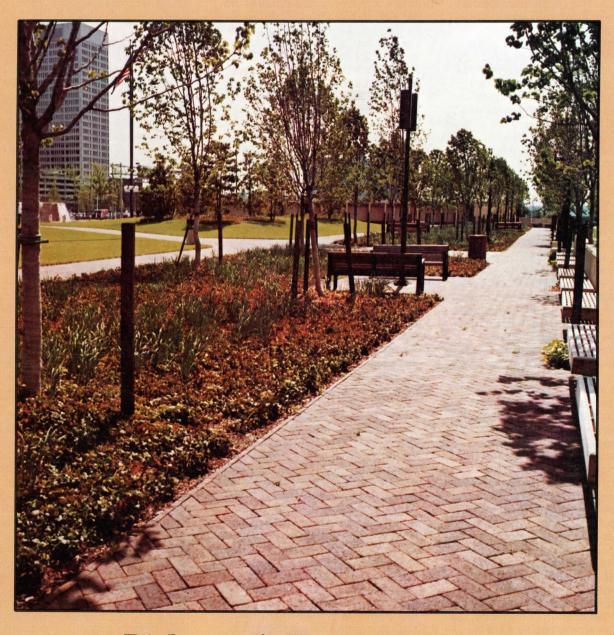
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Editorial

Local Option . . . Not According To The Attorney General

Few localities in the Commonwealth were aware of Senate Bill 160, which was passed during the 1978 Session of the General Assembly until Dr. Jean L. Harris, former Secretary of Human Resources under Governor Dalton's Administration, sent letters to various State and local government officials. This mysterious legislation was commonly referred to as the "local option bill," which became Section 15.1-36.2 of the Code of Virginia. The original intent of the local option legislation was to permit localities to establish human services delivery systems which prior to that time were prohibited by State law and administrative regulations.

Secretary Harris' 1978 letter announced the creation of the Local Option Task Force, appointed by the Secretary to prepare guidelines for localities to follow when submitting new plans to carry out the reorganization of human services programs. As many local elected officials, local human services administrators, city, county, and town managers and administrators may remember, the Local Option Task Force in 1979 held public hearings across the state to solicit input on how the guidelines should be developed. The guidelines were released in final form in August of

Like all good mysteries, there came on February 9, 1982 a major twist to the story of "local option" legislation. On February 9, 1982 the Attorney General of the Commonwealth, Gerald L. Baliles, in response to an inquiry from Senator Joseph V. Gartlan of Fairfax, ruled that local option is unconstitutional. As defined in Section 15.1-36.2, of the Code of Virginia (the "local option" section) local governing bodies were permitted to reorganize their human service programs in ways that would otherwise conflict with existing laws, rules or regulations. However, under this section of the Code, the local governing bodies were required to submit a reorganization plan to the Governor. If an existing provision of law prohibited or restricted the implementation of

the plan, the Governor was required to submit the plan to each house of the General Assembly at least fortyfive days prior to the commencement of a session of the Assembly. In one of the most unusual turn of events in Virginia statutory law, the local option legislation allowed for a local option plan to have the force of law, if the General Assembly did not specifically disapprove the plan by the end of the session in which the plan was submitted. Thus no specific act of the General Assembly was required to approve the local option plan.

Herein lies the basis of the Attorney General's opinion that the "local option" legislation is unconstitutional. In his written opinion, the Attorney General notes that "Article IV, Section II of the Constitution of Virginia (1971) provides, in part, that '[n]o law shall be enacted except by bill.' To repeal or modify a statute requires a legislative act of equal dignity and import. Nothing less than another statute will suffice." The legal authority for this point is Moran v. LaGuardia, 270 N.Y. 450, I N.E. 2d 961 (1936).

The Attorney General further states "it is well settled that a statute cannot be amended by resolution." The legal authority for this point is Newport News Fire Fighters Association v. City of Newport News, 307 F. Supp. 1113 (E.D. Va. 1969); . . . clearly, what the General Assembly cannot do by resolution, it cannot do by inaction, Opinion to the Honorable Adelard L. Brault, dated August 8, 1978 and found in the Report of the Attorney General (1979-1979) at 110; 1 A. Sands, Sutherland Statutory Construction Section 22.14 p. 141. To summarize the Attorney General: "The statutes affected by a local option reorganization plan cannot be held to be suspended.'

To correct this situation the Attorney General states: "It is my opinion that in order to comply with the requirements of the Constitution, the local option reorganization requires specific approval by bill enacted by the General Assembly in any case where a reorganization plan conflicts with existing

statutes. It is further my opinion that any such legislative action would constitute a special act as defined in Article VII, Section 1. of the Constitution of Virginia, which requires an affirmative vote by two-thirds of the members elected to both houses in the General Assembly.

The Attorney General's opinion is both clear and persuasive in that the "local option" legislation in its present form is unconstitutional. The real question is, why did it take so long for anyone, be it Legislative Services, the previous Secretary of Human Resources, the previous Attorney General or a member of the General Assembly to raise the question of the constitutionality of this unique law which was passed in 1978? The question of the constitutionality of the "local option" legislation came up several times during the Task Force meetings in 1979. Several localities including Dickerson County, Fairfax County, the cities of Manassas and Manassas Park (jointly), Montgomery County, Shenandoah County and Surry County have spent a considerable amount of staff time and money in developing local option plans.

Were their good faith efforts all for naught? While the elected officials and staffs of these localities may come close to despair at the Attorney General's opinion . . . all is not lost. If the "local option" legislation has an epitaph, it ought not be inspired by the number of aborted reorganization plans that were developed and submitted to the Governor. Rather, it should be recognized that the process has served as a catalyst which caused local elected officials and staffs to examine their organizations and methods of delivering human services at the local level. One such example is Fairfax County, which discovered that it did not need the approval of the Governor or the General Assembly to make a number of key changes wanted in its local human services delivery

In spite of the short life of the "local option" legislation, positive (Continued on page 16)

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On the Cover

The Kanawha Plaza connects the new Federal Reserve building, the Virginia Electric and Power Company building and the recent expansion of Ethyl Corporation. It is a pleasant area for downtown employees to relax in because of its landscaped walkways and ample benches. Part of Richmond's 1974-75 Capital Improvements Program, the Plaza was completed in 1979.

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The Two Sides Meet...



The jurisdictions discuss their options.

(Photos courtesy of The Free Lance-Star)

Fredericksburg's Side

By Peter R. Kolakowski

When the moratorium was lifted in 1980, the City of Fredericksburg reviewed the revised annexation laws and initiated a feasibility study to investigate the possibility of annexing a portion of Spotsylvania and/or Stafford County. Although the city had not sought annexation since 1955, the explosion of growth immediately outside the city limits and the erosion of the city's tax base indicated that a study of annexation was needed.

During the decade of the 1970s Spotsylvania County was the fastest growing County in the State of Virginia. The growth outside City limits necessitated the provision of urban type services; services which in many cases were provided jointly by the city and the county. Despite its unprecedented growth during the 1970s, Spotsylvania aggressively moved to provide as many urban services as possible. Recognizing

About the Author

Mr. Kolakowski is Fredericksburg's City Manager.

that the threat of annexation existed, on September 24, 1981, Spot-sylvania filed a suit for partial immunity. In response to this suit the city made its annexation ordinance public.

Negotiations commenced with meetings in which both sides traded initial proposals, attempted to find common ground for discussions and set dates for further negotiation sessions. The tenor of the first sessions indicated the desire of both localities to attempt to reach a settlement. Until the first week of December the negotiations were cordial and basically just an exchange of ideas. In fact, the sessions were general discussions of each locality's position and statements for and against annexation. Three weeks before the selfimposed deadline for the negotiations, an impasse was developing over the issues. Leaks to the media exacerbated the tension between. the negotiating teams.

A utility plan for both localities, conceived and brought forward by a

Councilmember on the City's negotiation team, led the way to a final agreement. This focus on the County and City's mutual need for improved water and wastewater services was the common ground which led to the settlement of the tougher issue, the City's need for land. This utility solution consolidated water and wastewater services in the watershed occupied by the City and major portion of the County's urban growth. This ended years of battling over the utilities and gave a sense of accomplishment to the negotiations which eased resolution of the land issue.

"A plan for providing utility services led the way for a pact."

The final step was negotiation of the contract's language. This part of the process required 14 hour days over a nine day workweek. The final contract draft was agreed upon two

(Continued on page 6)

The Two Sides Agree



Spotsylvania Board Chairman Hugh Cosner and Fredericksburg Mayor Lawrence A. Davies sign the agreement.

Spotsylvania's Story

By Steven T. Foster

"City, Spotsylvania Sign Historic Accord" was a newspaper headline on December 23, 1981.

The Fredericksburg City Council and the Spotsylvania County Board of Supervisors signed an unprecedented agreement concerning annexation, immunity from annexation, the joint provision of water and sewer service and the revitalization of what was once the area's largest industry. After several years of distrust, infighting and isolationism, the two jurisdictions, having a combined population of over 50,000 residents, accomplished a near miracle.

The 1979 session of the General Assembly adopted a new "annexation package" designed as a compromise to appease the warring factions in Virginia local government. After the dust settled, it was discovered that the legislature had

given total "immunity" from annexation to the large urban counties in the Commonwealth. Both cities and counties received additional state aid for law enforcement, judges' salaries and special welfare costs. As far as annexation was concerned, many counties including Spotsylvania, Augusta, James City and Albemarle found the sanctity of their territorial borders once again threatened.

"The best 'defense' for the County was an 'offense'."

Not long after July I, 1979, the effective date of the annexation legislation, the Spotsylvania County Board of Supervisors hired a cadre of lawyers and consultants to prepare a "defense" against possible annexation by Fredericksburg. Following over two years of preparation, analysis and study, the county determined that the best "defense" for Spotsylvania was an "offense."

On September 24, I981 the Spotsylvania County Board of Supervisors adopted a resolution petitioning the Commission on Local Government to grant immunity to 24 square miles of the county's more densely developed commercial, industrial and residential areas. Over the past decade, the Board of Supervisors responded to the demand for urban-type services by constructing necessary public facilities to serve the county's growing population. Confident of qualifying for "partial immunity," the county was able to negotiate face-to-face with the city on equal terms. Less than three months after the initial filing of this petition, the two governing bodies worked out a solution following numerous negotiating sessions. Although there is no clear "winner" or "loser" as a result of this agreement, both the county and the city benefited. The real winners were the citizens of both iurisdictions.

As part of the agreement, Spot-(Continued on page 6)

About the Author Mr. Foster is the County Administrator for Spotsylvania.

and one-half hours prior to its sign-

ing on December 22.

The citizenry, as well as the media and various state agencies, were amazed that Fredericksburg and Spotsylvania could come to an amicable agreement, settle a seven year old utilities question, and solve a three and one-half year old annexation battle. Particularly after years of tension and mistrust, the cooperation of both localities to resolve development issues was hailed as a new era for the region.

There were several factors for this turnabout. The first was the common issues that eventually surfaced in the negotiations. The first three weeks of the negotiations centered upon the drawing of property lines with a general debate about annexation and partial immunity. Revenue sharing was proposed by the City, but Spotsylvania repeatedly stated that this was not an option to be considered in the negotiations.

The final agreement contains provisions for the two issues that each side wished to resolve. These were the questions about utilities, water and wastewater capacity and service, and annexation. Many other

issues were discussed, but annexation and utilities were the two interjurisdictional problems to be resolv-

ed in the settlement.

Compromise was reached because both sides recognized the political and economic needs of the other jurisdiction. This is directly related to the second factor in the negotiations. Fredericksburg and Spotsylvania wanted to seriously negotiate a settlement. mistrust that had accumulated in years of interjurisdictional squabbling was overcome after the first few weeks of negotiations. Both sides expressed the desire to avoid costly adversary litigation and wished to use these required negotiations to attempt to seek an agreement.

It is estimated that this agreement saved the two localities millions of dollars in consultant and legal fees plus years of court battles and acrimony subsequent to a court settlement. Related to this desire to negotiate in good faith was a mutual agreement to actively use the mediator recommended by the Commission on Local Government. The mediator's efforts in the shuttle negotiations kept a possible complete impasse from occurring during the course of the negotiations

The third factor in the agreement

process was the manner in which the negotiations were conducted. It was agreed upon to conduct the negotiations in closed session under the Freedom of Information Act protection of the Commission on Local Government. This allowed a free exchange of ideas and uninhibited discussion. News leaks and misinformation in the local media from the session caused some problems in the discussions; however, these were eventually overcome by both sides.

The short time period in which the negotiations commenced and were completed is another factor in the process. A period of intensive negotiations with a set deadline of December 31, 1981, was agreed upon by both parties. The result was a six week negotiation process with a number of formal negotiation sessions but continual informal talks. The necessity for the formal "across the table" exchange of proposals and dialogue is apparent in any negotiations. The informal negotiations between the mediator and members of each negotiating team, however, were the true gauge of the desire of each locality to seek the agreement. These informal discussions were absolutely necessary. Without them it is believed that this agreement would never have been reached. It was from these informal discussions, particularly between the elected officials of each jurisdiction, that laid the common ground and allowed the issue of utilities to surface and moved the negotiations process forward.

The City of Fredericksburg would certainly have preferred to receive the entire 6.3 square miles included in the original annexation ordinance rather than 4.63 square miles it did receive. Conversely, Spotsylvania would have preferred to have had no territory lost. But the point of any negotiation is to work out compromises and to find an agreement that both parties can live with. The identification of concerns in which both parties could agree upon, which in this case was the consolidation of water and wastewater utilities, enabled the resolution of the most difficult part of the negotiations, the land issue.

The negotiations spawned the recognition that each locality had specific needs and requirements that could be mutually solved. Also, there was a realization that the best way to solve local problems was for the jurisdictions involved to discuss all the problems in an attempt to reach an agreement in-

stead of settling for a court mandated edict. This was done by the City of Fredericksburg and Spotsylvania County over differences and antagonism that had been growing for years. Now both sides look forward to implementation of the agreement and to promotion of not only the individual jurisdictions, but the region as a viable and peaceful place in which to work and live

(Spotsylvania, from page 5)

sylvania County will not contest the annexation of 4.6 square miles of county territory. In exchange for this territorial adjustment, Spotsylvania will be completely immune from any annexation for at least 25 years, and probably longer. To Spotsylvania, the Commonwealth's fastest growing county, this means quite a lot. No longer worried about the prospect of annexation, the county can properly plan and coordinate the development of the county and related public services.

Spotsylvania will be able to accelerate its plan to develop the now defunct FMC Corporation cellophane manufacturing plant as an industrial park. The county purchased the plant in August, 1980 following a successful voter

referendum.

When the plant closed in 1978, over 1,200 people were suddenly out of work, and left idle were an on-site seven million gallon per day sewage treatment plant and a 20 million gallon per day process water plant. As part of the agreement between the city and the county, the city will pump sewage to the former FMC sewage treatment plant which will be converted from an industrial sewage treatment facility to a municipal plant. Spotsylvania and Fredericksburg will share in the expense of converting and upgrading this valuable facility. This work will hasten the development of the former cellophane plant into a reconditioned 230-acre industrial park complex.

In addition to the joint provision of sewage treatment, the city and county will formally "reunite" their potable water systems. Prior to the adoption of the 1979 annexation package, the two jurisdictions bought and sold water to each other through several interconnections that joined the otherwise separate water systems. Spotsylvania and Fredericksburg have agreed to provide back-up water supply to each other during times of emergency as

(Continued on page 21)



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People

Honors

The International City Management Association tapped Harold S. Atkinson of Franklin and Brent Remsburg of Abingdon as Life Members.

Mary E. Ingram, town clerk of Herndon, was named "Woman of the Year" by the Herndon Business and Professional Women's Club. She has served as Herndon's Town Clerk since 1975.

Deaths

Former mayor of Chase City A.G. "Pete" Hutcheson died. He served as a member of the Town Council from 1953 to 1959 when he became mayor and served until 1963.

Hunter E. Gurley, fire chief of Chase City, passed away February 25. A native of Chase City, he was a member of the Volunteer Fire Department for 30 years and served as Chief for 16 years. For the past 12 years he was a certified state fire instructor with the Department of

Education. At the time of his death, Gurley was President of the Southside Firemen's Association and an Executive Committee member of the State Fire Chiefs Association of Virginia.

Appointments

G. M. "Mickey" Newman will assume the position of town manager for Abingdon this month after he leaves the city manager post in Norton.

Dennis K. Morris has been appointed executive director of the Crater Planning District Commission.

E. S. "Sam" Clay, Jr., assistant city manager for public information and human resources for Virginia Beach, has been appointed Fairfax County's library director. Clay had been library director in Virginia Beach before being named assistant city manager. He is a graduate of Randolph-Macon College and the University of North Carolina.



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Fire Information On Wheels

By Roy D. Patrick

When a single county has 12 fire companies staffed about 50 percent by volunteers, effective and competent fire fighting could be hard to undertake. After all, each volunteer has to be trained to use the equipment and become familiar with the areas of the county he/she will be responsible for—and during their "off" hours, at that.

"Chesterfield makes information available for their volunteers at the scene."

Chesterfield County was faced with such a situation, but they found a way to utilize the efforts of their 300 volunteers in an effective way. They instituted the Technical Service Unit. Three enthusiastic and experienced firefighters comprise the Technical Service Unit. These firefighters are responsible for prefire planning for eight all volunteer fire companies. Stations with salaried personnel have someone assigned to work with the TSU.

The TSU pre-fire planning involves:

- locating potential trouble spots in an area
- determining the types of buildings
- locating hydrants
- locating shutoffs or electrical power, gas and other potential hazardous facilities
- identifying the best routes into the area and naming specialized equipment to combat specific types of fires
- committing this information to drawings, 35mm slides, video equipment and projector displayed transparencies
- using this information for training classes.

The information compiled by TSU can be placed at the scene of a fire to provide firefighters with information they need for instant decision-making. It also can provide inexpensive training information for the volunteers at any time convenient to them.

How to get this vital research at the scene of an emergency?

It is converted into a microfilm



The van is stocked with fire equipment as well as information about the area in which the firefighters are working.

storage and retrieval system which is stored in a mobile van. All of the information covering one area usually is placed on one microfiche. In the case of multiple fires, the information is duplicated at the communications dispatch center so an alternate source of information is available.

Members chosen for the Technical Service Unit have received specialized training from the Virginia Elevator Company on the operation, entry and rescue of trapped individuals from malfunctioning elevators in addition to being in-

structed by the Virginia Commonwealth Gas Company on the operation and types of gas shutoff valves in the county.

Needless to say, the response from the volunteer firefighters has been outstanding.

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About the Author

Mr. Patrick is chief of administrative services for Chesterfield's Fire Department.

Suits Made Against Police

By James L. Haque

In twenty years, the increase of civil suits Virginia citizens initiated against one another nearly doubled.

Police officials and municipalities have likewise faced staggering increases in the number of civil suits filed against them as a result of police activities. The liability for wrongful police action has not been limited to the police officer but, under certain conditions, has extended to the municipality and its public treasury, as well.

An exploration of the law suits generated by police activity is necessary to understand this liability problem and how to prevent it.

Two major types of civil actions against police officers municipalities are tort actions in Virginia courts and civil rights suits in federal courts. A civil rights action will generally take place in a United States District Court while a tort suit occurs in either a Virginia General District Court or a Virginia Circuit Court depending upon the amount of money in litigation. Suits for amounts over \$7,000 must be filed in the Circuit Court. It is important to discuss tort suits first because what is true for a tort action is also generally true for a civil rights action as the latter are premised on principles of tort law.

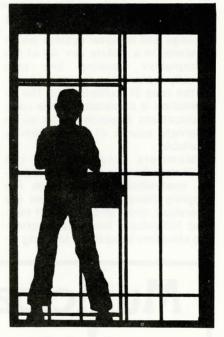
There are three categories of torts: intentional, gross negligence and simple negligence. Intentional torts involve intentional wrongdoings so that personal injury and/or property damage results. Common examples include charges of false arrest or false imprisonment (they are virtually the same claim) and assault and battery (unlawful use of force). A survey by the International Association of Chiefs of Police, (IACP), found that 68.8 percent of the suits against the police involved these charges.

Negligence involves the breach of a standard of care which causes personal injury and/or property damage. It is really the careless doing of something when the actor knew or should have known of the foreseeable risk.

The difference between gross and simple negligence is in the amount of carelessness and the degree of risk or harm involved. Any time there is carelessness involved in a shooting by police the courts will generally consider this gross negligence because of the high degree of risk inherent in the use of firearms. Negligent police shootings of bystanders often result in such suits. If the police are involved in a collision through carelessness, they may be liable for

simple negligence.

Besides false arrest and assault and battery claims, a significant number of other claims are made against the police for negligence in the use of firearms automobiles. Together these represent the bulk of tort suits, however, others are possible such as prosecution, civil malicious trespass and defamation of character (libel and slander).



While the civil tort law offers several legal remedies, the one most commonly sought is that of damages. Damages may nominal, punitive or compensatory. Nominal damages mean that the litigant who wins, wins in name only and the court will only award an amount such as one dollar. Punitive damages are awarded by civil courts in order to punish the wrongdoer. To be held liable for punitive damages the police would have had to have specifically intended the wrong. For example, if an officer, knowing it was illegal to make an arrest, makes the arrest anyway. Certainly malicious actions by police can result in punitive damages.

The bulk of damages awarded are compensatory because civil courts generally seek to compensate injured persons to restore them to their original condition prior to the injury in so far as money can do that. There are three types of compensatory damages: actual, pain and suffering and mental anguish. Actual damages include those out of pocket expenses of the one injured such as medical expenses and lost wages. Generally these can be demonstrated quite clearly. Pain and suffering and/or mental anguish is an inexact science. Because of this, plaintiffs can claim just about any amount they wish and juries have little in the way of standards to make judgements

While tort suits do occur in Virginia's courts, the most common form of legal claim against the police and their municipality takes place in the Unites States District Court under the 111 year old Civil Rights Act of 1871. Section 1983 of title 42 of the United States Code is that portion of the Act upon which most claims are based. The Section reads as follows:

CIVIL ACTION FOR DEPRIVA-TION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the Unites States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

As defined through U.S. Supreme Court Cases, section 1983 says that any state or local government official who deprives anyone of a federally guaranteed constitutional or statutory right is liable under federal civil law. That liability is usually in the form of compensatory, punitive or nominal damages. There is one important difference. While police officers and other local officials are liable, local government itself is not liable for punitive damages in a section 1983 suit (although it may be under other civil rights sections of title

Not only are the remedies in a

About the Author

Dr. Hague is an associate professor of administration of justice and public safety at Virginia Commonwealth University.

VIRGINIA TOWN AND CITY

civil rights claim generally the same as that of a tort action, but the kinds of incidents which generate one can usually result in the other. To be a section 1983 claim, the plaintiff simply describes the tort in constitutional language. A false arrest becomes an unreasonable seizure under the Fourth and Fourteenth Amendments. Assault and battery is a deprivation of liberty without due process of law under the Fourteenth Amendment.

Two exceptions to the rule that torts are also constitutional claims are malicious prosecution and defamation of character. Even negligent torts fall under the Civil Rights Act of 1871 except the negligence must be gross. One section 1983 case of gross negligence involved police indifference in the face of known dangers to the plaintiffs. In that case the court described the Fourteenth Amendment's liberty interest as the right to bodily integrity and as restraining state activities which are fundamentally offensive to a sense of justice.

Additional similarity between tort and civil rights claims comes in the form of the statute of limitations. Federal courts use the statute of limitations of the state in which the claim arose. In Virginia, this is ordinarily two years.

"How does a municipality become liable for police actions in a tort or section 1983 action and what defenses are there to such liability?"

First of all, a municipality and its officials, including police administrators and supervisors, are not liable for the wrongs of subordinate police officer under the doctrine of respondeat superior. Respondeat superior is the legal rule applicable in the private sector which holds the private employer or superior responsible for the wrongful acts of his subordinate employee even though the act was not specifically commanded or authorized so long as the subordinate was acting within the scope of his employment. If a private company delivery truck driver, for example, operates his truck negligently during a delivery and injures someone, the private company is liable along with the driver. But if a police officer wrongfully injures a citizen during the performance of his duties, there is no automatic liability on the part

of his superior officers or municipality. In the public sector there may be liability by public officials and the municipality for an act of a subordinate employee if public officials: 1) command or direct the act of the subordinate, 2) participate in the act, 3) condone or ratify the subordinate's act, or 4) by their own negligence place the subordinate in a position to do foreseeable harm. This is obviously direct liability rather than vicarious because the superior official has himself done a wrongful act which is a legal cause of the injury.

A municipality is not automatically liable even under the four circumstances just outlined. Virginia municipalities are protected by the doctrine of sovereign immunity when sued in tort (see later discussion of sovereign immunity). Liability also does not automatically follow any of the four circumstances in a section 1983 case even though in 1978 the U.S. Supreme Court decided that sovereign immunity is not applicable in federal court under section 1983. The Court limited a municipality's liability to injuries caused by the "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy and conversely if

government officials act outside municipal policy or custom the municipality is not liable."

But in 1980 in Owen v. City of Independence the Supreme Court went further when it held that municipalities sued under section 1983 are liable even when the wrongdoing officials are not liable in the case of a constitutional wrong committed pursuant to the government's policy or custom. In such a case the wrongdoing officials were merely following the government's policy or custom. They have a defense, the government does not. It is clear that the Supreme Court intended to apply the doctrine of equitable loss spreading when it stated that "even some constitutional development could not have been foreseen by municipal officials, it is fairer to allocate any resulting financial loss to the inevitable costs of government borne by all the taxpayers, than to allow its impact to be felt solely by those whose rights, albeit newly recognized, have been violated."

The most important defense which the police and other municipal officials have against section 1983 suit, and one which is also applicable in a tort action, is that of a qualified immunity. This means that the official

(Continued, page 21)

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High Schoolers Get Credit For Fire Training

Ben, a 17 year old high school student, enjoys being a member of the nearby volunteer fire department. Even though he knows a lot, he needs to know more. He figures he'll have to wait until he attends college-besides he doesn't have time to attend extra classes and keep up with his regular school

Is there a way to train Ben, and others in a similar situation, for the fire service?

Fauguier County High School in Northern Virginia and the Virginia Office of Fire Services Training invented a way for high school students to earn credits for graduation while attending fire training classes during school hours.

"It's the first program of its kind in the nation."

A program was set up whereby students can earn high school credit and credit from the International Fire Service Training Academy. Approval was received from the local school board, the State Department of Education and the State Office of Fire Services Training.

The first major hurdle? The instructor—the person had to be acceptable to both the education people and the fire instructors. Paul Poling, a retired telephone company employee and seasoned State certified fire instructor, was selected to teach the course. The local fire departments provide the equipment, text and the IFSTA 200 manual. The school system provides the space and the Office of Fire Services Training funds the program.

The Training

The first year of the program qualifies a student as Firefighter I and II in the State certification program. The optional second year qualifies a student as a Firefighter III and an emergency medical technician (EMT).

Virginia has an extensive certification program which standards are set by the National Professional Qualifications Board. The students are given tests during the class which will prepare them for the certification tests at the end of the course. The certification includes a written and skilled test on the objectives for Firefighter I and II



Paul Poling (left), the instructor, gives the students their certificates earned for fire service courses.

which is administered by the Office of Fire Services Training. Students who complete the second year will take the Firefighter III test and the EMT test which is administered by Department of Emergency Medical Services.

Students selected for the program have to be members of local volunteer fire departments or they have to agree to become members. The departments agreed to accept any students who were interested in participating in the program. The staff who established the program worked very closely with the guidance department at Fauquier County High School to schedule students so they would be available from 1:00 p.m. to 3:00 p.m. each day.

Mr. Poling has kept the level of interest up by scheduling guest speakers from State fire services organizations and asking some of the top fire departments in the State to tell the class about career opportunities. Students also participate in field exercises.

Since the program is in its early stages, the Office of Fire Services Training, local school and fire officials are watching it very closely. At this point, most people are enthused with the program and students are doing well in the class. While the program may not work in every community, it has real poten-

The benefits are obvious. The training assists students in making a career decision or in seeking employment in the fire services or a related field. It also assists those students who would like to continue their education in an associate degree or degree program in fire science or engineering. The course supplies the local volunteer fire departments with a group of young well trained firefighters and the students are safer citizens because of their understanding of fire safety practices.

It's a two way program. It enables high school students to receive credit for training in the fire service and it provides training to the fire departments throughout Virginia. Currently Fauquier County High School is gearing up for the next academic year since the program will be continued.

While the primary objective is to provide training to the fire departments, the success of this program could mean better fire protection in

Virginia.

For more information, contact the Office of Fire Services Training, P.O. Box 706, Ashland, Virginia 23005 or your local fire training area supervisor.



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Managers To Meet At the Homestead

What is happening with government these days? Members and friends of the Virginia Section, International City Management Association will hear speakers who have some of the answers at the Section's Annual Conference on April 28-30, 1982 at The Homestead in Hot Springs, Virginia.

Block grants are being discussed frequently and a special panel on Thursday afternoon will review the Small Cities Nonentitlement Block Grant. Panelists are members of the Policy Advisory and Technical Advisory Committees which have been studying the block grant since its

inception last August.

Lt. Governor Richard J. Davis, Chairman of Governor Robb's Advisory Commission on Block Grants, will speak Friday morning on the work to date of the commission.

The Section is fortunate to have Dr. James Howell, senior vice president and chief economist for the First National Bank of Boston. Virginians who heard him at ICMA's conference in Anaheim have raved about his delivery ever since. Join Dr. Howell on Thursday morning.

Julian F. Hirst's reputation as a speaker is longstanding. He pokes fun at members and manager problems at Wednesday's Opening Dinner.

You're the speaker for Thursday afternoon's Cracker Barrel Sessions. Note cards will be available for you to jot down the topics you want to discuss during the informal sessions. Moderators will keep the conversations moving.

Hear about the latest agreements between localities at the Annexation and Consolidation session Friday morning from some panelists who have lived to tell about it. Also offered at the same time is a session on the controversial school aid formula and what is being done to try to make it more equitable.

Should you join an insurance pooling group? How do you set up a risk management program? These will be discussed on Friday morn-

Special activities include golf and tennis tournaments, bridge, a tour of The Homestead and all the activities offered by The Homestead. Members, guests and spouses are urged to choose whatever they want since activities and program events are open to all attendees.

A special program is planned for the spouses on Thursday morning. Dr. Ruth K. Mulliken of The College of William and Mary will discuss *On Being A Person*.

Friday evening is formal. Tuxedos or dark business suits are the attire for men while long dresses are for women.

For conference material call Sheree Carter at 804/649-8471.

PROGRAM

1982 Virginia Section Conference The Homestead, Hot Springs

WEDNESDAY, APRIL 18

12:00 noon-6:00 p.m. 12:30 p.m. 6:30 p.m. 7:30 p.m.

THURSDAY, APRIL 29

7:00 a.m.- 3:00 p.m. 7:30 a.m.- 9:00 a.m.

9:30 a.m. 10:00 a.m.-12:15 p.m.

2:00 p.m.- 4:00 p.m.

FRIDAY, APRIL 30

8:30 a.m.- 2:00 p.m. 9:00 a.m.

9:30 a.m.-10:30 a.m. 10:45 a.m.-12:30 p.m.

2:00 p.m. 6:15 p.m. 7:00 p.m. 9:00 p.m.-12:00 midnight Registration
Golf and Tennis Tournaments
President's Reception
Opening Dinner
Speaker— Julian F. Hirst

Speaker—Julian F. Hirst, Norfolk City Manager

Registration
Prayer Breakfast
Message—Dr. Ruth K. Mulliken
Opening Session

Speaker—Dr. James Howell, Senior Vice President and Chief Economist, First National Bank of Boston

Concurrent Sessions

- 1. Small Cities CDBG Panel
- 2. Roanoke Redevelopment/ Cracker Barrel Session
- 3. Legislative Recap/Cracker Barrel Session

Registration

Speaker—Lt. Governor Richard J. Davis Risk Management Panel Concurrent Sessions

1. Annexation and Consolidation

2. School Funding
Business Session
Reception
Dinner

Dancing/Music

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According to Captain Benjamin A. Powell of the Charlottesville Fire Department, the training available to 14-21 year-olds through the program enables them to compete effectively for future jobs in the fire service. The training procedure for the young firefighters has been approved by Virginia Fire Service Training regulations and conforms to the National Fire Prevention Administration Standards 1001.

All that the applicant needs is a certain degree of interest, enthusiasm and dedication. The Explorer Program must be submitted to the National Boy Scout Council and the International Association of Fire Chiefs for their approval.

During their association with the Post, members must adhere to certain guidelines. For example, explorers must have a signed release form from their parents or legal guardian and their uniforms must be worn for all explorer functions. In addition, there are age group stipulations referring to responsibilities:

 Persons I4-I6 are not allowed on the fire ground and may not ride fire vehicles. They are to participate in station duties.

 Persons I6-I8 may assist in support activities on the fire ground and respond to fires via fire vehicles, but may not enter burning structures.

 Persons I8-2I may respond to fires, participate in fire ground activities, enter burning structures and respond to fires on fire vehicles.

All explorers are under close supervision at all times.

Many of the young firegfighters are involved in fire hydrant inspections, pre-fire planning, fire prevention, radio communications, testing apparatus and assisting at the station after a large incident.

Besides basic training, explorers are encouraged to enter college level fire science classes and are allowed to attend school away from the area.

The explorers are not to be used as a substitute labor force; they are involved so that they may learn, according to Captain Powell.

For further information, contact Captain Benjamin Powell, Charlottesville Fire Department, 203 Ridge Street, Charlottesville, Virginia 2290l.

(Editorial, from page 2)

changes can and will yet occur in the method of delivering human services in Virginia at the local level. The next generation of change will be sparked by a need to "manage with less" and by President Reagan's own version of a "local option" system at the state level, with the introduction of the Administration's New Federalism Initiative.

What was not achieved from the bottom using Virginia's local option opportunity, may well be precipitated from the top down as the new Federalism takes shape. The Eighties should be an interesting decade.

George J. Drummight J.

George T. Drumwright, Jr.

About the Author Mr. Drumwright is Henrico's Deputy County Manager for Human Services and was a member of former Secretary Harris' Local Option Task Force.

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Ideas

Fireside Chatter

Some children in Missouri might stop playing with matches when a fire truck tells them to. Kansas City, Missouri actually has a talking fire truck. The Director of Community Relations, Harold Knabe, said it's used to educate the public about fire prevention.

The unique truck is a minipumper with a detective pump and firefighters refuse to tell how the truck talks...

Use Old Pumpers

Crescent City proved that innovation pays when it saved a bundle on replacing a worn out fire vehicle.

When the city was faced with the need to replace a special van for carrying equipment they found out it would cost \$60,000 to \$80,000. Determined to trim that figure, the city converted a 1981 Ford 350 van truck into an energy fire vehicle equipped with flood lights, emergency light bar and siren and 2-way radio—all for \$19,771.

Fire Prevention

A Colorado fire department knows how to get things done easier. They simplified their task of inspecting 1300 local businesses each month by presenting a fire safety award to those showing outstanding cooperation. Now the businesses get a pat on the back for good behavior and the fire department provides the needed incentive to get citizens to practice good fire prevention and safety.

Development Corporation

Fairfax County's new Local Development Corporation (LDC) selected nine business leaders from the community for its initial officers and board of directors.

This nonprofit corporation, expected to be operational in mid-July, plans to provide long term fixed asset financing for eligible small businesses. The Chamber of Commerce and County Economic Development Authority are cooperating in the sponsorship of the organization.

Cut Expenses

Need to reduce payroll expenditures? Assistant Director of Personnel for Henrico, George H. Cauble, Jr., suggested shortening your workweek and delaying scheduled increases to cut cost.

Several other alternatives to employee lay-offs include:

- A "freeze on raises," not only for merit increases but also on cost of living raises, reclassifications and promotions.
- Payless holidays
- Cuts in employee pay; across the board or by a fixed dollar method.
- Choose employee benefits carefully cutting superfluous ones.
- Avoid unnecessary overtime compensation with careful planning.

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Stop Kids From Setting Fires

By James C. Smalley

Following a small brush fire last January, a parent of a seven-year old child contacted the volunteer fire department in Burke, Virginia, a suburban community Washington, D.C. The mother told a volunteer officer about her son who had set several fires around their house, including the most recent fire. In desperation she had even burned the child's fingertips with matches to get him to stop playing with fire. Burke's solution? The National Juvenile Firesetter Counseling Program.

The Juvenile Firesetter Counseling Program was designed and developed by the U.S. Fire Administration to train fire education specialists, fire investigators, law enforcement and juvenile authorities. The program, delivered through workshops and technical assistance, teaches the techniques of interviewing firesetting children and their families and how to recognize problems that may lead to recurrent fire setting. The department counselor selects methods for educating the children and their families but in the case of a more serious problem, the counselor refers the family to a source of professional help.

"Burke used inactive members to assist in the program."

When setting up the counseling program, the Burke Volunteer Fire Department tried to interest people with special expertise to assist them in starting their program. After looking over the fire roster, they discovered several members who were inactive. One member said her college work in psychology and counseling was taking most of her available time and another volunteer rescue member who was an elementary school teacher had expressed an interest in public fire

About the Author Mr. Smalley is Chief of the Burke Volunteer Fire Department.



education programs. Both fit the counseling requirements and both agreed to join the counseling group. Thus, two potentially lost members were given tasks that could not only assist the fire department but enhance their own personal aspirations.

The department counselors and professionals who agreed to assist with the program were trained at workshops held at the Fairfax Fire Service Training facility.

Following their training, the department's aggressive public fire education committee made personal contacts with the news media to request television time. As a result of the televised news story. other volunteer departments in Fairfax, Virginia and Montgomery Coun-Maryland contacted counselors at the Burke Volunteer Fire Department for assistance in beginning a similar program. Burke's program is currently gaining momentum as the counseling team members are encouraging local school authorities, counselors and psychologists to assist with the program.

Fires set by juveniles occur year round in Burke but are notably seasonal, beginning in late February and continuing through

June when the grass is drier and winds are more pronounced. Due to the program, this year the Burke Volunteer Fire Department was ready to offer assistance to the community in reducing the number of these fires.

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(Spotsylvania, from page 6)

well as in non-emergency times. Together the two communities will now have at their disposal over IO million gallons of treated water per day—more than double the current daily demand. This common sense approach involving the joint provision of services will save county and city taxpayers millions of dollars in capital outlay expenditures.

Spotsylvania and Fredericksburg will both benefit in many tangible and intangible ways from signing the joint agreement. The agreement provides an infrastructure that will allow the governing bodies of both jurisdictions to deal more effectively with present and future problems confronting the two localities.



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(Police, from page 10)

acted in good faith and on the basis of probable cause. Good faith means that at the time of the act the actor honestly believed that what he was doing was right. Probable cause as used here is a civil standard and is not the same as probable cause in criminal law and procedure. As used civilly, probable cause simply means that the person asserting the defense had a reasonable basis for his action.

Police acting pursuant to departmental policy or custom are acting in good faith and on the basis of probable cause. In *Wallace* v. *King*, Fairfax police officers followed a longstanding written departmental policy that if police had an arrest warrant and reason to believe the suspect was in a residence of a third party,

then on the authority of the arrest warrant they could enter the home and search. The Fourth Circuit Court of Appeals decided this policy was unconstitutional and that absent consent or emergency circumstances a search warrant would be necessary. Qualified immunity would protect the police officer in such a case but not the local government under the doctrine of Owen v. City of Independence.

As noted earlier, the doctrine of sovereign immunity affords no protection to a municipality or its officials in a 1983 action. However, sovereign immunity is still a valid defense in a tort suit in a Virginia Court. To be protected under this doctrine four conditions must be met.

(Continued on page 23)



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Risk Manager

The City of Richmond, Virginia is seeking a Director to head newly formed agency which administers the municipal safety program, hospitalization plan, self-insured worker's compensation plan, and unemployment compensation claims. Responsible for analyzing methods to reduce risk through commercial insurance, self-insurance and/or safety practices; manages agency budget and directs small professional and clerical staff. Requires completion of course curriculum of undergrad level major in business, finance, accounting, or a related field and three years experience in a risk management program in administrative or supervisory capacity or equivalency. Salary \$24,388-\$31,122 annually plus excellent fringe benefits. Resume and City application must be returned by April 15, 1982 to: City of Richmond, Department of Personnel, 900 East Broad Street, Room 108, Richmond, Virginia 23219.

Purchasing Agent

City of Portsmouth. Under general direction, plans and directs centralized purchasing, supply management, and central stores activities. Requires any combination equivalent to graduation from college in purchasing, accounting, business or public administration and four years of responsible purchasing experience. Submit resume to: Employment Office, City of Portsmouth, 801 Crawford Street, Portsmouth, Virginia 23704. Salary \$24,793.

Director of Finance

This is a highly responsible position reporting directly to the City Manager. Supervises the Department of Finance and is responsible for central accounting; personnel administration; utility billing. Apply in person or send resume with salary requirements to City of Bedford Personnel Office, Municipal Building, P.O. Box 807, 215 East Main Street, Bedford, Virginia 24523.

Director of Public Works

Wise, Virginia. Salary of \$14,000 to \$16,000 per year with excellent Fringe benefits. Salary commensurate with experience and qualifications. Duties include administration and maintenance of Town roads, and water and sewer systems. Must have proven experience in Public Works and budget preparation. Submit resume to: Sim Ewing, Town Manager, P.O. Box 1100, Wise, VA 24293, Phone Number: (703) 328-6187. Applications must be received by 4/23/82.



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(Police, from page 21)

First, the activity must further a public purpose which, of course, policy work does. Second, the activity must be governmental in nature and again police work qualifies. In the third place, the wrongdoing can be no worse than simple negligence. Should a police official do an intentional or grossly negligent wrong he would have acted outside of the scope of his employment and the protection of sovereign immunity. Finally, wrongful act must have been discretionary and not ministerial. These terms have meanings peculiar to the doctrine of sovereign immunity. While everyone would agree that police exercise discretion in making arrests, an arrest is viewed as a ministerial rather than a discretionary act under the doctrine. Under sovereign immunity ministerial acts are the day to day acts of government which implement those policy decisions which are discretionary. Acts of discretion are policymaking so that policy-makers and policymaking are protected under sovereign immunity. The higher a municipal official is administratively, the more likely he is to be protected by this defense.

The Virginia General Assembly has changed sovereign immunity by passing the Virginia Tort Claims Act to become effective July 1, 1982. A literal reading of this new statute (vet to be interpreted in Virginia's courts) increases allowable monetary recovery from the state but does not appear to remove the common law protection of sovereign immunity from municipalities. Time and court interpretation will tell us if this is so.

There are other possible defenses to civil liability. For example, in a tort suit where negligence is claimed, the police could raise the contributory negligence of the plaintiff as a defense.

While other courses of action may also be suggested to prevent civil litigation in municipalities three recommendations will be made here.

First, identify potential situations which may generate or are generating litigation. Certainly the aforementioned IACP survey demonstrates that police arrests and use of force are prime candidates. Secondly, be certain that there are clear, written guidelines regarding these situations. The U.S. Supreme Court favored such a course of action in Owen v. City of Independence when it said "the threat that damages might be levied against the city may encourage those in policymaking positions to institute internal rules and programs designed to minimize the likelihood of unintentional infringements on constitutional rights."

Some fear that written guidelines would increase liability as guidelines would provide a greater standard of care and thus easier proof of negligence. Such a danger was long ago recognized by the Virginia Supreme Court which held that an agency's guidelines and regulations cannot be used to set the standard for negligence. While this is an old case it is still the only pronouncement of a rule by our Supreme Court.

The final recommendation is to make extra efforts in assuring that qualified police officers thoroughly trained as to the meaning and application of these guidelines.

Implementation of such steps as these to prevent liability is still the best defense to civil claims.

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