town may establish and conduct a system of hiking, biking, and horseback riding trails; may set apart for such use any land or buildings owned or leased by it; may obtain licenses or permits for such use on land not owned or leased by it; may acquire land, buildings, and other recreational facilities by gift, purchase, lease, or otherwise and equip and conduct the same; may expend funds; and may do all acts and things necessary and convenient to carry out the purposes of this section.

B. In furtherance of the purposes of this section, any county, city, or town may provide for the protection of persons whose property interests, or personal liability, may be related to or affected by the use of such trails. (1979, c. 278; 1981, c. 124.)

The number of this section was assigned by the Virginia Code Commission, the number in the 1979 act having been 15.1-271.1.

Law Review. — For survey of Virginia law on property for the year 1978-1979, see 66 Va. L. Rev. 359 (1980).

§ 15.1-275. **Acquiring property adjoining parks, monuments, streets, etc.; disposal of such property.** — Any city or town of this Commonwealth may acquire by purchase, gift or condemnation property adjoining its parks or plats on which its monuments are located, or other property used for public purposes, or in the vicinity of such parks, plats or property, which is used and maintained in such a manner as to impair the beauty, usefulness or efficiency of such parks, plats or public property, and may likewise acquire property adjacent to any street the topography of which, from its proximity thereto, impairs the convenient use of such street, or renders impracticable, without extraordinary expense, the improvement of the same. The city or town so acquiring any such property may subsequently dispose of the property so acquired, making limitations as to the use thereof, which will protect the beauty, usefulness, efficiency or convenience of such parks, plats or property.

Any city or town proposing to open or widen a street by acquiring any part of a block or square in such a manner that the value of the property abutting the proposed street would be injuriously affected unless the property on such block or square is replatted and the property line readjusted, may at the same time it acquires the land for such street also acquire by purchase, gift or otherwise, all or any part of the property on such squares or blocks and may subsequently replat and dispose of the property so acquired, in whole or in part, making such limitations as to the uses thereof as it may see fit. (Code 1950, § 15-701; 1956, c. 17; 1962, c. 623.)

Former provision held unconstitutional. — So much of Acts 1916, pp. 112, 113 (constituting the second paragraph of this section as it read prior to the elimination of the word "condemnation" formerly appearing after the word "gift" near the middle of the paragraph) as authorized a city or town desiring to open or widen a street to acquire by condemnation all

or any part of the property in a square or block and replat and dispose of the property so acquired, where the property abutting the proposed street would be injuriously affected unless the property on such block or square be replatted, was held unconstitutional. *City of Richmond v. Carneal*, 129 Va. 388, 106 S.E. 403 (1921).

§ 15.1-276. **Definition of public uses.** — The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace all uses which are necessary for public purposes. (Code 1950, § 15-702; 1962, c. 623; 1971, Ex. Sess., c. 1.)

Applied in *Eriksen v. Anderson*, 195 Va. Corp. v. *City of Norfolk*, 199 Va. 716, 101 655, 79 S.E.2d 597 (1954); *Stanpark Realty* S.E.2d 527 (1958).

**§ 15.1-277. Acquisition of property near parks or other public property.** — Any city or town may acquire by purchase, gift or condemnation property adjoining its parks or plats on which its monuments are located, or other city or town property used for public purposes, or property in the vicinity of such parks, plats and public property, which is used in such manner as to impair the beauty, usefulness or efficiency of such parks, plats or public property and any acquisition of any such property is hereby declared to be for a public use as the term public uses is used in Article I, Section 11, of the Constitution of Virginia. The city or town so acquiring any such property may subsequently dispose of the same, in whole or in part, making such limitations as to the uses thereof as it may see fit. But nothing in this section shall be construed to give any city or town any power to condemn the property of any railroad company or public service corporation which it does not otherwise possess under existing law. (Code 1950, § 15-703; 1962, c. 623; 1971, Ex. Sess., c. 1.)

**§ 15.1-278. Certain counties may operate parks, recreation areas and swimming pools.** — The governing body of any county in which a sanitary district has been established under the laws of this Commonwealth may, for the use and benefit of the public in such sanitary district in addition to the other powers and duties granted under other laws:

- (1) Construct, maintain and operate parks, recreation areas and swimming pools;
- (2) Acquire by gift, condemnation, purchase, lease or otherwise and maintain and operate parks, recreation areas and swimming pools;
- (3) Contract with any person, firm, corporation or municipality to construct, establish, maintain and operate the parks, recreation areas and swimming pools;
- (4) Fix and prescribe the rates of charge for use of the parks, recreation areas and swimming pools and provide for collection of same;
- (5) Levy and collect an annual tax upon all the property in the districts subject to local taxation to pay in whole or in part the expenses and charges incident to maintaining and operating such parks, recreation areas and swimming pools; and
- (6) Employ and fix compensation of any technical, clerical or other force or help deemed necessary for the construction, operation and maintenance of the parks, recreation areas and swimming pools. (Code 1950, § 15-704; 1962, c. 623.)

**§ 15.1-279. Same; other counties.** — Chapter 177 of the Acts of 1942, approved March 11, 1942, codified as § 2743h of Michie Code 1942, and chapter 298 of the Acts of 1944, approved March 29, 1944, codified as § 2743i of Michie Supp. 1946, and continued in effect by § 15-705 of the Code of 1950, relating to the acquisition of parks, playgrounds and other recreational facilities by counties having a population in excess of 1,000 a square mile, are continued in effect.

Chapter 355 of the Acts of 1948, approved March 31, 1948, as amended by chapter 153 of the Acts of 1954, approved March 5, 1954, authorizing the school board or governing body of any county having a population in excess of 2,000 per square mile to acquire lands in such county and construct thereon recreational facilities, is incorporated in this Code by this reference.

The following amendment to Acts of Assembly, continued in effect by this section, is incorporated in this Code by this reference:

Chapter 331 of the Acts of 1950, which amended chapter 177 of the Acts of 1942. (Code 1950, § 15-705; 1962, c. 623.)

**§ 15.1-280. Swimming pools in certain counties.** — Chapter 20 of the Acts of 1950, approved February 17, 1950, as amended by chapter 115 of the Acts of 1954, approved March 3, 1954, relating to the construction, etc., of swimming pools by the governing body of any county having a population of more than 1,000 per square mile, is incorporated in this Code by this reference. (Code 1950, § 15-705.1; 1962, c. 623.)

**§ 15.1-281. Acquisition and housing of relics, paintings, carvings, sculpture and other works of art.** — The governing body of each county, city and town in this Commonwealth may enter into such agreements with appropriate authorities or agencies, acting under legislation enacted by the Congress of the United States, or with any person, firm, association or corporation, public or private, to provide and secure for such county, city or town such relics and such paintings, carvings, sculpture and other works of art as may be specified in such agreements and may appropriate buildings to house the same. For such purposes the governing body of such county, city or town, notwithstanding any provision of this chapter to the contrary, may furnish such materials, services and supplies and appropriate and expend from the general funds of such county, city or town such moneys as the governing body may deem proper. (Code 1950, § 15-706; 1962, c. 623.)

**§ 15.1-282. Solid and hazardous waste management.** — The governing bodies of counties, cities and towns are authorized in their discretion to acquire by lease, gift, purchase or condemnation, land, facilities or equipment to be utilized in solid and hazardous waste management as defined in § 10.1-1400. The governing bodies of counties, cities and towns are vested with the power of eminent domain insofar as the exercise of such power is necessary for the acquisition of lands for the purposes of this section and in the exercise of such power are vested with such powers and rights as are or which may hereafter be vested by law in the governing bodies of counties, cities and towns and the procedure in such condemnation suit or procedure shall be under the restrictions provided by the general statutes of this Commonwealth relative to the condemnation of land so far as the same may be applicable and are not in conflict with provisions of this section. (Code 1950, § 15-707; 1956, Ex. Sess., c. 49; 1959, Ex. Sess., cc. 12, 35; 1960, c. 306; 1962, cc. 23, 601, 623; 1979, c. 719; 1988, c. 373.)

The 1988 amendment substituted "§ 10-264" for "§ 32.1-177" in the first sentence.

**§ 15.1-283. Drainage; condemnation for drainage systems.** — The governing body of any county, city or town shall have power to provide for adequate drainage of any and all areas in the county, city or town, and to effectuate such power may install and maintain drainage systems, and acquire, by gift, purchase, lease, condemnation or otherwise, lands, buildings, structures or any interest therein and may appropriate money therefor. The power of eminent domain is vested in any such governing body to the extent necessary to effect such acquisition.

The provisions of this section as to the power of condemnation shall be subject to the provisions of § 25-233 of the Code of Virginia.

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It is the intention of the General Assembly that this section shall be liberally construed to effectuate the purposes set out herein. (Code 1950, § 15-707.1; 1960, c. 211; 1962, c. 623.)

**Law Review.** — For note on "Public Regulation of Water Quality in Virginia," see 13 Wm. & Mary L. Rev. 424 (1971).

This section is an express declaration by the General Assembly that establishing adequate drainage is a public purpose and that the

use of property for that purpose is a public use. While such a declaration is not conclusive and is subject to judicial review, it is presumed to be right. *Burns v. Board of Supvrs.*, 218 Va. 625, 238 S.E.2d 823 (1977).

**§ 15.1-284. Condemnation for stone quarries; sale of crushed stone.** — Every incorporated town in this Commonwealth may, through its governing body, acquire land suitable for stone quarries or the quarry rights in such land and may take stone therefrom and manufacture the same into crushed stone for its own use. Every such town may also sell to its own residents or to the Commonwealth or any of its political subdivisions any crushed stone so manufactured and not needed for its own use. (Code 1950, § 15-708; 1962, c. 623.)

**§ 15.1-285. Title to real estate for public uses either to be approved by attorney-at-law or title insurance; appeal.** — Whenever it shall be necessary for any county or the public officers of the county, having authority for the purpose, to purchase real estate or acquire title thereto for public uses, the contract therefor shall be in writing and, whenever the consideration paid for said real estate exceeds \$1,000, the title thereto shall be examined and approved in writing by a competent and discreet attorney-at-law selected by the governing body or title insurance, approved by a competent and discreet attorney-at-law selected by the governing body, shall be purchased for said real estate. Such approval or policy of insurance shall be filed with the clerk for the county along with the recorded deed or other papers by which the title is conveyed. No such contract shall be valid unless and until the title to such real estate be thus approved or insured.

If the attorney who has been designated refuses to approve the same, the disapproval shall be in writing and filed with the clerk of the county. The governing body of the county, or any five citizens thereof, may, by motion, appeal of right from the decision of the attorney to the circuit court of the county submitting with such motion their petition, accompanied with the evidences of title. Ten days' notice of such motion shall be given to the attorney and from the decision of the court, upon such motion, an appeal of right may be taken by the petitioners to the Supreme Court.

The public officers of the county purchasing real estate or acquiring title thereto for public uses shall pay to the attorney a reasonable compensation for his services.

The provisions of this section shall not apply to the acquisition of easements.

No contract entered into prior to July 1, 1975, the consideration for which was less than \$1,000, shall be declared invalid for failure to comply with the requirements of this section to obtain a title examination. (Code 1950, § 15-709; 1962, c. 623; 1975, c. 145; 1978, c. 115; 1980, c. 215; 1986, c. 518.)

**Purpose of section is to prevent loss of public funds.** — This section was not enacted for the benefit of vendors of land, but to prevent the loss of public funds by investment in property the title to which was defective. It is true that it declares that the contract shall

not be valid unless and until the title to the land "be thus approved" (now "be thus approved or insured"), but this does not necessarily mean that the contract shall be void. The statute, like the statute of frauds, does not go to the existence of the contract, but makes



written evidence necessary to evidence it. Moreover, like the statute of frauds, the right to demand compliance with the statute is a matter personal to the parties to the contract and their privies, and cannot be insisted upon by third persons. *McClanahan v. Norfolk & W. Ry.*, 122 Va. 705, 96 S.E. 453 (1918).

Not applicable to sales by county officers. — This section has no reference to property which the board is endeavoring to

pass the title to, but simply to property the title to which it desires to secure. *School Bd. v. Smith*, 134 Va. 98, 113 S.E. 868 (1922).

As to enforcement of a contract not in writing and not approved, see *McClanahan v. Norfolk & W. Ry.*, 122 Va. 705, 96 S.E. 453 (1918).

Applied in *Board of Supvrs. v. Bedford High School*, 92 Va. 292, 23 S.E. 299 (1895).

**§ 15.1-286. Approval and acceptance of conveyances of real estate to counties.** — Every deed purporting to convey real estate to a county shall be in a form approved by the county attorney for the county to which such conveyance is made, or if there be no such attorney, then a qualified attorney-at-law selected by the governing body. No such deed shall be valid unless accepted by the county, which acceptance shall appear on the face thereof and shall be executed by a person authorized to act on behalf of the county pursuant to a resolution duly adopted by the governing body of such county; however, the provisions of this section shall not apply to any conveyance of real estate to any county under the provisions of the Virginia Land Subdivision Act (§ 15.1-465 et seq.). (Code 1950, § 15-709.1; 1958, c. 360; 1962, c. 623; 1968, c. 416; 1977, c. 584; 1980, c. 215; 1984, c. 87.)

**§ 15.1-287:** Repealed by Acts 1982, c. 647, effective January 1, 1983.

Cross references. — For provisions as to bodies and governmental agencies, see § 11-35 procurement by state and local governing et seq.

**§ 15.1-288. Insurance of county buildings; providing temporary offices.** — The governing body of every county may cause the county buildings to be insured, in the name of such governing body and their successors in office, for the benefit of the county, if they deem it expedient; and if there are no public buildings, may provide temporary suitable rooms for county purposes. (Code 1950, § 15-711; 1962, c. 623.)

**§ 15.1-289. Permitting visually handicapped persons to operate stands for sale of newspapers, etc.** — The governing body of any county, city or town in the Commonwealth may, by ordinance or otherwise, grant permission to any blind person to construct, maintain and operate, under the supervision of the Virginia Department for the Visually Handicapped, in the county courthouse or city hall, or other appropriate place adjacent thereto, a stand for the sale of newspapers, periodicals, confections, tobacco products and similar articles and may prescribe all needful rules and regulations for the conduct of any such stand so permitted. (Code 1950, § 15-712; 1954, c. 71; 1962, c. 623.)

**§ 15.1-290. Governing body may designate member to manage park.** — The governing body of any county which owns and operates within its borders any park within the limits of which is a pond or lake upon which pleasure boats are operated and other recreational facilities are provided may designate one of its members to manage, or supervise the management of, such park and recreational facilities and may allow him such compensation for his services in that regard as the board may deem proper, the same to be paid out of the general fund in the county treasury, and to be in addition to his compensation for his general services as a member of the board; provided that

such additional compensation shall not exceed \$150 for any year. (Code 1950, § 15-713; 1962, c. 623.)

§ 15.1-291. Liability of counties, cities and towns in the operation of recreational facilities. — No city or town which shall operate any bathing beach, swimming pool, park, playground or other recreational facility shall be liable in any civil action or proceeding for damages resulting from any injury to the person or property of any person caused by any act or omission constituting simple or ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such recreational facility. Every such city or town shall, however, be liable in damages for the gross or wanton negligence of any of its officers or agents in the maintenance or operation of any such recreational facility.

The immunity created by this section is hereby conferred upon counties in addition to, and not limiting on, other immunity existing at common law or by statute. (Code 1950, § 15-714; 1962, c. 623; 1979, c. 277.)

Law Review. — For article, "A Century of Tort Immunities in Virginia," see 4 U. Rich. L. Rev. 238 (1970).

"Gross negligence" is that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another. It is a heedless and palpable violation of legal duty respecting the rights of others. Gross negligence amounts to the absence of slight diligence, or the want of even scant care. *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987).

This statute is clear and unambiguous. Thus, general rules for construction of statutory language of doubtful meaning do not apply. Under these circumstances, there is no need for interpretation by the court; the plain meaning and intent of the enactment will be ascribed to it. *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987).

Application not conditioned on profit, free public use, etc. — The General Assembly intended to limit the civil liability of municipalities in the maintenance and operation of any recreational facilities to cases of gross or

wanton negligence. That is what the legislature said in plain terms. The statute's application is not conditioned on profit, free public use, or "highly participatory" activity. *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987).

Leaving a road grading machine near a children's playground did not constitute gross or wanton negligence, on the ground of attractive nuisance, within the meaning of this section. *Town of Big Stone Gap v. Johnson*, 184 Va. 375, 35 S.E.2d 71 (1945).

Lack of protective devices or warnings at platform edge in orchestra pit. — City's failure to install protective devices or to post warnings for children at a platform edge in the orchestra pit of a recreational facility which was open and obvious amounts, at the most, to ordinary negligence and a failure to exercise reasonable care. Such acts of omission do not rise to that degree of egregious conduct which can be classified as a heedless, palpable violation of rights showing an utter disregard of prudence. *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987).

## CHAPTER 9.

### PUBLIC UTILITIES; FRANCHISES; SALE OF PUBLIC PROPERTY.

Article 1.		Sec.	
General Provisions.			
Sec.		15.1-293.	Purchase of gas, electric and water plants operating in contiguous territory.
15.1-292.	General powers of counties, cities and towns as to public utilities; pollution of water.	15.1-293.1.	Acquisition by county of water supply system or sewerage system from sanitary district.
15.1-292.1.	[Not set out.]	15.1-294.	Contracts with sewerage or water purification company, etc.
15.1-292.2.	Regulation of sewage disposal or water service.		

pursuant to §§ 33.1-119 supervisors shall perform nonwealth Transportation domain suits brought 1-98, except that such suits of the governing body of the 384; 1958, c. 382; 1960, c. 1983, c. 434; 1989, c. 304;

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for local improvements; city or town may impose owner or abutting property rging the walkways upon en existing alleys, and for rm water sewers including sessments may include the incurred by the locality in nt of the improvements; in excess of the peculiar abutting property owner or all be imposed upon any ssment.

of any county, city or town property owners for the walks, waterlines, sanitary n of street lights; for the ther protective devices; for the foregoing; and for ed to, benches or waste ide the legal, financial or e locality in creating the ments; however, the taxes ar benefits resulting from ers.

, the governing body may property owner or abutting ving of an existing street property owners who own g such street request the s permitted by this para- nefits resulting from the nd in no event shall such erty abutting such street parcel abutting such street,

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special benefits conferred upon that property by the installation or construction of flood control barriers, equipment or other improvements for the prevention of flooding in such area and shall provide for the payment of all or any part of the above projects out of the proceeds of such taxes or assessments, provided that such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners. (Code 1950, § 15-669; 1962, c. 623; 1966, c. 127; 1971, Ex. Sess., c. 126; 1972, cc. 704, 767; 1976, cc. 512, 617; 1977, c. 225; 1981, c. 581; 1985, c. 59; 1989, cc. 24, 564; 1991, c. 422.)

The 1991 amendment added "Such taxes or assessments may include the legal, financial or other directly attributable costs incurred by the locality in creating the district and financing the payment of the improvements" at the beginning of the second sentences of the first

and second paragraphs, and substituted "however, the taxes" for "however, such taxes" in the second sentence of the first paragraph, and substituted "however the taxes" for "provided that such taxes" in the second sentence of the second paragraph.

## CHAPTER 8.

### BUILDINGS, MONUMENTS AND LANDS GENERALLY.

Sec.

15.1-261.1. Leasing county land.

15.1-262. Purchase, sale, etc., of real property.

Sec.

15.1-291. Liability of counties, cities, and towns in the operation of recreational facilities.

§ 15.1-261.1. Leasing county land. — The governing body of any county, in its discretion, may lease to any responsible person, firm or corporation any improved or unimproved lands owned or held by such county for any lawful purpose provided such governing body shall first hold a public hearing after giving at least seven days' notice thereof in a newspaper having general circulation in the county. The terms and provisions of any such lease shall be prescribed by the governing body, provided that any such lease shall contain a clause to the effect that at the termination of such lease it shall not be renewed if required for any of the purposes mentioned in § 15.1-258, and that upon termination, all improvements erected thereon shall revert to the county and shall be free from any encumbrance at the time of such reversion. All moneys received by such county under this section shall be paid into the treasury of such county. The provision of this section requiring the holding of a public hearing shall not apply to the leasing of such land to another public body, political subdivision or authority of the Commonwealth. (1970, c. 375; 1986, c. 477; 1991, c. 57.)

The 1991 amendment substituted "seven days' notice" for "fifteen days' notice" in the first sentence.

§ 15.1-262. Purchase, sale, etc., of real property. — The governing body of the county shall have power to sell, at public or private sale, or exchange, lease, mortgage, pledge, subordinate interest in or otherwise dispose of the real property, which includes the superjacent airspace (except airspace provided for in § 15.1-376.1) which may be subdivided and conveyed separate from the subjacent land surface, of the county; to purchase any real estate as may be necessary for the erection of all necessary county buildings; to provide a suitable farm as a place of general reception for the poor of the county;

provided that no such land shall be disposed of unless and until the governing body has held a public hearing thereon concerning such disposal thereof. The provisions of this section shall not apply to the vacation of public interests in real property under the provisions of Articles 7 (§ 15.1-465 et seq.) and 8 (§ 15.1-486 et seq.) of Chapter 11 of this title.

The governing body of the county shall have the power to acquire by purchase, gift, devise, bequest, grant, lease, or otherwise title to, or any interests or rights of less than fee-simple title in, any real property within its jurisdiction, for any public purposes, including, but not limited to, those purposes set forth elsewhere in this chapter.

This section shall not be construed to deprive the judge of the right to control the use of the courthouse of the county during the term of his court therein. (Code 1950, § 15-692; 1962, c. 623; 1968, c. 418; 1974, c. 282; 1977, c. 269; 1979, c. 431; 1980, cc. 212, 559; 1984, c. 241; 1986, cc. 477, 573; 1990, c. 813.)

The 1990 amendment added the last sentence of the first paragraph.

**§ 15.1-291. Liability of counties, cities, and towns in the operation of recreational facilities.** — No city or town which shall operate any bathing beach, swimming pool, park, playground, skateboard facility, or other recreational facility shall be liable in any civil action or proceeding for damages resulting from any injury to the person or property of any person caused by any act or omission constituting simple or ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such recreational facility. Every such city or town shall, however, be liable in damages for the gross or wanton negligence of any of its officers or agents in the maintenance or operation of any such recreational facility.

The immunity created by this section is hereby conferred upon counties in addition to, and not limiting on, other immunity existing at common law or by statute. (Code 1950, § 15-714; 1962, c. 623; 1979, c. 277; 1990, c. 18.)

The 1990 amendment inserted "skateboard facility" in the first sentence of the first paragraph.

The statutory term "recreational facility" is unambiguous and means a place for citizens' diversion and entertainment. It is a place, like a bathing beach, swimming pool, park, or playground, where members of the public are entertained and diverted, either by

their own activities or by the activities of others. *DePriest v. Pearson*, 239 Va. 134, 387 S.E.2d 480 (1990), citing *Frazier v. City of Norfolk*, 234 Va. 388, 362 S.E.2d 688 (1987).

County was not operating a "recreational facility" within the meaning of this section when it was transporting passengers by bus to an outing in Williamsburg. *DePriest v. Pearson*, 239 Va. 134, 387 S.E.2d 480 (1990).

## CHAPTER 8.1.

### VIRGINIA INDOOR CLEAN AIR ACT.

Sec.

- 15.1-291.1. Definitions.
- 15.1-291.2. Statewide regulation of smoking.
- 15.1-291.3. Responsibility of building proprietors and managers.

Sec.

- 15.1-291.4. Local ordinances regulating smoking.
- 15.1-291.5. Mandatory provisions of local ordinances.

Sec.

- 15.1-291.6. Optional nances.
- 15.1-291.7. Excepti
- 15.1-291.8. Chapter local or

**§ 15.1-291.1.** requires a differ

"Bar or lounge ment where one excluding any : tables or seating served.

"Educational students, includ public or priva vocational scho

"Health care required to be l hospital, nursin or ambulatory

"Person" me company, or o

"Private wor public in the

"Proprietor" controls the ac corporations, :

"Public con vehicle used f compensation. that is not su

"Public plac including, but wealth or any or public veh other health ( auditorium, a performance

"Restauran lounge area : more patron consideration

"Smoke" on cigar, or ciga lighting, inh: kind.

"Theater" which is pri picture, stag performance

**§ 15.1-291** wealth or a: reasonable r the building

VIRGINIA:

IN THE CIRCUIT COURT OF GREENSVILLE COUNTY

CITY OF EMPORIA, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Chancery No. 3183
	)	
COUNTY OF GREENSVILLE, et al.	)	
	)	
Defendants.	)	

DECREE

This cause came on to be heard upon the plaintiffs' bill of complaint for declaratory judgment; upon the defendants' response and grounds of defense; upon the parties' joint stipulation of facts; upon the plaintiffs' motion for summary judgment; upon the memoranda filed by the parties; and upon the argument of counsel.

Upon consideration whereof, and for the reasons set forth in an oral opinion rendered on January 10, 1992, the Court hereby finds and declares that (a) the construction and operation of two courthouses and clerk's offices for the Greenville County Circuit Court, as proposed by the defendants, would violate the 1962 Acts of Assembly, Chapter 623, and the 1968 Acts of Assembly, Chapter 78, (b) that the defendants may not construct a new circuit court courthouse at a site within the County, as proposed by the defendants, without first obtaining referendum approval of the qualified voters of the County and the City pursuant to § 15.1-559 of the Code of Virginia (1950), as amended, and (c)

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that the granting of injunctive relief requested by the plaintiffs will not be necessary in these circumstances to obtain compliance with the Court's rulings.

Accordingly, the Court hereby ORDERS and DECREES that the plaintiffs' motion for summary judgment be, and it is hereby, granted, except as to the request for injunctive relief, which is denied.

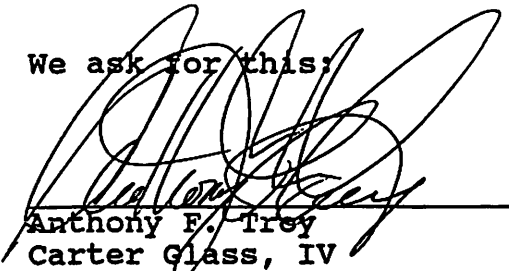
It is further ORDERED that a transcript of this Court's oral opinion of January 10, 1992 be made a part of the record of this proceeding and that this case be stricken from the docket and placed among the ended chancery causes.

Let the Clerk of Court send an attested copy of this decree to all counsel of record.

Entered this 18<sup>th</sup> day of ~~January~~ <sup>FEBRUARY</sup>, 1992.

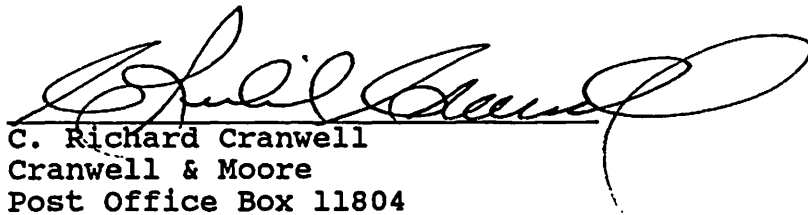
  
Rudolph Bumgardner, III, Judge

We ask for this:

  
Anthony F. Trey  
Carter Glass, IV  
Harold E. Greer, III  
Mays & Valentine  
NationsBank Center  
1111 East Main Street  
P. O. Box 1122  
Richmond, Virginia 23208-1122

Counsel for Plaintiffs

Seen and objected to:



C. Richard Cranwell  
Cranwell & Moore  
Post Office Box 11804  
Roanoke, Virginia 24022-1804

Counsel for Defendants

I certify that the document to which this authentication is  
affixed is a true copy of the original record of the Court, Greenville  
County, that it is a true copy of the record, and that I am the  
custodian of the record.

Robert C. Venable, Clerk

By Mary D. Lee  
Deputy Clerk

Date

2-20-92

### **ASSIGNMENTS OF ERROR**

- I. THE COURT ERRED IN ITS RULING THAT A REFERENDUM IS REQUIRED FOR GREENSVILLE COUNTY TO CONSTRUCT AN ADDITIONAL CIRCUIT COURT BUILDING, BECAUSE THE ACTION DOES NOT CONSTITUTE A RELOCATION OF THE COUNTY SEAT OF GREENSVILLE COUNTY.
- II. THE COURT ERRED IN ITS RULING THAT GREENSVILLE COUNTY AND THE CITY OF EMPORIA MUST SHARE A SINGLE CIRCUIT COURT FACILITY.



**ASSIGNMENT OF CROSS-ERROR**

- I.    THOUGH THE CIRCUIT COURT REACHED THE  
CORRECT CONCLUSION AS TO THE  
APPLICABILITY OF THE REFERENDUM  
REQUIREMENT IN § 15.1-559, IT ERRED IN  
DEFINING THE TERM "COURTHOUSE": TO MEAN  
"COUNTY SEAT OF GOVERNMENT."