

Virginia Municipal League Small Towns Conference

TOWN AND COUNTY LAW

What Your Attorney Wants You to Know!

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Towns and counties are separate legal entities under Virginia law and are sometimes granted different powers and responsibilities by the General Assembly. This presentation is intended to identify the major differences between towns and counties in terms of authority and duties, as well as certain instances where powers may be exercised jointly. This presentation is not intended to be exhaustive or to provide legal advice, and you may wish to contact your local government attorney for further guidance.

I. CREATION

Va. Code §§ 15.2-201, 15.2-300 -301, 15.2-400 et seq., 15.2-500 et seq., 15.2-600 et seq., 15.2-1402, 15.2-3600 et seq.

Counties are political subdivisions created by the General Assembly. (The General Assembly recognized Accomack County as fully functioning governmental entity, separate and apart from Northampton County on September 15, 1663).

There are several optional forms of county government that may be adopted after approval by a voter referendum, including county board form of government, county executive form of government, county manager form of government, and urban county executive form of government. Some counties have charters (not Accomack County).

Towns are also political subdivisions of the Commonwealth created by charter. Towns have the powers set forth in the Charter. Provisions in the Charter supersede general law unless the General Assembly specifically provides otherwise.

Towns may be incorporated by a petition signed by 100 voters of any community being presented to the circuit court for the county requesting incorporation as a town. If approved by a special court, the incorporated town shall request the General Assembly to grant its charter.

II. DEFINITIONS

Virginia Constitution, Art. VII, Sec. 1 and Va. Code § 15.2-102

County means “any existing County or such unit hereafter created.”

Town means “any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.”

A town is a municipality and falls under all laws that apply to municipal corporations.

III. GOVERNING BODIES

Virginia Constitution, Art. VII, Sec. 5 and Va. Code §§ 15.2-102, 15.2-1422, 15.2-1420, 15.2-1422, 15.2-1425, 15.2-1522

All powers granted to a locality are vested in its governing body.

Governing bodies of counties and towns are elected by the qualified voters of such locality.

The governing body of a county is the board of supervisors. Its presiding officer is its chairperson, who may be elected by the qualified voters of the county or appointed from the board’s membership by the supervisors.

The governing body of a town is the town council. Its presiding officer is its mayor, who may be elected or appointed from the town council’s membership by the members of the council.

The governing body acts through its ordinances, resolutions and motions.

All question submitted to the governing body shall be determined by a majority of the members voting on any such question. Counties may have a designated tie breaker.

Prior to taking office, every elected county or town officer must take an oath which can be given by the clerk of the circuit court or such other person authorized to administer oaths. Oaths of town council are returned to clerk of the town council. Oaths of the board of supervisors are returned to the clerk of the circuit court.

IV. GENERAL GRANT OF POWERS

Va. Code §§ 15.2-1201, 15.2-1102

Counties have the power to adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants, which are not inconsistent with the laws of the Commonwealth.

Towns have all powers conferred upon or delegated to it under the Virginia Constitution and the laws of the Commonwealth that are necessary or desirable to promote the general welfare of its

inhabitants and the safety health, peace, good order, comfort convenience, morals trad, commerce and industry of the municipality and its inhabitants.

V. ANNEXATION/CONSOLIDATION

Va. Code §§ 15.2- 3201 et seq., 15.2-3520, 15.2-3547. 15.2-3548

Unless prohibited by moratorium, the council of any city or town may by ordinance petition the circuit court for the county in which any territory adjacent to the city or town lies for annexation of such territory.

Annexation may also be initiated by a voter referendum.

A special court shall hear the evidence and decide the necessity for annexation considering the best interests of the people of the county and the town.

Towns and counties may reach an agreement for the purpose of defining the town's annexation rights in the future.

A town may annex another town in whole.

County and incorporated towns located entirely within the county may consolidate into a single county subject to the approval of a special court.

A county may be consolidated with any other county or city having a common boundary with the necessity of any action concerning the consolidation being taken by a town council. The town continues as a town with its charter intact.

VI. ADOPTION OF BUDGET & TAX RATE/AUDIT

Va. Code §§ 15.2-2503, 15.2-2510, 15.2-2512

All localities must adopt a budget for informative and fiscal planning purposes and fix a tax rate by a date no later than the date on which the fiscal year begins.

Counties and towns with a population exceeding 3,500 and towns constituting a separate school division must submit an annual audit to the Auditor of Public Accounts on or before December 15th.

In counties, residents may request a public audit by filing a petition with the circuit court signed by at least 50 residents. The judge may appoint one or more certified public accountants to make such audit.

VII. APPROPRIATIONS

Va. Code §§ 15.2-950, 15.2-1203

Every governing body may make appropriations for the support of the locality, the performance of its functions, and the accomplishment of all other lawful purposes and objectives.

Counties may appropriate funds to any incorporated town within its boundaries.

VIII. BOUNDARY ADJUSTMENTS

Va. Code §§ 15.2-3106 et seq.,

Localities may relocate or change the boundary line between them by agreement, approved by the circuit court.

IX. BUILDING CODE

Va. Code §§ 36-98, 36-105

Adoption of Part 1 of the Uniform Statewide Building Code (New Construction) is mandatory in all localities.

Towns with a population of less than 3,500 may elect to administer and enforce the USBC, but if the town does not so elect, the county shall administer and enforce the USBC for the town.

Counties may enter into an agreement with a town for the provision of the county's local building department for technical assistance with the administration and enforcement of the USBC.

X. CONFLICT OF INTERESTS ACT

Va. Code § 2.2-3100 et seq.

Every officer and employee of local government is subject to the Virginia State and Local Government Conflict of Interests Act, which sets out uniform standards of conduct for such officers and employees.

XI. CONSTITUTIONAL OFFICERS

Virginia Constitution, Art. VII, Sec. 4 and Va. Code § 15.2-1600

The voters of a county must elect treasurers, commissioners of the revenue, sheriffs, Commonwealth attorneys, and clerks of the court.

XII. DEBT

Virginia Constitution, Art. VII, Sec. 10 and Va. Code §§ 15.2-1243, 15.2-15.2-2634, 15.2-2636, 15.2-2638

Subject to several exceptions, no town may issue bonds or other interest-bearing obligations which, including existing indebtedness, at any time exceed 10% of the assessed valuation of the real estate in the town, as shown by the last preceding assessment for taxes.

Towns may issue bonds in accordance with the Virginia Constitution by adoption of an ordinance or resolution setting forth the maximum principal amount of the bonds and the in general terms, the purpose for which the proceeds of the bonds will be used.

Counties may only issue bonds upon a county referendum in which the majority of qualified voters approve contracting the debt, borrowing the money and issuing the bonds. Several exceptions apply.

The governing body of a county shall receive and audit all claims against the county and approve and order warrants in settlement of those claims.

XIII. ECONOMIC DEVELOPMENT

Va. Code §§ 15.2-1129.1, 15.2-1129.2, 15.2-1204, 15.2-4903

All localities may create an industrial/economic development authority.

Counties may appropriate funds for advertising and giving publicity to the resources and advantages of the county and for promoting economic development in the county.

Towns may create local economic revitalization zones to provide incentives and regulatory flexibility to private industry.

Towns may create arts and cultural districts, including business license tax incentives and regulatory flexibility.

XIV. FREEDOM OF INFORMATION ACT

Va. Code § 2.2-3700 et seq.

The Virginia Freedom of Information Act applies to all localities. This includes the requirement for open meetings advertised in accordance with state law and the requirement for the disclosure of public records upon request of a citizen of Virginia or persons distributing magazines or newspapers in Virginia or persons broadcasting on television or radio in the Commonwealth. There are numerous exceptions to the requirements for open meetings and the mandatory release of public records.

XV. LAW ENFORCEMENT

Va. Code §§ 15.2-1609, 15.2-1701, 15.2-1702, 46.2-1300, 46.2-1308, 53.1-96

The elected county sheriff enforces the law in the county.

Towns may establish a police force, which shall supplant the county sheriff as the primary law-enforcement agency within the town.

The chief law enforcement officer in a town with a police force shall be the chief of police or the town sergeant.

Counties cannot establish a police force unless such action is approved by the voters in a referendum.

In case of an emergency declared by the chief law-enforcement officer of a county, such officer may call upon the chief law-enforcement officer of towns within the county for assistance.

Counties may establish and maintain a farm where any person convicted and sentenced to confinement in the jail of such county may be confined to the farm and required to do such work as may be assigned.

XVI. MOTOR VEHICLES/TRAFFIC REGULATIONS

Va. Code §§46.2-1300, 46.2-1308, 46.2-1313, 46.2-1314

Localities may adopt ordinances to regulate the operation of vehicles on the highways of the locality. The local laws must not conflict with applicable state laws. All fines for violation of such ordinance shall be paid into the county or town treasury.

Localities may incorporate state law provisions relating to traffic violations by juveniles and driving while under the influence.

Counties may by ordinance provide for the establishment of a traffic school in the locality.

XVII. ORDINANCES

Va. Code § 15.2 – 1427

Ordinances are generally adopted by a majority of the members present and voting at a lawful meeting. In some cases, state law requires a two-thirds or a three-quarters vote.

Counties cannot adopt an ordinance unless noticed of an intention to propose the ordinance for passage has been advertised by reference twice.

XVIII. PROPERTY ACQUISITION –

Va. Code §§ 15.2-1800, 15.2-1802

Both towns and counties may acquire property for any public use.

A town may also acquire real property for a public use outside its boundaries; a county may only do so if expressly authorized by law.

Counties may acquire land, other than by condemnation, within its boundary for the development of business and industry. A public hearing is required.

Towns may acquire land, other than by condemnation, within its boundary and three miles outside its boundary for the development of business and industry. A public hearing is required.

XIX. PROPERTY SALE OR CONVEYANCE

Virginia Constitution, Art. VII, Sec. 9 and Va. Code §§ 15.2-1800, 15.2-2100

Both towns and counties may sell, exchange, lease or otherwise dispose of its real property after holding a public hearing.

A town may not sell its rights in property or utilities except by an ordinance or resolution passed by an affirmative vote of three-fourths of all members elected to the governing body.

A town may not lease its property or grant any easement in its property in a manner not permitted to the general public for a period of 40 years, except that certain air rights and easements for columns of support may be granted for 60 years.

A town may not grant a franchise or privilege for a term in excess of 5 years, except for a truck railway, until the town receives public bids after due advertisement.

XX. PURCHASING

Va. Code §§ 2.2 4300 et seq., 15.2-1238, 15.2-1543

All localities are subject to the Virginia Public Procurement Act.

Counties may employ a county purchasing agent to purchase or contract for all supplies, materials, equipment and services subject to the Virginia Public Procurement Act.

Counties may not order supplies or contract for services until the chief financial officer has certified that there is sufficient funds to pay the cost of such order or contract.

XXI. SOVEREIGN IMMUNITY

Va. Code §§ 15.2-1405, 15.2-1809

In general, counties are immune from tort liability for all activities of their officers, agents and employees even if acting in a proprietary capacity.

In general, towns are immune from liability for simple negligence in the exercise of governmental functions.

The members of the local governing body of any locality are immune from suit arising from the exercise or failure to exercise their discretionary or governmental authority as members of the governing body, provided such action or inaction does not involve unauthorized appropriations, misappropriations, gross negligence, or intentional or willful misconduct.

No town which operates a park or recreational facility shall be liable in any civil action for damages resulting from an injury to the person or from a loss or damage to the property or any person caused by any act or omission constituting ordinary negligence on the part of any officer in the town in the maintenance or operation of such park or recreational facility. This immunity is also conferred upon counties.

XXII. STREETS

Va. Code §§ 15.2-2000, 15.2-2015, 15.2-2202, 15.2-2023, 33.2-324, 33.2-326, 33.2-319, 33.1-339, 33.2-366,

Towns' streets subject to local control within the boundaries of incorporated towns may receive highway maintenance funds and remain subject to the jurisdiction of the town council of such town.

Upon a request from the governing body of towns with a population of less than 3,500, the Commissioner of Highways may select certain streets in such towns for maintenance,

improvement, construction and reconstruction, not to exceed two mile of street in such towns that are included in the Secondary State Highway System.

Towns may provide for the issuance of permits for the use of streets, roads, bridges and other public rights-of-way.

County and some town streets may become part of the Secondary State Highway System. Counties have no control over such roads. Subject to several conditions, towns may receive payments from VDOT for the maintenance, construction, or reconstruction for principal and minor arterial roads.

Counties may expend its general revenues for the construction and repair of public roads not in the primary or secondary state highways system.

Counties may receive state maintenance funds if they have withdrawn from the Secondary State Highway System.

Counties may install and maintain suitable lights on public rights-of-way within its boundaries and pay the costs of such installations and maintenance.

XXIII. TAXATION IN GENERAL

Va. Code §§ 15.2-1104, 15.2-1427, 58.1-3007

No local tax may be increased in any locality unless published in a newspaper having general circulation in the locality affected at least 7 days before the proposed levy is made and the public is given an opportunity to appear before the local governing body on the subject of such increase.

Towns may assess taxes as necessary to perform the functions of the municipal corporation.

In towns, taxes cannot be imposed except by a two-thirds vote of the council members.

XXIV. TAXATION OF REAL ESTATE

Virginia Constitution, Art. X, Secs. 1, 2, 6 – 6-B and Va. Code §§ 58.1-3200, 58.1-3252, 58.1-3256,

All property in towns and counties shall be taxed, unless wholly or partially exempt under state law or segregated for state taxation.

All assessments of real estate and tangible property shall be at fair market value.

Counties with a full-time real estate assessor may conduct biennial assessments of all land in the county.

Towns may conduct general reassessment every fourth year if the town council declares by ordinance or resolution the necessity therefore.

If conducted, town assessments are made by a board of assessors appointed by the town council.

XXV. PERSONAL PROPERTY TAXATION/MISCELLANEOUS TAXES

Va. Code §§ 58.1-3500, 58.1-3700, 58.1-3711, 58.1-3818, 58.1-3819, 58.1-3832, 58.1-3833, 58.1-3840, 58.1-3841

All localities may levy a tax on tangible personal property.

All localities may levy a business license tax. Any county license tax shall not apply within the limits of any town in such county where such town now or hereafter imposes a town license tax on the same privilege. If the governing body of any such town provides that a county license tax shall apply within the limits of such town, then such license tax will apply in the town.

All localities may levy an admissions tax. However, counties may levy a tax on admissions charged to any event, unless a state sales and use tax is imposed at a rate of at least 1%, a portion which is dedicated to the promotion of tourism.

All localities may levy a transient occupancy tax on facilities offering guest rooms rented out for continuous occupancy for fewer than 30 days. Any county that imposes a tax rate greater than 2% shall provide that any excess from the rate over 2% shall be designated and spent for tourism and travel. Any county transient occupancy tax shall not apply within the limits of any town in such county where such town now or hereafter imposes a town transient occupancy tax. If the governing body of any such town provides that a county transient occupancy tax shall apply within the limits of such town, then such license tax will apply in the town.

All localities may levy a tax on the sale or use of cigarettes.

All localities may levy a food and beverage tax. Any county meal and beverage tax shall not apply within the limits of any town in such county where such town now or hereafter imposes a town meal and beverage tax. If the governing body of any such town provides that a county meal and beverage tax shall apply within the limits of such town, then such meal and beverage tax will apply in the town. The situs for taxation for any tax levied on the sale of food and beverages or meals shall be the county, city, or town in which the sales are made, namely the locality in which each place of business is located without regard to the locality of delivery or possible use by the purchaser.

XXVI. ZONING, PLANNING AND SUBDIVISION

Va. Code §§ 15.2-2210, 15.2-2219, 15.2-2223, 15.2-2232, 15.2-2239, 15.2-2280, 15.2-2281, 15.2-2308

Every locality must have a planning commission, although joint commissions are permitted by agreement of adjacent localities.

Every governing body must adopt a comprehensive plan for its jurisdiction.

Every planning commission must review proposed public acquisitions and improvements for consistency with the comprehensive plan. Several exceptions apply.

Every governing body must adopt a capital improvement plan.

Every governing body must adopt a subdivision ordinance.

Adoption of a zoning ordinance is optional. A county zoning ordinance shall apply only to the unincorporated areas of its boundaries.

If a zoning ordinance is adopted, a board of zoning appeals is required to consider requests for variances and appeals of zoning determinations.

XVII. JOINT EXERCISE OF POWERS

Va. Code §§ 15.2-1300, 15.2-1301, 15.2-1306 et seq., 15.2-1513, 15.2-1736, 15.2-1747, 15.2-2219, 53.1-95.2 et seq.

Any power exercised or capable of being exercised by any political subdivision may be exercised and enjoyed jointly with any other political subdivision having a similar power.

Two or more political subdivisions may form and maintain associations for the purpose of promoting through investigation, discussion and cooperative effort, the interest and welfare of such political subdivisions.

Localities may form regional partnerships to accomplish governmental activities, such as regional planning and economic development.

Localities may jointly employ or share the services of any person.

Localities may enter into mutual aid agreements for the use of joint law-enforcement to maintain peace and good order.

Localities may enter into agreements for a regional criminal justice academy, which shall be public body politic and corporate.

Localities may by ordinance create a jail authority for the construction and operation of regional jails.

Joint planning commissions are permitted by agreement between adjacent counties and municipalities.