

**THE VIRGINIA LAW RELATING TO WORKING OR
TRANSACTIONING BUSINESS ON SUNDAY
REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



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THE VIRGINIA LAW RELATING TO WORKING OR
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REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, October 18, 1963.

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly in 1960 amended the section of the Code dealing with "laboring at any trade or calling" on Sunday. The new Act specifically prohibited the sale of certain named types of articles on Sunday. Two years later, in 1962, the General Assembly deemed it desirable that a study be made of the operation of the amended statute and accordingly directed the Virginia Advisory Legislative Council, by House Joint Resolution No. 4, to make such a study. The text of the Resolution is as follows:

HOUSE JOINT RESOLUTION NO. 4

Directing the Virginia Advisory Legislative Council to make a study of Article 7 of Chapter 7 of Title 18.1 of the Code of Virginia and related laws restricting certain activities on specified days of the week.

Whereas, the 1960 session of the General Assembly of Virginia amended and reenacted §§ 18.1-358, 18.1-358.1 and 18.1-358.2 of the Code of Virginia, relating to working or transacting business on Sunday; and

Whereas, recent events in Virginia and other states have focused public interest upon the conflict between established laws preserving Sunday as a common day of rest and the growing trend toward mercantile activity seven days a week; and

Whereas, people in all sections of Virginia have demonstrated interest in the action taken by the 1960 session with respect to Sunday legislation; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study and report upon Article 7 of Chapter 7 of Title 18.1 of the Code of Virginia and all similar and related laws which restrict business, industrial, commercial or other activities on any specified day or days of the week. All agencies of the State shall assist the Council upon request. The Council shall conclude its study and make its report to the Governor and General Assembly not later than October one, nineteen hundred sixty-three and shall set forth therein what changes, if any, are required to conform such laws to present conditions.

The Council selected two of its members, C. W. Cleaton, member of the House of Delegates, South Hill, and Mosby G. Perrow, Jr., member of the State Senate, Lynchburg, as Cochairmen of a Committee to make the study. (Due to illness, Senator Perrow was unable to participate in the deliberations of the Committee.) The following persons also served as members of the Committee: Matt G. Anderson, member, House of Delegates, Oilville; Norman C. Bailey, wholesale merchant, former member, House of Delegates, Orange; Rutledge C. Clement, attorney, Danville; Mrs. Kossen Gregory, housewife, Roanoke; Frank D. Harris, attorney, South Hill; Maury A. Hubbard, Executive Secretary, Virginia Farm Bureau Federation, Richmond (we note regretfully that Mr. Hubbard died before the study was completed); Mrs. J. Ray Larcombe, housewife, Warrenton; James T. Mathews, Group Manager, Sears Roebuck and Company, President, State Chamber of Commerce, Richmond; Wm. N. Neff, merchant, former member, Senate of Virginia, Abingdon; George T. Omohundro, Jr., merchant, Scottsville; Wm. S. Patterson, merchant, Lynchburg; Anne Dobie Peedles, Stony Creek; Harry B. Price, Jr., merchant, Norfolk; and William L. Winston, attorney, member of the House of Delegates, Arlington. John B. Boatwright, Jr. and G. M. Lapsley served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee reviewed the laws of this and other states relating to the subject. It held public hearings in Richmond, Norfolk and Arlington, which were well attended. A fourth hearing in the western part of Virginia was considered, but was not held because of the lack of requests from that area and also because many of its citizens appeared at the other hearings. It considered the material before it and the recommendations made to it and reported to the Council. The Council has reviewed the report of the Committee and now submits the following report.

Summary of Recommendations

1. Virginia's long established policy of preserving Sunday as a common day of rest and recreation for its citizens should be continued.
2. Minor clarifying amendments to the law would facilitate its interpretation and enforcement.
3. The localities' responsibility for enforcement of the law as to working or transacting business on Sunday should remain unchanged.

Reasons for Recommendations

Since the days of its early colonial history Virginia has had a policy of regulating the business activities of its citizens on Sunday. Similar policies have been maintained in most, if not all, of the States of the Union. The statute which Virginia enacted in 1960 parallels, in its basic philosophy and in many of its details, those recently enacted in a number of other states. These statutes have generally withstood court challenge as valid and appropriate exercises of the discretionary power of the several legislative bodies, and the Virginia statute was upheld by the Supreme Court of Appeals in the case of *Mandell v. Haddon*, 202 Va. 979.

In the *Mandell* case, the court stated that the purpose of the statute is "... to promote and strengthen the established policy of Virginia in

favor of a common day of rest, relaxation and recreation for as many persons as possible . . .". Evidence presented at the Committee hearings emphasized the desirability from many standpoints, of this policy. The present century has seen the emergence of many forces which tend to disrupt the family, which, throughout the history of our Nation, has been an important stabilizing influence in our society. With the large number of homes where both parents work, and with many working mothers being employed in retail establishments, general adoption of a seven day schedule for such establishments would have a serious adverse effect on the lives of all those living in such homes.

Another attitude of persons who appeared at the public hearing is worthy of note. Many of them spoke in opposition to some of the restrictive features of the law. Many of these same persons, however, indicated that although some of them were operating business establishments on Sunday, they would much prefer to have an enforceable and enforced Sunday Law in operation so that they could operate six days a week without loss of business to their competitors.

Although a majority of those who appeared at the hearings favored retention of the present Virginia law, various objections were presented by citizens who oppose the law for religious or conscientious reasons (despite the present exemptions for those who observe Saturday as a religious day) and others who felt their own businesses could be operated more profitably on an unrestricted basis seven days a week. Basically, however, no solution has been proposed which does not fall into one of two categories—retention of the present law in substantially its present form on the one hand, or on the other hand and alternatively, return to the law as it existed prior to the 1960 amendment or complete repeal of the law.

We are convinced that the vast majority of the citizens of Virginia favor a single day of rest and recreation, with consequent moral, economic and social benefits, even though business activities are thereby restricted to those essential to the area or the circumstances. Under the former law, successful enforcement was virtually impossible and attempts at enforcement were made only sporadically. The unsatisfactory conditions resulting from the vagueness of the prior statute and the difficulties in its enforcement led to flagrant disregard of it. This is a condition which should not be permitted to exist; flouting the law in any instance is a canker which can all too readily spread and lead to a generally lawless attitude on the part of the public in all cases.

By contrast with the former law the 1960 statute is specific in its terms and offers enforcement officials a basis for acting on a uniform basis throughout the State.

Certain provisions of the statute, however, could with profit be modified in the interest of clarity and we set forth in detail in the following section of this report those amendments which we believe would be helpful.

Clarifying Amendments to § 18.1-358

The Supreme Court of Appeals of Virginia has upheld § 18.1-358 as being constitutional; the provisions of the statute have been supported by an overwhelming majority of those who made their views known during

the course of the study. We therefore recommend against any substantial changes in the wording of the statute.

However, we do feel a few minor amendments might clarify what we believe to have been the legislative intent when the bill was enacted; these will make it more definite and susceptible to more uniform interpretation. We list below the amendments which we recommend and which appear in the draft of the bill which is attached to this report as an appendix.

(1) The second sentence of the section lists certain transactions which shall not be deemed to be "works of necessity or charity". The Court, in its opinion, describes the specific exemptions from the application of the statute, as "works of necessity" and we feel that the transactions to which the section makes the prohibition explicit should be similarly described.

(2) The prohibition in the statute of Sunday sales of hardware includes certain items commonly sold both in hardware stores and in stores such as drug stores which are normally open on Sunday, which items could very readily be classed as necessities under certain conditions. We, therefore, recommend that the prohibition on sales of hardware be qualified to exclude light bulbs, batteries and electrical fuses.

(3) The law as it was amended in 1960 prohibited Sunday sales of farm produce, excluding from the prohibition sales of such produce grown by the seller and sold at roadside stands or at the place where grown. It is our understanding of the intent of the 1960 amendment that it was designed to prevent the sales *in stores* of perishable items commonly sold in the produce departments of grocery stores. We recommend substituting for the words "farm produce" the words "fresh fruits and vegetables". It is our further understanding that it was the intent of the exclusion applicable to products sold by the grower, to allow a farmer to offer for sale at a roadside stand or at his farm anything which he might produce on his farm in this State (thereby including such items as hams, eggs, or chickens). We recommend that the exclusion be rephrased to include fresh fruits and vegetables and "other edible products" but that its application be made more certain by limiting sales to those which are both grown by the seller in this State and sold either at roadside stands or at the place where grown.

(4) There has been considerable confusion in regard to the interpretation of the prohibition on sales of meats, poultry and seafoods. This prohibition was limited to those inedible without further cooking or preparation and this phrase was construed by some to relate back to the prohibition on sales of farm produce. The application was further confused by an exclusion relating to sales of smoked or cured hams. We recommend that this be clarified by the insertion of a semicolon immediately preceding the words "or fresh, frozen or salt meat, poultry or seafood"; and inasmuch as the suggested amendment relating to sales of farm produce would include hams and poultry when sold by the grower at stands or at the place where grown, we recommend the omission of the words "excluding smoked or cured hams".

(5) The Court in its opinion refers to the exemptions of business activities "which on their face are works of necessity under the modern day conception of things". Among these the 1960 statute referred to "the sale of motor fuels or oils, repair parts or accessories for immediate necessary use in connection with motor vehicles, boats or aircraft". This has raised questions such as whether it would be permissible under the statute for a motor vehicle to be greased or washed at a service station on Sunday.

This language should be clarified and we recommend that the exemption be broadened to include servicing, fueling, or emergency repair of motor vehicles, boats or aircraft.

Enforcement

We are aware that the present statute is not applied with the same degree of strictness throughout the State. This observation also applies to other statutes. Some have proposed that means be devised whereby one uniform level of enforcement would be applicable throughout the State. In this connection it must be noted that the major evils which the 1960 legislation sought to correct have in large measure been brought under control.

To obtain the same high and strict degree of enforcement throughout the State would involve either the creation of some agency with a large staff to enforce the law or the vesting of such responsibility in some present agency having such a staff; in either case giving the agency chosen the power to make rules and regulations having the force and effect of law would be involved, as would large additional expenditures. Either approach would encroach upon the powers of local law enforcement officials and represent a dangerous and unwarranted centralization of power in the State government.

The grant of the rule making power raises serious legal questions. Central enforcement involves a consideration of attitudes throughout the State and the philosophy of the relationship between the State and local governments in the field of law enforcement.

Virginia is a large State and contains a population whose interests, economic condition, and customs are widely varied. The business activities of its citizens are quite different in the truck farming area of the Eastern Shore, the Atlantic Coastal regions, the Central and Northern parts of the State, the largely rural Southside area, the Piedmont and Valley areas and the rugged terrain in Western and Southwest Virginia.

It has always been a cornerstone of governmental philosophy in Virginia to permit the diverse conditions existing throughout the State to be dealt with, insofar as possible, on the basis of maximum local autonomy. The General Assembly, in adopting legislation, lays down the guide lines for the regulation of a given activity; but our governmental structure is such that the laws must be enforced by the duly elected representatives of the several communities. They are close to the people whom they serve, and being chosen by them, must be responsive to local wishes.

Experience in this nation with laws which have lacked public support has taught a stern lesson, that the people will not obey, nor officials compel obedience to, a law which most people feel is arbitrary and unfair. However, the temperament of the Virginia population is such that they will comply with a law which they believe is just, and which is fairly administered, with due regard to local needs and peculiar local conditions.

We have attempted, in the attached draft of amendments to the law regulating certain business activities on Sunday, to simplify the statute and to make it readily susceptible to interpretation. Interpretation of the statute, and its application in the light of local conditions, can be best left to the law enforcement authorities of the several political subdivisions of the Commonwealth.

Conclusion

We should like to express our appreciation to the many persons who were of assistance to us in this study, especially to those who gave of their time to advise us of their views at the several public hearings which were held by the Committee. Our particular gratitude is expressed to the members of the Committee for their long and careful study of this subject and the assistance rendered the Council in connection with the preparation of this report.

A bill to carry out the recommendations hereinabove described is attached as an appendix to this report.

Respectfully submitted,

CHARLES K. HUTCHENS, Chairman

EDWARD E. WILLEY, Vice-Chairman

C. W. CLEATON

JOHN WARREN COOKE

JOHN H. DANIEL

CHARLES R. FENWICK

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MOSBY G. PERROW, JR.

ARTHUR H. RICHARDSON

STATEMENT OF C. W. CLEATON

I want to reserve the right to support a bill on better enforcement if one is presented.

C. W. CLEATON

STATEMENT OF MOSBY G. PERROW, JR.

I subscribe to the overall objectives of the Report and Bill. By virtue, however, of the different interests and outlooks throughout the State, somewhat more freedom should be given to the localities to predicate enforcement upon local requirements, thereby giving further vitality to the long-established Virginia principle of strengthening local subgovernments. Virginia Beach and Arlington, as compared to Lynchburg, Richmond and Roanoke, may be cited as cases of areas in mind.

MOSBY G. PERROW, JR.

A BILL to amend and re-enact § 18.1-358 of the Code of Virginia, relating to Sunday selling and the enforcement of same.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-358 of the Code of Virginia be amended and reenacted as follows:

§ 18.1-358. On the first day of the week, commonly known and designated as Sunday, it shall be unlawful for any person to engage in work, labor or business or to employ others to engage in work, labor or business except in household or other work of necessity or charity. The exemption for works of necessity * contained in the preceding sentence shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell, on Sunday, any of the following: jewelry; precious and semi-precious stones; silverware; watches; clocks; luggage; musical instruments; recordings; toys (excluding items customarily sold as novelties and souvenirs); clothing and wearing apparel; clothing accessories; footwear; textile yard goods; housewares; china; kitchenware; home, business, office or outdoor furniture, furnishings and appliances; sporting goods (excluding sales or rental of bathing, boating, and fishing paraphernalia and equipment, and sales or rental on the premises where sports, athletic events or recreational facilities are located or conducted of equipment essential to the normal use or operation of such premises for the purposes specified); pets, pet equipment or supplies; cameras and photographic supplies (excluding film and flash bulbs); hardware (*excluding light bulbs, batteries and electrical fuses*); tools; paints; building and lumber supplies and materials; motor vehicles; trailers (excluding mobile homes); farm implements; lawn and garden equipment and supplies; * *fresh fruits and vegetables* (excluding sales of * *fresh fruits and vegetables and other edible products which are both* grown by the seller *in this State* and sold *either* at roadside stands or at the place where grown); or fresh, frozen or salt meats, poultry or seafood customarily inedible without further cooking or preparation * . No inference shall arise from the foregoing enumeration of classes of personal property that sales or offers or attempts to sell other classes of personal property not mentioned are included within the above exemption for works of necessity or charity. This section shall not apply to furnaces, kilns, plants, wholesale food warehouses, ship chandleries, and other business of like kind that may be necessary to be conducted on Sunday, nor to the publication, distribution and sale of newspapers or magazines, nor to the * *servicing, fueling or emergency repair of* motor vehicles, boats or aircraft, nor to the operation of motion picture theaters, nor to sports, athletic events, scenic, historic and recreational and amusement facilities.

Note: (1) In line 5, the words "or charity" were deleted. (2) In line 20, after word "hardware" the words "(excluding light bulbs, batteries and electrical fuses)" were added. The word "electrical" was added to specify the type of fuses. (3) In line 23, the words, "farm produce" were deleted, and the words, "fresh fruits and vegetables" were added. (4) In line 24, the words "farm produce" were deleted, and the words, "fresh fruits and vegetables and other edible commodities" were added. The words "edible commodities" are vague and do not seem to effectuate the intent of the Committee. (5) In line 26, a semicolon was added after the word "grown". In line 27, the words "excluding smoked or cured hams" were deleted. (7) In lines 35 and 36, the words "sale of motor fuels or oils, repair parts or accessories for immediate necessary use in connection with" were deleted, and the words, "servicing, fueling or emergency repair of" were added.

