

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

FREDERICK W. PAYNE , et al.

Plaintiffs,

v.

Case No. CL 17 - 145

CITY OF CHARLOTTESVILLE, VIRGINIA, et al.

Defendants

Plaintiff's Brief: Virginia's Veterans Monument Protection Law and the Dillon Rule

Summary

The Defendants' Answer to Plaintiff's Motion for Temporary Injunction in paragraphs 1 and 5 call into question the applicability of, and the Plaintiffs' likelihood of prevailing on, the Monument Protection Law. Their Demurrer, to the extent it may be considered to bear on the issue of a temporary injunction if at all, asserts in paragraph 3 that the law was "not in existence" at the time the Lee and Jackson monuments were erected.

First (as discussed in Plaintiffs' Briefs on the Danville Case, and Standing, incorporated here by reference) what matters is what the law is now, not what it was then.

Second, the Demurrer errs as a matter of historical fact: the predecessor to today's law was very much in existence. It had then and still has two main parts: a Dillon Rule authority for erecting war monuments and veterans memorials, and a prohibition against disturbing them once erected.

Parts 1) through 5) discuss the evolving Dillon Rule authority and prohibition. The law initially invited erecting Confederate monuments at the county seat. After 113 years and 11 amendments, now all localities in Virginia are allowed to erect monuments or memorials for veterans and wars, commemorating an expanding list of conflicts

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The prohibition precludes, and always precluded, localities from disturbing or interfering with monuments once erected. At first it only protected monuments erected at the county seat. Then monuments on any property owned by a locality. Now — today — it protects monuments and memorials erected anywhere within a locality's "geographic area."

Part 5) discusses the most recent amendments, and the law as it currently stands. Part 6) and the Conclusion summarize the multiple remedies the law envisions against local officials acting without authority in attempting to remove, disturb, or interfere with a war monument or veterans memorial.

1) The original 1904 Dillon Rule authority to create Confederate monuments

Before 1904, the Virginia legislature authorized monuments piecemeal, one at a time; for example, an act empowering Roanoke county and the town of Salem to buy a Confederate monument. cf. 1904 Va. Acts Ch. 30 (Exhibit 1 page 2).

Special legislation was required because Virginia follows the Dillon Rule: local governments are not sovereign in themselves and exercise "only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." [citations omitted] Sinclair v. New Cingular Wireless PCS, LLC, 727 SE 2d 40, 44; 283 Va. 567 (holding Albemarle County slope ordinance waiver void for exceeding delegated authority under Dillon Rule) ("Sinclair"). And "if there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body." Sinclair 727 SE 2d at 44; see also Tabler v. Board of Supr's of Fairfax County, 269 SE 2nd 358, 359, 221 Va. 200 (1980) (discussing Dillon rule; holding county lacked legislative authority for ordinance for

refund on beverage containers). ("Tabler")¹ Before 1904 a locality could not spend public money to erect a monument without obtaining the legislature's express permission, just for that one monument. See generally Local Government Autonomy and the Dillon Rule, at <http://www.virginiaplaces.org/government/dillon.html>

In 1904 the General Assembly for the first time issued a blanket authority that read:

Chap 29. —an ACT to empower the circuit court and board of supervisors of any county to authorize and permit the erection of a Confederate monument upon the public square at the county seat thereof.

Approved February 19, 1904

1. Be it enacted by the general assembly of Virginia, That the circuit court of any county be, and it is hereby, empowered, with the concurrence of the board of supervisors of such county entered of record, to authorize and permit the erection of a Confederate monument upon the public square of such county at the county seat thereof. And if the same shall be so erected, it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for the protection, preservation, and care of same. 1904 Va. Acts Ch. 29 (emphasis added) (Exhibit 1 page 2).

This 1904 law is the forebearer of what evolved through eleven amendments into our current law codified at Va. Code 15.2-1812 et seq. ("Monument Protection law").

¹ The city's Answer to Plaintiff's Motion for a Temporary Injunction in paragraph 3 calls what the city did "presumptively valid legislative action" but the city acted not only without conferred authority but contrary to an absolute prohibition — which under the Dillon rule makes it presumptively invalid. Indeed there is no need for a presumption: it was flat out invalid, proscribed, and void.

The provision allowing erection of monuments will be called the "Dillon Rule authority;" the provision prohibiting officials and others from disturbing or interfering with monuments once erected, the "prohibition." When the legislature has gone out of its way to proscribe authority, under the Dillon Rule courts must scrupulously enforce the proscription. See Sinclair 727 SE2d at 44 (saying the Dillon rule requires strict construction, doubts are resolved against governing body); Lamar Co. LLC v City of Richmond, 756 SE 2d 444, 446, 287 Va 348 (2014) (discussing difference between enabling legislation which is permissive and restrictive legislation limiting local government) ("Lamar").

2) Amendments in 1910 broadened the authority to allow county appropriations

The 1904 law proved inadequate, since it only authorized circuit courts to erect monuments with the "concurrence" of a board of supervisors, but did not explicitly authorize taxing and appropriations for that purpose. In 1910 the legislature expanded the Dillon rule authority to allow boards of supervisors to appropriate money for monuments, to raise taxes by special levy if necessary, and to receive private donations. The amendments conferred authority not merely to erect but to "permanently care for, protect or preserve the monuments." And "[a]n emergency existing by reason of the fact that many of the counties are ready to begin work on monuments and desire to make the appropriation at once," the act took effect "from its passage." 1910 Va. Acts Ch. 17 (Exhibit 2 page 2).²

The prohibition on disturbing or interfering with a monument once erected remained unchanged, and would until 1982.

² The "hurry up" language allowing immediate appropriations is an example of the legislature's always clear expectation that the Monument law should apply to monuments already created or in the process of being created, as well as those to be created in the future.

3) Amendments from 1930 to 1988 expanded the conflicts commemorated

In 1930 the General Assembly enlarged the Dillon rule authority to add World War I monuments to the Confederate monuments already eligible. And it invited "private persons, Confederate Veterans, World War veterans, or the American legion" to donate to supplement public funds for monuments and their care and preservation. 1930 Va. Acts Ch. 76 (Exhibit 3 page 2).

In 1942 the General Assembly codified the law in Title 25 under authority granted to boards of supervisors; there were no other changes. Va. Code Ann. §25-2742 (1942) (Exhibit 4 page 2).

In 1945 the General Assembly recodified the law, now in Title 15. They added the title "Memorials for War Veterans" and added two more wars to the Dillon rule authority list: the Spanish-American War and World War II. 1945 Va. Acts p. 47, codified at Va. Code Ann. §15-696 (1950) (Exhibit 5 pages 2 - 3).

In 1962 the General Assembly recodified the law again, this time at §15-270; there were no other changes. 1962 Va. Acts ch. 623, codified at Va. Code Ann. §15-270 (1950) (1973 Repl. Vol.) (Exhibit 6 page 2).

In 1982 the General Assembly added the Korean War and the Vietnam War, pluralized monuments and memorials, and in the prohibition changed "the same" to "such" so it read: "[a]nd if such shall be erected it shall not be lawful thereafter for the authorities of the county, or any other person or persons whatever, to disturb or interfere with any monuments . . ." 1982 Va. Acts Ch. 19 (Exhibit 7 page 2).

In 1988 the General Assembly changed the prohibition again, this time altering "[i]f such shall be erected" to "[i]f such are erected it shall be unlawful for the authorities of

the county . . . ”³ It also reworded the invitation to private funding by dropping Confederate veterans. 1988 Va. Acts Ch. 284 (Exhibit 8 page 2).

4) The 1997 and 1998 rewrites expanded the law from county seats to all localities

In 1997 the legislature revamped the Dillon Rule authority, substituting for boards of supervisors, court squares, and county seats — a “locality may authorize and permit the erection of monuments and memorials for any war or engagement designated in §2.1-21 upon any of its property” [emphasis added]. It also dropped the list of wars, though the omission proved to be temporary as the list returned the next year.

The prohibition remained unchanged, except it now became illegal for the authorities of a “locality” rather than just a county, “to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same.”

The 1997 amendments also once more recodified the provision, this time at §15.2-1812 where it remains to this day. 1997 Va Acts ch. 587 codified at Va. Code Ann. §15.2-1812 (1950) (1997 Repl. Vol.) (Exhibit 9 page 2).

In 1998 amendments, the General Assembly brought back the list of wars in the Dillon Rule authority and expanded it considerably, including for the first time Union monuments: “Algonquin (1622), French and Indian (1754-2763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846, 1848), Confederate or Union Monuments or Memorials of the War between the States (1861-1865) Spanish-American

³ At the risk of belaboring this point, the change from the future tense to the present indicative is yet another instance of clear legislative intent that the law is meant to apply to all existing monuments, not just monuments to come in the future after that amendment.

(1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), and Operation Desert-Shield-Desert Storm (1990-91)."

The 1998 amendments also extended the law's geographic coverage, to any monuments within the "geographic limits of the locality" — not merely monuments erected on property a locality owned.

Also in 1998 for the first time in 94 years the legislature expanded the prohibition. The legislature expanded the language "disturb or interfere with" to include "removal of, damaging or defacing monuments or memorials," or "placement of Union markings or monuments on previously designated Confederate memorials," or vice-versa.

(emphasis added). 1998 Va Acts ch. 752, codified at Va. Code Ann. §15.2-1812 (1950) (2002 Cum. Supp.) (Exhibit 10 page 2).

5) Amendments 2000 and after: the law as it stands today

The General Assembly in the year 2000 augmented the prohibition with an entirely new damages recovery procedure for "rebuilding, repairing, preserving and restoring" monuments, at §15.2-1812.1. The provision applied to any "monument, marker or memorial for war veterans" in either §15.2-1812, or the criminal vandalism statute §18.2-137. It invited a "person having an interest in the matter" to enlist the aid of the attorney for the locality, and failing that, sue for damages 60 days after a "violation or encroachment." The amendment was careful to preserve existing "rights of any person, organization, society, or museum to pursue any additional civil remedy otherwise allowed by law." 2000 Va. Acts ch. 812, codified at Va. Code Ann. §15.2-1812.1 (1950) (2002 Cum. Supp.) (Exhibit 10 page 3).

There would be two more additions to the Dillon Rule authority. One in the year 2005, when the legislature added Operation Iraqi Freedom to its list of wars: 2005 Va Acts ch.

390, codified at Va. Code Ann. 15.2-1812 (1950)(2008 Repl. Vol.) (Exhibit 11 page 2). The last in 2010 when the legislature added two more wars and redated one: "The Global war on Terrorism (2000 -), Operation Enduring Freedom (2001 -) and Operation Iraq Freedom (2003 —)." The codification cross references added "as to the penalty for injuring any monument, etc. see §18.2-137." 2010 Va Acts ch. 860, codified at Va. Code Ann. §15.2-1812 (1950) (2012 Repl. Vol.)(Exhibit 12 pages 2 & 4).

As of 2017, the law now stands as it did after the 2010 amendments.⁴ The text of the current law is reproduced in Exhibit 12 pages 2 - 4.

Virginia's Attorney General Mark Herring describes it as follows:

Simply put, the statute empowers a locality to authorize and permit a monument commemorating various wars and conflicts, including veterans of those wars, and thereafter to maintain it. It also bars "authorities of the locality " from disturbing or interfering with the monument, to include removing it . . . Finally, violation of the statute is a criminal offense that may range from a Class 3 misdemeanor to a Class 6 felony, depending on the nature of the conduct. (citations omitted). Opinion 15-050 __ Op. Va. Att'y Gen.__(2015)(online http://ag.virginia.gov/files/Opinions/2015/15-050_Whitfield.pdf) (Plaintiff's Brief: The Danville Case Exhibit 1 pages 1-2)("Atty General Opinion")

6) Remedies for willful Dillon Rule violation

Endeavoring to remove a monument is clearly an unauthorized use of government resources, and the law is long settled that a remedy for unauthorized expenditures is an

⁴ There was a failed amendment in 2016 when the legislature passed, but the governor vetoed, an amendment that would have overturned the ruling in the Danville case denying the protection of the law to a flag and the Sutherlin mansion. We discuss this ruling separately, see Plaintiff's Brief: The Danville Case.

injunction, and restitution of money improperly expended. A case from 1905 (the year after the forebearer of this law was first passed) indicates that even then already it was “well established doctrine that courts of equity have jurisdiction to restrain the illegal diversion of public funds” in the form of salaries paid without Dillon rule authority. Johnson v. Black, 49 S.E. 633, 635 103 Va. 477, 68 L.R.A. 264 (Va., 1905) (holding aberrant county officials must repay salaries). The court said taxpayers may:

... compel the restitution of public funds which have been illegally diverted and lodged in the hands of persons not entitled to the same, who have taken them with notice of the wrongful diversion, and the governing body of the subordinate or local government will not act or take the necessary steps to have such funds restored. Johnson v. Black 49 S.E. at 635 [multiple citations omitted].⁵

Such is the situation in the case at bar: illegal use of tax money by salaried public officials, notice, and a refusal to cease the illegal enterprise. An injunction affords means to stop the illegal conduct, and money damages prevent the Defendants from profiting by it. See e.g. United States v. Moore, 765 F. Supp. 1251 (E.D. Va., 1991) (holding government may recover salary illegally paid to defendant, the result of misusing his federal position); In re Petition to Suspend Burfoot (Norfolk Va. Cir., 2017) (Civil No.: CL16-13221)(p. 11)(requiring salary of city treasurer facing suspension for illegal acts to be held in separate account rather than paid to him until matter decided); City Of Lynchburg v. Amherst County, 80 S.E. 117, 119, 115 Va. 600, (Va., 1913) (holding county did have authority to pay bridge watchman; however if inter-jurisdiction agreement on maintaining the bridge had been ultra vires, county would have had no such authority); Booker v. Donohoe, 28 S. E. 584, 586 - 588; 96 Va. 359 (Va., 1897) (surveying cases from other jurisdictions; holding when county clerk office usurped by

⁵ While we are here concerned with the illegal use of public funds, rather than an illegal diversion to the officials themselves, the result is the same. Taxpayer money is being illegally spent.

intruder, the intruder serving as clerk forfeits salary illegally received); State ex rel. Koontz v. Smith, 134 W.Va. 876, 62 S.E.2d 548, 552 (W.Va., 1950)(interpreting law allowing recovery against a person who in his official capacity wilfully participates in an illegal expenditure to require allegation of wilful act); see also Arlington County et al. v. White, et al., 528 SE 2d 706, 707, 259 Va. 708 (2000) (according taxpayer standing to enjoin county single sex couple health coverage policy as ultra vires because it would increase tax expenditures).

Conclusion

The history of the law has been continuous expansion, widening coverage, and greater protection. To reiterate: the law now provides as it always provided Dillon Rule authority for local authorities to use taxpayer money to erect monuments. But it denies and always denied authority for removing them once erected, declares it to be illegal.

There are now four or five mechanisms (depending on how you count) to stop local officials from removing, disturbing, or interfering with, an existing war monument or veterans' memorial:

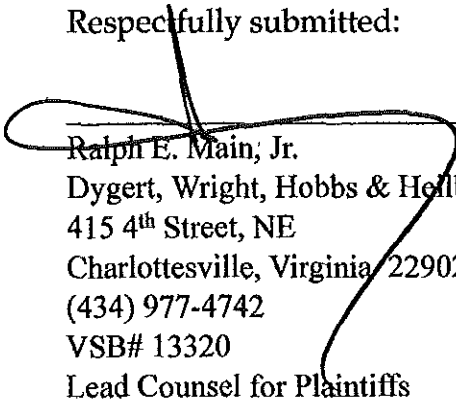
- 1) the declaration that it is unlawful for authorities of a locality to disturb or interfere with a monument makes such action ultra vires: outside Dillon Rule authority, null and void, see Sinclair 727 SE 2d at 49; Tabler 269 SE 2nd at 361; Lamar 756 SE 2d at 447 (each holding act of locality ultra vires). Taxpayers are empowered to sue to stop the waste of tax money — here, primarily city staff and City Councillor salaries and overhead costs — expended and to be expended on the illegal endeavor.
- 2) under the prohibition a locality cannot lawfully prevent “its citizens from taking proper measures and exercising proper means for the protection and preservation and care of same.” Whether just cleaning a monument, or seeking a protective injunction — local officials cannot lawfully thwart citizens seeking to protect and

preserve a monument, and citizens may use whatever means are "proper:" in this case a cease and desist injunction, see Va Code §15.2-1812;

- 3) the damages provision added in 2000 envisions an after-the-fact action for money to restore monuments, either to be filed by the City Attorney or failing that, by "any person having an interest in the matter," see Va code §15.2-1812.1;
- 4) money damages are not the exclusive remedy, as the law explicitly preserves other "rights of any person, organization, society, or museum to pursue any additional civil remedy otherwise allowed by law" certainly including the traditional remedy of an injunction, possibly others — whatever others are available, such as criminal charges as described below, see Va code §15.2-1812.1(C);
- 5) the cross reference in the 2010 codification says "[a]s to the penalty for injuring any monument, see §18.2-137" (proscribing removing monuments). City officials, denied authority to disturb a monument, presumably are also denied immunity for official acts unauthorized. The Attorney General calls violation of §15.2-1812 a criminal offense under §18.2-137. Local officials removing a monument or even attempting to remove one — risk prosecution.⁶

Respectfully submitted:

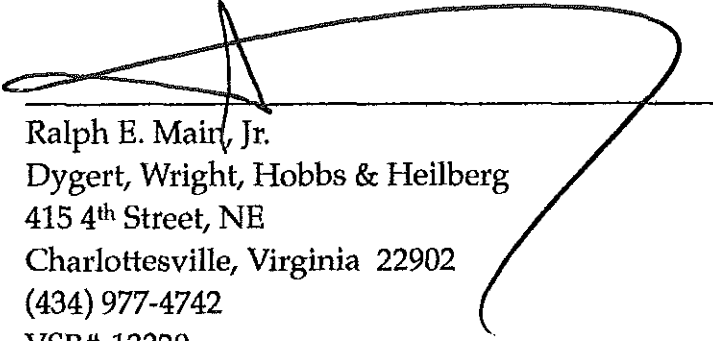
(date) April 27, 2017


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 VSB# 13320
 Lead Counsel for Plaintiffs

⁶ Attempting a felony is punished under Va Code § 18.2-26. Intentionally removing a monument valued at greater than \$1000 is a Class 6 felony. Va Code §18.2-137(B).

CERTIFICATE OF SERVICE

I certify that I had the foregoing Plaintiff's Brief: Monument Protection Law and the Dillon Rule hand delivered to the offices of Craig Brown, Esq., attorney for the City of Charlottesville and for the individual Defendants, on April 27, 2017.



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EXHIBITS

Plaintiff's Brief: Virginia's Veterans Monument Protection Law and the Dillon Rule

- Exhibit 1: Acts Session 1904 (original law)
- Exhibit 2: Acts Session 1910 (1910 amendments)
- Exhibit 3: Acts Session 1930 (1930 amendments)
- Exhibit 4: Virginia Code of 1942 (1942 recodification)
- Exhibit 5: Code of Virginia 1950 (1945 amendments)
- Exhibit 6: Code of Virginia 1950, 1973 Repl. Vol. (1962 amendments)
- Exhibit 7: Acts 1981 Special Session (1982 amendments)
- Exhibit 8: Acts 1988 regular Session (1988 amendments)
- Exhibit 9: Code of Virginia 1950, 1997 Repl. Vol. (1997-1998 amendments)
- Exhibit 10: Code of Virginia 1950, 2002 Cum. Supp. (2000 amendments)
- Exhibit 11: Code of Virginia 1950, 2008 Repl. Vol. (2005 amendments)
- Exhibit 12: Code of Virginia 1950, 2012 Repl. Vol. (2010 amendments; **current law**)

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ACTS

1904 Original

AND

JOINT RESOLUTIONS

PASSED BY THE

GENERAL ASSEMBLY

OF THE

STATE OF VIRGINIA,

DURING THE

SESSION OF 1904.

RICHMOND:

J. H. O'BANNON, SUPERINTENDENT OF PUBLIC PRINTING.

1904.

CHAP. 29.—An ACT to empower the circuit court and board of supervisors of any county to authorize and permit the erection of a Confederate monument upon the public square at the county seat thereof.

Approved February 19, 1904.

1. Be it enacted by the general assembly of Virginia, That the circuit court of any county be, and it is hereby, empowered, with the concurrence of the board of supervisors of such county entered of record, to authorize and permit the erection of a Confederate monument upon the public square of such county at the county seat thereof. And if the same shall be so erected, it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for the protection, preservation, and care of the same.

CHAP. 30.—An ACT to authorize and empower the board of supervisors of Roanoke county and the council of the town of Salem to appropriate and contribute money for the purpose of aiding in the erection of a monument to the Confederate soldiers of said county.

Approved February 19, 1904.

1. Be it enacted by the general assembly of Virginia, That the board of supervisors of Roanoke county and the council of the town of Salem be, and are hereby, authorized and empowered to appropriate and contribute out of the funds of said county and town a sum of money, not exceeding five hundred dollars, for the purpose of aiding in the construction of a monument to the Confederate soldiers of said county, to be erected on the public square of said county, or at the county seat thereof. Such appropriation may be made as a whole, or be made and paid out by instalments, as the said board and town council may determine.

CHAP. 31.—An ACT to amend and re-enact section 2967 of the Code of Virginia in relation to attachments.

Approved February 19, 1904.

1. Be it enacted by the general assembly of Virginia, That section twenty-nine hundred and sixty-seven of the Code of eighteen hundred and eighty-seven be amended and re-enacted so as to read as follows:

§ 2967. On what estate attachment may be levied; how debts, etc., at-

1910 Amendments

ACTS
AND
JOINT RESOLUTIONS
(Amending the Constitution)
OF THE
GENERAL ASSEMBLY
OF THE
STATE OF VIRGINIA

SESSION WHICH COMMENCED AT THE
STATE CAPITOL ON WEDNESDAY,
JANUARY 12, 1910

RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1910

ever sum or sums of money that may be necessary, out of any funds belonging to said county, or to make a special levy and appropriate the money derived therefrom for the completion of or the erection of a monument to the Confederate soldiers of said county upon the public square at the county seat, or elsewhere at the county seat, and to appropriate from time to time sufficient of the county funds to permanently care for, protect and preserve the same.

Approved February 9, 1910.

1. Be it enacted by the general assembly of Virginia, That the circuit court of any county be, and it is hereby, empowered, with the concurrence of the board of supervisors of such county entered of record, to authorize and permit the erection of a Confederate monument upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

2. And the board of supervisors of any county in this Commonwealth be, and they are hereby, authorized and empowered to appropriate a sufficient sum or sums of money out of the funds of any such county to complete or aid in the erection of a monument to the Confederate soldiers of such county upon the public square thereof, or elsewhere at the county seat; and they are also authorized to make a special levy to raise the money necessary for the completion of any such monument, or the erection of a monument to such Confederate soldiers, or to supplement the funds already raised or that may be hereafter raised by private persons, or by Confederate veterans, or other organizations, for the purposes of building such monuments; and they are also authorized and empowered to appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money to permanently care for, protect and preserve the Confederate monument erected upon the public square of any such county, and to expend the same therefor as other county funds are expended.

3. An emergency existing by reason of the fact that many of the counties are ready to begin work on monuments and desire to make the appropriation at once, this act shall be in force from its passage.

CHAP. 18.—An ACT to amend and re-enact section 2357 of the Code of Virginia as heretofore amended in relation to how owner may correct mistakes and obtain an inclusive grant for lands.

Approved February 9, 1910.

1. Be it enacted by the general assembly of Virginia, That section twenty-three hundred and fifty-seven of the Code of Virginia as heretofore amended be amended and re-enacted so as to read as follows:

§2357. How owner may correct mistakes and obtain inclusive grant. If any person wishes to rectify mistakes or uncertainty in the courses or description of the bounds of his lands, or holds two or more tracts ad-

1930 Amendments

ACTS
OF THE
GENERAL ASSEMBLY
OF THE
STATE OF VIRGINIA

Session Which Commenced at the State Capitol on
Wednesday, January 8, 1930

RICHMOND:
DIVISION OF PURCHASE AND PRINTING
1930

1930]

ACTS OF ASSEMBLY

87

county may authorize and permit the erection of a Confederate or World War monument at the county seat thereof. [H B 68]

Approved February 28, 1930

1. Be it enacted by the general assembly of Virginia, That section twenty-seven hundred and forty-two of the Code of Virginia, nineteen hundred and nineteen, be amended and re-enacted so as to read as follows:

Section 2742. Circuit court and board of supervisors of any county may authorize and permit, and aid in the erection of a Confederate or World War monument at the county seat thereof.—The circuit court of any county may, with the concurrence of the board of supervisors of such county entered of record, authorize and permit the erection of a Confederate or World War monument upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

And the board of supervisors may appropriate a sufficient sum or sums of money out of the funds of any such county to complete or aid in the erection of a monument to the Confederate or World War veterans of such county upon the public square thereof, or elsewhere at the county seat; and they are also authorized to make a special levy to raise the money necessary for the completion of any such monument, or the erection of a monument to such Confederate or World War veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, or by Confederate veterans, or by the American Legion, or other organizations, for the purpose of building such monuments; and they are also authorized and empowered to appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money to permanently care for, protect and preserve the Confederate or World War monument erected upon the public square, or elsewhere at the county seat, of any such county, and to expend the same thereafter as other county funds are expended.

CHAP. 77.—An ACT to authorize the town of Cape Charles to borrow \$20,000.00 and issue bonds therefor for the purpose of refunding outstanding school bonds. [H B 71]

Approved February 28, 1930

1. Be it enacted by the general assembly of Virginia, That in addition to any other indebtedness of the town of Cape Charles, which the said town has, from time to time created, the council of said town may, by two-thirds vote of said council, in the name of and for the use of said town, cause to be issued, bonds or certificates of indebted-

1942 Codification

THE VIRGINIA CODE OF 1942

ALL THE GENERAL ACTS TO
AND INCLUDING THE LEGISLATIVE
SESSION OF 1942

COMPLETE ANNOTATIONS

UNDER THE EDITORIAL SUPERVISION OF

A. HEWSON MICHIE

CHAS. W. SUBLETT

AND

BEIRNE STEDMAN

THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.

1942

tions 2778(24) to 2778(79), both inclusive, of the Code of Virginia, may invest sinking funds of such county in bonds of the United States, the State of Virginia, or of any county, city or town in the State of Virginia or in any district of any such county. (1940, p. 309.)

§ 2741b. Payment of bonds in installments. — All bonds issued by any county or magisterial district in this State, on and after January first, nineteen hundred and thirty-seven, shall be issued to mature in annual or semi-annual installments, the last installment of which shall be payable not more than thirty years from the date of such bonds. At least four per centum of the principal amount of each issue shall, beginning not later than five years after date of issue, be payable annually together with all due interest. The provisions of this act shall apply to renewals and extensions of all bonds issued after January first, nineteen hundred and thirty-seven and to all bonds issued to refund any unretired portion of such bonds, but shall not apply to renewals or extensions of any such bonds issued prior to January first, nineteen hundred and thirty-seven or to any such bonds issued for the purpose of refunding any bonds issued prior to said date.

Acts authorizing counties and districts to issue bonds shall be construed to authorize the issuance of such bonds in accordance with the provisions of this act. (1936, p. 394.)

§ 2742. Circuit court and board of supervisors of any county may authorize and permit, and aid in the erection of a Confederate or World War monument at the county seat thereof. — The circuit court of any county may, with the concurrence of the board of supervisors of such county entered of record, authorize and permit the erection of a Confederate or World War monument upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of said county, or any other person or persons whatever, to disturb or interfere with any monument so erected, or to prevent the citizens of said county from taking all proper measures and exercising all proper means for protection, preservation and care of same.

And the board of supervisors may appropriate a sufficient sum or sums of money out of the funds of any such county to complete or aid in the erection of a monument to the Confederate or World War veterans of such county upon the public square thereof, or elsewhere at the county seat; and they are also authorized to make a special levy to raise the money necessary for the completion of any such monument, or the erection of a monument to such Confederate or World War veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, or by Confederate veterans, or by the American Legion, or other organizations, for the purpose of building such monuments; and they are also authorized and empowered to appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money to permanently care for, protect and preserve the Confederate or World War monument erected upon the public square, or elsewhere at the county seat, of any such county, and to expend

the same thereafter as other county funds are expended. (1904, p. 62; 1910, p. 21; 1930, p. 87.)

See §§ 1510, 1937, 2124a et seq.
Effect of Amendment of 1930.—Monuments to World War Veterans were authorized by the 1930 amendment.

§ 2742a: Repealed by Acts of 1932, p. 482.

§ 2742b. Lights on streets and highways in certain counties. — The boards of supervisors of counties adjoining and abutting a city with a population of twenty-five thousand, or more, inhabitants, as determined by the United States census of nineteen hundred and thirty six, and they are hereby, vested with the power, to be exercised in their discretion, to install and maintain suitable lights on the streets and highways in the villages and built-up portions of such counties, respectively, and to pay the costs of such installation and maintenance out of the county fund. (1932, p. 481.)

§ 2743. Powers of local nature conferred on boards of supervisors. — In addition to the powers conferred by other statutes, the board of supervisors of every county shall have power:

To adopt quarantine regulations affecting both persons and animals in furtherance of the protection of the health of the county and not inconsistent with general statutes.

To adopt the necessary regulations to prevent the spread of contagious diseases among persons or animals.

To provide against and prevent the pollution of water in their respective counties whereby it is rendered dangerous to the health or lives of persons residing in the county.

To prevent trespassing by persons, animals, and fowls; and to prevent animals from trespassing and running at large upon the public highways, whether such highways be enclosed by fence or not.

To adopt such measures as they may deem expedient to secure and promote the health, safety, and general welfare of the inhabitants of their respective counties, not inconsistent with the general laws of this State.

To provide for the purchase, operation, manning and maintenance of suitable equipment for fighting fires in or upon the property of the county and its inhabitants, and to prescribe the terms and conditions upon which the same will be used for fighting fires in or upon privately owned property. The board of supervisors of any county adjoining or near any city having and maintaining fire-fighting equipment, shall have authority to contract with any such city, upon such terms as the board may deem proper, for fighting fires in such county, and to prescribe the terms and conditions upon which fires may be fought on privately owned property in the county, and shall have authority to raise funds with which to pay for such services, by levying and collecting annually, at such rates as such board may deem sufficient, a special tax upon the property in such county, or in any magisterial district thereof, subject to local taxation.

To prescribe building lines in villages and unincorporated towns, and the types of buildings that may be erected therein.

For carrying into effect these and their other powers, the boards of supervisors may make ordinances and by-laws and prescribe fines and

CODE OF VIRGINIA

1945 Amendments

1950

With Provision for Subsequent Pocket Parts

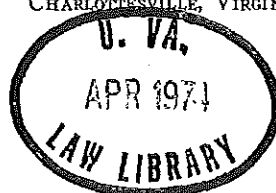
ANNOTATED

Prepared by the Virginia Code Commission Under
Authority of Chapter 262 of the Acts of the
General Assembly of 1948

IN TEN VOLUMES
VOLUME 3



THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VIRGINIA



the Supreme Court of Appeals will not restrain him by prohibition from proceeding under the rule; but the board should make their defense in the circuit court, and any error of the judge in that proceeding may be corrected by writ of error to the Supreme Court of Appeals. *Supervisors v. Wingfield*, 27 Gratt. (68 Va.) 329.

§ 15-693. Building and repairing buildings.—The board of supervisors of any county shall have power to locate, build and keep in repair county buildings and, in its discretion, may locate and construct a suitable building to be used for a county or regional free library or library system, or office buildings on the same lot on which is located the courthouse, clerk's office, jail or public high school. (Code 1919, § 2725; 1930, p. 806; 1940, p. 276.)

§ 15-693.1. Circuit and corporation courts to order courthouses to be repaired.—When it shall appear to the circuit court of any county or the corporation court of any city, from the report of persons appointed to examine the courthouse, or otherwise, that the courthouse of such county or city is insecure or out of repair, or otherwise insufficient, such court shall award a rule, in the name and on behalf of the Commonwealth against the supervisors of the county, or the members of the council of the city, as the case may be, to show cause why a peremptory mandamus should not issue, commanding them to cause the courthouse of such county or city to be made secure, or put in good repair, or rendered otherwise sufficient, as the case may be, and to proceed as in other cases of mandamus, to cause the necessary work to be done.

If in the progress of such proceedings any of the defendants die, or go out of office, their successors may be made parties by the service of a notice in writing to appear and defend the proceedings; and the cause shall thereafter proceed against them as defendants. The vacation of his office otherwise than by death shall not relieve any of the parties from a liability already incurred, whether the penalty has already been imposed or not.

The jurisdiction vested by this section in the circuit courts shall be exercised also by the Hustings Court of the city of Richmond. (Code 1919, §§ 2865-2867.)

§ 15-694. Providing for armories.—The board of supervisors of any county may appropriate out of the general levy, except the school fund, and expend annually such sums of money as their judgment may warrant to aid and assist in the erection and maintenance of suitable armories for companies of the Virginia National Guard, or otherwise contribute towards the assistance and maintenance of such companies as may have their company stations and existence within the county limits, or within any incorporated town or city of the second class located within the geographical limits of the county. (Code 1919, § 2731; 1940, p. 83.)

§ 15-695. Armory buildings and stables in certain cities.—Chapter 95 of the Acts of 1918, approved March 4, 1918, codified as § 3030a of Michie Code 1942, relating to the erection and maintenance of armory buildings, stables, etc., in cities having a population of from sixty-five thousand to one hundred thousand, is continued in effect.

§ 15-696. Memorials for war veterans.—The circuit court of any county may, with the concurrence of the board of supervisors of the county entered of record, authorize and permit the erection of a Confederate, Spanish-American War, World War I or World War II monument or memorial upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of the county, or any other person or persons whatever, to disturb or interfere with any monument or memorial so erected, or to prevent the citizens of the county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

And the board of supervisors may appropriate a sufficient sum or sums of

that proceeding may of error to the Appeals. Supervisors v. (68 Va.) 329.

the board of supervisors in repair county suitable building to them, or office building; office, jail or public

for courthouses to any county or the court is intended to examine the or city is insecure or a rule, in the name of the county, or to show cause why a court to cause the court to be repaired, or rendered as in other cases of

rights die, or go out of of a notice in writing all thereafter proceed otherwise than by death incurred, whether the

rights shall be exercised 1919, §§ 2865-2867.)

of supervisors of any school fund, and ex- by warrant to aid and for companies of the is the assistance and ny stations and exist- (town or city of the county. (Code 1919,

in cities.—Chapter 95 3030a of Michie Code buildings, stables, etc., one hundred thousand,

circuit court of any sors of the county en- Confederate, Spanish- ment or memorial upon eof. And if the same for the authorities of isturb or interfere with : citizens of the county : means for the protec-

icient sum or sums of

money out of the funds of the county to complete or aid in the erection of a monument or memorial to the Confederate, Spanish-American War, World War I or World War II veterans of the county upon the public square thereof, or elsewhere at the county seat; and they may also make a special levy to raise the money necessary for the completion of any such monument or memorial, or the erection of a monument or memorial to such Confederate, Spanish-American War, World War I or World War II veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, Confederate veterans, the American Legion or other organizations, for the purpose of building such monuments or memorials; and they may also appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money permanently to care for, protect and preserve the Confederate, Spanish-American War, World War I or World War II monument or memorial erected upon the public square, or elsewhere at the county seat, of the county, and may expend the same thereafter as other county funds are expended. (Code 1919, § 2742; 1930, p. 87; 1945, p. 47.)

§ 15-697. Systems of public recreation and playgrounds.—Any city, town or county may establish and conduct a system of public recreation and playgrounds; may set apart for such use any land or buildings owned or leased by it; may acquire land, buildings and other recreational facilities by gift, purchase, lease, condemnation or otherwise and equip and conduct the same; may employ a director of recreation and assistants; and may expend funds for the aforesaid purposes. (1924, p. 40; Michie Code 1942, § 3032b.)

Bathing beach for colored citizens.—The city of Norfolk in undertaking to establish a bathing beach and recreation for the benefit of its colored citizens was not attempting to do an illegal thing. The purpose for which the city proposes to spend public

money is within the power expressly delegated to it both by general law and its charter. Page v. Com., 157 Va. 325, 160 S. E. 33.

Applied in Mayes v. Mann, 164 Va. 584, 180 S. E. 425.

§ 15-698. How conducted.—The local authorities establishing such system may conduct the same through a department or bureau of recreation or may delegate the conduct thereof to a recreation board created by them or to a school board or to any other appropriate existing board or commission. (1924, p. 40; Michie Code 1942, § 3032b.)

§ 15-699. Joint systems.—Any two or more cities, towns or counties may jointly establish and conduct such a system of recreation and may exercise all the powers given by the two preceding sections. (1924, p. 40; Michie Code 1942, § 3032b.)

§ 15-700. Petition and election for establishment.—Whenever a petition signed by at least ten per centum of the qualified voters shall be filed at least thirty days prior to any general or special election in the office of the clerk of any city, town or county, the authorities thereof shall submit to the voters at such election the question of the establishment and conduct of a system of public recreation and playgrounds. Such petition shall request the authorities to establish and conduct a system of public recreation and playgrounds and to levy a specified annual tax therefor, provided that such tax shall not exceed two cents on each one hundred dollars of the assessed valuation of property subject to local taxation.

Upon the adoption of such proposition by a majority of the qualified voters voting in such election, the local authorities shall, by resolution, provide for the establishment and conduct of a system of recreation and playgrounds and for the levy and collection of such tax and shall designate the body to be vested with the powers and duties necessary to the conduct thereof. (1924, p. 40; Michie Code 1942, § 3032b.)

CODE OF VIRGINIA

1950

With Provision for Subsequent Pocket Parts

ANNOTATED

Prepared under the Supervision of
The Virginia Code Commission

BY

The Editorial Staff of the Publishers

Under the Direction of
W. M. WILLSON, SYLVIA FAULKNER AND PATRICIA H. QUILLEN

VOLUME 3A

1973 REPLACEMENT VOLUME

*(Including Acts of the 1972 Session and annotations taken from
Virginia Reports through Volume 212, p. 652)*



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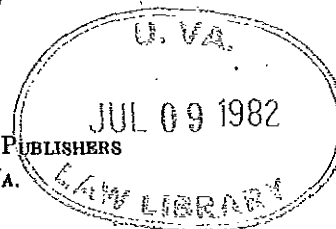


EXHIBIT 6
PAGE: 1
1967 Amended

population of from sixty-five thousand to one hundred thousand, is continued in effect. (Code 1950, § 15-695; 1962, c. 623.)

§ 15.1-270. **Memorials for war veterans.** — The circuit court of any county may, with the concurrence of the governing body of the county entered of record, authorize and permit the erection of a Confederate, Spanish-American War, World War I or World War II monument or memorial upon the public square of such county at the county seat thereof. And if the same shall be so erected it shall not be lawful thereafter for the authorities of the county, or any other person or persons whatever, to disturb or interfere with any monument or memorial so erected, or to prevent the citizens of the county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

And the governing body may appropriate a sufficient sum or sums of money out of the funds of the county to complete or aid in the erection of a monument or memorial to the Confederate, Spanish-American War, World War I or World War II veterans of the county upon the public square thereof, or elsewhere at the county seat; and they may also make a special levy to raise the money necessary for the completion of any such monument or memorial, or the erection of a monument or memorial to such Confederate, Spanish-American War, World War I or World War II veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, Confederate veterans, the American Legion or other organizations, for the purpose of building such monuments or memorials; and they may also appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money permanently to care for, protect and preserve the Confederate, Spanish-American War, World War I or World War II monument or memorial erected upon the public square, or elsewhere at the county seat, of the county, and may expend the same thereafter as other county funds are expended. (Code 1950, § 15-696; 1962, c. 623.)

§ 15.1-271. **Systems of public recreation and playgrounds.** — Any city, town or county may establish and conduct a system of public recreation and playgrounds; may set apart for such use any land or buildings owned or leased by it; may acquire land, buildings and other recreational facilities by gift, purchase, lease, condemnation or otherwise and equip and conduct the same; may employ a director of recreation and assistants; and may expend funds for the aforesaid purposes. (Code 1950, § 15-697; 1962, c. 623.)

Applied in *Page v. Commonwealth*, 157 Va. 325, 160 S.E. 33 (1931); *Mayes v. Mann*, 164 Va. 584, 180 S.E. 425 (1935).

§ 15.1-272. **Same; how conducted.** — The local authorities establishing such system may conduct the same through a department or bureau of recreation or may delegate the conduct thereof to a recreation board created by them or to a school board or to any other appropriate existing board or commission. (Code 1950, § 15-698; 1962, c. 623.)

§ 15.1-273. **Same; joint systems.** — Any two or more cities, towns or counties may jointly establish and conduct such a system of recreation and may exercise all the powers given by the two preceding sections (§§ 15.1-271, 15.1-272). (Code 1950, § 15-699; 1962, c. 623.)

§ 15.1-274. **Same; petition and election for establishment.** — Whenever a petition signed by at least ten per centum of the qualified voters shall be filed at least thirty days prior to any general or special election in the office of the clerk of any city, town or county, the authorities thereof shall submit to the voters at such election the question of the establishment and conduct of a system of public recreation and playgrounds and to levy a specified annual tax

EXHIBIT: 7
PAGE: 1

ACTS
OF THE
GENERAL ASSEMBLY
OF THE
COMMONWEALTH OF VIRGINIA

1981 SPECIAL SESSION

which met at the State Capitol, Richmond

Convened Monday, March 30, 1981

Adjourned sine die Wednesday, January 13, 1982

COMMONWEALTH OF VIRGINIA
RICHMOND
1982

[H 524]

Approved March 9, 1982

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-270 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-270. Memorials for war veterans.—The circuit court of any county may, with the concurrence of the governing body of the county entered of record, authorize and permit the erection of a Confederate, Spanish-American War, World War I or World War II, Korean War and Viet Nam War monument monuments or memorial memorials upon the public square of such county at the county seat thereof. And if the same such shall be so erected it shall not be lawful thereafter for the authorities of the county, or any other person or persons whatever, to disturb or interfere with any monument monuments or memorial memorials so erected, or to prevent the citizens of the county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

And the governing body may appropriate a sufficient sum or sums of money out of the funds of the county to complete or aid in the erection of a monument monuments or memorial memorials to the Confederate, Spanish-American War, World War I or World War II veterans of such wars from the county upon the public square thereof, or elsewhere at the county seat; and they may also make a special levy to raise the money necessary for the completion of any such monument monuments or memorial memorials, or the erection of a monument monuments or memorial memorials to such Confederate, Spanish-American War, World War I or World War II veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, Confederate veterans, the American Legion or other organizations, for the purpose of building such monuments or memorials; and they may also appropriate from time to time, out of any funds of such county, a sufficient sum or sums of money permanently to care for, protect and preserve the Confederate, Spanish-American War, World War I or World War II such monument monuments or memorial memorials erected upon the public square, or elsewhere at the county seat, of the county, and may expend the same thereafter as other county funds are expended.

CHAPTER 20

An Act to amend and reenact § 15.1-29.4 of the Code of Virginia, relating to giving local government a bad check.

[H 591]

Approved March 9, 1982

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-29.4 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-29.4. Ordinances providing fee for passing bad checks to local governing bodies.—The governing body of any county, city or town may provide by ordinance a fee, not exceeding the amount of ten twenty dollars, for the uttering, publishing or passing of any check or draft for payment of taxes or any other sums due, which is subsequently returned for insufficient funds or because there is no account or the account has been closed.

EXHIBIT: 8
PAGE: 1

ACTS
OF THE
GENERAL ASSEMBLY
OF THE
COMMONWEALTH OF VIRGINIA

1988 REGULAR SESSION

which met at the State Capitol, Richmond

Convened Wednesday, January 13, 1988

Adjourned sine die Saturday, March 12, 1988

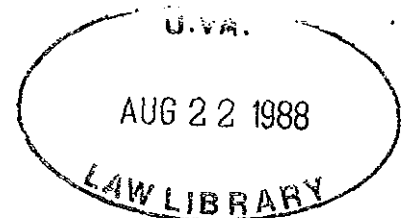
Reconvened Wednesday, April 20, 1988

Adjourned sine die Wednesday, April 20, 1988

VOLUME I

CHAPTERS 1-800

COMMONWEALTH OF VIRGINIA
RICHMOND
1988



F. The Board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection B from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

CHAPTER 284

An Act to amend and reenact § 15.1-270 of the Code of Virginia, relating to memorials for war veterans.

[H 868]

Approved March 24, 1988

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-270 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-270. Memorials for war veterans.—The circuit court of any county may, with the concurrence of the governing body of the county entered of record, authorize and permit the erection of *Revolutionary War, War of 1812, Mexican War, Confederate, Spanish-American War, World War I, World War II, Korean War and Viet Nam War* monuments or memorials upon the public square of such county at the county seat thereof. ~~And if such shall be are erected it shall not be lawful thereafter unlawful~~ for the authorities of the county, or any other person or persons whatever, to disturb or interfere with any monuments or memorials so erected, or to prevent the citizens of the county from taking all proper measures and exercising all proper means for the protection, preservation and care of same.

~~And~~ The governing body may appropriate a sufficient sum or sums of money out of the funds of the county to complete or aid in the erection, *in the public square or elsewhere at the county seat*, of monuments or memorials to the *county's* veterans of such wars ~~from the county upon the public square thereof, or elsewhere at the county seat; and they~~. The governing body may also make a special levy to raise the money necessary for the completion of any such monuments or memorials, or the erection of monuments or memorials to such veterans, or to supplement the funds already raised or that may be hereafter raised by private persons, *Confederate veterans, the American Legion* or other organizations, for the purpose of building such monuments or memorials; and ~~they~~ it may also appropriate ~~from time to time~~, out of any funds of such county, a sufficient sum or sums of money permanently to care for, protect and preserve such monuments or memorials erected upon the public square, *or elsewhere at the county seat*, of the county, and may expend the same thereafter as other county funds are expended.

CHAPTER 285

An Act to amend and reenact § 37.1-195 of the Code of Virginia, relating to community services board.

CODE OF VIRGINIA

1950

With Provision for Subsequent Pocket Parts

ANNOTATED

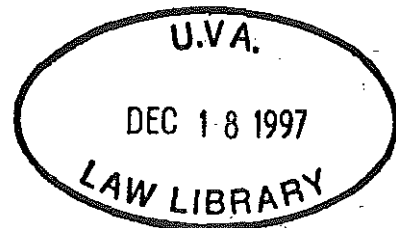
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BY
The Editorial Staff of the Publishers

VOLUME 3A

1997 REPLACEMENT VOLUME

*(Including Acts of the 1997 Regular Session and annotations
taken from South Eastern Reporter, 2d series,
through Volume 486, page 150.)*



MICHIE
Law Publishers
CHARLOTTESVILLE, VIRGINIA

5.2-1811

§ 15.2-1812

COUNTIES, CITIES AND TOWNS

§ 15.2-1900

ARTICLE 3.

Miscellaneous.

§ 15.2-1812. Memorials for war veterans. — A locality may authorize and permit the erection of monuments or memorials for any war or engagement designated in § 2.1-21 upon any of its property. If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended. (Code 1950, § 15-696; 1962, c. 623, § 15.1-270; 1982, c. 19; 1988, c. 284; 1997, c. 587.)

§ 15.2-1813. Notice when public hearing required. — Any public hearing required by this chapter shall be advertised once in a newspaper having general circulation in the locality at least seven days prior to the date set for the hearing (1997, c. 587.)

§ 15.2-1814. Acquisition authorized by chapter declared to be for public use. — Any acquisition of property authorized by any provision of this chapter is hereby declared to be for a public use as the term "public uses" is used in § 15.2-1900. (1997, c. 587.)

CHAPTER 19.

CONDEMNATION.

Sec.	Sec.
15.2-1900. Definition of public uses.	15.2-1904. Possession of property prior to condemnation; powers of Commonwealth Transportation Commissioner conferred.
15.2-1901. Condemnation authority.	
15.2-1902. Condemnation proceedings generally.	15.2-1905. Special provisions for counties.
15.2-1903. Requirements for initiating condemnation; filing of ordinance or resolution with petition; voluntary conveyance.	15.2-1906. Condemnation of existing water or sewage disposal systems.

§ 15.2-1900. Definition of public uses. — The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace all uses which are necessary for public purposes. (Code 1950, § 15-702; 1962, c. 623, § 15.1-276; 1971, Ex. Sess., c. 1; 1997, c. 587.)

Property is considered taken for constitutional purposes if the government's action deprives the property of all economic use. Board of Supvrs. v. Omni Homes, Inc., 481 S.E.2d 460 (1997) (decided under prior law).

Property is damaged for Virginia constitutional purposes when an appurtenant right connected with the property is directly and specially affected by a public use and that use inflicts a direct and special injury on the

CODE OF VIRGINIA

1950

2000 Amendment

2002 Cumulative Supplement

ANNOTATED

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BY

The Editorial Staff of the Publishers



VOLUME 3A

1997 REPLACEMENT

*Includes acts adopted at the 2002 Regular Session, Acts 2002, cc. 1 to 899,
of the General Assembly*

**Place in Pocket of Corresponding Volume of Main Set.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

 LexisNexis™

to acquire, lease or sell land for
try. — A town may acquire pursuant to
land within its boundaries or within
the development thereon of business
quired until the governing body has held
osed acquisition. Any land so acquired
private sale to any person, firm or
business or manufacturing establish-
authority for any town to exercise the
ing any charter provision to the con-

hereof, is not sold to a person, firm or
business or manufacturing establish-
of the governing body, not required for
and industry, the governing body, if
land so acquired, in whole or in part,
thereof as it may see fit. No such land
ing body has held a public hearing
e 1950, § 15-7.2; 1960, c. 545; 1962, c.
7; 1998, c. 198.)

ment thereon of business and industry. Towns
may also acquire such land within three miles,
in the present first sentence, substituted "town"
for "locality," and substituted "its boundaries"
for "their boundaries," and in the present last
sentence, substituted "town" for "locality."

Handicapped persons to operate

Handicapped are deemed to refer to the Vir-
ginia Department or Board for the Blind and
/ision Impaired. See § 63.1-68.

Parks and Playgrounds.

in the operation of parks, recre-

TOWNS

nd facility. — Clearly, there is a significant
stinction between a "recreational event,"
rich is simply something that happens, an
currence of limited scope and duration in-
ended to provide persons attending with enter-
nment, and a "recreational facility," which is
nothing that is "built, constructed, [or] in-
lled"; there is nothing within the provisions
his section that evinces a legislative intent
at this distinction be disregarded so as to

extend immunity to "recreational events."
Lostrangio v. Laingford, 261 Va. 495, 544
S.E.2d 357 (2001).

July 4th celebration not "recreational
facility." — A July 4th celebration jointly spon-
sored by a town and others on property not
owned by the town, while undoubtedly in-
tended to provide the public with entertain-
ment and diversion, was not a "recreational
facility" contemplated by the provisions of this
section, and the town was not entitled to assert
sovereign immunity with respect to claims as-
serted by a plaintiff who allegedly tripped and

fell over a feed bucket that had been negli-
gently left outside the fence enclosing a petting
zoo that was not operated by the town.
Lostrangio v. Laingford, 261 Va. 495, 544
S.E.2d 357 (2001).

Trash removal is maintenance. — The
removal of trash created by the use of the
recreational facility (city coliseum) was a nec-
essary and essential aspect of the maintenance
or operation of the coliseum and, thus, this
section bars plaintiff's tort claims for negli-
gence. Decker v. Harlan, 260 Va. 66, 531 S.E.2d
309 (2000).

ARTICLE 3.

Miscellaneous.

§ 15.2-1812. Memorials for war veterans. — A locality may, within the
geographical limits of the locality, authorize and permit the erection of
monuments or memorials for any war or conflict, or for any engagement of such
war or conflict, to include the following monuments or memorials: Algonquin
(1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of
1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or
memorials of the War Between the States (1861-1865), Spanish-American
(1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-
1953), Vietnam (1965-1973) and Operation Desert Shield-Desert Storm (1990-
1991). If such are erected, it shall be unlawful for the authorities of the locality,
or any other person or persons, to disturb or interfere with any monuments or
memorials so erected, or to prevent its citizens from taking proper measures
and exercising proper means for the protection, preservation and care of same.
For purposes of this section, "disturb or interfere with" includes removal of,
damaging or defacing monuments or memorials, or, in the case of the War
Between the States, the placement of Union markings or monuments on
previously designated Confederate memorials or the placement of Confederate
markings or monuments on previously designated Union memorials.

The governing body may appropriate a sufficient sum of money out of its
funds to complete or aid in the erection of monuments or memorials to the
veterans of such wars. The governing body may also make a special levy to
raise the money necessary for the erection or completion of any such monu-
ments or memorials, or to supplement the funds already raised or that may be
raised by private persons, Veterans of Foreign Wars, the American Legion or
other organizations. It may also appropriate, out of any funds of such locality,
a sufficient sum of money to permanently care for, protect and preserve such
monuments or memorials and may expend the same thereafter as other funds
are expended. (Code 1950, §§ 15-696 through 15-699; 1962, c. 623, § 15.1-270;
1982, c. 19; 1988, c. 284; 1997, c. 587; 1998, c. 752.)

§ 15.2-1812.1. Action for damage to memorials for war veterans. —
A. If any monument, marker or memorial for war veterans as designated in
§§ 15.2-1812 and 18.2-137 is violated or encroached upon, an action for the
recovery of damages may be commenced by the following:

1. For a publicly owned monument, marker or memorial, by the attorney for
the locality in which it is located; or, if no such action has commenced within
sixty days following any such violation or encroachment, by any person having
an interest in the matter; and
2. For a privately owned monument, marker or memorial, by the private
organization, society or museum that owns it or any member of such organi-
zation, society or museum.

Damages may be awarded in such amounts as necessary for the purposes of rebuilding, repairing, preserving and restoring such memorials or monuments to preencroachment condition. Damages other than those litigation costs recovered from any such action shall be used exclusively for said purposes.

B. Punitive damages may be recovered for reckless, willful or wanton conduct resulting in the defacement of, malicious destruction of, unlawful removal of, or placement of improper markings, monuments or statues on memorials for war veterans.

C. The party who initiates and prevails in an action authorized by this section shall be entitled to an award of the cost of the litigation, including reasonable attorney's fees. The provisions of this section shall not be construed to limit the rights of any person, organization, society, or museum to pursue any additional civil remedy otherwise allowed by law. (2000, c. 812.)

CHAPTER 19.

CONDEMNATION.

Sec.

15.2-1901. Condemnation authority.

§ 15.2-1901. Condemnation authority. — A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection B.

B. A locality may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580. (1997, c. 587; 2001, c. 538.)

The 2001 amendments. — The 2001 amendment by c. 538 substituted "subsection B" for "subsection C" in subsection A; deleted former subsection B, which read: "A city or town may acquire property or property interests outside its boundaries by exercise of the power of eminent domain"; redesignated former subsection C as present subsection B; and in subsection B, substituted "A locality" for "A county" and added the last two sentences.

Law Review. — For case note on damages for impairment of access to land, see 18 Wash. & Lee L. Rev. 138 (1961). For article on recovery

of consequential damages in eminent domain, see 48 Va. L. Rev. 437 (1962). For article on condemnation of future interests, see 48 Va. L. Rev. 461 (1962). For article on condemnation of leasehold interests, see 48 Va. L. Rev. 477 (1962). For article on loss of access to highways and different approaches to the problem of compensation, see 48 Va. L. Rev. 538 (1962). For survey of Virginia law on property for the year 1971-1972, see 58 Va. L. Rev. 1328 (1972). For article, "Property Law," see 35 U. Rich. L. Rev. 777 (2001).

CIRCUIT COURT OPINIONS

City acted ultra vires in entering into a contract with a private developer under which the city would condemn property for use as parking garage that would primarily benefit

the developer. *City of Virginia Beach v. Christopoulos Family*, 54 Va. Cir. 95 (Virginia Beach 2000).

EXHIBIT
PAGE: 1

2005 Amendment

CODE OF VIRGINIA

1950

With Provisions for Subsequent Pocket Parts

ANNOTATED

Prepared under the Supervision of

The Virginia Code Commission

BY

The Editorial Staff of the Publishers

VOLUME 3A

2008 REPLACEMENT VOLUME

*Includes acts adopted at the 2008 Regular Session, Acts 2008, cc. 1 to 884,
and 2008 Special Session I, cc. 1 and 2,
of the General Assembly*

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2. Acquire by gift, condemnation, purchase, lease or otherwise and maintain and operate parks, recreational facilities and swimming pools;
3. Contract with any person, firm, corporation or municipality to construct, establish, maintain and operate the parks, recreational facilities and swimming pools;
4. Fix, prescribe and provide for the collection of fees for use of the parks, recreational facilities and swimming pools;
5. Levy and collect an annual tax upon all the property in the district subject to local taxation to pay in whole or in part the expenses and charges incident to maintaining and operating such parks, recreational facilities and swimming pools; and
6. Employ and fix compensation of any technical, clerical or other force or help deemed necessary for the construction, operation and maintenance of the parks, recreational facilities and swimming pools. (Code 1950, § 15-704; 1962, c. 623, § 15.1-278; 1997, c. 587.)

ARTICLE 3.

Miscellaneous.

§ 15.2-1812. Memorials for war veterans. — A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for any war or conflict, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), and Operation Iraqi Freedom (2003). If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended. (Code 1950, § 15-696; 1962, c. 623, § 15.1-270; 1982, c. 19; 1988, c. 284; 1997, c. 587; 1998, c. 752; 2005, c. 390.)

§ 15.2-1812.1. Action for damage to memorials for war veterans. —

A. If any monument, marker or memorial for war veterans as designated in §§ 15.2-1812 and 18.2-137 is violated or encroached upon, an action for the recovery of damages may be commenced by the following:

1. For a publicly owned monument, marker or memorial, by the attorney for the locality in which it is located; or, if no such action has commenced within

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§ 15.2-1812.1

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COUNTIES, CITIES AND TOWNS

§ 15.2-1812.2

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sixty days following any such violation or encroachment, by any person having
an interest in the matter; and

2. For a privately owned monument, marker or memorial, by the private
organization, society or museum that owns it or any member of such organi-
zation, society or museum.

Damages may be awarded in such amounts as necessary for the purposes of
rebuilding, repairing, preserving and restoring such memorials or monuments
to preencroachment condition. Damages other than those litigation costs
recovered from any such action shall be used exclusively for said purposes.

B. Punitive damages may be recovered for reckless, willful or wanton
conduct resulting in the defacement of, malicious destruction of, unlawful
removal of, or placement of improper markings, monuments or statues on
memorials for war veterans.

C. The party who initiates and prevails in an action authorized by this
section shall be entitled to an award of the cost of the litigation, including
reasonable attorney's fees. The provisions of this section shall not be construed
to limit the rights of any person, organization, society, or museum to pursue
any additional civil remedy otherwise allowed by law. (2000, c. 812.)

**§ 15.2-1812.2. Willful and malicious damage to or defacement of
public or private facilities; penalty.** — A. Any locality may by ordinance

make unlawful the willful and malicious damage to or defacement of any
public buildings, facilities and personal property or of any private buildings,
facilities and personal property. The penalty for violation of such ordinance is
a Class 1 misdemeanor. The punishment for any such violation in which the
defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway
overpass, or (iii) committed for the benefit of, at the direction of, or in
association with any criminal street gang, as that term is defined by § 18.2-
46.1, shall include a mandatory minimum fine of \$500.

B. Upon a finding of guilt under any such ordinance in any case tried before
the court without a jury, in the event the violation constitutes a first offense
that results in property damage or loss, the court, without entering a judgment
of guilt, upon motion of the defendant, may defer further proceedings and place
the defendant on probation pending completion of a plan of community service
work. If the defendant fails or refuses to complete the community service as
ordered by the court, the court may make final disposition of the case and
proceed as otherwise provided. If the community service work is completed as
the court prescribes, the court may discharge the defendant and dismiss the
proceedings against him. Discharge and dismissal under this section shall be
without adjudication of guilt and is a conviction only for the purposes of
applying the ordinance in subsequent proceedings.

C. The ordinance shall direct that the community service, to the extent
feasible, include the repair, restoration or replacement of any damage or
defacement to property within the locality, and may include clean-up, beauti-
fication, landscaping or other appropriate community service within the
locality. Any ordinance adopted pursuant to this section shall make provision
for a designee of the locality to supervise the performance of any community
service work required and to report thereon to the court imposing such
requirement. At or before the time of sentencing under the ordinance, the court
shall receive and consider any plan for making restitution or performing
community service submitted by the defendant. The court shall also receive
and consider the recommendations of the supervisor of community service in
the locality concerning the plan.

D. Notwithstanding any other provision of law, no person convicted of a
violation of an ordinance adopted pursuant to this section shall be placed on
probation or have his sentence suspended unless such person makes at least

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EXHIBIT: 12
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2010 Amendment

With Provisions for Subsequent Pocket Parts

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ANNOTATED

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Prepared under the Supervision of

The Virginia Code Commission

BY

The Editorial Staff of the Publishers

VOLUME 3A

2012 REPLACEMENT VOLUME

*Includes acts adopted at the 2012 Regular Session
and 2012 Special Session I
of the General Assembly*



History.

Code 1950, § 15-704; 1962, c. 623, § 15.1-278; 1997, c. 587.

**ARTICLE 3.
MISCELLANEOUS.**

§ 15.2-1812. Memorials for war veterans.

A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for any war or conflict, or for any engagement of such war or conflict, to include the following monuments or memorials: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), Confederate or Union monuments or memorials of the War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-). If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials.

The governing body may appropriate a sufficient sum of money out of its funds to complete or aid in the erection of monuments or memorials to the veterans of such wars. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.

History.

Code 1950, § 15-696; 1962, c. 623, § 15.1-270; 1982, c. 19; 1988, c. 284; 1997, c. 587; 1998, c. 752; 2005, c. 390; 2010, c. 860.

Cross references.

As to penalty for injuring any monument, etc., see § 18.2-137.

§ 15.2-1812.1. Action for damage to memorials for war veterans.

A. If any monument, marker or memorial for war veterans as designated in §§ 15.2-1812 and 18.2-137 is violated or encroached upon, an action for the recovery of damages may be commenced by the following:

1. For a publicly owned monument, marker or memorial, by the attorney for the locality in which it is located; or, if no such action has commenced within sixty days following any such violation or encroachment, by any person having an interest in the matter; and
2. For a privately owned monument, marker or memorial, by the private

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resulting in the defacement of, malicious destruction of, unlawful
of, or placement of improper markings, monuments or statues on
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the party who initiates and prevails in an action authorized by this
shall be entitled to an award of the cost of the litigation, including
able attorney's fees. The provisions of this section shall not be construed
the rights of any person, organization, society, or museum to pursue
ditional civil remedy otherwise allowed by law.

1812.2. Willful and malicious damage to or defacement of public
or private facilities; penalty.

Any locality may by ordinance make unlawful the willful and malicious
to or defacement of any public buildings, facilities and personal
y or of any private buildings, facilities and personal property. The
y for violation of such ordinance is a Class 1 misdemeanor. The
ment for any such violation in which the defacement is (i) more than 20
the ground, (ii) on a railroad or highway overpass, or (iii) committed for
enefit of, at the direction of, or in association with any criminal street
as that term is defined by § 18.2-46.1, shall include a mandatory
um fine of \$500.
Upon a finding of guilt under any such ordinance in any case tried before
ourt without a jury, in the event the violation constitutes a first offense
results in property damage or loss, the court, without entering a judgment
nt, upon motion of the defendant, may defer further proceedings and place
endant on probation pending completion of a plan of community service
If the defendant fails or refuses to complete the community service as
ed by the court, the court may make final disposition of the case and
ed as otherwise provided. If the community service work is completed as
ourt prescribes, the court may discharge the defendant and dismiss the
things against him. Discharge and dismissal under this section shall be
adjudication of guilt and is a conviction only for the purposes of
ving the ordinance in subsequent proceedings.
The ordinance shall direct that the community service, to the extent
ble, include the repair, restoration or replacement of any damage or
ment to property within the locality, and may include clean-up, beauti-
on, landscaping or other appropriate community service within the
y. Any ordinance adopted pursuant to this section shall make provision
designee of the locality to supervise the performance of any community
work required and to report thereon to the court imposing such
ement. At or before the time of sentencing under the ordinance, the court
receive and consider any plan for making restitution or performing
community service submitted by the defendant. The court shall also receive
consider the recommendations of the supervisor of community service in
locality concerning the plan.

**ARTICLE 3.
MISCELLANEOUS.**

§ 15.2-1812. Memorials for war veterans.

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Section 15.2-1812 applies to monuments for any war or conflict, including an engagement in such war or conflict, or for war veterans, but not to memorials or markers erected to recognize the historical significance of buildings. See opinion of Attorney General to W. Clarke Whitfield, Jr., Esquire, Danville City Attorney, No. 15-050, 2015 Va. AG LEXIS 23 (8/6/15).

§ 15.2-1812.1. Action for damage to memorials for war veterans.

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Section 15.2-1812 applies to monuments for any war or conflict, including an engagement in such war or conflict, or for war veterans, but not to memorials or markers erected to recognize the historical significance of buildings. See opinion of Attorney General to W. Clarke Whitfield, Jr., Esquire, Danville City Attorney, No. 15-050, 2015 Va. AG LEXIS 23 (8/6/15).

**CHAPTER 19.
CONDEMNATION.**

Section

15.2-1901. Condemnation authority.

15.2-1902. Condemnation proceedings generally.

§ 15.2-1901. Condemnation authority.

A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection B.

B. A locality may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580.

C. Notwithstanding any other provision of law, general or special, no locality shall condition or delay the timely consideration of any application for or grant of any permit or other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied, of allowing the locality to condemn or otherwise acquire the property or to commence any process to consider whether to undertake condemnation or acquisition of the property.