

# Virginia & Town & City

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# Legal Guidelines

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## Zoning and Rezoning – A Function of the Governing Body

**By Howard W. Dobbins,  
General Counsel**

It was only about three years ago that many persons interested in local government became exceedingly perturbed by what was perceived to be a trend in the decisions of the Virginia Supreme Court evidencing an erosion of the legislative prerogatives of local governments, particularly in the area of zoning or rezoning. This writer did not fully share the general concern and the apparent lack of confidence in our Supreme Court and in the fall of 1980 pointed out that notwithstanding the disturbing opinion in *Hylton Enterprises Inc. v. Board of Supervisors of Prince William County*, 220 Va. 435, 258 S.E. 2d 577 (1979), in the twelve months following *Hylton* local governments had not fared too badly at the hands of the Supreme Court on such issues. In a recent opinion the court indicated its continued acceptance of the doctrine that the governing body's legislative judgment on zoning matters may not be judicially reversed as long as that judgment is fairly debatable.

In *Laird v. City of Danville*, 302 S.E. 2d 21 (April 29, 1983), the court was first called upon to determine the superiority of a Danville charter provision authorizing the city council to delegate to its planning commission the power to approve requests for rezoning with the power reserved to the council itself to review the decisions.

In this case, the application for a rezoning was first denied by the planning commission and then approved in part by the council, each acting pursuant to the charter

delegation and review provisions. The council's action was held invalid by the trial court, and the council thereupon rezoned the property by enacting an ordinance pursuant to the applicable provisions of the Virginia Code, which action was thereupon upheld by the trial court.

On appeal by landowners other than the applicant of the trial court's final decision, the Virginia Supreme Court stated that the case turned on the simple proposition that the rezoning of property, no less than the establishment of its original zoning classification, is wholly legislative, requiring action in the form of an amendatory ordinance adopted by the one "purely legislative body" that exists in the locality involved. Hence, zoning of property is accomplished by the governing body of a county or a municipality (*Virginia Code* §15.1-486) and rezoning is accomplished also by the governing body (§15.1-491 (g)). The city charter provision delegating this power to the planning commission was therefore contrary to the applicable laws of Virginia and invalid.

The applicant also challenged the trial court's decision on the basis that the evidence before the court was insufficient to support the rezoning ordinance. The Supreme Court examined the entire record and being satisfied that the issue of the zoning of property was fairly debatable held that the city council's action to rezone must stand. This holding should bring added comfort to those in local government who continue to be concerned that legislative discretion of local government

bodies is being diminished by decisions of the Virginia Supreme Court.

Another subject of vital interest to local government officials was examined in the case of *Barry v. City of New York*, decided by the Circuit Court of Appeals for the Second Circuit, 52 U.S.L.W. 2025 (June 22, 1983). In *Barry*, the federal appeals court considered and upheld New York City's financial disclosure law requiring annual financial reports for most elected and appointed officials, candidates for city office and all civil service employees with an annual salary of \$30,000 or more. The law required covered employees and their spouses to provide extensive information about their personal finances.

The court reasoned that the filing requirement, though affecting privacy, furthered a substantial, possibly even compelling, state interest to deter corruption and conflicts of interest among city officers and employees and to enhance public confidence in the integrity of city government. Even the provision permitting public inspection of the financial reports did not invalidate the statute because it contained substantial procedures available upon a valid claim for privacy.

The plaintiffs in the case contended that they were not public figures and did not occupy policy-making provisions and therefore should be immune from disclosure. This contention was rejected by the court on the ground that the constitutional balance was tipped in favor of permitting public disclosure because of the magnitude of the city's interests.



# Computerization Comes to Stanley: A Small Town's Experience

**By Mayor Roger Keyser**

**"We have become convinced that the size of the community is not the determining factor..."**

In December 1981, the town of Stanley's central sewer system was placed in operation and with it came the need to revise the town's water billing procedures to incorporate the new sewer charges. The town already had an extensive water supply system serving approximately 400 in-town and 500 out-of-town connections. The new sewer system added 400 in-town and 100 out-of-town connections to be serviced.

The town's water billing had always been computed and prepared manually on a quarterly basis requiring an average of 64 hours each week just to compute and type water bills. Manually posting water receipts and preparing cut-off notices required approximately another 30 hours per billing period. Computing the sewer charges would almost double the processing time. The total time required to manually process water and sewer bills would be 120 hours per billing period, and for each manually processed bill at least 300 opportunities for human error existed.

When the town council decided to change to a monthly billing system due to the amount of the individual's quarterly water and sewer bills, they added a 120-hour per month work load on an office staff of two full-time and one part-time employees. This meant a combined 80-hour work week. It was obvious the town either had to hire an additional employee at a cost of \$10,000

a year, or find a more efficient method of billing.

Our first step was to contact several companies that provide utility billing services. We found that a service contract for our billing would cost between \$400 to \$450 a month. The service would provide ready-to-mail utility bills plus several system management reports. Although the cost was reasonable, we felt we should compare this with the cost of purchasing our own computer system which could be used for utility billing as well as other bookkeeping functions.

We began an extensive survey of available computer systems and established primary criteria. First, the cost of the computer system had to be within the town's limited budget, and second, the system had to be simple enough to be operated by our present office personnel. After talking with numerous computer vendors and looking at several different computer systems, it became obvious we did not have the

ware program, plus the purchase of the program source code to allow programming changes, plus the cost of reprogramming would be more than the cost of a custom program. One vendor offered us a package system including computer, printer, a custom billing program, a general ledger program, other programs including word processing and electronic spreadsheet programs, pre-printed billing forms and a service contract on the computer equipment.

The town used a simple program I had written for my personal computer as a sophisticated "calculator" for computing bills while our custom program was being prepared. Although my program required user input of each customer's account information, it provided a basis for determining the many variables to be built into the custom program. Close cooperation between the town and the vendor resulted in an extremely flexible utility billing program which can

**"The time savings which will result will allow our office staff to spend more time on other problem areas..."**

expertise to evaluate and select the proper system for our needs. At that point we decided to employ the services of an independent consulting firm to review and determine our needs. The resulting study provided us with specific software program requirements and an analysis of various computer systems which would meet these requirements. We learned it was important to understand our software needs before selecting a computer. Based on the study, we narrowed our selection to two vendors.

One major obstacle remained: none of the available utility billing programs appeared to have the flexibility to handle our water and sewer billing procedures without extensive programming changes. We found the initial cost of the soft-

easily be changed to meet our future needs or tailored to meet the needs of other towns.

The program is menu-driven for ease of use; it is password protected to insure only authorized personnel have access to the data; the rates can be changed by the user; the program allows operator input of certain data which vary from month-to-month, such as commercial trash fees billed on the basis of volume and number of pick-ups; and it provides management information in the form of reports prepared on the basis of users, consumption and revenue by various rates.

The town of Stanley is currently entering user account information and will be processing the October billing on the computer. We have been able to computerize our utility

## About the Author

Roger Keyser is mayor of the town of Stanley. Born and raised in Stanley, he spent 17 years with the federal government in Washington, DC, where he obtained an extensive background in federal budgeting and program management. He is a graduate of George Mason University with a degree in management.



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billing and bookkeeping functions without any change in office personnel. The time savings which will result from using the computer will allow our office staff to spend more time on other problem areas and should result in an overall increase in efficiency and better service to the public. In addition, financial information available to the mayor and town council will be up-to-date as of the day of the council meeting and will allow closer monitoring of the budget.

The installation of the computer system has not resulted in a reduction of existing costs, but it has resulted in a savings of costs which would have been incurred otherwise. Based on a four-year projection, to continue to manually process utility bills would have required the addition of an employee at a cost of approximately \$10,000 a year, or a total four-year cost of \$40,000. Our computer system including all hardware and software cost \$5,500 plus \$350 a year for a maintenance contract, giving us a total four-year cost of \$6,900 and resulting in a four-year savings of \$33,100. We also estimate a savings of as much as \$2,000 a year in the cost of the annual audit due to the improved efficiency of our bookkeeping system and the availability of information for the auditors.

Although many people argued that our town is too small to need a computer, we have become convinced that the size of the community is not the determining factor in deciding whether to buy a computer. It is rather, only a factor in determining software program and computer equipment requirements. Based on our experience, I believe the time has come for every town to take a look at computerizing their utility billing and bookkeeping functions. As one can readily see, the initial costs are only a fraction of the savings which can be realized in a very short time.

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# Technology and Local Government: Building New Partnerships

**By Bob Havlick**

Nineteen cities and counties are cooperatively financing a comprehensive analysis of whether to build and own an ethanol plant.

Twenty-six jurisdictions and ten private companies are evaluating water-on-need irrigation devices.

Four cities and three counties are sponsoring the creation of a microcomputer cooperative for local governments.

Several cities and counties are advising a high technology company during the development of a powerful, battery powered, portable computer.

A city manager's idea was turned into an actual product, Light Sentry, now being used by cities in several states to decrease street lighting costs.

These and other projects are the results of the activities of a non-profit organization, the Florida Innovation Group (FIG), which acts as a catalyst in bringing local governments and the private sector together for programs of mutual benefit. The results of this cooperation is the introduction of new technologies, methodologies and ideas into both the public and private sectors.

Two examples illustrate this process. A few weeks ago a Michigan company contacted the group re-

garding a new device said to cause significant fuel savings in diesel vehicles. A meeting between company representatives and fleet management administrators from two cities was arranged. The technology made sense to the local officials and terms of an evaluation program were drawn up. The devices were installed on different types of diesel vehicles and performance data will be recorded during the next several months. The innovation group will monitor the program and report progress to its member jurisdictions. If at the end of the evaluation the devices have performed as promised, the locality will purchase them. If not, they will be returned. The company also will provide product liability insurance for the life of the evaluation.

Benefits to the company from this type of program include the following:

- field evaluation of its product
- collection of field data for use in future promotions
- sale of product upon completion of a successful evaluation
- free publicity through the innovation group
- access to the local government market and the group's assistance in reaching decision makers

Local governments' gains include benefits such as:

- hands-on evaluation of new products at no initial cost or risk
- as part of the network, each jurisdiction provides as well as receives data on product evaluations
- purchase of new products with proven performance and favorable returns
- favorable prices as part of the network

- opportunities for more efficient service delivery through the use of new products at an earlier stage than normal
- participation in product development and market entry

The second example involves a group of local governments cooperatively deciding to initiate a new program with potential benefits including introduction of new technology into local governments, reduced costs, more efficient use of existing products and new revenue sources.

This program, The Microcomputer Cooperative, evolved during one year of discussions among the innovation group staff, local officials, private sector representatives and technical managers in cities and counties. It was decided that a core group of 15 to 25 governments working together would be better able to deal with the rapidly changing field of microcomputers than individual jurisdictions.

Briefly the services of the Microcomputer Cooperative will include the following:

- current data on hardware and assistance in evaluation of this information
- hands-on utilization of several microcomputer configurations, independent of vendors, at the Microcomputer Coop's office and on-site in each member's offices
- evaluation of software
- participation in software exchange and development
- opportunity to license in-house developed software to the coop for sale nationwide with revenues returned to the developer
- up to 65 hours of on-site time of a microcomputer specialist

—Continued on page 8—

#### About the Author

Bob Havlick holds a MA in Public Administration from Northern Illinois University. Over the past several years he has worked for the city of LaGrange Park, IL, the International City Management Association, a nationwide technology firm and as a partner in a technology development company in Chicago. Four years ago Havlick established the Florida Innovation Group with offices in Tampa. He is currently president of FIG.



# Microcomputers and Virginia Local Governments

The Florida Innovation Group recently conducted a microcomputer survey of 171 local governments in Virginia, Florida, North and South Carolina.

Of the 32 surveyed Virginia jurisdictions, 15 (47 percent) currently use microcomputers. Fourteen of the respondents plan to purchase microcomputers during the next 12 months.

Virginia cities, towns and counties are also interested in cooperating with one another in the field of microcomputers. Sixty-three percent of the jurisdictions want to participate in software exchange while 44 percent are interested in the more difficult task of cooperative microcomputer software development.

A good indicator of the extent to which a local government is using a micro is whether it is writing its own

software programs. In Virginia 32 percent of the respondents are writing microcomputer software. As microcomputers continue to proliferate in local government more cities, towns and counties will write their own programs and, hopefully, exchange such programs with one another through a formal software exchange program.

To date most microcomputers in Virginia local governments (excluding those used in school classrooms) are used for administrative functions such as word processing, data base management, spread sheet analyses and public works. As local jurisdictions develop and implement policies for the use of microcomputers, these ever more powerful machines are likely to be used in increasing numbers by every local government department.

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A technical committee of local government data processing managers and a policy group of city and county administrators will monitor and direct the coop while innovation group staff will be responsible for operations.

Through such cooperatively funded programs local governments are able to reduce per jurisdiction costs while greatly expanding individual benefits and access to technical resources. The private sector is much more likely to respond with product and support to an organized group of local governments with a technical purpose (in this case the expanded and more efficient use of microcomputers) than to a single jurisdiction.

These two examples contain most of the ingredients employed by the Florida Innovation Group in combining the interests of local governments and the private sector. The only limits to what is possible through these approaches are our own imaginations and willingness to assume some risk. In Florida more than 50 jurisdictions are involved in FIG activities and plans exist to bring private companies into formal membership.

The range of possibilities is vast. Just a few of FIG's involvements include a public/private science and technology cooperative, a government microcomputer newsletter, development of a program for venture capital investment in enterprise zones, microcomputer-based fiscal impact analysis packages, an on-line computerized fleet management program, numerous product and technology analyses, and seminars on subjects of interest as needed.

The financial support for FIG is obtained through annual local government membership fees, special assessments for selected projects, private sector fees, product royalties and seminar revenues. The three-year-old Florida Innovation Group is exploring the means to establish a parallel group in Virginia. As the Florida group matures and new products succeed in the marketplace, the value of these new partnerships among local governments and the public and private sectors will become even more evident.

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# How to Tell A Bit from a Byte

## All you need to know to speak "Computerease"

By Mary J. Kaminski, C.A.M.

### A

**Assembler**—The closest language to machine language. Generally, one assembler instruction equals one machine instruction. Experienced programmers use assemblers to write programs that run fast and take up little memory space. They are used primarily for writing special-purpose software, such as the operating system.

### B

**Batch Processing**—An approach to computer processing where groups of like transactions are accumulated (batched) to be processed at the same time. Usually characterized by turnaround times that are measured in hours. Requires less hardware resources for a given transaction volume than transaction processing.

**Baud**—A unit that measures the speed at which a computer transmits information. It's the number of bits sent or received by a computer every second over a teleprocessing link.

**Binary**—Base 2 numbering system used extensively by digital computers and which uses only the numerals 0 and 1.

**Bit**—Computers "do their thing" using the binary number system; that is, everything is computed using the digits 1 and 0. These digits are called "bits" - short for binary digits.

**Byte**—A group of eight bits that makes up one unit of information. A byte can represent numerals, letters, or other information, and is the smallest addressable unit of computer memory.

### C

**Chip** (also, integrated circuit)—A small silicon wafer that contains from a few dozen to tens of thousands of circuits for storing and processing information.

**Compiler**—A program that translates a high level computer language into codes the machines can understand called machine language.

**CPU**—Stands for central processing unit, which is the "brain" of the computer where the memory is housed and where other operations, such as giving orders to printers and disk drives, are controlled.

**CRT**—Abbreviation for cathode ray tube. A television-like screen used to display data from the computer. Add a typewriter keyboard and it's sometimes called a terminal. Often CRT and terminal are one and the same.

### D

**Database**—A vast and continuously updated file of information, abstracts, or references on a particular subject. On-line databases are designed so that by using subject headings, key words or phrases, users can quickly and economically search for, sort, analyze, and print out data on their terminals.

**Data Processing, Centralized**—The processing of all data pertaining to a given activity at a single location, usually in one building housing the equipment

configuration. Data to be processed is transmitted to the centralized facility from all parts of the organization for processing and return, or for use there or elsewhere. No other data processing capability should exist elsewhere in the organization in a fully centralized activity, except for input preparation prior to transmission, or other minor processing.

**Data Processing, Decentralized**—The housing of data by individual subdivisions of an organization or at each geographical location of the parts of an organization. Each subdivision has its own data processing capability required to further its own individual mission and is not dependent in any way on a central facility.

**Disk**—A magnetic storage device used to record information in the form of binary digits.

**Disk Drive**—A device that stores and retrieves information from a disk. It works like a stereo turntable, with an electronic "needle" that records and plays back information sent to it by the computer—this "needle" does not physically touch the disk. Disk drives are used for permanent storage of computerized data.

**Distributed Data Processing**—Use of computers at various locations. Refers to the arrangement of computers within an organization, in which the computer complex has many separate computing facilities all working in a cooperative way, rather than the conventional single computer at a single location.

**Dump**—Mass copying of a portion of all the computer memory, usually to detect program mistakes or errors.

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**E**

**Electronic Mail**—A system that can manage virtually every aspect of person-to-person communication within an organization, including message preparation, transmission, filing, retrieval, and distribution control. The computer is the "mailbox" and gives each user access to his or her messages through ordinary terminals—fixed or portable, video or hard copy.

**G**

**Graphics**—The use of diagrams or other graphic means to obtain operating data and answers. The use of written symbols and visual displays.

**H**

**Hardware**—Hardware in the computer world is the computer itself and the peripheral devices attached to it, such as disk drives, tape drives, CRTs, and printers.

**I**

**Interface**—A device that allows the computer to work with the outside world (printers, modems, etc.). A shared boundary between two systems or two devices.

**K**

One K equals 1,024 bytes or characters (K actually means a thousand, like kilo—kilometer, for example—but in computers it's applied as a rough figure). Typically used to describe computer memory size (i.e., 256K).

**L**

**Language**—Computers are stupid. In order to tell them what to do, you have to be very specific, so specific that English is too vague and too general for the machines to understand. Thus, you have to speak to the computer in its own preprogrammed language.

There are three popular types of language, each developed for a certain purpose.

COBOL, which stands for "Common Business Oriented Language." It is used for purposes such as accounting and personnel work.

FORTRAN, which is used in science and engineering. It stands for "Formula Translation," and you can do complex calculations with it.

BASIC, which was developed at Dartmouth, and is easy to learn. It's the language you get with home and school computers.

Then there's PASCAL, ALGOL, PL/1, Assembler, RPG, and dozens of others.

**M**

**Mainframe**—A term traditionally used to reference the computers sold by IBM, Univac, Honeywell, NCR, Burroughs, etc. Historically these machines were very strong batch processing units with transaction processing as a lesser capability. They were also much larger and more expensive than the minis. The difference between minis and mainframes has become very fuzzy since several minis are larger than smaller mainframes and several mainframes are less expensive than the large minis. The term is also used to refer to the central control and processor of any computer complex.

**Megabyte (or M)**—1,024 Ks or 1,048,576 bytes or characters. Commonly used to refer to the amount of information that can be stored on a mass storage device such as a disk, or the memory size of large computers.

**Memory**—Generally refers to computer memory. Programs and data currently being operated on by a computer must reside in memory. Should be considered temporary storage since data in computer memory is usually lost when electrical power is removed.

**Microcomputer**—A small computer that uses a microprocessor for its central processing unit. In function and structure it's like a minicomputer, except for differences in price, size, speed of execution, and computing power. Most cost under \$10,000, can be configured to handle three to four terminals. Large capacity floppy disks can be used for mass storage. Some machines have multiple languages and canned business packages are available.

These machines have all the basic capabilities of a very large computer, although there are fewer programming aids available. Microcomputers are designed to be "friendly" because most "speak" to practically any office worker in understandable languages.

**Microprocessor**—A single microelectronic chip containing all the elements of a central processing unit. It's the physical heart of the system, and is the computer.

**Minicomputer, Large**—Systems from \$70,000 and higher provide a more powerful CPU than a small minicomputer, faster transfer of information between memory, disk, and CPU, and in some cases an operating system comparable in capability to small "mainframe" computers. Also, with many large minicomputers advance data man-

agement software is commonly available.

Networking capabilities are allowing users to combine computers, allowing expansion capabilities that are almost limitless, especially for timesharing rather than the traditional batch processing operation.

**Minicomputer, Small**—Cost, a larger and more powerful CPU, and in many cases higher-caliber software tend to distinguish the mini from the microcomputer. They may range from \$20,000 to around \$70,000, and handle up to 16 terminals and 60M of external storage (though this may vary somewhat from vendor to vendor). Applications range from complete stand-alone business systems to front-end processors (machines that handle input/output to a larger computer).

**Modem**—From the words modulate-demodulate. It's the name of a device that can hook up one computer to another via telephone. Modems are also used to do such things as turn the binary digit language of a computer into sound and turn sound back into binary digits.

**N**

**Network, Computer**—Basically, two or more interconnected computers with advantages for permitting geographical distribution, and thus economy of operation.

Such a network also permits parallel processing, combinations of send-receive communications, multipoint remote entry and output, locally controlled databases, and less requirement for centralized facilities.

**O**

**Off-Line**—Descriptive of peripheral equipment or devices not under the control of the central processing unit.

**On-Line**—Pertaining to peripheral equipment or devices in direct communication with the central processing unit.

**Operating System**—The software that makes the computer run—the real brains of the operation. It's an organized collection of techniques and procedures to supervise and control the running of all other programs.

**P**

**Peripherals**—Any devices connected to a computer. They are usually electromechanical ma-



chines that have the capability to send or receive information. Examples include: disk drives, printers, CRTs and your television set.

**Personal Computers**—Often defined as low-cost microcomputers oriented to home use, have graphics (often color), and can produce sounds. Newer personal computers can perform word processing and other business functions better than earlier models.

It used to be that personal computers meant personal and business computers were business, and rarely did the twain meet. That distinction is beginning to blur, however, and personal computers now perform business functions and vice versa. This trend toward overlapping is significant in that it offers management new options in computerizing a wider range of business functions.

A definition of personal computer (also called desktop computer) may become obsolete the moment it is committed to print because of the rapidly changing technology and the merging of functions.

**Printer**—A machine that prints out what you've typed into your computer. Printers may produce text or graphics of varying quality (e.g., letter or draft).

## S

**Software**—The instructions that tell the computer's hardware what to do; i.e., the programs (including the operating system). Software can be written in a number of languages such as BASIC, FORTRAN, COBOL, and PASCAL.

**Storage Units**—There are four kinds:

- Floppy disks (affectionately known as floppies) are thin, flexible platters coated with magnetic material, are about eight inches square, and hold 256K to one M (an M is a megabyte, or one million bytes) storage.
- Minifloppies. These are similar to the floppies except they're 5 1/4 inches square. They usually hold 125K to 256K storage.
- Hard disks are magnetic storage devices, aluminum coated and

bigger than the floppies, used by the large business computers. They hold about five M to 300M storage and give quick access to large amounts of information.

- Cassette tapes: They file information in sequence.

## T

**Teleconferencing**—A catch-all term that includes conferences both by phone and by television.

## V

**VisiCalc**—Business-oriented software package available for many microcomputers. It replaces pencil, paper, and calculator, and provides the typical "what-if" questions of financial analysis and budgetary planning.

## W

**Word Processor**—A computer system (including peripherals) that has been specially designed to prepare, store, edit, and disseminate human-language texts.

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# Organizational Change for the Sake of Technology

## A Support Building Strategy

**By C. Reggie Whitley  
and C. Willard Clark**

In response to current economic conditions and fiscal pressures, state and local governments throughout the nation are busy rejuvenating industrial and economic development efforts. High among early priorities or "targets" for many of these programs is "high tech" industry. The community normally accompanies these efforts with a portrait of itself as an ideal "host" for the conception, nurturing and growth of this breed of highly specialized industrialization. Although some such programs will succeed, eventually many of these efforts must undergo an inevitable refinement in priorities as initial idealism yields to experience in the marketplace and the reality that generally "high tech" begets "high tech."

Fortunately for local governments, another approach to coping with the imbalance between limited resources and the expanding cost of services exists. Like so many economic development efforts today, the basic ingredient for success is also high technology. In contrast to importing new industry, this approach involves the seeming-

ly limitless opportunities available to every local government through increased productivity and enhanced cost-saving effectiveness derived from internalizing computer technology. Just as with recruiting "high tech" industry, simply espousing the concept of progress through technology is not enough. Frequently overlooked is the need to create a "friendly" and accommodating environment in which the application of computer technology can succeed and flourish.

### Organizational Realignment

Since inception in the 1960s, the Data Processing Center of the Lynchburg city government functioned as a division of the Finance Department. This position in the city's organizational structure represented a natural outgrowth of the early accounting and financial records maintenance role initially assigned to data processing and computer services. With the ensuing years, organizational receptivity to computerization grew and technological advancements took place at a rapid pace. Corresponding increases in competition for computer services became increasingly fierce. As the early accounting and financial records orientation of the computer assumed lesser relative importance, its organization-wide potential as a management tool emerged. Accompanying this evolution were nagging questions regarding the propriety of one department determining the computer service priorities, policies, goals and long-range plans of an entire city government.

To resolve these concerns and focus attention on the productivity and cost savings which might result from further expansion of the role of

the computer, the data processing function was relocated in July 1981 to become the only direct sub-unit of the city manager's office. With fifteen employees under the direction of the data processing manager, the center serves as the central processing facility for all departments of the city government, the various constitutional offices and some segments of the public schools.

### The Policy-Making Framework

To complement this realignment in organizational structure, an Information Services Advisory Group was appointed in July 1982. The purposes of this group include establishing policy, goals and long-range plans related to development and operation of information services (data processing and micrographics); assuring that data processing services are distributed equitably among all users and potential users in accordance with established service priorities; serving as the means for informing all department directors in the area of information services; providing a forum for city government, school and constitutional officials for discussion of plans and the status of computer and micrographics functions within overall Data Processing Center operations; and focusing attention on an organization-wide basis toward opportunities for expansion in computer technology application. The advisory group, which meets each quarter and which is appointed by and is advisory to the city manager, consists of seven members: the deputy city manager, who in addition to having responsibility for overall supervision of data processing serves as the chairman of the group; the director of

#### About the Authors

Mr. Whitley, deputy city manager, has served the city of Lynchburg since 1972. The author of numerous articles regarding a variety of local government issues, he is a graduate of Davidson College and earned his master's degree in public administration from the University of Georgia. Mr. Clark has served the Lynchburg Data Processing Center since 1974 and assumed its leadership as data processing manager in January 1979. His background includes extensive data processing training along with considerable experience in the computer service operations of private industry.



finance; the director of office management and budget; a representative of the public schools designated by the school superintendent; a representative of one of several city council appointed offices, currently the city assessor; a representative of the constitutional offices, currently the commissioner of revenue; and one other department director on an annual rotating basis, currently the chief of police. The data processing manager serves as an ex-officio member of the group.

This composition assures thorough representation of virtually every segment of the municipal government which now utilizes or which may eventually utilize the services of the Data Processing Center. Each department or agency now represented on the Information Services Advisory Group, with the exception of the police department, currently utilizes the Data Processing Center. The police department operates a separate mini-computer system as a result of federal grant funding in the 1970s. The police chief was designated as the first rotating member of the advisory group in order to underscore the importance of compatibility of policies, goals and long-range planning with this one and only computer system within the city government which is independent of the Data Processing Center.

#### **Advisory Group Activities**

During its first year, the activities of the Information Services Advisory Group focused on several areas. Following an initial program of orientation developed by the data processing manager, the group carefully considered its assigned mission and commenced its most significant ongoing responsibility: assigning priorities to competing demands for computer resources. Unquestionably, one of the advisory group's most notable contributions has been development of a policy to guide the acquisition of personal or microcomputers. Both the rationale and particular features of this policy deserve special mention.

On January 3, 1983 "Time" magazine veered from its customary "Man of the Year" designation to declare the computer as "Machine of the Year." The Information Services Advisory Group was particularly impressed with the need for local governments to respond to the "future shock" implications of the technological explosion reflected in the "Time" article.

"Sale figures are awesome and

will become more so," the article said. "In 1980 some two dozen firms sold 724,000 personal computers for \$1.8 billion. The following year 20 more companies joined the stampede including giant IBM, and sales doubled to 1.4 million units at just under \$3 billion. When the figures are in for 1982, according to Dataquest, a California research firm, more than 100 companies will probably have sold 2.8 million units for \$4.9 billion."

The advisory group's concern was further reinforced by another article, "Multiple Microcomputers: Who's In Charge Here?" in the September 1982 issue "Public Technology NEWS." It included the following assessment: "Desktop microcomputers have become so inexpensive and easy to use that nearly every department or office can think of ways to justify acquiring a system. In business, the spread of micros has been so quiet and sudden that many corporations have no idea how many of these machines are at work in their offices. Even when orders are issued to prohibit or limit purchases, micros continue to pop up on the desks of managers and professionals. Some buy their own systems and bring them to the office. Others disguise microcomputer purchases as word processors, typewriters, or other office equipment."

To promote the coordination which appeared necessary for a positive organizational response to this emerging form of computer technology, the advisory group recommended that a policy be formulated to guide the acquisition of personal or microcomputers. The city manager welcomed this suggestion and accepted the group's proposal. Six months later, the Information Service Advisory Group culminated its first year of activity with adoption of a policy emphasizing the following considerations in acquiring microcomputer equipment: cost justification for equipment, programs, maintenance, supplies, consultant fees, etc., as the first prerequisite; advanced planning for proposed purchases in conjunction with normal budget-making deliberations; demonstrated performance of programs prior to equipment acquisition; capability for same day repair or replacement of defective or malfunctioning equipment; ability of microcomputer to emulate terminals compatible to the existing "mainframe" computer; except where word processing is the prevailing applica-

tion, de-emphasis on acquisition of letter quality printers because of slow speed and relatively high cost; adherence to the established procurement ordinance; and advanced review by the Information Services Advisory Group of any proposed acquisition of microcomputer equipment which does not satisfy the preceding criteria.

In addition to recognizing the importance of specified standards, the policy provides assistance to user departments and agencies by outlining a methodical, deliberate and cautious approach in any decision-making to acquire microcomputer equipment. In this regard, it promotes coordination of new technology by the host city government rather than the disorder, duplication, incompatible equipment and cost consequences likely to result when technology is permitted to dominate the host.

#### **Assessing Accomplishments**

In 1981 the city administration began a carefully charted course to create an organizational climate conducive to the expanded application of computer technology and its significant potential for productivity and cost savings. While it is difficult at this time to evaluate the effectiveness of the various changes several interim results are identifiable.

First, through attention to new computer technology opportunities, through the sharing of transferable, user-prepared computer programs among other local governments and through cost-conscious concern for telephone line-related charges, Lynchburg has saved large sums of public funds. A substantial segment of these savings will continue to accrue on a yearly basis into the future.

Second, the organizational relocation of the Data Processing Center and the emphasis on cross-departmental decision-making regarding competing computer service demands assure all proposals will receive equal, organization-wide consideration and, theoretically, the highest priority needs will receive the earliest attention. This approach encourages departments and agencies to feel that a mechanism exists to promote equal access to computer services. In the absence of such an approach, some units might otherwise pursue computerization reluctantly, thinking such technology is inaccessible.

Third, the adoption of a policy for acquisition of microcomputers is

—Continued on page 22—



# Tort Liability of Local Officials

By John A. Gibney Jr.

Few things could be simpler than filing a lawsuit against a public official or a locality. Anyone with a pen, some paper and a complaint can file a suit. If a plaintiff lacks funds, the courts will even waive the filing fees. Eventually, nearly all public officials are sued. A suit usually requires the defendants to spend what seems an inordinate amount of money and time on lawyers and case preparation. That's the bad news.

The good news is that plaintiffs win few suits against governmental bodies and officials. Governmental defendants have a variety of defenses which often result in the dismissal of most cases long before they come to trial. Most cases not dismissed are settled, often for a nominal payment. Very few cases go to trial and result in money judgments against localities or their officers.

The law in this area has changed dramatically in the past five years leaving many questions unanswered, but before discussing officials' liability, a few concepts need to be explained.

**Tort.** A tort is a civil wrong which causes harm. The victim of a tort can bring suit to recover his losses and sometimes for punitive damages. One of the most common examples of a tort is an accident caused by a careless driver.

**Immunity.** Immunity is a shield or defense to a suit for money damages. Governmental defendants can assert immunity defenses in a variety of circumstances.

**Sources of law.** Individuals and governmental bodies must comply with two bodies of law — state and

federal. State law governs most day to day activities. For instance, state law makes it unlawful to drive a car recklessly. In contrast, federal law governs only rights specifically created under the Constitution or federal statutes. Most civil rights suits are technically tort cases brought under federal law. The difference between federal and state law is important because federal and state courts apply different laws of immunity.

## State Tort Liability

The Virginia law of tort liability is not at all clear. In 1979, the Virginia Supreme Court in *Short v. Griffiths*, 220 Va. 53 (1979), said that local officials "do not enjoy governmental immunity and . . . are answerable for their own acts of simple negligence." Thus if the county manager hits a pedestrian while driving a county car on county business, he is personally liable for the harm he causes.

Two recent cases have raised the possibility that local officials, like their state counterparts, may be immune from suit in certain situations. In *First Virginia Bank—Colonial v. Baker*, 225 Va. (1983), the Virginia Supreme Court went through a lengthy analysis of the duties of a circuit court clerk before holding she was not immune from suit for errors in recording deeds. The court left the possibility open that under different facts the clerk might have been immune. In the second case, *Banks v. Sellers*, 224 Va. 168 (1982), the court held that a local school superintendent and a principal were immune from suit by a student who had been stabbed in school.

While these cases offer hope that some local officials may be found immune from suit, the cases denying immunity to local public employees have not been overruled and the law remains unclear. For the time being, therefore, the safest course is to assume that local officials are not immune from suit under state law.

Local employees also can make

the locality liable through their negligent acts. For reasons shrouded in history, Virginia law treats counties and cities differently in this area. Counties are immune from liability; they cannot be sued for money damages. Cities are immune when they act in their "governmental" capacities, but they can be liable for their "proprietary" functions. "Governmental" actions are those "taken for the common good of all, without the element of special corporate benefit or pecuniary profit," according to the court in *Ferer v. City of Norfolk*, 203 Va. 551 (1962). Applied, this test has led to some strange results. For instance street maintenance is a proprietary function which can lead to municipal liability. In selecting and adopting a plan for the construction of streets, and in maintaining traffic signals on its streets, however, a city performs a governmental function for which it is immune.

The recently enacted Virginia Tort Claims Act has raised a number of questions about local liability. The act does not apply to localities and their officers and creates no new liabilities for them. Rather, it applies only to the commonwealth, and the Virginia Supreme Court has not yet addressed the liability of localities and local officials under the act.

## Federal Tort Liability

Local officials can be held personally liable for federal torts committed in the performance of official duties. Most commonly these cases involve violations of federally protected civil rights.

Public officers do, however, have several immunity defenses. Legislative immunity protects council members and supervisors from liability for their votes on matters before them, as cited in *Bruce v. Riddle*, 631 F.2d 272 (4th Cir. 1980). Legislative immunity protects officials only when acting in their legislative capacities; its shield is lost when the official becomes in-

—Continued on page 16—

### About the Author

Mr. Gibney is currently an assistant attorney general in the office of the attorney general's civil litigation section. His primary duties include defending state officials. Before coming to this office, Gibney was in private practice for several years with a firm which represented a number of school boards, cities and counties.



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volved in the day to day operation of local government.

Qualified immunity provides protection to a broader range of local officials. Under qualified immunity, an officer is not necessarily liable in his individual capacity whenever a court finds a federal right has been violated. Qualified immunity is not, however, carte blanche to make mistakes. If an officer violates a clearly established constitutional or statutory right of which he knows or should have known, he loses his immunity (*Harlow v. Fitzgerald*, U.S., 102 S.Ct. 2727 (1982)). For instance, a city manager cannot claim immunity for directing city employees to close down a local newspaper that has published editorials critical of him.

Until 1978 local governments were immune from suit for civil rights violations. In 1978, however, the United States Supreme Court held in *Monell v. New York Department of Social Services*, 436 U.S. 658 (1978), that if a city or county has a regular practice, policy or custom which violates individuals' constitutional rights, the locality generally can be held liable for monetary damages. Localities, however, are immune from punitive damages (*City of Newport v. Fact Concerts Inc.*, 456 U.S. 247 (1981)).

#### Protecting Local Officials

Local officials are prime targets for lawsuits but they can take several steps to ease the pain of going to court.

First, local officials can, should and must obtain insurance. A number of companies provide policies which cover not only localities but also their officials and employees.

These policies offer a number of options, and an important one is a "defense" clause. A defense clause obligates the insurance company to provide a lawyer to defend suits. If a locality anticipates having to hire a private attorney to defend tort suits, a defense clause may provide valuable savings. Such a clause can pay for itself in one major case.

An insurance policy is worthless if no one alerts the insurer when a claim is made. Localities, therefore, should create a procedure to assure all lawsuits are promptly brought to the insurance company's attention. At a minimum, a local employee should be assigned the specific responsibility of notifying the insurer of all claims.

Finally, it is important to record information about the subject matter of potential lawsuits as quickly as possible. Memories fade quickly, and if no one remembers an event, it becomes difficult to defend a suit brought several years after the events in question. Local officials and employees should keep a written record of the facts surrounding all potential claims. The record can be as simple as a note to the files, but it must be prepared as soon as possible after the event and should include every fact remembered, no matter how seemingly trivial.

Preparing a record of the facts is one part of assisting a locality's defense attorneys in responding to a suit. Attorneys will make other demands of local officials. They will want several interviews with their clients; they will ask for information which seems tangential to the claim; they will sit for hours reviewing scores of documents. Their purpose is simple: trials are won by ex-

haustive preparation, not by courtroom fireworks. Attorneys' demands on local officials are crucial to trial preparation, and anything less than total cooperation from local officials diminishes the chances of winning a case.

#### Summary

Being sued is an unfortunate counterpart of public service, but local officials have a variety of legal defenses against tort suits and can take a number of steps to protect themselves from personal liability. The threat of suit, therefore, should not defer local officials from vigorously serving the public.

*This article does not represent the official views or opinions of the Virginia Attorney General's Office. It deals only with suits brought seeking money judgments; it does not deal with injunctive and other non-monetary relief. It is important to remember that this article is only an outline. A city or county official with specific questions should consult his locality's attorney as each case presents unique problems. The author thanks Mary Lynne Bailey for her assistance in research for this article and Joseph P. Rapisarda and William Hefty for their review and advice.*

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# Police Chiefs Hold Conference

The Virginia Association of Chiefs of Police held its 58th Annual Conference at the OMNI International Hotel in Norfolk Aug. 21-24. President Roland A. Lakoski, chief of police, Chesapeake, presided and more than 200 chiefs and guests attended.

During the conference, the association elected its 1984 officers and gave awards to four men. One award was made posthumously.

Col. Leslie T. Sheppard, chief of police, Henrico County, assumed the association's presidency and Harry T. Haskins Jr., chief of police, Salem; Frank W. Johnstone, director of police, University of Virginia; Maj. Cecil S. Johnson Jr., field supervisor, State Police Department, became first, second and third vice presidents respectively.

Sgt. John H. Cherry, formerly of the Chesapeake Police Department, was honored posthumously with an award for outstanding contribution to law enforcement. Sept. 27, 1982, Sgt. Cherry was killed in an attempt to apprehend a disorderly person without the use of deadly force.

Troopers Perry J. Freeman, S. A. Boone and D. W. Sawyer of the State Police Department received awards for valor. Trooper Freeman, in a difficult 25 minute operation, rescued a woman who had jumped from the Key Bridge from the icy current of the Potomac River Jan. 7, 1983. Trooper Sawyer, along with civilian Ricky Fletcher, were trapped under a roof which collapsed while they were trying to rescue a victim in a Shell Service Station explosion in Haysi, VA, May 28, 1982. While the building was burning, Trooper Boone crawled under the debris and raised the roof with a bar enabling the three men to be freed.

Virginia Delegate Richard M. Bagley; Executive Director for the Department of Criminal Justice Services Richard N. Harris; and Assistant Director of Training for the FBI at Quantico James D. McKinzie participated in a panel discussion on "Training and the Future" held at the conference. Other conference seminars included a presentation on accreditation, a report on the Hot



Col. Leslie T. Sheppard

Pursuit Task Force and a report on the Governor's Task Force to Combat Drunk Driving.

The 59th VACP Annual Conference will be held in Williamsburg Aug. 19-22, 1984.

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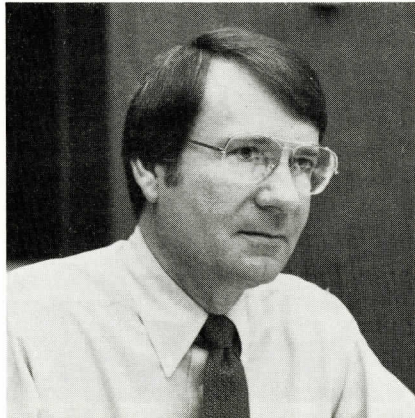


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# People

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## Charlottesville Manager Receives Award



**Cole Hendrix**, city manager, Charlottesville, received the 1983 L. P. Cookingham Award for Career Development. The award is presented annually by the International City Management Association (ICMA) to a manager or chief administrator who has significantly contributed to the encouragement and development of young people in local government careers.

Hendrix, who has served as Charlottesville's city manager since 1971, has helped many young professionals with their careers through city management internships, departmental internships, minority career development and general professional development. Since his appointment, a total of 79 University of Virginia students have completed internships in various departments of the city's government. Seventeen public administration graduate students have completed internships in his office alone. In addition, a number of high school students have participated in work/study programs with the city.

## Fairfax County Executive Named Citizen of the Year

**J. Hamilton Lambert**, county executive of Fairfax County, was recently named Citizen of the Year by the Fairfax County Chamber of Commerce. Lambert was selected among 600,000 people and members of some of the world's leading corporations located in the county

to receive the award recognizing outstanding leadership and contributions to the well being of the county.

Lambert has served as county executive since August 1980. His appointment culminated more than 20 years of service in Fairfax County. He has worked with practically every department of the county government and has received numerous other awards. He received the county's highest award bestowed on an employee in 1969, and in 1979 he received the Council of Government's Metropolitan Achievement



Award, an award given only one other time. In January 1982, "The Washingtonian" magazine honored Lambert with its Washingtonian of the Year Award. He also was recently named director of the Virginia Association of County Administrators.

## Falls Church Appoints New City Manager

**Anthony H. Griffin** is the new city manager of Falls Church. He succeeds Harry E. Wells who retired after 19 years as city manager and 35 years as an employee of the city.

Griffin has served as the deputy county manager of Arlington since September 1982. He has been employed by Arlington County since 1975, and served as acting county manager, and administrative assistant and administrative aide in the county manager's office. He holds master's degrees in urban and regional planning and in urban affairs from Virginia Polytechnic Institute and State University.

## Ex-Police Chief Dies

**Elmer R. Blevins**, former police chief of Marion, suffered a heart attack the night of August 1 and died early the following day in Smyth County Community Hospital. Blevins, 65, had retired just 33 days prior. He joined the Marion police force in 1957 and had served as chief for eight years. He was succeeded by John H. Grubb Jr., a former state trooper.

## Bond To Serve ICMA

**John P. Bond III**, city manager, Petersburg, has been elected a vice president of the International City Management Association. He will represent the Southeast and will serve a two-year term.

Bond, a native of Washington, DC, became city manager of Petersburg in 1979. Prior to that he served as assistant city manager of Miami and assistant city manager of Winston Salem, NC. He is currently chairman of ICMA's affirmative action committee.

## BOCA Elects Two Virginia Building Officials

**Joseph Bertoni**, chief building inspector for Fairfax County and a past president of the Virginia Building Officials Association, has been elected to the board of directors of the Building Officials and Code Administrators International (BOCA), and **Charles Everly**, building official for Alexandria and also a VBOA member, has been elected treasurer of BOCA. BOCA is an international association that provides model codes for adoption by local governments.



Bertoni



## Two Take Council Seats

**Jimmie B. Bryan** was appointed to Lynchburg City Council June 23 to replace Hubert Nash, at-large council member who died the preceding week. Bryan, 67, is a retired high school basketball coach and athletic director. His term will expire in 1984.

**Joanne Marston** was appointed to the Edinburg Town Council in August to replace Fred Hottle who resigned. Marston is an employee of the Farmers Bank of Edinburg.

## Ex-City Manager Dies

**S. Lee Grant**, city manager of Winchester for almost 28 years, died July 26 in a local nursing home at the age of 76. Grant was appointed city manager in 1939 at the age of 32. He had served as superintendent of the Water Department from 1931 to 1939, and was first hired by the city in 1930 as a water meter reader. Upon his retirement he was elected city manager emeritus.

## Cornell Assists With Magazine

The Virginia Municipal League has hired **Mary Ann Cornell** to assist with "Virginia Town & City" magazine on a part-time basis. Cornell, a mass communications student at Virginia Commonwealth University, is working primarily with the magazine's advertising, although she assists in other areas as well. She is a native of King George County and has also attended Bridgewater College.

## Staunton Cited For Preservation

The Historic Staunton Foundation received the Preservation Honor Award funded by Rust-Oleum Corp. and granted by the National Trust for Historic Preservation. The Staunton organization was first in recognizing and making citizens aware of the commercial value of the city's historic buildings and then succeeded in implementing an exemplary facade improvement program.

# Governor's Conference On Tourism Set

The Virginia Governor's Conference on Travel and Tourism will take place in Richmond at the Hotel John Marshall Oct. 30-31.

The conference will actually begin with an afternoon registration and gala evening reception Sunday, Oct. 30, at the Science Museum of Virginia. Gov. Charles S. Robb, who has demonstrated a strong commitment to tourism making it one of the few areas of state government to receive increased funding, will speak Monday morning, Oct. 31. Following Gov. Robb's remarks, open round-table discussions will allow the opportunity to express concerns, pose questions and recommend solutions, policies and

priorities to help determine the future development of Virginia's tourism industry.

Conference workshops include "How to Persuade Elected Officials to See It Your Way," "How to Generate Media Publicity," "How to Package Successful Tours for Domestic and International Markets," and "How to Plan Local Festivals and Events that Work."

Conference registration is \$30 in advance, \$35 at the door. For more information contact LaVerne Deusebio, Division of Tourism, Director of Tour Development, 202 N. Ninth St., Richmond, VA 23219, or call (804) 786-2051.

## Marketplace

**Chief of Police, Manassas, VA.** Responsible for operation of police department under general supervision of city manager. Department has operating budget of \$986,000 with 41 full-time and 6 part-time employees. Position requires strong leadership, extensive experience in modern police work with progressive supervisory experience in operation and administration, at least two years of command experience and ability to innovate programs. Bachelor's degree in criminal justice or associated field preferred, but applicants with extensive law enforcement schooling and training will receive equal consideration. Salary \$25,938-\$36,525 depending on education and experience, plus full range of fringe benefits. Candidates may be invited to

participate in an assessment center procedure to be conducted in Manassas by IACP. Send resume, including salary history, to C. M. Moyer Jr., City Manager, P.O. Box 512, Manassas, VA 22110.

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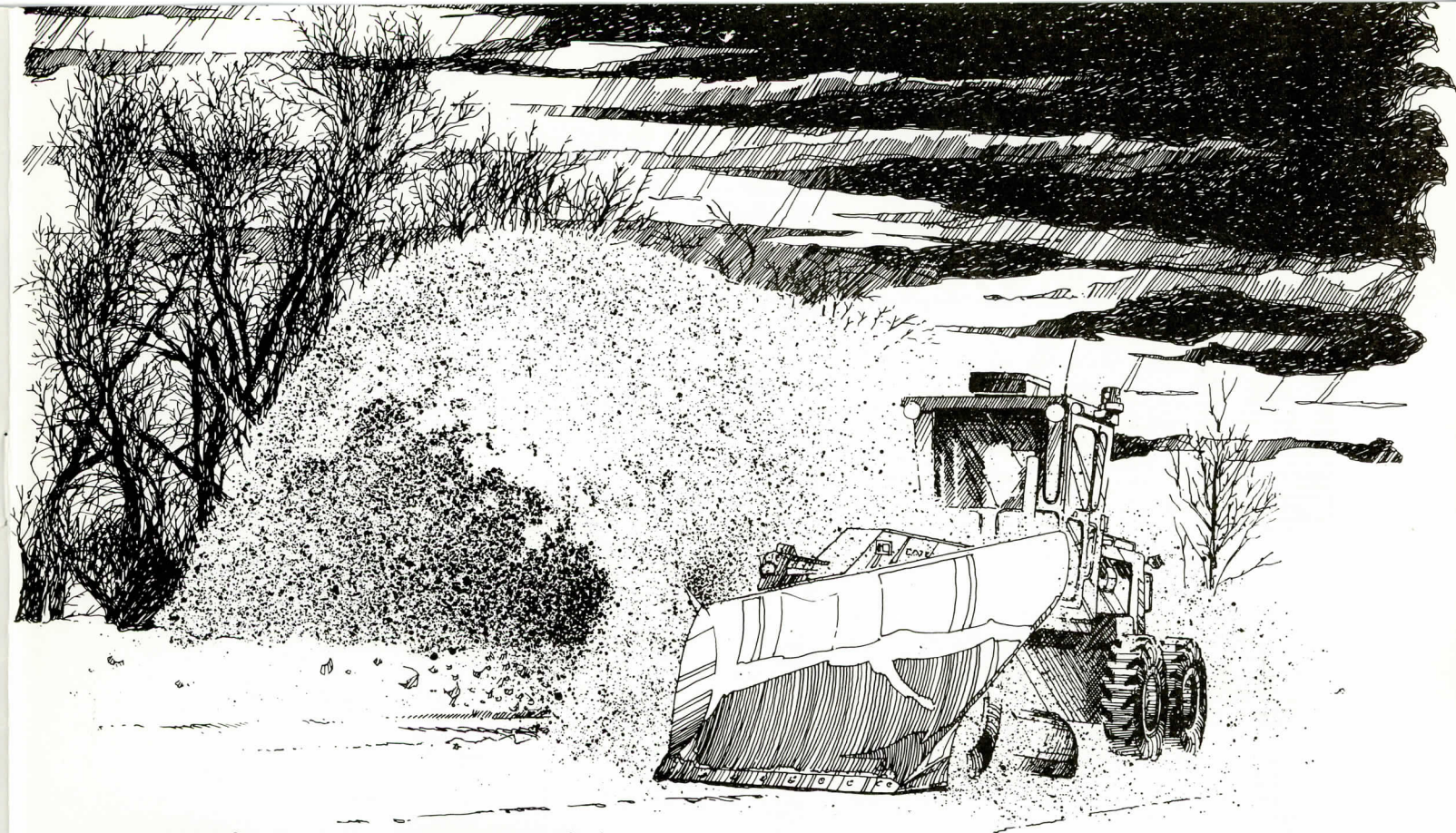
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\*Source: Public Securities Association Statistical Yearbook Municipal Finance, *The New Issue Market in 1982*, page 23.

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