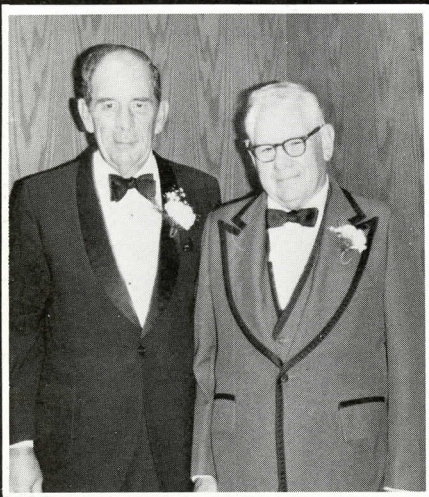


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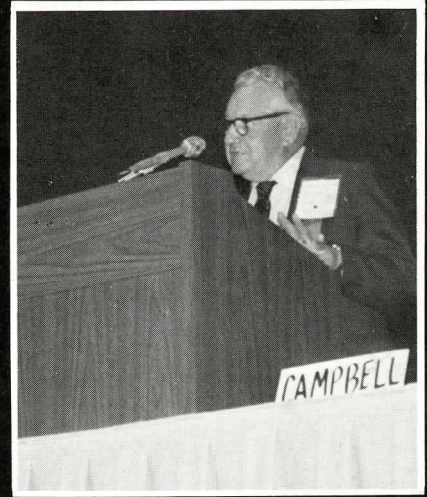
1982 VML Annual Conference



Francis West, Raymond Ratcliffe



Michael Amyx, Harry Wells



Raymond Ratcliffe

Inside:

- Ethical Dilemmas For Elected Officials
- Metropolitan Alternatives
- Editorial: Voluntary Annexation Agreements
- Community Services Board

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On the Cover

Left Photo: Newly elected President West with Past President Ratcliffe. Middle Photo: VML Executive Director Amyx presents VML Achievement Award to Falls Church City Manager Wells. Right Photo: Raymond Ratcliffe presides over the Opening Session.

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4 Voluntary Annexation Agreements

"Richard Weeks looks at recent concerns of the Commission on Local Government. Are municipalities giving up the right to annex beyond that required by law?"

5 People**6 VML Elects West****7 Marketplace****8 Metro Alternatives**

"One of the most progressive public/private partnerships is occurring in the Richmond area. Other Virginia localities could use the plan embraced by these local governments."

10 Legal Guidelines**11 Meeting the Needs of the Mentally Ill**

"Pauline Mitchell reviews the creation of community services boards and how they are assisting Virginia's mentally ill."

12 Ethical Dilemmas in Public Procurement

"The VML and the Virginia Attorney General's office prepared a quiz for local elected officials regarding conflict of interests and purchasing. Do you pass?"

15-16 Professional Directories

Editorial

Are Municipalities Giving Up Too Much To Achieve Voluntary Annexation Agreements?

By Richard F. Weeks, Jr.

In a recent report of the Commission on Local Government, the Commission raised a point that municipal officials should keep in mind when negotiating annexation agreements with counties: Are municipalities giving up the right to annex beyond that required under state law?

In its report, the Commission stated, "that one significant aspect of the agreement does appear to run counter to the interests of the State." The Commission is concerned about granting immunity to counties by voluntary agreements.

This editorial is not intended as a criticism of any voluntary annexation agreement. Decisions on granting annexation immunity should not be taken in isolation from other factors of an agreement, including the qualitative benefit of lessening the divisiveness between the localities. However, caution is required on the part of municipal officials currently negotiating or considering annexation.

Municipalities should use caution in agreeing not to annex for a period beyond that required by State law. Current law prohibits further annexation for ten years after an annexation is granted. Agreeing not to annex for a period longer than ten years could result in many counties qualifying for partial immunity before the end of the agreed period. The same growth pressures which lead a municipality to seek annexation for additional land will also enable counties to qualify for partial immunity. In fact, many counties are experiencing growth well in excess of their neighboring cities.

The Commission on City-County Relations, often referred to as the Stuart Commission, which conducted an extensive study of annexation, did not make a recommendation on this aspect of the annexation procedure. Prior to the 1979

amendments to the annexation procedure, State law provided that a city or town could not seek to annex territory of a county within five years of the effective date of annexation or if the annexation was denied, within five years of the filing of the suit. The 1979 amendments to the annexation procedure, however, changed this limitation to 10 years and in the case of a denial, the 10 years would be after the date of the final order. Therefore, a period of no more than 10 years is a long-standing policy of the state.

Further, the Stuart Commission arrived at the conclusion that in order for counties to qualify for immunity they "should possess populations of sufficient size and overall density to justify and support the county's development of a service capability adequate to provide a full range of urban services."

The following are criteria recommended by the Stuart Commission for county immunity:

- a population exceeding 25,000 persons and an average density of at least 200 persons per square mile, based on the latest United States Census or on a special census conducted under court supervision;
- a determination that the urban areas of the county are currently being provided with urban services of a quality comparable to those offered by cities in that geographic region of the state;
- a determination that the county will be able to meet efficiently and effectively the anticipated public service needs of its urban residents; and
- a determination that the interests of the state in the area are served in granting a county the immunity previously defined.

The final legislation adopted as part of the "annexation compromise" in 1979 closely resembled the Stuart Commission recommendations. Current law includes two sets of criteria: counties must have either a population of 20,000 and a density of 300 persons per square mile, or a population of 50,000 and a

density of 140 persons per square mile. Current law also includes the requirement that a county provide urban-type services before it can be granted immunity.

The last criteria for immunity recommended by the Stuart Commission is that the interest of the state be served. This criteria was carried over into the current law. If you assume that the immunity criteria were developed with the best interest of the state in mind, then an agreement which has the effect of providing a county not otherwise qualified for partial immunity with potentially permanent immunity from annexation may not be in the best interest of the State, or the long term interest of the municipality.

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About the Author

Mr. Weeks is the VML Director of Intergovernmental Relations.

People

Norfolk Mayor **Vincent J. Thomas** was appointed to serve as chairman of an influential committee of the U.S. Conference of Mayors. Thomas will head the Community Development, Housing and Economic Standing Committee which advises Congress and the President on problems cities are experiencing in those areas.

Fairfax County Board Member **Marie B. Travesky** was recently elected president of the Virginia Association of Public Transit Officials. Other officers elected were **Curtis Payne** of the Tidewater Transportation District, first vice president; **John A. Sinkiewicz** of the Petersburg Area Transit, second vice president; **Dr. Grace Pleasants** of the Greater Richmond Transit, secretary-treasurer; **James C. Echols** of the Tidewater Transportation District Commission, assistant secretary; and **Edward Knight** of the Peninsula Transportation District Commission, member-at-large. The association consists of representatives of all jurisdictions in the state which have public or private mass transportation services.

The Falls Church City Council appointed **David Ray Lasso** as the new city attorney effective September 13. Lasso will serve a four-year term; he replaces Paul T. O'Grady. Lasso had been one of Arlington County's three assistant county attorneys for five years.

Saltville Town Council appointed **Larry Woods** as town manager and **Michael Untiedt** as town attorney.

Louis R. Clarke, director of grounds and maintenance for the City of Seattle, has been hired as Richmond's director of recreation and parks. A graduate of Indiana University, Clarke holds a graduate degree in planning and public administration from Princeton University. Clarke joined the City of Richmond on September 20.

Danville's Electric Utility Director **Eldred C. Yerks** resigned to accept a position with Carolina Light & Power Company in Raleigh, North Carolina. He is a past president of the Municipal Electric Power Association of Virginia.

Tappahannock's town attorney for nearly 30 years, **Gordon Lewis**, retired in August. Lewis was first associated with the town when he

was elected to council in 1936 and served until 1938 when he was elected to the Virginia General Assembly. He served there three terms. He was appointed to the town attorney post in 1956.

Samuel D. Simpson, former councilman for the Town of Rocky Mount, died in August. Simpson served on council for 30 consecutive years, from September, 1932 until September, 1962.

Baliles Names Local Officials To Task Force

A number of local government officials and experts have been appointed by Virginia Attorney General Gerald L. Baliles to serve on a special task force to study the implications of a Supreme Court ruling limiting antitrust exemptions for local government.

The task force will review Virginia's laws on antitrust exemptions for localities and formulate

recommendations for consideration by the 1983 Session of the Virginia General Assembly.

Included on the task force from local government are: Harold Atkinson, former city manager of Franklin and past president of the Virginia Municipal League; James E. Buchholtz, Roanoke County Attorney; Wil Dibling, Roanoke City Attorney; W. Thomas Hudson, Blacksburg Town Attorney and president of the Local Government Attorneys Association; R. Michael Amyx, Executive Director of the Virginia Municipal League; Bill Phillips, Lynchburg City Attorney and Chairman of the Virginia Chapter of National Institute of Municipal Law Officers; Paul Burton, Hampton City Attorney; David Stitt, Fairfax County Attorney; George Long, Executive Director of the Virginia Association of Counties; Joseph Rapisarda, Henrico County Attorney; R. L. Nutter, Virginia Beach Assistant Attorney; and Howard W. Dobbins, General Counsel of the VML.



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West Elected VML President

Martinsville's Councilman Francis T. West was elected President of the Virginia Municipal League at its annual conference in Virginia Beach on September 21, 1982.

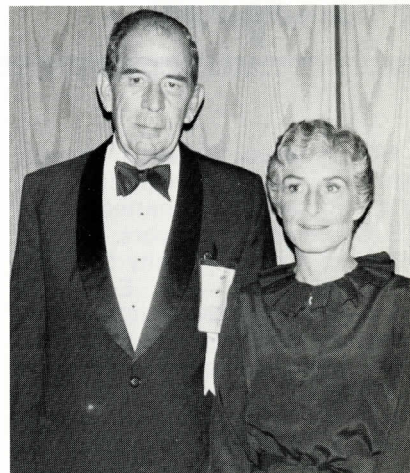
In his speech to conference delegates at the annual banquet, VML President West encouraged Virginia local officials to accept the New Federalism concept and urged the return of local control: "We cannot avoid the direct confrontation between what the citizens want and what the citizens are willing to pay for it. I believe we, at the local level, should be willing to accept the New Federalism concept and seriously consider the expansion of our responsibilities. It must be recognized that taking this approach and meaning that we no longer side step the issues and point to Washington. We got into the present mess, partly because Uncle Sam was too willing

to take over, and partly because the states and local governments were too reluctant to deal with the serious needs of our people. We must not make that mistake again."

President West was first elected to the Martinsville City Council in 1966 and served as the city's mayor from 1972 to 1974. He was elected to the VML Executive Committee in 1978. He has also served on the Governor's Local Government Advisory Council from 1978 to 1982.

West serves as vice chairman of the State Board for Community Colleges and he is a former president and director of the Martinsville-Henry County Chamber of Commerce.

He is the chairman of the board of West Window Corporation in Martinsville. He is married to Eleanor (June) West and has four children and eight grandchildren.



Francis T. West and his wife, June

VML Executive Committee Elected

Also during the Annual Conference, the VML delegates elected the officers and executive committee members of the League.

Vienna Mayor Charles A. Robinson, Jr. was elected first vice president while Fredericksburg Mayor Lawrence A. Davies was elected second vice president. Elected third vice president was Norfolk Mayor Vincent J. Thomas and Emporia Councilman Sam W. Adams was elected fourth vice president.

Comprising the executive committee are Newport News City Manager Robert W. Williams, Salem Councilwoman Jane L. Hough, Gordonsville Mayor Arlie C. Payne and Pulaski Mayor Raymond F. Ratcliffe, immediate past president of the VML.

Section Leaders Elected

Chairmen of the Urban, City and Town Sections also serve on the League's executive committee. Fairfax County Vice Chairman Martha V. Pennino was elected chairman of the Urban Section while James City County Supervisor Jack D. Edwards was elected chairman of the City Section. Elected chairman of the Town Section was Appomattox Mayor Ronald C. Spiggle.

Vice chairmen of the Sections are Portsmouth Mayor J. E. Johansen (Urban), Clifton Forge Councilman M. Stuart Koethcke (City) and Grotoes Mayor Margie Mayes (Town).



Officers (from left): President Francis T. West; Second Vice President Lawrence A. Davies; Third Vice President Vincent J. Thomas; and Fourth Vice President Sam W. Adams. Not pictured is First Vice President Charles A. Robinson, Jr.



Members of the VML Legislative Committee (from left): Fairfax County Supervisor James Scott, Norfolk Mayor Vincent Thomas, Loudoun County Supervisor Frank Raflo and Lynchburg Council Member Joan MacCallum.



Franklin Assistant City Manager Mollie Bass listens during Women in Local Government meeting.



VML Policy Committee Chairman (front left): Charles Beatley, Alexandria; Elliott Shearer, Lynchburg; James McCord, Williamsburg, Sandra Duckworth, Fairfax County; Claude Staylor, Norfolk; and Elizabeth Bowles, Roanoke.



Ratcliffe with Senate Candidate Paul Tribble



Senate Candidate Richard J. Davis

Marketplace

City Attorney

City of Alexandria. Salary: \$46,494-\$65,416/year. Performs the professional legal services for the City; administers and manages the office of the City Attorney and directs the activities of professional, para-professional and clerical staff. Requires personal and professional integrity; progressive, responsible supervisory experience and the ability to maintain effective working relationships. Must possess knowledge of Federal, State and local laws and court decisions affecting the practice of law at the City (Municipal) level; be a graduate of an accredited law school and a member of the Virginia State Bar Association. Must have a minimum of five years experience in the practice of law in the Commonwealth of Virginia, three years of which include experience in municipal corporate law. Is required to become a resident of the City of Alexandria within 120 days of appointment and must remain a resident for the duration of employment with the City. Only City of Alexandria applications will be accepted. Applicants must submit a City of Alexandria application and Supplemental Application form to the City Clerk, Room 302, City Hall, 301 King Street, Alexandria, Virginia 22314 no later than November 10,

1982. Applications received after November 10, 1982 will not be processed. For additional information or application forms, call (703) 838-4550.

Police Chief

The Town of Colonial Beach, Virginia population 2,500 is accepting applications for the position of Police Chief. Applicants should have a thorough knowledge of law enforcement practices, experience in police work, and demonstrated leadership qualities. Salary negotiable depending on education and experience. Applicants will not be discriminated against because of age, sex, religion, race, or national origin. Applications should be submitted to the Town Manager, P.O. Box 36, Colonial Beach, Virginia 22443 no later than November 12, 1982.

Assistant City Manager

Poquoson, Virginia (population 8,726). Applicants must have considerable budgetary, research, and analyses experience and excellent communications skills. Responsibilities will include, but not be limited to, director of finance and purchasing, director of personnel and training, and grants director. Salary \$23,234-\$32,719. Resumes must be submitted by no later than Wednesday, November 10, 1982 at 4:30 p.m. to: James W. Lord, City Manager, 830 Poquoson Avenue, Poquoson, Virginia 23662.

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I certify that the statements made by me are correct and complete.
Charlotte Kingery
Editor

Metro Alternatives

Richmond Area Localities Join Forces with The Chamber, United Way

By Charlotte Kingery

Many localities have formed public/private partnerships but Metropolitan Alternatives in Richmond is surely something to ponder . . . and admire.

Metropolitan Alternatives is a group of individuals representing area local governments, and the private and volunteer sectors. Members of Alternatives gather in a roundtable discussion to share what they see as needs in their areas, identifying community wide issues as they talk. From there, the group acts like a "broker" among the sectors to develop "alternatives" or solutions to the problem.

The group, however, does not attempt to take on all the issues—only those that are human services related, have a means for getting resolved and are in the interest of the community, corporations and individual members of Metropolitan Alternatives.

Who belongs? Six partners share equally in the process: Richmond city, Henrico, Hanover and Chesterfield counties, United Way of Greater Richmond and Metro Richmond Chamber of Commerce. The public/private membership is the basis for Metro Alternatives.

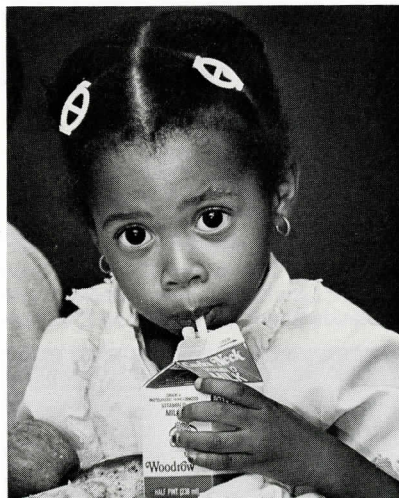
Forming Metro Alternatives

Led by Henrico Deputy County Manager for Human Resources George T. Drumwright, Jr., the county was awarded a Human Services Innovations Project by the National Association of Counties and Stanford Research International, Inc., one of four projects nationwide. Metro Alternatives was born out of that innovations project.

Although most projects or grants come with money, Henrico's award did not. What Henrico did get was the ability to call on SRI for research and NACO for staff assistance when the county was seeking approval from area localities and businesses, and getting endorsements from the Commonwealth of Virginia and the United Way.

About the Author

Ms. Kingery is the VML Director of Communications and Human Services. In that capacity, she also is the Editor of *Virginia Town & City*.



Richmond area localities have over 35,000 preschoolers yet only 8,100 spaces in child day care centers. Metro Alternatives sought an answer.

What Are The Concerns of the Area?

In most communities there are universal needs such as housing, transportation, fire and police protection. When Metro Alternatives went to work on its first project, a community wide issue came to the forefront: the need for child day care centers. As cited in the Alternatives position paper, *Child Care: A Problem Diagnosis*, Richmond area localities have 35,194 children under the age of four yet there are only 8,143 spaces available in day care centers or homes. The problem becomes mind boggling when the children in kindergarten and elementary schools who require additional child care outside school hours are counted. The figure rises over 55,000 for children 10 years old and under.

Looking from the lower end of the age scale, the position paper shows a scarcity of facilities for toddlers two years old and under and, with the "baby boom" generation now bearing their own, the demand will increase. Also, parts of the Richmond area are growing with industry but essential services such as child day care are not following the growth.

Ironically, despite the need for day care, facilities are closing in the area because of money problems. Day care centers are not all Kool-Aid and crayons, they are a business. Centers need to be cost effective

and of high quality but sometimes if the quality becomes what the parents want and expect for their children, it is not affordable. All in all it can be a tough situation.

When Metropolitan Alternatives starting looking at the project, the need for good day care centers was echoed by several. Corporate personnel directors had been hearing the plea for years and even though the League of Women Voters actively tried to promote the interest of corporations in day care for three years, the results were minimal.

But how to get these fragmented groups, especially the numerous corporations and industries, in the Richmond area together? Metropolitan Alternatives sponsored a seminar entitled *Child Care: Corporate Alternatives*. Using a diverse group of organizations and businesses, Metropolitan Alternatives displayed the best public/private mixture Richmond had seen. The Federal Reserve Bank served as host while the Richmond Junior League provided a mini-grant to cover seminar materials and lunch for the participants. First and Merchants National Bank underwrote the printing for 150 invitations and the Private Industry Council provided 150 booklets, which outline employer tax incentives for child day care.

Held in May, the seminar was "unbelievable" to some. Fifty-four firms and organizations sent 80 representatives to the seminar. The roster read like a "Fortune 500" list: Philip Morris, Blue Cross/Blue Shield of Virginia, E. I. DuPont, Best Products Company, Inc. and Richfood, Inc. Speakers emphasized that child day care reduces employee absenteeism, draws and retains good employees, keeps families together and increases employee productivity. All good reasons to look into child care centers. Participants didn't keep the information to themselves; by the end of the day all 100 information packets were distributed and because of the heavy demand, Metro Alternatives, with the assistance of a local bank, produced 100 more . . . in hopes that chief executive officers would read and take action.

Some action was overnight. The day after the seminar, a developer from Henrico County inquired how

he could attract a child day care center to his industrial park. Another downtown business contacted the United Way about developing day care for its employees. The response resounded outside central Virginia. Tenneco from Texas called asking about day care as did the Clarke County, Virginia Board of Supervisors. On the home front, the Henrico Board of Supervisors approved a rezoning case for property adjacent to the Henrico Government Complex to be used for a free standing private center which would provide county employees with day care. Employees working in the Chesapeake and Potomac Telephone Regional Building Center, which is close by, could also utilize the facility.

Since the seminar, all area localities are monitoring several day care projects which are going through the process of approval for zoning, planning and developing, and licensing but no special consideration is being given to applicants.

Not only did the position paper on child care and the seminar motivate thinking and doing but other ideas and thoughts were expressed.

Richmond Assistant City Manager James Wilson said roadblocks were identified through Metro Alternatives that may not have been otherwise. "The city has a specific requirement that each child day care center has to have a certain number of feet of open space per child. With the cost of renting or owning property, that requirement may be unrealistic. That regulation may be one of the reasons why day care is expensive and why more facilities are not located in portions of the city where it is needed the most, in low income communities."

Wilson also speculates that more "red tape" may be preventing centers for those toddlers under two years of age: "Requirements are excessive for that age group but the red tape includes more than local government." As the Alternatives group keeps discovering, it will take all levels of government and further discussion to overcome the regulations.

The day care project was a logical place to start for Metro Alternatives since many were aware of the need, but it took a special planning group to pull the sources together and channel those ideas and energies into a result. As indicated by Henrico's Drumwright, "The ingredients (for the solution to day care) were out there but no one was stirring the ingredients."

"A planning group by description with a trio of government, business and volunteer input by design, Metro Alternatives is rethinking and reorganizing human services in Metro Richmond."

Housing For The Mentally Ill

While in a roundtable discussion, Metro Alternative members spotted a second problem they could tackle. Housing for the mentally retarded and mentally ill was an issue that re-occurred during those talks. Richmond alone has the majority of group homes in Virginia for the mentally disturbed and other area localities are beginning to feel the same pressure.

Although the group is working from a regional base, Henrico County is taking some strides of its own. The county moved its group home from a house to a private rental apartment designed for the handicapped. Henrico's Drumwright explained why the county changed: "The national economy may see way for apartments instead of homes. Apartments offer flexibility as far as how many residents there are from month to month and there is no need to look for a corporate investment (to build a facility) to offer a place for these residents."

Chesterfield and Hanover counties are following similar plans. According to Chesterfield's Robert Masden, the county is applying for a \$300,000 grant from the Virginia Department of Mental Health and Mental Retardation to be used mostly for supervised apartments and group homes. Hanover has applied for a Section 8 housing grant for mentally retarded individuals. Nan Silverthorne, director of Hanover's social services department, is also enthusiastic about private assistance: "We (Hanover County) received \$1,500 from an organization

in the county to be used for subsidized housing. The contribution depended on an equal match but, by the end of September, private donations allowed us to meet our goal."

Analyzing The Cuts

Not one document or paper analyzes the funding cutbacks (federal, state and local) experienced by agencies and services in the Richmond area. Who knows where the gaps are, or what is being duplicated? No one—not until Metro Alternatives gives the final report of its fiscal impact survey which will measure the impact of those cuts.

As a Metro Alternatives member explained, "The survey will answer three things. Businesses can decide which agency requests are the most deserving of their donations, agencies and business can do some long range planning and duplication of services can be reduced."

The survey, now completed, was an ambitious project. Metro Alternatives mailed over 300 standardized questionnaires to agencies and organizations which received funding in the past few years including HOME, Jewish Family Services, The Science Museum, Richmond Redevelopment and Housing Authority, local recreation departments and the Federal Arts Council. No organization was overlooked.

The questions varied, too. Some were specific about funding and the percentage of funding supplied by government, private contributions, or user fees. Others were directed at service levels—possible waiting

(Continued on next page)



Reviewing questionnaires from the fiscal impact survey are (from left) George Drumwright, Henrico County, Larry Walton, United Way, Jill McCormick, project director, and James Watts, Metro Chamber.

lists of potential clients, or the possibility that services could be shared with another organization.

Again, the responsibilities for the survey were apportioned among members of Metro Alternatives. The project director, Jill A. McCormick, was employed by United Way and Metro Richmond Chamber. As the deadline approached to return the questionnaires, volunteers from Henrico County Homemakers Extension Club operated a telephone bank from the Chamber's offices to remind responders to get their survey in the mail. The United Way received the questionnaires and tabulated the responses by computer.

By the first week of October Larry Walton, executive director of the United Way, was able to give a general direction of the needs of the area and the impact of the funding cuts. More than 60 percent of the agencies and organizations responded.

"In the preliminary report, three areas stand out as being drastically hurt. Housing, employment and placement assistance, and employment programs are at the top. Emergency services like food, fuel assistance and shelter also rank high. Recreation programs are currently sustaining themselves but the cuts have certainly affected them," Walton said.

Metro Alternatives hopes the business community will refer to the fiscal impact survey report. The report will be published, with the aid of the Chamber and key business people, in a form useful to the business community. The purpose, as indicated earlier, is to let the businesses and industries know where the cuts are and, if they wish to help, where to start. George Drumwright cautions, "Our purpose is not to favor one agency or organization over another, but to provide a vehicle for the business community to fine tune and target on issues of special interest. The focus of the report shows those services that have been hit the hardest."

The report will be sent to business, community and government leaders.

A Positive Force

Metropolitan Alternatives has proven to be a positive force in the Richmond area because its members are credible and it involves "not only the planners but the doers." Getting private and public partnerships going can be tiring and frustrating so to see them changing attitudes and making waves pro-

Legal Guidelines

By Howard Dobbins
General Counsel

A recent opinion by the Virginia Supreme Court is an example of resolving one issue only to raise another.

Glenmar Cinestate, Inc. v. Farrell and Bentley, 292 S.E. 2d 366 (June, 1982). In *Glenmar*, an off-duty police officer directing traffic out of a drive-in theater onto a State highway was found to be an independent contractor, not an employee of the theater, and therefore, the theater incurred no liability for the officer's negligent direction of traffic which resulted in a collision and injury and death. The holding is in accord with hornbook master and servant legal principles for it is apparent from the opinion that in his direction of traffic, the off-duty officer was given no instructions by the employer but instead was permitted to direct the traffic by such means and methods as he chose. Inasmuch as the employer did not reserve the right to control the officer in connection with this operation, the officer's relationship was that of independent contractor and not servant of the theater and was sufficient to dispose of the case.

Not content with this disposition of the case, the opinion stated further relying on *N&W Railroad Company, Inc. v. Haun*, 167 Virginia 157, 187 S.E. 481, that inasmuch as the officer was then directing traffic and was standing in the public highway that he was engaged in the performance of a *public duty* and for this reason also his employer incurred no vicarious liability for his conduct. We believe that the Court's reliance on *Haun* was misplaced.

In *Haun* two persons were appointed special police officers for the railroad under provisions of Section 3944 of the *Code of Virginia* of 1942 (Section 56-353 of the 1950 *Code of Virginia*) permitting such appointment for railroads. Under this statute, though paid by the railroad, the officers, whose appointment was approved by a circuit court, were authorized to exercise all public powers which could be lawfully exercised by any constable or police officer for the preservation of peace, the arrest of offenders and disorderly persons and the en-

forcement of laws against crimes. Such persons were commissioned with general police power with respect to trains and railroad property and their actions in *Haun* in attempting to arrest thieves of the railroad were held to be as police officers and not as employees of the railroad. But in *Glenmar*, the officer was not directing traffic as a county officer although he might have been wearing a uniform at the time. It appears that his authority was not greater than that of any other person at the time. Furthermore, his action in directing traffic was not in the strictest sense a public act but one primarily for the benefit of his theater employer.

Whether or not the Virginia Court was correct in its reliance on the principle earlier announced in *Haun*, insulation of a private employer from the affects of an officer's negligence under such circumstances may also have the effect of defeating injured parties rights to recover against financially responsible parties and raises other important collateral questions. If the officer in *Glenmar* had been a servant rather than independent contractor would his master be shielded from his negligence simply because he acted in such a "public capacity"? Secondly, if the employer, whether master or contractor, is shielded, is the locality from which the officer's authority is derived exposed to liability for his acts?

Meeting The Needs Of The Mentally Ill, Retarded

Community Services Boards Work

By Pauline A. Mitchell

"Collaboration among the individuals, their families, the community, the local governments, the private sector, the public facilities—all are essential to form a network of services—which must in turn form a single system of care for the mentally ill, mentally retarded and substance abusing citizens of the Commonwealth of Virginia. The Community Services Boards are a basic, vital and necessary part of this holistic system of care." Joseph Bevilacqua, Commissioner

The City of Newport News was looking for help to solve a problem that nags every jurisdiction—identifying, treating, preventing, and educating the mentally ill, or substance abusing employees.

City staff first looked to the private sector, but were concerned that private vendors would have vested interests which may conflict with city needs so they called upon Steve Capo', executive director of the Hampton-Newport News Community Services Board. After discussing their problems and needs, Capo' established an Employee Assistance Program on a contractual basis. In the assistance program, troubled employees receive confidential counseling from the services board staff, who are skilled in counseling, treating and educating people who are depressed, emotionally disturbed or have an alcohol/drug problem. The success of this program, said Capo', will be due to our "good liaison with both private and public service providers, and no ties which would conflict with city interests."

The Newport News Employee Assistance Program is only one example of how the skills of the services boards can support a jurisdiction.

How CSBs Work

Community services boards are relatively new. They came into existence in 1968 with the enactment of Title 37.1, Chapter 10 of the *Code of Virginia* and the establishment of two services boards, one in Prince William County and one in Arlington.

About The Author

Mrs. Mitchell is the Director of Information and Public Education for the Virginia Department of Mental Health and Mental Retardation.



Alcohol Rehabilitation, Inc. of Arlington (ARI), a contractual agency of the Arlington, Fairfax-Falls Church and the Alexandria Community Services Boards, began in 1964 and assists some 200 clients a year. Recovering alcoholics spend a minimum of three weeks in a rural setting on a farm, where clients spend their time growing vegetables and feeding hogs. The client's physical health is first restored, then with the support of program counselors and other recovering alcoholics, the client works to become a productive member of the community while maintaining sobriety. Local businesses in Arlington help place ARI graduates in jobs.

ton. Nicknamed "Chapter 10" boards, taken from the chapter where they are referred to in the *Code*, the community services boards grew rapidly. By the following year 13 more were created and by 1971, there were 14 CSBs in Virginia, operating on a \$480,078 allocation from the Virginia General Assembly. Compare that with last year's figures: 37 community services boards serving more than 98 percent of the state's population, with approximately 500 service programs operated either directly or contractually, and having expenditures of approximately \$122 million.

When creating this network to help the mentally ill/retarded, the state legislature gave local governments, through the services boards, the responsibility for service delivery, either by direct services or by contracts. The boards are accountable for fiscal procedures and their service programs. Screening and

placing patients takes place at the local level and only as a last resort does the state become involved. In recent years more patients are receiving care in the community, causing the number of hospital patients to decrease. The network of local services with minimum state assistance has been so effective that it is now a mandate (Section 37.1-194 of the *Code of Virginia*) that every local government have a community services board, individually or with another jurisdiction, by July 1, 1983.

Even though state involvement appears to be removed, the Virginia Department of Mental Health and Mental Retardation allocates funds (some which must be matched on the local level), monitors service delivery programs for quality and provides technical assistance and support to the services boards.

(Continued on page 18)

Ethical Dilemmas in Public Procurement

A Test For Mayors, Council Members, and County Supervisors

By Francis C. Lee and Clay L. Wirt

Public officials frequently find themselves in potential conflict of interests situations arising in the context of public procurement. With the passage of the Virginia Public Procurement Act (Ch. 7, Title II, *Code of Virginia*) this past spring, which is effective January 1, 1983, additional questions are being asked. An ethical dilemmas test for mayors, council members and county supervisors relating to public procurement follows. Hypothetical questions are presented. The answers, except as noted, are based on the Virginia Conflict of Interests Act (Ch. 22, Title 2.1, *Code of Virginia*) and the Virginia Public Procurement Act.

Each question assumes that you are a mayor, council member or county supervisor. The rules stated herein, however, have equal application to all officials and employees at the local level. An exception is that officers and employees of purely advisory agencies are not prohibited from entering into contracts with their own agencies as long as certain disclosures and safeguards are met.

This article continues the combined effort of Attorney General Gerald L. Baliles and his staff, the Virginia Association of Counties and the Virginia Municipal League to educate local government officials about Conflict of Interests laws.

1. A few days before Christmas, a package arrives at your office. Inside is a card from the president of a large corporation that occasionally does business with the city. The card says "You are doing a super

About the Authors

Francis Lee is a senior assistant attorney general with responsibility for reviewing all opinions issued by the Attorney General. In 1968-1970 he served as chairman of the subcommittee of the State Commission Studying Conflict of Interests which had the responsibility for developing the Virginia Conflict of Interests Act.

Clay Wirt is staff attorney for the VML. He is co-author of a manual for local government attorneys on the Virginia Conflict of Interests Act and has written extensively about the Virginia Public Procurement Act.

Willful violation of the Conflicts Act or the ethics section of the Procurement Act subjects you to removal from office and up to a \$1,000 fine or one year in jail.

job for our city. Keep up the good work. We just wanted you to have a token of our gratitude." You open the package and find a beautiful crystal dish which you estimate to be worth \$50-\$60. Do you accept the dish?

Answer: No. Send it back. Although very small gifts of essentially no value may technically be allowed by these two Acts, the authors suggest that the safest practice is to totally discourage or shun all gifts regardless how small. If a contractor or potential contractor invites you to lunch, go dutch-treat. If you are offered tickets to ball games, for example, respectfully regret. The Procurement Act was enacted to the end that procurement procedures be conducted with avoidance of any impropriety or appearance of impropriety. If in doubt whether to accept some token of appreciation, don't.

2. For many years, William and you have been close friends. After attending high school and college together, you were best man at each other's weddings. Your wives are also good friends. For the past dozen years, William and his wife have established a tradition of taking you to dinner on your birthday. William owns a large hardware supply business and has done thousands of dollars of business each year with the city.

Last year, you were elected to the city council for the first time. You have been named chairman of the council committee which oversees procurement contracts, including hardware supplies. One week before your birthday, you receive a call from William indicating that he has made reservations for your birthday dinner at a fancy new restaurant in town. Do you accept?

Answer: Yes. It is clear that the motivation for offering and accepting the dinner is based purely on a mutual friendship and not because you are in a responsible position on

the council and William is trying to win your favor. Public service does not require you to give up friendships and traditions that were well established prior to election to council.

3. You have served for six terms as mayor of your town. The town has recently awarded bids for remodeling the council chambers. The mayor's chair you have used for over a decade is being replaced to match the new decor. You have many sentimental reasons for wanting to purchase the chair although it has outlived its useful life. You are more than willing to pay a premium for the chair. May you purchase it?

Answer: No. You may not purchase anything from your governing body except (1) public utility services or (2) goods or services offered to the general public on a uniform price schedule (e.g. recreational services). Your governing body may rescind any sale made in violation of this prohibition within five years of the date of the sale.

You still may be in luck. The chair has lost its economic value. You have provided many years of faithful service to your town. The governing body would probably not violate the Conflicts Act if it simply gave you the chair as a token of esteem.

4. You serve on the council. You are a skilled carpenter and would like to participate in sealed bidding for remodeling work to be done in the council chambers. If you were awarded the bid, may you enter into the contract?

Answer: No. Except in a limited number of circumstances specifically authorized by the Conflicts Act, you are flatly prohibited from entering into any contract with your own governing body. The fact that such a contract or subcontract would be awarded by competitive bidding is irrelevant.

In 1975 the General Assembly added a fairly major exception to this prohibition against contracting

with your own governmental agency. If you are a mayor or council member from a town or city under 10,000 in population, you may contract with your council in amounts up to \$10,000 per year or \$25,000 if the contract results from a sealed bid. You must, however, make it clear in advance to your council that you are the one who will be doing the work and you must not participate in anyway as a mayor or council member in the decision to award the contract. (If you are a county supervisor from a county under 10,000 in population, you do not have the benefit of this exemption.)

5. You serve on the council. One of your many financial interests in your community is a 5% ownership interest in a construction firm. Your council has submitted requests for bids for remodeling work in the council chambers. The firm has asked that you find out for them the procedures for submitting the bid. May this firm in which you own a 5% interest do remodeling work for the council?

Answer: No. If you own a 5% or more interest in a business or receive an annual aggregate compensation of \$5,000 or more from the business (excluding dividend and interest income), such firm is prohibited from contracting with your council. If, though, your ownership interests are less than these amounts, the firm may contract with the council.

6. You serve on the council. You have no ownership interests and receive no compensation from a construction firm which wishes to do remodeling work in the council chambers. Your 21-year-old son who lives in your household, however, has a 5% ownership interest in or receives compensation totaling \$5,000 or more per year from this firm. May this firm do remodeling work for the council?

Answer: No. Sorry. An interest of your spouse or any other relative who lives in your household is assumed to be your interest.

7. You serve on the council. A construction firm wishes to bid on remodeling work for the council chambers. You serve free on the board of directors of this firm, and do not own as much as 1¢ in the firm or receive as much as 1¢ per year in compensation from the firm. You do not have a "personal and pecuniary interest" under the Conflict of Interests Act which would prevent this firm from contracting with

your council. But should you participate in the decision of the council to award the contract?

Answer: No. Even though not a prohibited contract under the Conflicts Act, the New Public Procurement Act prohibits you (as an officer with official responsibility in the procurement transaction) from participating in the decision on behalf of your council. You must also not participate if you or any person living in your household or one of your business partners holds a position with this firm such as an officer, director, trustee, partner or the like. Though the Procurement Act does not specifically require you to do so, it is advisable that you disclose to the council and public why you are not participating in the decision to award the remodeling contract.

8. You serve on the council. You are a skilled carpenter and would like to enter into a contract to work for the city fire department. May you do so?

Answer: Yes. If you fulfill certain safeguards to ensure that you do not take advantage of your public position, you may contract with a "governmental agency" other than your governing body if (1) you provide written disclosure of the existence of your interest in the potential contract to both your governing body and to the fire department and (2) the fire department either (a) awards the contract through competitive bidding or (b) determines in writing and as a matter of public record that the contract is not appropriate for competitive bidding. You must also totally refrain from any attempt as a council member to influence the award of the contract.

You thought that the Conflict of Interests Act prohibited you from entering into contracts with your own city? No, only with your own "governmental agency." Attorney General opinions have consistently held that each department of a city, county or town is considered a sep-

arate governmental agency as long as that department has authority for issuing the contract. Thus, in this example, the fire department and not the city council must be responsible for deciding who will receive the remodeling contract. Typical examples of separate governmental agencies within cities, counties or towns include: the governing body, offices of constitutional officers, local boards of zoning appeals, public service authorities, fire departments and school boards. City and town charters may be a useful tool for determining which local government official or department has final authority for city or town activities.

9. You serve on the council. You own an interest in a construction firm or you receive compensation each year from the firm. May this firm contract with your city fire department to provide remodeling work?

Answer: Yes, using the same reasoning as in case Number 8. But if you own 5% or more of the firm or receive \$5,000 or more per year in compensation (exclusive of dividends and interest) each of the safeguards set forth in case number 8 must be met.

10. You are chairman of the Board of Supervisors in your county and own substantial real estate holdings in the county. One of your properties abuts the property where the courthouse sits. Population growth and expanded county services create the need for additional courthouse property. May you contract to sell your property to the county?

Answer: Yes. For various public policy reasons the Conflict of Interests Act authorizes a limited number of exceptions from the general rules prohibiting you from contracting with your own governing body (or another governmental agency unless the various disclosure, non-

(Continued, page 17)

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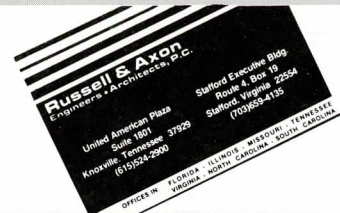
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(Ethics, from page 13)

participation, and bidding requirements are met). The Conflicts Act authorizes you to enter into a contract with your governing body to sell, lease or exchange real property. You must though, disclose in advance your interests to your governing body and disqualify yourself in your official capacity as county supervisor from participating in any aspect of the discussion or vote whether to purchase the property from you. Your non-participation must be set forth as a matter of public record.

11. You are on the council of your city and work 40 hours a week as an employee of General Electric. As a council member and as an employee of General Electric you are not in a position to influence a proposed contract between any agency or any department of your city and General Electric. May General Electric enter into such contract with your locality?

Answer: Yes. The Conflicts Act (as an exception to the general anti-contracting rules) authorizes this firm to enter into such a contract because your sole interest in the contract is employment by the contracting firm. You lose this exemption, if you have authority to participate on behalf of your local government or the private firm in the procurement or letting of the contract.

12. You are mayor of your town. You have a material financial interest in a local bank. [That is you have a personal and pecuniary interest in the bank amounting to 5% or more ownership interest or yearly compensation, excluding dividends and interest, of \$5,000 or more.] May your municipality invest its idle funds in your bank?

Answer: Yes. Another major exception to the anti-contracting rules between you and your municipality is "employment by, ownership of an interest in, or service on the board of directors of public service corporations, financial institutions or companies furnishing public utilities . . ." You must disqualify yourself from any participation in your capacity as mayor in the decision whether or not to invest in your bank. This means that prior to the investment you will notify the governing body of your financial interest. You should do it in such a fashion that the general public will know why you are not participating in the matter.

Although you are not specifically required to do so by the Conflicts Act, a good practice would be to have a written letter in the Council

file with a copy to the Commonwealth's Attorney stating your non-participation and a notation to this effect as part of the council minutes. You must not only not participate in any actual vote to invest but you must totally stay out of any consideration of the matter or attempt to influence the decision.

You should also know that each January you are required to file a written disclosure of the existence of your interest in the bank with your governing body and the Commonwealth Attorney of your locality. This filing is required because you should have reason to believe that you have a material financial interest which may be substantially affected by actions of your governing body.

13. You are a council member and your spouse is a principal owner of a contracting land development firm. This firm brings a zoning appeal before the city council for land it proposes to develop. Would you participate in the question?

Answer: No. The interest of your spouse (or any family member who resides in your household) is treated as your own interest. You thus have a material financial interest in the zoning decision ("a transaction") before your agency. The transaction is one "not of general application." That is, the transaction directly affects your financial interests. It does not simply have "general application" throughout your town.

An example of a transaction of "general application" would be the vote of a council member who is also an owner of real estate on the comprehensive town zoning plan. This transaction is one of general application because a comprehensive plan focuses on the general interests of the community and not the private interests of the council member.

You must disclose your interests and disqualify yourself from any consideration of the zoning decision. As suggested in the answer to case number 11, disclose in such a fashion that your governing body and the public will be aware of your interest and in your capacity as a council member, stay out of the zoning decision altogether.

14. You are on the council and are forced to disqualify yourself from participating in a council decision whether or not to rezone your property. Once you have properly disclosed your interest and disqualified yourself from any participation in the matter as a council member,

may you move to the other side of the council table and argue your personal interests just like any other private citizen?

Answer: Good news. Move to the other side of the table and go to it. Your election to public life does not mean that you have to give up your private rights. But make it abundantly clear that you are speaking (arguing, urging, pleading, scolding) not in your capacity as a council member, but as a private citizen.

The drafters of the Conflict of Interests Act took great care to assure that you could serve as a mayor, council member or county supervisor without unduly interfering with your private life. The recent Procurement Act continues this same focus. The Conflicts Act enacted in 1970 repealed and superseded some 25 different conflict of interests statutory provisions and numerous local charter and ordinance provisions inconsistent with the Act. It sought to establish clear and well understood standards to govern ethical conduct so that public officials could be judged fairly by the public and so they could know what is expected of them in terms of continuing their private careers or business interests while fulfilling their public office.

We hope that you scored well on our test. As a minimum we hope you have a clearer understanding of what the Virginia Conflict of Interests Act and the new Public Procurement Act expects of you should you find yourself in any of our hypothetical fact situations.

(Metro, from page 10)

duces a feeling that makes people lean back in their chairs and sigh an expression of deep relief.

As Jim Wilson of Richmond says, "Alternatives has the authority and responsibility to do the things the city can't do. The group used a process as an opportunity to do something. We're hoping the process will become an institution, not the exception."

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(Boards, from page 11)

Essential to good community service is the knowledge and experience of members appointed by the local governing bodies to the community services boards. Each board must have at least five members and not more than 15. Localities decide the number of members and appoint the members based on population or the number of precincts or magisterial districts each jurisdiction has. For example, the most recent established board comprises three jurisdictions, each having three magisterial districts. The localities decided to have nine members, one from each magisterial district in each jurisdiction.

The community services boards help localities by providing local professional expertise, advising local governments on services and alternate sources of revenue, developing programs for the unmet needs of citizens and serving as an advocate for clients and services in their jurisdictions.

Core Services

As a result of legislative changes in 1980, five basic core services must soon be in place in each locality and available to all citizens, regardless of place or residence:

- emergency services on a 24-hour basis;
- inpatient services for mentally ill, substance abusing or mentally retarded persons;
- day support/outpatient services which include non-residential day support activities and social support;
- residential services, including respite care for individuals living with their families; and
- prevention and early intervention services.

To ensure that these core services are in place, the Virginia Department of Mental Health and Mental Retardation is allocating approximately \$11 million during the 1982-1984 biennium to fill in the gaps where the communities lack the necessary resources.

Many community services boards, such as in Chesterfield County, or the City of Richmond, are single jurisdiction boards. "These usually result in a higher sense of ownership by the communities," said Paul Gilding, community services board administrator for the Virginia Department of Mental Health and Mental Retardation. "However," he continued, "some boards, such as the Fairfax/Falls Church Board, are multijurisdictional but operate as effectively as a

single jurisdiction board." They also enjoy, he added, good support from the local governing jurisdictions, both in tax dollars and interest in programs and services.

"It would be a mistake for the community services board system to become a 'state' system."

"The greatest success of the services boards," said Gilding, "is in the development of an effective partnership between local and state government. The state can pull in more tax dollars, which is understandable, because the localities often lack the freedom to generate local dollars. It would be a mistake for the community services board system to ever become a 'state' system. On the local level, it is flexible enough to reflect local needs and interests."



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