

A Brief, Incomplete Outline on Town/County Relations for Town Leaders

Michael W.S. Lockaby¹

- I. Sources of Authority:
 - a. Charter—every Town has a charter.² The charter normally controls over conflicting statutes, unless the statute states, “notwithstanding any contrary provision of law, general or special.”³
 - b. Towns are granted a slate of powers under the Uniform Charter Powers Act.⁴ While the statutes seem to grant these powers to counties also,⁵ the Supreme Court of Virginia has sometimes been reluctant to agree to this in practice.
 - c. Counties under the traditional county form of government have general powers and required procedures.⁶ There are also a variety of special forms of county government that provide counties that adopt them special powers or impose on them special requirements.⁷
- II. In addition to specific powers granted by charter or statute, the General Assembly has granted to both towns and counties a measure of its “police power” to legislate for the public health, safety, and general welfare of the community.
 - a. For Towns: “A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of municipal government, the exercise of which is not expressly prohibited by the Constitution and general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants therefor, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed or held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically

¹ Michael Lockaby is a member in the law firm Spilman, Thomas & Battle, PLLC, in Roanoke, Virginia, where his practice focuses on local government matters. He is the part-time Town Attorney for Bedford and Clifton Forge and part-time County Attorney for Botetourt County. <https://www.spilmanlaw.com/professional/lockaby-michael-w-s/>

² To my knowledge, the only exception is Newsoms, which was incorporated by court order and never subsequently granted a charter.

³ Va. Code § 15.2-100.

⁴ Chapter 11, Title 15.2, Code of Virginia, 1950, as amended.

⁵ Va. Code § 15.2-1201.

⁶ Chapter 12, Title 15.2, Code of Virginia, 1950, as amended.

⁷ Fairfax County uses the urban county executive form of government; Prince William and Albemarle Counties use the county executive form; Arlington County uses the county manager plan of government; and Carroll and Grayson Counties use the county board form of government. Each of these forms has a slightly different spin on the powers of a county.

limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth.”⁸

- b. For Counties: “Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulation for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.”⁹

III. County application of police power within a Town:

- a. Judicial interpretation has generally held that county ordinances apply within a town.¹⁰
- b. Sometimes, the powers are harmonized. For instance, if a county adopts a license ordinance for a particular business, and the town controls its location through zoning, the different regulations are harmonized.¹¹
- c. Sometimes, the powers are concurrent, i.e., both apply and authorities may proceed under either. This applies to bike helmets,¹² solid waste and flow control,¹³ swimming pool fences,¹⁴ human rights,¹⁵ recreation,¹⁶ nuisances,¹⁷ and (sometimes) utilities.¹⁸
- d. In many circumstances, if a town adopts legislation in a particular area, it displaces county authority, but if the town does not, the county’s ordinances apply.¹⁹
- e. In some circumstances, even if a county legislates, its regulations never apply within an incorporated town, even if the town has not legislated on the topic at all. This applies, for instance, to (1) planning, zoning, and subdivision ordinances,²⁰ (2)

⁸ Va. Code § 15.2-1102.

⁹ Va. Code § 15.2-1200.

¹⁰ *Nexsen v. Bd. of Supv’rs of Elizabeth City Cnty.*, 141 Va. 313 (1925).

¹¹ 1978-79 Op. Va. Att’y Gen. 288 (May 2, 1979) (citing *King v. Cnty. of Arlington*, 195 Va. 1084 (1954)).

¹² Va. Code § 46.1-906.1.

¹³ Va. Code § 15.2-928.

¹⁴ Va. Code § 15.2-921.

¹⁵ Va. Code § 15.2-965.

¹⁶ Va. Code § 15.2-1806.

¹⁷ Va. Code §§ 15.2-900, -906.

¹⁸ Va. Code § 15.2-2109.

¹⁹ 1986-87 Op. Va. Att’y Gen. 208 (April 29, 1987).

²⁰ Chapter 22, Title 15.2, Code of Virginia, 1950, as amended; Va. Code §§ 15.2-2280, -2281. *See also Bd. of Supv’rs of Loudoun Cnty. v. Town of Purcellville*, 276 Va. 419 (2008) (locality in which property lies controls land use).

comprehensive animal laws (probably),²¹ (3) roads and streets in many circumstances,²² (4) traffic control,²³ and (5) franchises.²⁴ In the case of land use, town ordinances apply even to county property within town limits.²⁵

IV. Some statutory responsibilities triggered at population thresholds:

- a. Responsibility to comply with the Virginia Public Procurement Act is triggered at a population of 3,500.²⁶ However, grant often come with conditions requiring public procurement compliance, so be careful about specific situations.
- b. Greater Conflict of Interests Act requirements apply at the 3,500 and 10,000 population thresholds.²⁷
- c. Responsibility to maintain roads and streets is triggered at a population of 3,500, but there are a lot of ifs, ands, and buts about this.²⁸
- d. Responsibility to enforce Uniform Statewide Building Code is triggered at a population of 3,500.²⁹ Above that threshold, towns may (and often do) contract with the county to enforce the USBC. Note that even below 3,500, a county is not required to enforce the USBC Maintenance Code within a town if the county has not adopted the Maintenance Code.³⁰ Some smaller towns that wish to enforce the Maintenance Code therefore make sure they have a staff member trained in Maintenance Code enforcement to carry out this role.

V. Interaction of powers over taxes and fees:

- a. The general rule is that town imposition of taxes does not preempt county taxes, i.e., a person must pay both.³¹ There are also exceptions, such as business license taxes.³²
- b. Taxes that “stack,” i.e., a person must pay both the county and town tax include (1) real estate tax, (2) personal property, machinery and tools, and merchants capital tax, and (3) admissions tax.

²¹ There are Attorney General opinions relating to a former animal control scheme that indicate that county animal control ordinances *never* apply within town limits. 1982-83 Op. Va. Att’y Gen. 212 (Feb. 18, 1983); 1977-78 Op. Va. Att’y Gen. 131 (Sept. 13, 1977). However, the Comprehensive Animal Care Act, Chapter 65, Title 3.2, Code of Virginia, 1950, as amended, has substantially changed the statutory language in ways that might or might not matter.

²² Va. Code § 15.2-2000(B).

²³ Va. Code § 46.2-1311.

²⁴ Va. Code § 15.2-2100.

²⁵ 1997 Op. Va. Att’y Gen. 48 (April 7, 1997); 1978-79 Op. Va. Att’y Gen. 75 (April 6, 1979).

²⁶ Va. Code § 2.2-4343(A)(9).

²⁷ Va. Code §§ 2.2-3110, -3115.

²⁸ Va. Code §§ 33.2-319, -320.

²⁹ Va. Code § 36-105.

³⁰ Op. Va. Att’y Gen. 10-076 (Dec. 10, 2010).

³¹ *Bd. of Supv’rs of Washington Cnty. v. Saltville Land Co.*,

³² *Town of Ashland v. Bd. of Supv’rs of Hanover Cnty.*, 202 Va. 409 (1961).

- c. Taxes where towns may displace county taxes include (1) business license (BPOL) tax, (2) meals tax, (3) transient occupancy tax. There are others.
- d. County taxes on E-911 and telephone consumer utilities preempt town taxes on the same thing, but there are grandfather clauses.

VI. Power to operate utilities:

- a. Towns have general powers to operate water,³³ sewer, natural gas, solid waste, and electrical utilities, both within and without their corporate limits.
- b. Towns must deal with the power of the State Corporation Commission to allocate service territory with regard to electricity and natural gas, both inside and outside corporate limits.³⁴
- c. A county may review and disallow new town water and sewer systems in the county.³⁵ However, systems in existence prior to 1976 may be expanded without county approval.
- d. There is some authority to the effect that a town has a responsibility to serve all persons wishing to receive water or sewer service within town limits if it can. However, it has no responsibility to serve connections outside of town limits.³⁶

VII. Law enforcement:

- a. Every county has a sheriff, who is, by default, the primary law enforcement for the county³⁷ (although the commonwealth's attorney is the chief law enforcement officer of the county if there is no police chief³⁸). He is an elected constitutional officer.³⁹
- b. All localities have the general power to create police forces.⁴⁰ However, before a county may create a police department, it must hold a referendum.⁴¹ Once a police force is established, the chief of police (who may, in a town, be called the "town sergeant") is the chief law enforcement officer of the locality.⁴²
- c. Sheriffs are always responsible for (1) courthouse security, (2) the jail unless a jail authority is formed, for (3) service of civil process, both for the county and incorporated towns,⁴³ If a government (either the county or a town) has created a

³³ Va. Code § 15.2-2109(A).

³⁴ Va. Code §§ 56-265.4:1, 15.2-2109.3; *Town of Culpeper v. Va. Elec. & Power Co.*, 215 Va. 189 (1974).

³⁵ Va. Code §§ 15.2-2126 et seq., 15.2-2149 et seq.

³⁶ *Town of Rocky Mount v. Wenco of Danville, Inc.*, 256 Va. 316 (1998).

³⁷ Va. Code § 15.2-1609.

³⁸ *See Wadkins v. Arnold*, 214 F.3d 535 (4th Cir. 2000); *In re Hannett*, 270 Va. 223 (2005).

³⁹ Va. Const. art. VII, § 4.

⁴⁰ Va. Code § 15.2-1701.

⁴¹ Va. Code § 15.2-1702.

⁴² Va. Code § 15.2-1701.

⁴³ Va. Code §§ 15.2-1609, 8.01-295.

police department, the sheriff retains the ability to enforce the law, but is relieved of the duty to do so and may assume that the police are properly enforcing the law.⁴⁴

- d. If a town does not have a police department, then the county sheriff (and probably, although not certainly, a county police department) has the power and responsibility to enforce general state laws and county ordinance within town limits.⁴⁵ As a general proposition, sheriffs are not required to enforce town ordinances, unless there is an agreement between the town and the sheriff—in which the county board of supervisors must acquiesce—to do so.⁴⁶
- e. Town police may undertake all law enforcement purposes up to one mile outside of town limits and on town-owned property, wherever it is.⁴⁷
- f. If a person dies in a town, the town police department, as the “primary law enforcement agency,” must conduct a diligent search to identify the person and find next of kin.⁴⁸ However, if the person is indigent and the next of kin cannot be found or cannot pay for disposition of the person’s remains, it is the responsibility of the county sheriff or police department to dispose of the human remains, and of the county to pay for the cremation or burial.⁴⁹
- g. For the purposes of execution of an emergency custody order (ECO) or a temporary detention order (TDO), the choice of whether the county sheriff or the town police should undertake the transport is up to the magistrate.⁵⁰ However, the Attorney General has instructed that if a town has a police department, magistrates should normally designate the town police to carry out the transport.⁵¹
- h. The town attorney, not the commonwealth’s attorney, is responsible for prosecuting town ordinances, unless otherwise agreed.⁵²

VIII. Issues unique to certain localities:

- a. Annexation and Annexation Settlement. Unlike cities, which are under an annexation moratorium, towns still have the power to annex land into their corporate limits.⁵³ The full scope of annexation is far beyond the scope of this outline. However, it is not unusual for towns to enter agreements with counties relating to future annexation by ordinance, rather than by an adversarial proceeding

⁴⁴ *Commonwealth v. Malbon*, 195 Va. 368 (1953).

⁴⁵ 1976-77 Op. Va. Att’y Gen. 253 (Aug. 25, 1976).

⁴⁶ 1976-77 Op. Va. Att’y Gen. 257 (April 29, 1977); Va. Code § 15.2-1726.

⁴⁷ Va. Code §§ 19.2-250, 15.2-1725.

⁴⁸ Va. Code § 32.1-309.1.

⁴⁹ Va. Code § 32.1-309.2.

⁵⁰ Va. Code §§ 37.2-808, -810.

⁵¹ Op. Va. Att’y Gen. 11-123 (Oct. 21, 2011).

⁵² 1972-73 Op. Va. Att’y Gen. 92.

⁵³ Va. Code §§ 15.2-3201, -3202.

before a special court.⁵⁴ There can often be other unique provisions to deal with parochial concerns. In return, the town gives up the future right to seek city status.

- b. Reversions. Reversion agreements also often contain unique provisions relating to future town-county relations. So far, only the cities of South Boston, Clifton Forge, and Bedford have reverted from city to town status. However, Martinsville recently made an abortive attempt to revert, and there are more than a half-dozen other small cities that could or should consider it. Each of the reversion agreements provides for unique provisions, since in each case the city had its own constitutional officers, and arrangements for schools, social services, and other city services that subsequently became shared.

⁵⁴ Va. Code § 15.2-3231.