

**REPORT ON  
FULL TIME COMMONWEALTH'S ATTORNEYS  
OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL  
TO  
THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 19**

**COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond**

**1977**

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**Report on  
Full Time Commonwealth's Attorneys**

to

**The Governor and the General Assembly of Virginia,  
Richmond, Virginia**

**January, 1977**

To: The Honorable Mills E. Godwin, Jr., Governor of Virginia  
and

The General Assembly of Virginia

**INTRODUCTION**

Traditionally, in Virginia, the Attorney for the Commonwealth has served his office on a part time basis. This practice, at least in the larger, more urban counties and cities, has increasingly come into question, and, as a result, the General Assembly, at its 1976 session, agreed to House Joint Resolution No. 115, the text of which is as follows:

**HOUSE JOINT RESOLUTION NO. 115**

Directing the Virginia Advisory Legislative Council to study and report on the need of making the position of Attorney for the Commonwealth a full time position, the anticipated costs involved and such other attendant matters as may come to the attention of the Council.

WHEREAS, the General Assembly has previously recognized a need for full time Attorneys for the Commonwealth in larger cities in order that they may devote all of their efforts and energy toward the prosecution of criminal cases; and

WHEREAS, there are currently six political subdivisions within the Commonwealth which share a Commonwealth's Attorney with a second political subdivision; and

WHEREAS, in recent years there has been a significant increase in criminal activity in Virginia; and

WHEREAS, the various political subdivisions of this Commonwealth have been required to employ a significant number

of additional law-enforcement personnel to bring to justice the perpetrators of such crimes; and

WHEREAS, these law-enforcement officers have as a result of the training requirements imposed by the Criminal Justice Officers Training and Standards Commission and the efforts of the Bureau of Forensic Science become more proficient in their work and as a result have caused the arrests of an ever increasing number of alleged perpetrators of crime; and

WHEREAS, the average case load of an Attorney for the Commonwealth is increasing at such a dramatic rate that he is required to devote more time than previously in the prosecution of criminal cases; and

WHEREAS, the reorganization of the court system requires his appearance on a regular basis, in not only the circuit court, but the general district court and the juvenile and domestic relations district court; and

WHEREAS, in many jurisdictions there are part-time Commonwealth's Attorneys and part-time Assistant Commonwealth's Attorneys; and

WHEREAS, a Committee of the Virginia State Bar in Legal Ethics Opinion CO 2 of October thirty, nineteen hundred fifty-nine, suggested that the Virginia State Bar recommend to the General Assembly of Virginia that (1) Commonwealth's Attorneys be prohibited by law from engaging in a defense of any criminal cases, and (2) that the compensation to Commonwealth's Attorneys be substantially increased to a level adequately providing for their of income as a result of this change; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring That the Virginia Advisory Legislative Council is directed to the question of whether or not the position of Commonwealth's Attorney should be full time in all jurisdictions of Commonwealth and the costs of providing for a full time position in all localities, and to make such recommendations as may be deemed appropriate.

It is recommended that the Council appoint a study committee composed of fourteen members and that two shall be Attorneys for the Commonwealth, two shall be attorneys licensed to practice law in this State specializing in criminal matters, two shall be interested citizens at large who shall not be attorneys, three shall be appointed from the membership of the Senate, and five shall be appointed from the membership of the House of Delegates.

The findings and recommendations of the Council shall be submitted to the Governor and the General Assembly no later than December one, nineteen hundred seventy-six.

Pursuant to the direction of the Resolution, the Council appointed a Committee to conduct an initial study and report to it.

George E. Allen, Jr., of Richmond City, an attorney-at-law, a member of the House of Delegates, and of the Council, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons were chosen to serve as members of the Committee with Mr. Allen: Hunter B. Andrews, a member of the Senate, and an attorney-at-law, Hampton; Howard P. Anderson, a member of the Senate and an attorney-at-law, Halifax; A. Joe Canada, Jr., a member of the Senate and an attorney-at-law, Virginia Beach; C. Hardaway Marks, a member of the House of Delegates and an attorney-at-law, Hopewell; A. L. Philpott, a member of the House of Delegates and an attorney-at-law, Bassett; Floyd C. Bagley, a member of the House of Delegates and an attorney-at-law, Prince William; Raymond R. Robrecht, a member of the House of Delegates and an attorney-at-law, Salem; Martin F. Clark, Commonwealth's Attorney of Patrick County; Robert F. Horan, Jr., Commonwealth's Attorney of Fairfax County; E. Carter Nettles, Jr., Commonwealth's Attorney of Sussex County; Royuston Jester, III, an attorney-at-law, Lynchburg; Joseph A. Massie, Jr., an attorney-at-law, Winchester; Stephen M. Phelps, an insurance broker, Rustburg; Thomas S. Winston, an attorney-at-law, Chesterfield; Sam Garrison, an attorney-at-law, Roanoke; and Claudette B. McDaniel, a housewife, Richmond.

Valuable counsel and assistance to the Committee was provided by the Honorable Fred G. Pollard, former Lieutenant Governor of Virginia, Chairman of the Compensation Board, and by John M. Rasnick, Jr., Executive Secretary of the Board. The Division of Legislative Services provided research and counsel to the Committee in its study.

The Committee submitted its report to the Council, and we have reviewed and studied it with care. We now submit the following report and recommendations.

### **PRELIMINARY STATEMENT**

The Committee spent many hours hearing testimony, and in deliberation. Philosophically, it was the feeling of a majority of the Committee that Commonwealth's Attorneys should serve full time. The Council agrees. Economic, traditional and political factors, however, inhibit a recommendation that this policy be undertaken at once. Accordingly, this report, and the legislation appended to implement it, is intended as a first step toward this goal. Further study is indicated.

### **RECOMMENDATIONS**

1. Since January 1, 1976, Commonwealth's Attorneys and their assistants in cities of more than 90,000 have been required to serve full time. (§ 15.1-821, Code of Virginia). Evidence considered by the Council is most persuasive that the trial work in these cities has become substantially more professional and successful since this

requirement has come into effect. The high crime rate demands efficient, effective and full time prosecuting attorneys to counter efficient, effective and full time defense attorneys.

The Council also finds that a majority of Commonwealth Attorneys who serve in the large jurisdictions are, in a practical sense, already full time. Any private practice undertaken by them is on a selective moonlighting basis.

Therefore, the Council recommends that upon commencement of a new term for any Commonwealth's Attorney, that he and all his assistants devote full time to their duties in cities and counties of 35,000 or more. There are only five cities between 35,000 and 90,000 population.

The Council further recommends that the minimum salary for the Commonwealth Attorney be \$25,000 with a maximum not to exceed 90% of the salary of the Circuit Court Judge. The salary of the Commonwealth Attorneys and their assistants shall be fixed by the Compensation Board as at present.

Based on the latest population studies by the Tayloe Murphy Institute (as of July 1, 1975), there are eighteen counties which have, or shortly will have, 35,000 or more population and they currently have, or will be recommended by the Board to have, sixty-nine Assistant Commonwealth Attorneys, as follows:

<u>County</u>	<u>Population</u>	<u>Number of Assistant Commonwealth Attorneys</u>
Fairfax	514.3	12
Henrico	170.6	9
Arlington	152.0	8
Prince William	123.8	6
Chesterfield	102.0	4
Roanoke	78.5	3
Pittsylvania	62.6	1
Montgomery	58.0	1
Henry	55.1	2
Rockingham	52.5	1
Campbell	50.7	(1) recommended
Augusta	49.1	1
Loudoun	48.9	3
Albermarle	46.7	2
Hanover	46.2	2
Tazewell	44.8	1
Wise	41.0	(1) recommended
Washington	39.3	1

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Fourteen cities have 35,000 population or more. The nine having 90,000 or more are already full time. The five between 35,000 and 90,000, with their ten assistants, are:

<u>City</u>	<u>Population</u>	<u>Number of Assistant Commonwealth Attorneys</u>
Lynchburg	52.9	3
Suffolk	47.5	1

Danville	46.0	2
Petersburg	44.9	2
Charlottesville	40.4	2

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The average salaries of the Commonwealth Attorneys are estimated at \$27,500 and their assistants at \$18,000. Based on these estimates the following is our projection of the cost:

	Present Costs	Estimated Costs	Difference
18 Commonwealth Attorneys	\$ 474,904	\$ 632,500	\$ 157,596
63 Assistant Commonwealth Attorneys	830,456	1,242,000	411,544
Other	347,577	524,069	176,492
<b>Total</b>	<b>\$1,652,937</b>	<b>\$2,398,569</b>	<b>\$ 745,632</b>

While the foregoing estimates, which were made by the Compensation Board are based on 1976 figures, it is represented to the Council that the difference between the present system, and the new proposals, would be relatively small.

Presently, the State pays one-half of these costs. Since other recommendations diminish the obligation of the Commonwealth's Attorneys to perform other duties for the locality, it is proposed that the State pay 60% of these costs. This would entail an estimated extra cost to the State of \$447,379.

Any Commonwealth Attorney and the governing body of his city or county may jointly elect to come into the full time system immediately, in which case the salary increases, and the State locality sharing provisions as to that city or county, will become effective upon application to the Compensation Board.

Implementation of this recommendation is contingent upon the availability of funds from the general fund of the Commonwealth.

2. The practice of criminal law by Commonwealth Attorneys, and their assistants, has presented a thorny problem for many years, and which has provided myriad opinions from the Virginia State Bar Committee. A majority of the Commonwealth Attorneys who appeared before the Committee do not presently engage in any such practice and prohibit their assistants from doing so. While there is no evidence in any particular that any impropriety is taking place, in many instances, the effect upon a jury of such an officer, whose public image is coupled with that of law enforcement, appearing in behalf of one who is charged with transgressing these laws may be less than subtle. In any event, it is the opinion of the Council that in order to preserve public confidence in the integrity of the legal profession as a whole, and in the office of the Commonwealth's Attorney in particular, the General Assembly should lay this problem to rest and prohibit the practice of criminal law by any Commonwealth Attorney, or his assistant. In settling

this policy question, evil is avoided, but more importantly, the appearance of impropriety is prevented.

3. In keeping with the philosophy that the office of Commonwealth's Attorney be involved with criminal matters only, the Council believes that relief from carrying out duties of a purely civil nature should be given this officer. The Commonwealth Attorney should not be expected or required to furnish sophisticated advice for complicated civil problems. In an age of specialization, these problems should be undertaken by a specialist.

To this end, we recommend:

(A.) That Commonwealth Attorneys not be required to defend constitutional officers who are sued civilly in their official capacities. The judges of the circuit court of the county or city should be empowered to appoint counsel, and fix his compensation.

(B.) In counties of 15,000 or more, Commonwealth attorneys shall not be required to represent or be advisors to the governing body or its agencies, except in criminal matters.

4. Complaint was made by some Commonwealth Attorneys that they are required to appear in cases involving very trivial misdemeanors. The truth of the complaint is apparent upon a reading of the Code of Virginia, which is replete with the imposition of duties of prosecution in all manner of problems involving agriculture, civil remedies, conservation, annexation, drainage, taxation, sales and other areas in which State agencies should more properly bear the responsibility of seeing that the law is observed. To this end, the Council recommends that, in addition to all felony cases, and other indictments or presentments, the prosecutorial duties of the Commonwealth Attorney be mandated to the prosecution of serious misdemeanors, ic. Classes 1, 1 and 3.

5. As stated in the Preliminary Statement, it is the opinion of the Council that as a long-range proposition, Commonwealth's Attorneys should all be full time. As a practical matter, this is not presently feasible.

Section 4 of Article VII of the Constitution of Virginia provides as follows:

§ 4. County and city officers.—There shall be elected by the qualified voters of each county and city a treasurer, a sheriff, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and a commissioner of revenue. The duties and compensation of such officers shall be prescribed by general law or special act.

Regular elections for such officers shall be held on Tuesday after the first Monday in November. Such officers shall take office on the first day of the following January unless otherwise provided by law and shall hold their respective offices for the term of four years, except that the clerk shall hold office for eight years.



The General Assembly may provide for county or city officers or methods of their selection, including permission for two or more units of government to share the officers required by this section, without regard to the provisions of this section, either (1) by general law to become effective in any county or city when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon in each such county or city, or (2) by special act upon the request, made after such an election of each county or city affected. No such law shall reduce the term of any person holding an office at the time the election is held. A county or city not required to have or to elect such officers prior to the effective date of this Constitution shall not be so required by this section.

The General Assembly may provide by general law or special act for additional officers and for the terms of their office.

The smaller counties have no need for a full time Commonwealth Attorney. He would simply not have enough to do to justify his salary. The problems presented by the sharing of this officer by more than one county, permitted by the Constitution, are not immense. The Council, however, is of the opinion that a Constitutional question should be settled before a serious study of these problems be undertaken. The question is: may two or more units of government share a single officer under the provisions of Article VII, Section 4 of the Constitution?

Article VII, Section 4 of the Constitution is plain that the General Assembly may permit the sharing of all constitutional officers by two or more units of government. The General Assembly recognized this in enacting § 15.1-40.2 in the 1971 Extra Session. § 15.1-40.2 set up procedures whereby all constitutional officers could be shared. In 1976 the section was amended so as to permit the sharing of the "officer or officers if less than all". Thus, if the amendment is constitutional, no problem exists.

The Council entertains some doubt as to the validity of § 15.1-40.2, as amended, since the Constitution refers to the sharing of "officers," not "officer or officers." However, in its study of the problem, the Council perused the Constitutional debates of the General Assembly, and found that Senator Hopkins, the then Chairman of the Senate Committee on Local Government, in his explanation of Article VII, Section 4, made reference to joint clerks, or joint sheriffs, creating the inference that single officers may have been intended. (Senate Debates. p.313)

If the amendment is invalid, an amendment of Section 4 of Article VII is indicated, so as to permit the sharing of a single officer.

The Council recommends, therefore, that the Attorney General be empowered and directed to seek judicial determination of the validity of § 15.1-40.2.

## **CONCLUSION**

The Council has been materially assisted by the testimony and written material to it by individual Commonwealth Attorneys appearing before the Committee or in writing setting forth their views. Some of these views differ materially with the philosophy and recommendations set out herein. It is hoped that these differences will be resolved, and that understanding between opposing views will mature with the passage of time.

Nothing, however, that the Council has found in its deliberations has led it to believe that the administration of criminal justice in Virginia is, or has been, conducted on less than the highest plane.

Respectively submitted,

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A BILL to amend and reenact §§ 14.1-53, 14.1-64 and 15.1-821, as amended, of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 15.1-50.1, relating to salaries of Commonwealth's Attorneys in cities and counties, full-time Commonwealth's Attorneys, and their assistants; proportion of such salaries to be borne by the State and localities; to provide a date for the amendment to become effective; optional compliance.

Be it enacted by the General Assembly of Virginia:

1. That §§ 14.1-53, 14.1-64 and 15.1-821, as amended, of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 15.1-50.1 as follows:

§ 14.1-53. Limits for salaries of Commonwealth's Attorneys and assistants.—The annual salaries of attorneys for the Commonwealth shall be within the limits hereinafter prescribed, that is to say:

In counties having a population of ~~fifty~~ *thirty-five* thousand inhabitants or less, such salaries shall be ~~not less than ten thousand eight hundred dollars nor more than twenty~~ *five thousand five hundred seventy* dollars.

~~In counties having a population of more than fifty thousand inhabitants but not more than one hundred thousand inhabitants, such salaries shall be not less than thirteen thousand seven hundred eighty dollars nor more than twenty five thousand seven hundred forty dollars.~~

~~In counties having a population of more than one hundred thousand inhabitants but not more than one hundred fifty thousand inhabitants, such salaries shall be not less than fifteen thousand one hundred dollars nor more than twenty nine thousand four hundred eighty dollars.~~

~~In counties having a population of more than one hundred fifty thousand inhabitants, or more than two thousand inhabitants per square mile, such salaries shall be not less than eighteen thousand eight hundred sixty five dollars nor more than thirty two thousand two hundred thirty dollars.~~

*In counties having a population of more than thirty-five thousand inhabitants, such salaries shall be not less than twenty-five thousand dollars, nor more than ninety per centum of the total compensation of the resident circuit court judge.*

*In cities having a population of not more than ~~fifty~~ *thirty-five* thousand inhabitants, such salaries shall be ~~not less than ten thousand eight hundred dollars nor more than twenty~~ *five thousand five hundred seventy* dollars ; *provided, however, that in cities having a population of more than twenty-five thousand inhabitants and less than thirty-five thousand inhabitants, such salaries shall not be less than twenty-five thousand dollars nor more than ninety per centum of the total compensation of the resident circuit judge, if such compensation is agreed upon by the Commonwealth's Attorney, the Council of the**

*City and the Compensation Board.*

~~In cities having a population of more than fifty thousand inhabitants but not more than ninety thousand inhabitants, such salaries shall be not less than thirteen thousand seven hundred eighty dollars nor more than twenty five thousand seven hundred forty dollars.~~

~~In cities having a population of more than ninety thousand inhabitants, such salaries shall be not less than fifteen thousand dollars nor more than thirty six thousand dollars.~~

*In cities having a population of more than thirty-five thousand inhabitants, such salaries shall be not less than twenty-five thousand dollars, nor more than ninety per centum of the total compensation of the resident circuit court judge.*

In cities and counties having a population of ~~ninety~~ more than thirty-five thousand inhabitants ~~or more~~, the Compensation Board, in determining the salary for the Attorney for the Commonwealth and his assistants therein, shall consider the provisions of § § 15.1-50.1 and 15.1-821 requiring that such attorneys serve on a full-time basis, and shall also consider the amount of the salary paid the city or county attorney of such city or county and his assistants.

In any city which contains a State penitentiary, the Board shall consider, when fixing the salary of the Attorney for the Commonwealth and his assistants in such city, the special or additional duties attendant upon such attorneys by reason of the location of such penitentiary.

But nothing herein contained shall prevent the governing body of any county or city from supplementing the salary of the Attorney for the Commonwealth in such county or city for additional services not required by general law, provided that any such supplemental salary shall be paid wholly by such county or city.

Whenever an Attorney for the Commonwealth is such for a county and city together, or for two or more cities, the aggregate population of such political subdivisions shall be the population for the purpose of arriving at the classification of such Attorney for the Commonwealth under the provisions of this section and such Attorney for the Commonwealth shall receive as additional compensation the sum of one thousand dollars.

Each assistant Attorney for the Commonwealth, authorized by law, if his services shall be deemed necessary by the Compensation Board, shall receive an annual salary which shall not equal or exceed the salary received by the Attorney for the Commonwealth of his county or city; provided, however, that after January one, nineteen hundred ~~seventy six~~ eighty, in cities having a population of ~~ninety~~ more than thirty-five thousand inhabitants ~~or more~~, the Compensation Board shall not provide any compensation for any assistant Attorney for the Commonwealth when the Commonwealth's Attorney for any such city does not serve on a full-time basis or engages in the practice of law outside of his duties as Attorney for the Commonwealth.

Notwithstanding any of the foregoing provisions of this section, the Compensation Board may, with the consent of the Attorney for the Commonwealth affected thereby, fix the salary of any Attorney for the Commonwealth at an amount less than the minimum provided hereinbefore.

§ 14.1-64. Proportion borne by State and by localities.—The salaries, expenses and other allowances of Attorneys for the Commonwealth in counties and cities shall be paid in the proportion of ~~one half~~ *forty per centum* by the respective counties and cities and ~~one half~~ *sixty per centum* by the Commonwealth.

The salaries, expenses and other allowances of treasurers and commissioners, or any officers, whether elected or appointed, who hold the combined office of county or city treasurer and commissioner of the revenue in the counties and cities shall be paid in the proportion of one half by the respective counties and cities and one half by the Commonwealth, except as hereafter in this section provided.

The salary, expenses and other allowances of any city treasurer who neither collects nor disburses local taxes or revenues shall be paid entirely by the Commonwealth and the salary, expenses and other allowances of any city treasurer who disburses local revenues but does not collect the same shall be paid in the proportion of one third by the city and two thirds by the Commonwealth.

In the case of each county and city treasurer except a city treasurer who neither collects nor disburses local taxes or revenues, and in the case of each county and city commissioner of the revenue, the cost of such office furniture, office equipment and office appliances as may be specifically authorized by and included in the then current expense allowance made to such officer under the provisions of Articles 7 (§ 14.1-48 et seq.) and 8 (§ 14.1-53 et seq.) of this chapter, shall be paid in the proportion of two thirds by the county or city and one third by the Commonwealth. The prices paid for such office furniture, office equipment and office appliances shall not be in excess of the prices available to the State if such purchases were made through the Department of Purchase and Supplies. The words "office furniture, office equipment and office appliances," as used in this paragraph, mean such items of this character as have a useful life of more than one year; and the word "cost," as used in this paragraph, may include a rental cost, in the discretion of the Compensation Board, in any case in which, in the opinion of the Board, such rental cost, in whole or in part, is properly includible in the expense allowance.

If any county or city commissioner of the revenue or county or city treasurer uses any forms, sheets or books of any kind for the assessment or collection of State or local taxes or levies, or in connection with the assessment or collection of such taxes or levies, in lieu of the standard forms, sheets or books furnished by the State, no part of the cost of such forms, sheets or books shall be paid by the State, but their entire cost shall be paid out of the treasury of the county or city whose governing body, required, authorized or consented to their use. This paragraph shall not be construed as

enlarging the existing powers of local governing bodies to require, authorize or consent to the use of such forms, sheets or books.

The cost of all forms, sheets and books of all kinds used for the assessment or collection of local license and local excise taxes or used in connection with the assessment or collection of local license and local excise taxes, shall be paid entirely out of the local treasury, including the cost of any tags, stamps, stickers, or other devices intended to evidence the payment of any such local license or local excise taxes.

The cost of all forms, sheets and books of all kinds used in the ascertainment, billing or collection of charges for utility or other special services rendered by a county or city, or by any district or agency thereof shall be paid entirely by the locality, although it may be the duty of the treasurer or the commissioner of the revenue to ascertain or collect such charges under applicable provisions of law.

The governing body of each county and city shall provide suitable office space for the treasurer and commissioner of the revenue, together with the necessary heat, light, water and janitorial service. The entire cost of providing such office space, heat, light, water and janitorial service shall be paid out of the local treasury.

The provisions of this section, as amended, shall not affect any county operating under an optional form of organization and government as provided by Chapters 13 (§ 15.1-582 et seq.) and 14 (§ 15.1-669 et seq.) of Title 15.1.

*§ 15.1-50.1. In counties having a population of more than thirty-five thousand, Commonwealth's Attorneys and all assistant Attorneys for the Commonwealth shall devote full time to their duties, and shall not engage in the private practice of law.*

**§ 15.1-821. Commonwealth's Attorneys for cities.**—In every city there shall be elected, for a term of four years, by the qualified voters of such city, an Attorney for the Commonwealth. Any city not required to have or to elect such officer prior to July one, nineteen hundred seventy-one, shall not be so required by this section. Assistant Attorneys for the Commonwealth for cities may be appointed by the Attorney for the Commonwealth for such city after having first received approval of the governing body of such city and of the Compensation Board for a term of office coterminous with his own, who shall receive such compensation as shall be fixed in the manner provided by law. All assistant Attorneys for the Commonwealth shall perform such duties as are prescribed by their respective Attorney for the Commonwealth. In cities having a population of *more than thirty-five thousand* ~~or more than ninety thousand~~, Commonwealth's Attorneys and all assistant Attorneys for the Commonwealth shall devote full time to their duties, and shall not engage in the private practice of law, ~~except in such cases as they may have been employed as counsel on July one, nineteen hundred seventy five~~. *In cities having a population of more than twenty-five thousand and less than thirty-five thousand, Commonwealth's Attorneys and all assistant Attorneys for the Commonwealth shall devote full time to their duties, and shall not engage in the private practice of law, if the Commonwealth's Attorney, the Council of the City and the Compensation Board all concur that he shall so serve. The office of assistant*

Attorney for the Commonwealth heretofore created and provided for in the charters of such cities is hereby abolished.

2. The amendments to the respective sections and the new section set out in this act shall be effective on and after January one, nineteen hundred eighty; provided, that in any city or county in which a Commonwealth's Attorney is elected prior to the Tuesday succeeding the first Monday in November, nineteen hundred seventy-nine, the provisions of this Act shall be effective on the first day of January following the year in which such election is held; and provided further, that upon prior written application by the Commonwealth's Attorney of any county or city and the governing body of such county or city to the Compensation Board requesting that the provisions of this act be made applicable within such county or city, then the provisions hereof shall become applicable forthwith, or upon such date as may be set out in the application.



A BILL to amend and reenact §§ 15.1-9.1, 15.1-9.1:1, 15.1-109, 15.1-286, 15.1-507, 15.1-558, 15.1-608, 15.1-643, 15.1-706, and 15.1-822, as severally amended, of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 15.1-8.1, the amended and new sections relating to the duties of Commonwealth's Attorneys and their assistants; to repeal all laws in conflict with this act to the extent of such conflict.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-9.1, 15.1-9.1:1, 15.1-109, 15.1-286, 15.1-507, 15.1-558, 15.1-608, 15.1-643, 15.1-706, and 15.1-822, as severally amended, of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 15.1-8.1, as follows:

*§ 15.1-8.1. Duties of Commonwealth's Attorneys and their assistants.—A. Except in counties having a population of fifteen thousand or less, no Commonwealth's Attorney, or assistant Commonwealth's Attorney, shall be required to carry out any duties as a part of his office in civil matters of advising the governing body and all boards, departments, agencies, officials and employees of his county or city, of drafting or preparing county or city ordinances, of defending or bringing actions in which the county or city, or any of its boards, departments or agencies, or officials and employees thereof, shall be a party, or in any other manner advising or representing the county or city, its boards, departments, agencies, officials and employees, except in matters involving the enforcement of the criminal law within the county or city.*

*B. The Commonwealth's Attorney and assistant Commonwealth's Attorney, shall be a part of the department of law enforcement of the county or city in which he is elected or appointed, and shall have the duty and powers imposed upon him by general law, including the duty of prosecuting all warrants, indictments or informations charging felony and Class 1,2, and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of five hundred dollars or more, or both such confinement and fine. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.1-356.*

**§ 15.1-9.1. Appointment and duties of county attorneys in certain counties having a density of population in excess of 500 per square mile.—The governing body of any county having a density of population in excess of five hundred inhabitants per square mile and adjoining a city situated wholly within the State and having a population in excess of two hundred thousand, and the governing body of any county having a population of more than four thousand per square mile may create the office of county attorney. Such a county attorney to be appointed annually by the county manager, and who shall serve at a salary to be fixed by the board of county supervisors. ~~In the event of the appointment of such county attorney, the Commonwealth's attorney shall be relieved of the duties of advising the board of county supervisors, of drafting or preparing county ordinances and of defending or bringing civil actions in which the county or any of its officials shall be a party, and all such duties shall be performed by the county attorney and he who shall be accountable to the county manager in all such matters.~~**

No person shall be appointed a county attorney under the

provisions of this section unless at the time of his appointment he shall be admitted to practice before the Supreme Court of Virginia.

§ 15.1-9.1:1. Creation of office of county attorney authorized; appointment, salary and duties.—Except as provided in §§ 15.1-9.1 and 15.1-9.2, the governing body of any county may create the office of county attorney. Such county attorney shall be appointed by the governing body to serve at the pleasure of the governing body. He shall serve at a salary to be fixed by the governing body. In the event of the appointment of such county attorney, the attorney for the Commonwealth of any such county shall be relieved of ~~the any~~ duty *imposed upon him by law* in civil matters of advising the governing body and all boards, departments, agencies, officials and employees, of the county, of drafting or preparing county ordinances, of defending or bringing actions in which the county or any of its boards, departments or agencies, or officials or employees, thereof, shall be a party, and in any other manner advising or representing the county, its boards, departments, agencies, officials and employees, and all such duties shall be performed by the county attorney. Nothing herein, however, shall relieve ~~the such~~ attorney for the Commonwealth from any of the other duties imposed on him by law including those imposed by § § 2.1-356 and ~~15.1-66.1~~. The county attorney shall be accountable to the governing body in the performance of his duties.

§ 15.1-109. Award or rejection of bids; records.—All open market orders or contracts made by the county purchasing agent or by any county department or agency shall be awarded to the lowest and best bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the county government, and the delivery terms. Any or all bids may be rejected. If all bids received on a pending contract are for the same unit price or total amount, the county purchasing agent shall have authority to reject all bids and to purchase the required supplies, materials, equipment or contractual services in the open market, provided the price paid in the open market shall not exceed the bid price. Each bid, with the name of the bidder, shall be entered on a record and each record with the successful bid indicated thereon shall, after the award of the order or contract, be open to public inspection.

All contracts shall be approved as to form by the *county attorney or other qualified attorney for the Commonwealth* and a copy of each long-term contract shall be filed with the treasurer or other chief financial officer of the county.

§ 15.1-286. Approval and acceptance of conveyances of real estate to counties.—Every deed purporting to convey real estate to a county shall be in a form approved by ~~the Commonwealth's attorney, or the county attorney in those counties which have created the office of county attorney,~~ for the county to which such conveyance is made, *or if there be no such attorney, then a qualified attorney at law selected by the governing body.* No such deed shall be valid unless accepted by the county, which acceptance shall appear on the face thereof and shall be executed by a person authorized to act on behalf of the county pursuant to a resolution duly adopted by the

governing body of such county; provided, however, that the provisions of this section shall not apply to any conveyance of real estate to any county under the provisions of the Virginia Land Subdivision Act.

§ 15.1-507. Protection of county property; employment of assistant counsel.—The governing body of any county may represent the county and have the care of the county property and the management of the business and concerns of the county, in all cases in which no other provisions shall be made and, when necessary, may employ counsel to ~~assist the attorney for the Commonwealth~~ in any suit against the county or in any matter affecting county property when the board is of the opinion that such counsel is needed.

§ 15.1-558. Settlement of claims against treasurer or former treasurer of county.—The boards of supervisors may, with the advice and consent of the ~~Commonwealth's county~~ attorney of the ~~county~~, adjust and settle upon equitable principles, without regard to strict legal rules, any judgment, the collection of which is doubtful, which may exist in favor of the county against any treasurer or ex-treasurer of the county and his sureties. But before such adjustment or settlement shall in anywise affect the rights of the county, it shall be submitted to the judge of the circuit court of the county, accompanied by a written statement signed by the chairman of the board of supervisors of the county of the facts and reasons which, in the opinion of the board, render such adjustment and settlement just and proper. When the court shall approve and endorse the same, it shall enter an order in its records of such approval, whereupon it shall become valid and binding.

But notwithstanding the foregoing provisions of this section, or any provisions of any other statute or act to the contrary, when any such judgment or claim shall have been standing for seven years or more and the original principal of the debt or obligation out of which the same grew has been paid, the board, with the consent and approval of the ~~Commonwealth's county~~ attorney of the ~~county~~, may accept in compromise of such judgment or claim, such amount or amounts as such board may deem proper, and under such circumstances such board may adopt and enter of record in its minute book a resolution reciting such compromise and the terms thereof and authorizing the ~~Commonwealth's county~~ attorney to accept such settlement on behalf of the county and, upon the payment of the amount so agreed to be accepted, to execute a receipt therefor, in full settlement of such claim, suit or judgment and to dismiss the suit or mark the judgment satisfied of record.

*If the county has no county attorney, the board may employ a qualified attorney at law to represent it in the settlement of such claims.*

§ 15.1-608. Department of law enforcement.—The department of law enforcement shall consist of an Attorney for the Commonwealth and a sheriff, together with their assistants, deputies and employees, and such police as may be appointed pursuant to this section and § 15.1-598.

The Attorney for the Commonwealth shall exercise all the powers conferred and perform all the duties imposed upon such officer by general law and shall be accountable to the board of county supervisors in all matters affecting the county and shall perform such duties, not inconsistent with his office, as the board of county supervisors shall direct. He shall be selected as provided in § 15.1-614.

The department of law enforcement may also include a county attorney to be appointed annually by the board of county supervisors and, who shall serve at an annual salary as fixed by the board of county supervisors. In the event of the appointment of such county attorney, the Commonwealth's attorney shall be relieved of the duties of advising the board of county supervisors, of drafting or preparing county ordinances and of defending or bringing civil actions in which the county or any of its officials shall be a party, and all such duties shall be performed by the county attorney and he who shall be accountable to the board of county supervisors in all such matters.

The sheriff shall exercise all the powers conferred and perform all the duties imposed upon sheriffs by general law. He shall have the custody of, and be charged with the duty of feeding and caring for, all prisoners confined in the county jail. He shall perform such other duties as may be imposed upon him by the board of county supervisors.

The county executive shall have supervision and control of the police force of the county. Such police may be appointed pursuant to § 15.1-598, and all police officers appointed by the board of county supervisors, pursuant to such section, including the chief of the department, shall be conservators of the peace in the county and shall be charged with the enforcement of all criminal laws throughout the confines of the county.

§ 15.1-643. Department of law enforcement.—The department of law enforcement shall consist of an Attorney for the Commonwealth and a sheriff, together with their assistants, deputies and employees, and any police appointed by the county manager, except as otherwise provided in § 15.1-649.

The Attorney for the Commonwealth shall exercise all the powers conferred and perform all the duties imposed upon such officer by general law and shall be accountable to the board of county supervisors in all matters affecting the county and shall perform such duties, not inconsistent with his office, as the board of county supervisors shall direct. He shall be selected as provided in § 15.1-652.

The sheriff shall exercise all the powers conferred and perform all the duties imposed upon sheriffs by general law. He shall have the custody, feeding and care of all prisoners confined in the county jail. He shall perform such other duties as may be imposed upon him by the board of county supervisors. The sheriff shall be selected as provided in § 15.1-652. The sheriff and such other deputies and assistants appointed hereunder shall receive such compensation as

the board of county supervisors may prescribe. Any policeman appointed by the county manager pursuant to § 15.1-634 shall be under the supervision and control of such county manager and such policeman shall have such powers as special policemen as may be provided for by general law.

§ 15.1-706. Attorney for the Commonwealth, county clerk, sheriff, commissioner of the revenue and treasurer of the county.—  
(a) The Attorney for the Commonwealth, the county clerk, the sheriff, the commissioner of the revenue and the treasurer of the county, in office immediately prior to the day upon which the county board form becomes effective in the county shall continue, unless sooner removed, as Attorney for the Commonwealth, county clerk, sheriff, commissioner of the revenue and treasurer, respectively, of the county until the expiration of their respective terms of office and until their successors have qualified. Thereafter such officers shall be elected in such manner and for such terms as provided by general law.

(b) When any vacancy shall occur in any office named in the foregoing paragraph, the judge of the circuit court of the county shall issue a writ of election to fill such vacancy. The election shall be held in the next succeeding November election or, if the vacancy occurs within one hundred and twenty days prior to such election, the second ensuing general election. The person so elected shall hold office for the unexpired term of the officer whom such person is elected to succeed. The judge of the circuit court of the county may make a temporary appointment to fill such vacancy until the people fill the same by election as herein provided.

(c) Each officer named in paragraph (a) of this section, may appoint such deputies, assistants and employees as he may require in the exercise of the powers conferred and in the performance of the duties imposed upon him by law.

(d) Each officer named in paragraph (a) of this section shall, except as otherwise provided in the county board form of county organization and government, exercise all the powers conferred and perform all the duties imposed upon such officer by general law. *Except as provided by general law*, he shall be accountable to the board of county supervisors in all matters affecting the county and shall perform such duties, not inconsistent with his office, as the board of county supervisors shall direct.

§ 15.1-822. Duties, etc., of city clerks of courts and Commonwealth's Attorneys.—~~The clerk of the corporation or hustings circuit court of a city and the clerk of the circuit and chancery courts, or any other courts thereof,~~ and the Attorney for the Commonwealth of a city shall perform like duties, receive the same fees and be subject to the same liabilities as the clerks of the circuit courts and Attorneys for the Commonwealth of counties; and such ~~officers, and each of them,~~ clerk shall, in addition, perform such other duties, receive such compensation therefor and be subject to such liabilities in respect thereto as may be prescribed in the charter of the city or by law or shall be lawfully imposed by its council.

**2. All laws and parts of laws in conflict, or inconsistent, with the provisions of this Act are repealed to the extent of such conflict or inconsistency.**

**A BILL to amend the Code of Virginia by adding a section numbered 54-45.1, so as to prohibit the practice of criminal law by Commonwealth's Attorneys and their assistants; unprofessional conduct.**

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 54-45.1 as follows:**

*§ 54-45.1. If any Commonwealth's Attorney or assistant Commonwealth's Attorney shall act as attorney at law in the defense of any case in which a criminal penalty may be imposed, he shall be guilty of unprofessional conduct; provided, the provisions of this section shall not be applicable where such defense is undertaken as a part of his regular duty as Commonwealth's Attorney or assistant Commonwealth's Attorney.*

A BILL to amend the Code of Virginia by adding in Article 3.1 of Chapter 2 of Title 15.1 a section numbered 15.1-66.4, so as to provide for legal counsel to Constitutional officers or their deputies and assistants in certain cases and to authorize compensation of such counsel; and to repeal §§ 15.1-66.1, as amended, and 15.1-66.2 of the Code of Virginia, relating to the same matter.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3.1 of Chapter 2 of Title 15.1 a section numbered 15.1-66.4 as follows:

*§ 15.1-66.4. Defense of Constitutional officers; appointment of counsel.—In the event that any treasurer, sheriff, Attorney for the Commonwealth, clerk or commissioner of the revenue is made defendant in any civil action arising out of the performance of his official duties, such officer may make application to the circuit court of the county or city in which he serves to assign counsel for his defense in such action. The court may, upon good cause shown, make such orders respecting the employment of an attorney or attorneys as may be appropriate, and fix his compensation. Reimbursement of any expenses incurred in the defense of such charge may also be allowed by the court. Such legal fees and expenses shall be paid from the treasury of the county or city, and reimbursement shall be made from the State Treasury in the proportions set out in § 14.1-64.*

2. That §§ 15.1-66.1, as amended, and 15.1-66.2 of the Code of Virginia are repealed.



**A BILL to authorize and direct the Attorney General of Virginia to institute proceedings in the nature of a declaratory judgment to determine the constitutionality of certain legislation and to confer jurisdiction upon the Supreme Court to hear such case.**

**Whereas, Section 4 of Article VII of the Constitution of Virginia provides:**

**Section 4. County and city officers.—There shall be elected by the qualified voters of each county and city a treasurer, a sheriff, an attorney for the Commonwealth, a clerk, who shall be clerk of the court in the office of which deeds are recorded, and a commissioner of revenue. The duties and compensation of such officers shall be prescribed by general law or special act.**

**Regular elections for such officers shall be held on Tuesday after the first Monday in November. Such officers shall take office on the first day of the following January unless otherwise provided by law and shall hold their respective offices for the term of four years, except that the clerk shall hold office for eight years.**

**The General Assembly may provide for county or city officers or methods of their selection, including permission for two or more units of government to share the officers required by this section, without regard to the provisions of this section, either (1) by general law to become effective in any county or city when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon in each such county or city, or (2) by special act upon the request, made after such an election, of each county or city affected. No such law shall reduce the term of any person holding an office at the time the election is held. A county or city not required to have or to elect such officers prior to the effective date of this Constitution shall not be so required by this section.**

**The General Assembly may provide by general law or special act for additional officers and for the terms of their office.**

**Whereas, the General Assembly, in its special session in 1971 enacted § 15.1-40.2, authorizing the sharing of all Constitutional officers by two or more units of government; and**

**Whereas, in its session of 1976, the General Assembly amended § 15.1-40.2 so as to permit the sharing of one or more of such officers; and**

**Whereas, doubt has now been cast on the validity of § 15.1-40.2 in that it may deviate from the Constitutional language of Section 4 of Article VII; and**

**Whereas, the General Assembly may, in the future, desire to enact legislation which will be controlled by § 15.1-40.2, and its validity becomes a matter of vital concern to the General Assembly; and**

Whereas, the General Assembly desires that the issue be resolved by a court of competent jurisdiction, in order that it be advised as to an appropriate method of procedure, that is, by Constitutional amendment or by legislation; now therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *The General Assembly declares that an actual controversy exists in the interpretation and constitutionality of § 15.1-40.2 of the Code of Virginia, within the meaning of § 8-578, and confers jurisdiction upon the Supreme Court of Virginia to hear and determine such controversy.*

§ 2. *The Attorney General of Virginia is authorized and directed to forthwith file in the Supreme Court of Virginia a suit for declaratory judgment respecting the interpretation, construction and constitutionality of § 15.1-40.2, as amended, of the Code of Virginia. In such proceedings, the Court shall consider and determine all questions raised by the suit, and all constitutional questions presented, whether raised in the suit or not.*

*The Executive Secretary of the State Board of Elections shall be made a party defendant to the suit, and the Court may, in its discretion, cause such other officers or persons to be made parties defendant as it deems proper, and may make such order respecting the employment of an attorney or attorneys for any State officer who is a party defendant as may be appropriate. The compensation of any such attorney shall be fixed by the Court, and upon its order paid out of the appropriation to the office or department of any such public office represented by such attorney.*

