

REPORT
ON THE
CITY OF STAUNTON—COUNTY OF AUGUSTA
INTERGOVERNMENTAL AGREEMENTS



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

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REPORT
OF THE
COMMISSION ON LOCAL GOVERNMENT

City of Staunton - Augusta County
Intergovernmental Agreements

PROCEEDINGS OF THE COMMISSION

On April 12, 1984 the City of Staunton and Augusta County formally submitted to the Commission for review two intergovernmental agreements which proposed the establishment of a new form of consolidated local government in the Commonwealth. The new consolidation arrangement would establish the consolidated County of Augusta embracing the territory within the two former jurisdictions while preserving the political identity of the former municipality as an enlarged Tier-City of Staunton.¹ The intergovernmental agreements submitted to the Commission for review were (1) the proposed plan of consolidation and (2) a Study Agreement for Consolidation which had been adopted by the governing bodies of the City and the County in March 1983.

The proposed plan of consolidation and the previously adopted agreement upon which the plan was founded were the product of negotiations between the parties which had been initiated as a result of the County's action (filed with the Commission on April 28, 1982) seeking the immunization of approximately 28.1 square miles of its territory from annexation by the City of Staunton, and which were continued pursuant to the City's action (filed with the Commission on November 8, 1982) seeking the annexation of approximately 26.9 square miles of County territory.² The two jurisdictions were assisted in their interlocal negotiations by independent mediators designated by

¹County of Augusta and City of Staunton, Notice of Voluntary Agreements between the City of Staunton and the County of Augusta (hereinafter cited as Notice of Voluntary Agreements), April 12, 1984.

²See County of Augusta, Partial Immunity Notice, Volume I, April 28, 1982; and City of Staunton, Annexation Notice, Volume I, November 8, 1982. The area proposed for annexation by the City of

the Commission.³

The joint notice filed with the Commission on April 12, 1984 was accompanied by certain data relative to the proposed consolidation and incorporated by reference an array of other documents and materials previously submitted to the Commission by the County and the City in conjunction with the partial immunity and annexation actions.⁴ Subsequent to its examination of these materials, the Commission met in Staunton on April 27 for the purpose of orally reviewing the intergovernmental agreements with officials of the City and the County. Further, the Commission solicited comment on the proposed consolidation from the 28 other local governments which qualified for notice of the proposed consolidation under the provisions of Section 15.1-945.7(A) of the Code of Virginia. Furthermore, the Commission held a public hearing, advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, at the Woodrow Wilson High School in Augusta County on the evening of April 27, 1984. That public hearing was attended by approximately 50 persons and provided the Commission with testimony from 16 individuals. In order to avail itself of further public comment, the Commission agreed to keep open its record for the receipt of written submissions from the public through May 15, 1984.

Staunton was virtually entirely within the area proposed for immunity by Augusta County.

³These mediators were Dr. Orion F. White of the Virginia Polytechnic Institute and State University and Dr. Roger Richman of Old Dominion University.

⁴Members of the Commission had previously toured the areas affected by the Staunton - Augusta County agreements on August 28, 1982 and on January 22, 1983 in conjunction with the Commission's review of the immunity action and its anticipated review of the annexation issue.

SCOPE OF REVIEW

The City of Staunton and Augusta County have submitted their intergovernmental agreements to the Commission for review pursuant to the provisions of Section 15.1-1167.1 of the Code of Virginia. While the agreements propose the establishment of a consolidated county, which is an action not generally subject to the Commission's review nor within the purview of Section 15.1-1167.1, the agreements do contain provisions regarding the modification or waiver of rights with respect to local government transition, annexation, and immunity which do require both Commission and court review in accordance with the above-referenced statute. Further, Senate Bill 70 (1984), which amends the State's consolidation law to permit the establishment of tier-cities, specifies that when consolidation agreements propose the creation of such tier-cities any proposed modification or waiver of transition, annexation, or immunity rights must be reviewed and approved pursuant to the provisions of Section 15.1-1167.1.⁵

It is important to note that Section 15.1-1167.1 of the Code of Virginia directs the Commission to focus its review of interlocal agreements on the question as to "whether the proposed settlement is in the best interest of the Commonwealth." Clearly, the principal interest of the State in this and similar interlocal issues is the effect of the proposed action on the viability of the affected local governments. In sum, then, it appears to this Commission that our responsibility in this report is a review of the transition, annexation, and immunity provisions within the proposed consolidation agreement and consideration of the impact of those provisions on the future viability of the affected jurisdictions. While the Commission is fully cognizant of the breadth and novelty of various other elements of the proposed consolidation and is aware that such elements may also affect, to varying degrees, the future viability of the con-

⁵Senate Bill 70 amends Section 15.1-1134 of the consolidation statutes by adding subsection "(15)" which specifically requires

solidating jurisdictions, our comments shall be principally confined to those provisions in the consolidation plan expressly identified for review by Senate Bill 70 (1984).

Finally, the Commission notes that the Study Agreement for Consolidation, approved by the governing bodies of the City of Staunton and Augusta County in March 1983, establishes three alternative annexation and immunity settlements which would apply if the consolidation effort fails. The specific alternative which would be implemented would be determined by the reason for the failure of the consolidation effort - i. e., whether the consolidation effort fails (1) as a result of action by the governing body or electorate in Staunton, or (2) as a result of action by the governing body or electorate in Augusta County, or (3) as a result of action by the governing bodies or electorate of both jurisdictions.⁶ It appears to the Commission to be inappropriate and premature for this report to address those alternative annexation and immunity settlements. If the consolidation effort is unsuccessful, the Commission is prepared to review the applicable settlement provisions.⁷

review of those provisions in a consolidation agreement modifying or waiving transition, annexation, or immunity rights. While Senate Bill 70 will not become law until July 1, 1984, it provides a clear expression of the legislature's concern for the review of these specific provisions in the agreement. In anticipation of the application of the new law, the Commission accepted the interlocal agreements for review under the general authority provided it by Section 15.1-945.3(I) of the Code of Virginia.

⁶See Study Agreement for Consolidation, Article VIII.

⁷It might be noted that the Commission's report on the immunity action initiated by Augusta County provides considerable comment and relevant data on the areas involved in the alternative annexation and immunity settlements. See Commission on Local Government, Report on the County of Augusta Partial Immunity Action, December 1982.

GENERAL CHARACTERISTICS
OF THE
CITY AND THE COUNTY

AUGUSTA COUNTY

Augusta County was founded in 1738, more than a half century prior to the establishment of our present national government. In terms of geographic size, it is the second largest county in the Commonwealth with an area of 986 square miles.⁸ In recent years Augusta County has experienced a significant population growth with its populace increasing from 44,220 to 53,732, or by 21.5%, between 1970 and 1980.⁹ Despite this population growth, however, as of 1980, the County remained sparsely populated, having a population density of only 55 persons per square mile.¹⁰ Further, it should be noted that the County's 1982 estimated population (53,700) does not reveal a continuance of the growth rate of the previous decade.¹¹

Employment data provide evidence of the current state of the County's economic development. As of 1983, Augusta County had a total civilian labor force of 26,251, but it provided nonagricultural wage

⁸County of Augusta, Augusta County Exhibits, Volume II of County exhibits relative to immunity, Exh. 1-1.

⁹Julia H. Martin and Michael A. Spar, Growth in Virginia, 1970-1980 (Charlottesville: Tayloe Murphy Institute, University of Virginia, 1981) Table 1.

¹⁰The exclusion of State and federal lands (359 square miles) and the exclusion of persons residing on such land would alter the population density figure. Due to the uncertain number of persons residing on such properties, a revised density figure based upon such exclusions is not available. It is recognized that the number of persons residing on State and federal lands in Augusta County is not inconsequential, since Western State Hospital and the Woodrow Wilson Rehabilitation Center together housed 1,925 persons at the time of the 1980 Census.

¹¹Julia H. Martin and Michael A. Spar, Estimates of the Population of Virginia Counties and Cities: July 1, 1981 (Final), and July 1, 1982 (Provisional) (Charlottesville: Tayloe Murphy Institute, University of Virginia, December, 1983), Table 2.

and salary employment to only 14,282 persons.¹² Thus, as of that year 45.6% of the County's labor force was engaged in agricultural production or employed beyond the County's boundaries. Other evidence suggests that agriculture does remain a prominent component of the County's economy. Data reveal that as of 1980 Augusta County ranked third among all of Virginia's 95 counties in terms of the total value of its agricultural products. Further, as of that date, there were 1,483 active farms in the County collectively cultivating 303,370 acres of farmland.¹³

The County's general growth and development in recent years are reflected in the increase in the true value of its real estate and public service corporation property. The data indicate that between 1970 and 1980 the true value of such property in the County increased from \$303.9 million to \$1,333.6 million, or by 338.8%.¹⁴ Between 1980 and 1982 (the latest year for which such statistic is available) such property values in the County grew to \$1,465.7 million, or by an additional 9.9% during that two-year period above.¹⁵ As of the

¹²U. S. Department of Labor, Bureau of Labor Statistics, Historical Report on Labor Force and Unemployment, Virginia, March 1, 1984; and Virginia Employment Commission, Covered Employment and Wages for Quarter Ending September 30, 1983 - Augusta County. Data reveal that between 1978 and 1983 there were 2,298 new nonagricultural wage and salary employment positions established in Augusta County. This increase constituted a growth in such employment of 19.2% during the five-year period.

¹³U. S. Department of Commerce, Bureau of the Census, 1978 Census of Agriculture - County Summary Data, Number AC 78-A-46, May 1981, Table 10.

¹⁴Virginia Department of Taxation, Estimated True (Full) Value of Locally Taxed Property in the Several Counties and Cities of Virginia - 1970, June 1971; and Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1980, March 1982. "True" values are calculated by the Department of Taxation on the basis of that agency's analysis of the ratio of the assessed value to the sale price of property sold.

¹⁵Virginia Assessment/Sales Ratio Study, 1982.

latter date, the per capita true value of Augusta County's real estate and public service corporation property was \$27,295.

Evidence of the growth in the County's commercial base is provided by retail sales tax data. Between 1970 and 1980 the total value of taxable retail sales in Augusta County increased from \$42.2 million to \$117.5 million, or by 178.2%.¹⁶ By 1982, however, total taxable sales in the County fell to \$112.5 million, a decrease of 4.3% during the two-year period since 1980.¹⁷ As of 1982 the per capita value of taxable retail sales in the County was \$2,095. Despite this recent decline in taxable retail sales, Augusta County has experienced considerable growth and diversification of its economic base since 1970. Moreover, given its topography, its geographic location, and its transportation corridors, it is reasonable to conclude that Augusta County has an extraordinary potential for future economic growth.¹⁸

CITY OF STAUNTON

In 1747, less than a decade after the founding of Augusta County, Staunton was established as a community and became one of the County's focal points for trade and development. In 1871 Staunton was granted independent city status and subsequently grew by a series of annexations to its present size of 8.88 square miles.¹⁹

¹⁶Virginia Department of Taxation, Taxable Sales, Annual Report, 1970 and 1980.

¹⁷Ibid., 1982.

¹⁸As of 1982 there were 36 sites in Augusta County, containing an aggregate of 5,811 acres of property, listed with the State's Division of Industrial Development. Many of these sites, which ranged in size from 10 to 1,000 acres, had both water and sewerage available, had access to rail lines, and were in close proximity to the interstate highway system (City of Waynesboro, City of Waynesboro Annexation Proceedings, Annexation Notice, Volume 1B; April 1983, pp. 1-4).

¹⁹City of Staunton, Response by City of Staunton to Partial Immunity Notice (hereinafter cited as Staunton Immunity Response),

As was true of many other Virginia municipalities, the City of Staunton experienced population loss during the decade between 1970 and 1980. That ten-year period saw Staunton's population decline from 24,504 to 21,857, or slightly in excess of 10%.²⁰ The 1982 population estimate for the City (22,000) suggests that Staunton's populace has remained relatively stable since 1980.²¹ Based on its 1980 population and area, the City has a population density of 2,461 persons per square mile.

Since the City of Staunton has not experienced any significant territorial growth since 1947, it is not surprising that the City retains relatively little vacant land suitable for development. According to data submitted to the Commission in 1982, Staunton contained only 513 acres of land within its corporate limits which were vacant and unrestricted in their development potential by steep slopes, floodplains, or other environmental factors.²² Moreover, it is evident that a significant percentage of this vacant land is not attractive for industrial or commercial development due to parcel size, transportation considerations, the nature of adjacent development, or legitimate zoning restrictions.

Various fiscal and economic data reveal a relatively modest economic growth in the City in recent years. Statistics indicate that between 1970 and 1980 the estimated true value of real estate and public service corporation property in the City increased from \$145.9 million to \$412.4 million, or by 182.4%, a percentage of growth

August 9, 1982, p. 4. The City's last significant annexation occurred in 1947 when 5.51 square miles of territory were added to Staunton's corporate limits.

²⁰Growth in Virginia, 1970-1980.

²¹Estimates of the Population of Virginia Counties and Cities: July 1, 1981 (Final) and July 1, 1982 (Provisional), Table 2.

²²Staunton Immunity Response, p. 108.

substantially less than that experienced by the County (338.8%).²³ Concern for the future development potential of the City is underscored by data indicating that by 1982 the estimated true value of real estate and public service corporation property in the City had risen to only \$412.6 million, or by only .04% during the two-year period.²⁴ As of 1982 the per capita true value of real estate and public service corporation property in the City was \$18,754, or only 68.7% of that in Augusta County (\$27,295).

In terms of commercial activity, the data reveal that total taxable sales in the City grew from \$51.7 million in 1970 to \$104.3 million in 1980, an increase of 101.8%.²⁵ In 1982 the total value of taxable sales in the City had risen to \$116.7 million, an increase of 11.9% during that two-year period. This growth in taxable sales in the City between 1980 and 1982 was in marked contrast to the 4.3% decline in such sales in Augusta County during the same period.²⁶ As of 1982, the per capita value of taxable sales in the City was \$5,303, or more than double that in the County (\$2,095). Recent employment data, however, do reflect a constricting economic base. These data reveal that between 1978 and 1983 the number of nonagricultural wage and salary employment positions in the City decreased by 1,230, or by 12.0% during that five-year period.²⁷

Finally, in terms of residential growth, the evidence discloses a precipitous decline in new development in the City. Subdivision records for the City reveal that while 257 lots were recorded between

²³Estimated True (Full) Value of Locally Taxed Property in the Several Counties and Cities of Virginia - 1970; and Virginia Assessment/Sales Ratio Study, 1980.

²⁴Virginia Assessment/Sales Ratio Study, 1982.

²⁵Taxable Sales, Annual Report, 1970 and 1980.

²⁶Ibid., 1982.

²⁷Historical Report on Labor Force and Unemployment, Virginia, March 1, 1984; and Covered Employment and Wages for Quarter Ending

1971 and 1975, the number of such lots platted during the ensuing five-year period (1976-1980) decreased nearly 50% to a total of 130. Further, data for 1981 and 1982 indicate that only two new lots were recorded in Staunton during that two-year period.²⁸

Despite its reduced population and diminished economic growth, Staunton continues to contribute substantially to the business, professional, and civic life of its general area. Staunton is the site of the predominant share of the area's medical facilities, financial institutions, professional and public offices, and cultural activities. These various facilities and activities have been and will continue to be of benefit to residents of the general area. It should also be noted that as of 1980 there were 5,213 residents of Augusta County employed within the corporate boundaries of Staunton.²⁹ This statistic is direct and significant evidence of economic interdependence between the two jurisdictions.

COMMUNITY OF INTERESTS

Augusta County and Staunton have roots which intertwine and which extend deeply into our nation's past. The history and development of the two jurisdictions have been inextricably related. Family, social, professional, and economic ties have crossed and continue to transcend jurisdictional lines. The proposed consolidation of the two governments would only broaden and extend a relationship between the two jurisdictions which already is real and pervasive. While Staunton continues to play a prominent role in the corporate life of its area,

September 30, 1983 - City of Staunton.

²⁸City of Staunton, "Subdivision Development 1955 to Present," separate mimeographed exhibit submitted to the Commission on Local Government in conjunction with annexation action, March 1983.

²⁹U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Place of Work Destinations, Virginia, Summary Tape File 4, Documentation Supplement 1, p. 1.

its governmental boundaries impose severe restraint on its prospects for economic growth. Alternatively, Augusta County since 1970 has experienced considerable development and has an extraordinary potential for future economic growth. The proposed consolidation would permit, it may be argued, the development potential of the County to complement the existing physical assets of the City for the mutual benefit of the residents of both jurisdictions.

TERMS OF THE CONSOLIDATION AGREEMENT

GENERAL PROVISIONS

The proposed consolidation of Staunton and Augusta County would be the first consolidation in the history of this State to preserve both consolidating governments as distinct and active political entities. While other consolidations in Virginia have retained certain geographic areas as service or debt retirement districts, the proposed Staunton - Augusta County consolidation would be the first to preserve both consolidating entities as separately functioning political units. The proposed consolidation actually contemplates a limited form of governmental merger, one which calls for the transformation of the City of Staunton to the Tier-City of Staunton. Under the terms of the consolidation agreement, and consistent with the enabling legislation, the Tier-City of Staunton is described as "a separate dependent geographical and political subdivision" which possesses "the powers of a town together with such powers as may be granted [it] . . . in this Consolidation Agreement, . . . [or] in general or special legislation [adopted] by the Virginia General Assembly."³⁰

It is significant to note that the new general laws of the State will establish from the outset certain distinctions between tier-cities and towns. First, the new legislation (effective July 1, 1984)

³⁰Consolidation Agreement, Section IX. Senate Bill 70 (1984) states that a tier-city shall "qualify in general law . . . as a town

will require proposed tier-cities to have a minimum population of 15,000, while new towns may be incorporated with populations as small as 1,000.³¹ Second, since tier-cities will also be the product of a consolidation agreement between a municipality and the consolidating county, they will have, unlike towns, a written general government "contract" defining in detail their relationship with the county. This contractual relationship permits the consolidating jurisdictions to fashion governmental arrangements which are adapted specifically to their peculiar needs and circumstances. Third, under the new general law governing the establishment of tier-cities the consolidating governments can agree to provisions which depart from the general statutory arrangements regarding business and professional license taxes, consumer utility taxes, and motor vehicle license taxes.³² Although the establishment of the tier-city as a new and distinct form of local government will facilitate, and will probably result in, further distinctions being made by the legislature between towns and tier-cities, the above-mentioned variances appear to be the only current distinctions between the two forms of local government.

While the proposed consolidation agreement will maintain Staunton as a distinct political entity with powers of taxation (including that with respect to real estate, personal property, and retail sales), it also effects the transfer to the new consolidated County responsibility for the general provision of fire services, libraries, park and recreation, social services, street lights, solid waste disposal, planning and zoning administration, and public education. The transfer of the public education function to the consolidated County

with respect to its rights, powers and obligations, and shall have such other rights, powers and obligations as may be given it by general law or special charter legislation." See amendments to Sec. 15.1-1135 adding subsection "(6a)."

³¹Senate Bill 70 (1984). See Sec. 1-13.28:1.

³²Ibid. See Secs. 46.1-65(d1), 58-266.1(7a), and 58-617.2(d). Town enactment of business and professional license taxes, consumer

will shift a costly public service to the larger government and should enable a better utilization of physical plant, economies of scale, and richer educational opportunities for students of the general area. From the vantage point of this Commission, the merger of the school systems of Staunton and Augusta County constitutes one of the major beneficial consequences of the proposed consolidation.

In sum, under the proposed consolidation Staunton will function as a new type of general local government in Virginia, possessing discrete fiscal and administrative authority. The plan of consolidation will also place upon the new consolidated County of Augusta responsibility for the provision of certain specified services to the residents of both jurisdictions and will bestow upon the County added fiscal resources for the discharge of such responsibilities.

TRANSITION PROVISION

The consolidation agreement contains a provision which would bar the Tier-City of Staunton, or any portion thereof, from exercising for 30 years from the date tier-city status is attained the authority granted towns under general law to seek independent city status.³³ By implication, after the conclusion of the 30-year period the tier-city would be eligible to seek independent city status in accordance with general law requirements. Other than by mutual consent, this provision in the consolidation agreement constitutes the only means by which the consolidation plan might be amended by the parties.

The consolidation plan proposed by Staunton and Augusta County involves major changes in political arrangements, in fiscal authority, and in the provision of public services. Some of these changes will

utility taxes, and motor vehicle license taxes can and usually do preempt or reduce county tax collections from the same revenue source.

³³Consolidation Agreement, Sec. XXXV(A).

require considerable time to implement fully and to evaluate adequately. In view of the fact that other provisions in the consolidation agreement provide flexibility in governmental arrangements and allow the geographic growth of the tier-city, the Commission considers the 30-year moratorium on the transition of the tier-city to independent city status reasonable and appropriate. The Commission finds that this provision, which would protect the integrity of the consolidated County for 30 years, is consistent with the interest of the Commonwealth.

ANNEXATION PROVISIONS

Restriction to Use of Special Annexation Process

The consolidation agreement contains a provision which states that the Tier-City of Staunton shall be barred for 30 years from the date tier-city status is attained from seeking an annexation except in accordance with the procedure and standards set forth in the consolidation agreement.³⁴ While the Commission finds no basis for recommending changes in this provision per se, it does note that this provision creates ambiguity as to the applicability of the special annexation process set forth in the consolidation agreement following the termination of the 30-year period. By implication, this provision in the consolidation agreement sanctions the tier-city's use of the general law annexation process after 30 years. Is this provision intended to foreclose the tier-city's use of the special annexation process set forth in the consolidation agreement after the initial 30-year period? The Commission recommends that this apparent ambiguity in the agreement be addressed by the jurisdictions prior to their presentation of the document to court for final approval.

Restrictions on Initiation of Annexations by the Tier-City

The consolidation agreement contains a provision which would pro-

³⁴Ibid.

hibit the governing body of the tier-city from initiating annexation proceedings during the ten-year period following the effective date of consolidation and from initiating annexations more frequently than once in each ten-year period thereafter.³⁵ Given the fact that the consolidation agreement itself establishes initial boundaries for the Tier-City which substantially expand the area of the former City, the ten-year moratorium on annexations by the Tier-City appears reasonable.³⁶ Further, the restriction which would limit Tier-City annexations to one for each ten-year period thereafter is consistent with general law provisions governing succeeding annexations by municipalities. The Commission notes, however, that, unlike general law, the consolidation agreement does not expressly allow more frequent annexations where such are mutually approved by the governing bodies of the municipality and the county. The Commission believes that such a provision in the consolidation agreement between Staunton and Augusta County would provide added and desirable flexibility.

Initiations of Annexation by Petition of Property Owners

In addition to annexations initiated by the Tier-City, the consolidation agreement would permit "fifty-one percent or more of the owners of land, . . ." to initiate proceeding for annexation.³⁷ This provision, it appears to the Commission, requires clarification. While it is a reasonable inference that this provision in the agreement contemplates that the petitioners can only seek the annexation of property with respect to which they represent "fifty-one per-

³⁵Ibid., Sec. XXXV(B).

³⁶The initial boundaries of the Tier-City will give that proposed municipality an area of 24.06 square miles. The current area of the City of Staunton is 8.88 square miles. Appendices A and B provide, respectively, a map showing the initial boundaries of the proposed Tier-City and data regarding its size and population.

³⁷Consolidation Agreement, Sec. XXXV(B).

cent or more of the owners of land," the provision does not expressly state such. An amendment could make clear that all petitioners must own property within the area they propose for annexation. Further, it should be noted that this provision in the consolidation agreement would enable property owners to effect the annexation of property with respect to which their aggregate holdings might constitute only a minority of the whole. Unlike the State's general annexation law which permits petitions for annexation from property owners only in instances where a petition is signed by 51% "of the owners of real estate in number and land area," the proposed provision in the consolidation agreement would allow petitions for annexation where only the first of the two conditions is met.³⁸ The Commission does not, however, view this variance from the general law annexation process as creating a situation threatening the viability of either local government and, thus, inconsistent with the interest of the State.

Finally, it should be noted that this proposed provision in the consolidation agreement deviates from the general law annexation process by not authorizing annexations to be initiated by petition of "qualified voters." While the general law annexation process permits annexation to be initiated by petition of either property owners or qualified voters, the consolidation agreement would not allow the latter. Although the omission of authority of qualified voters to petition for annexation to the Tier-City constitutes the elimination of an authority granted the citizenry by general law, the Commission cannot conclude that such omission in the consolidation agreement is contrary to the interest of the State. The Commission notes that the 1983 session of the General Assembly enacted legislation authorizing municipalities to enter into agreements with counties by which a municipality might agree to reject all citizen petitions for annexations.³⁹ The Staunton - Augusta County consolidation agreement is

³⁸See Sec. 15.1-1034(A), Code of Virginia.

³⁹Sec. 15.1-1034(C), Code of Virginia.

an instance in which a municipality has exercised that new legislative authority.

Standards for Annexation

The consolidation agreement states that annexations to the Tier-City of Staunton, whether initiated by the municipality or by petition of property owners, shall be granted by the court upon a determination that the area proposed for annexation is contiguous to the Tier-City and that it (1) has a population density of at least 300 persons per square mile or (2) has at least 51% of the land therein "developed for commercial or industrial use."⁴⁰ The consolidation agreement restricts the reviewing court to consideration of the above-mentioned density and land-use issue and removes from consideration other factors traditionally a part of the annexation process (e. g., the service needs of the area proposed for annexation). The Commission observes that the proposed abbreviated annexation review process parallels that permitted towns under the provisions of Article 1.1, Chapter 25, of Title 15.1 (i. e., agreements defining annexation rights). In view of this existing statutory prototype and the fact that annexations under the plan of consolidation will not significantly affect the County's tax base, the Commission finds no basis for recommending modification of the proposed annexation arrangement. The Commission does recommend, however, that the Tier-City undertake annexation only pursuant to an ordinance adopted after an advertised public hearing and including provisions which delineate with reasonable specificity the additional services which will be extended to the area annexed. Such a procedural step in the annexation process can provide affected residents and property owners with information concerning the prospective impact of a proposed annexation and remove a basis of possible misunderstanding and citizen complaint.

⁴⁰Consolidation Agreement, Sec. XXXV(B).

The Commission observes that the proposed standards for annexation would restrict the Tier-City to the annexation of contiguous and substantially developed property. Under the terms of the consolidation agreement the Tier-City would not be authorized to annex largely vacant property, and the future growth of Staunton would be predicated upon residential, commercial, or industrial growth contiguous to its boundary. Realistically, it may be anticipated that growth will occur contiguous to Staunton as the consolidated County may be expected to channel much of its future growth to areas adjacent to the Tier-City in order to utilize existing service facilities and to avoid the necessity for the construction of new capital facilities in outlying portions of the County. Indeed, one of the primary benefits of the proposed consolidation for the area and for the Commonwealth would be the ability of the County to direct growth to the vicinity of the Tier-City, thereby reducing pressure for the conversion of the County's agricultural lands. Thus, the Commission would anticipate that further development will occur contiguous to the Tier-City providing Staunton with a reasonable opportunity for future growth.

Judicial Review

The consolidation agreement states that annexation issues involving the Tier-City of Staunton will be reviewed and determined by the Circuit Court of Augusta County.⁴¹ The proposed use of the Circuit Court for the disposition of annexation issues differs from the review procedure established by general law which requires such issues to be considered by a special three-judge court appointed by the Virginia Supreme Court. While the Commission believes that the propriety and desirability of this arrangement is appropriately left to judicial determination as part of the court's review of the con-

⁴¹Ibid., Sec. XXXV(C).

solidation agreement, we do note that the circuit courts of the State have been statutorily made responsible for the disposition of petitions for total immunity which require consideration of similar factors.

IMMUNITY PROVISIONS

Immunity for Area of Tier-City

The consolidation agreement includes a provision which recognizes the right of the Tier-City of Staunton to petition for the immunization of its territory from city-initiated annexation and from the incorporation of new cities therein.⁴² This provision apparently is principally intended to protect the Tier-City from possible annexation by any existing (or potential) adjacent city. While the prospect of such an annexation appears remote, this provision in the agreement recognizes and endorses Staunton's legal authority to protect its corporate identity by means of an immunity petition.⁴³ Since other provisions in the consolidation agreement preclude the establishment of a new independent city within the boundaries of the Tier-City for 30 years, the protection against the incorporation of a new city which would be provided by a grant of immunity would be of no immediate consequence.

Immunity for Verona and Fishersville Areas

The consolidation agreement contains a provision by which the Tier-City agrees not to seek, without the consent of the County, the annexation of any properties which the County sought to have immunized by its action filed with the Commission in April 1982.⁴⁴ This pro-

⁴²Ibid., Sec. XXXV(G).

⁴³Senate Bill 70 (1984) amends the immunity statutes to permit tier-cities to petition for total immunity.

⁴⁴Consolidation Agreement, Sec. XXXV(E). This provision states that the parties agree that the areas of Augusta County which shall not be subject to annexation by the Tier-City are those

vision would deny the Tier-City the opportunity, without County approval, to expand northward along U. S. Highway 11 into the Verona area and eastward along the northern boundary of Interstate Highway 64 into the Fishersville area. The Tier-City's agreement not to seek the annexation of these areas without County consent would leave available to Staunton opportunities for growth into other areas which have economic development potential. Since the Commission has previously recognized the significance of the Verona and Fishersville areas to Augusta County, and since the "immunization" of those areas would leave Staunton with a substantial opportunity for meaningful growth, we find this provision in the agreement a reasonable reconciliation of the interests of both jurisdictions and consistent with the interest of the State.⁴⁵

Utility Provisions

Under the terms of the consolidation agreement Staunton and the Augusta County Service Authority (ACSA) will continue to maintain and operate separate water and sewerage systems after the effective date of consolidation. The agreement provides that the Tier-City of Staunton shall be given exclusive jurisdiction for water and sewerage service within the boundaries of the former City, while the ACSA would be given similar exclusive jurisdiction beyond the original boundaries of the Tier-City. Between those lines of exclusive jurisdiction service would be provided by whichever utility system could most efficiently provide service."⁴⁶ In the event that agreement cannot be reached as to which system can "most efficiently" extend service within this area, the issue would be submitted to arbitration. Thus,

described by metes and bounds in Deed Book 815, page 160 in the Clerk's Office of the Circuit Court of Augusta County.

⁴⁵Report on the County of Augusta Partial Immunity Action (December 1982), pp. 125-127.

⁴⁶Consolidation Agreement, Sec. XXI(S). The agreement does allow the Tier-City to continue to serve Staunton's present water

the consolidation agreement envisages water and sewerage service being provided within the Tier-City by two distinct systems with varying charges and fees. This arrangement is not desirable, and it is one which will result in citizen charges of inequity and public discontent.

The optimum solution which this Commission encourages the parties to pursue is the general consolidation of the utility systems serving the two jurisdictions. If such consolidation cannot be negotiated, the Commission recommends that the parties develop appropriate arrangements whereby the Tier-City would be given authority to serve all water and sewerage connections within its boundaries. The Commission is fully cognizant of the fact that both of these alternatives have broad ramifications which will require extensive negotiations. However, the maintenance and continued functioning of two distinct utility systems in one municipality, particularly where those systems have major differences in their charges and fees, will create a set of problems which will demand rectification.

DESIGNATION AS "TIER-CITY"

During the course of the Commission's review various Staunton officials indicated their expectations that all physical signs, municipal equipment, correspondence, and legal documents which had previously borne the inscription "City of Staunton" would, following the consolidation, henceforth require use of the designation "Tier-City of Staunton." While this issue is clearly not of fundamental importance, it appears to the Commission that the legal categorization of Staunton as a "tier-city" need not necessitate the general use of such unwieldy legal designation in the title of the municipality. The Commission

customers (and any new connections added through December 1985) in the Verona area and to extend other utility service beyond its boundaries pursuant to contract with the County.

encourages Staunton officials to continue to use, pursuant to a grant of express legislative authority if such is deemed necessary, the designation "City of Staunton" on all municipal property, signs, and documents. If legislative authority is deemed to be required for the continued use of that designation, the Commission recommends that such be sought at the earliest opportunity for reasons of good public relations and in recognition of the historic nature of the "City of Staunton." Whatever its legal classification, Staunton will continue to be identified colloquially as a "City." The laws of the Commonwealth should be able to accommodate this public proclivity.

CONCLUDING COMMENT

In reviewing those aspects of this consolidation agreement subject to its review, the Commission has become increasingly aware of the magnitude and complexity of the proposed governmental reorganization. The agreement contemplates a form of governmental consolidation which for the first time in Virginia will allow the continued political existence of both consolidating entities. Because of the nature of this proposed consolidation, which preserves the constituent elements, this governmental reorganization is far more intricate than any ordinary consolidation. The Commission has reviewed with respect not only the plan of consolidation which is proposed for submission to the local electorate but also the methodology by which that plan was developed. This Commission would be remiss if it failed to acknowledge the detailed technical analysis which preceded the development of the consolidation plan and the establishment of the Appeal Commission by which major points of disagreement were resolved. While the proposed consolidation is certainly a pioneering effort in this Commonwealth, it is an initiative which has been preceded by careful and extended analysis. To be sure, neither this nor any other plan of local governmental organization can assure the optimal administration of all public affairs. The Staunton - Augusta County consolidation plan is, however, a thoughtful attempt to fashion a new governmental arrange-

ment to meet the area's contemporary needs and prospective concerns. Certainly, it is a plan of government which merits the respectful consideration of the citizenry it is designed to serve.

Recent decades have constituted in Virginia, as elsewhere in this nation, an era of marked social, economic, and political change which has prompted in many areas a reconsideration of governmental arrangements and processes. The proposed plan of consolidation which is under consideration in the Staunton - Augusta County area is the product of such reconsideration. While we in this Commonwealth have particularly strong attachments to our localities and traditional governmental arrangements, a famous Virginian and patron saint of local government might be cited as a proponent of change and adaptation:

. . . as new discoveries are made, new truths disclosed, and manners and opinions change with the circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him as a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.⁴⁷

Qualified by the recommendations proposed previously in this report, the Commission finds that those provisions in the Staunton - Augusta County consolidation plan which have been subject to its review are consistent with the interest of the State in the protection and preservation of the viability of its local governments.

⁴⁷Adrienne Koch and William Peden, eds., The Life and Selected Writings of Thomas Jefferson (New York: The Modern Library, Random House, 1966), p. 674.

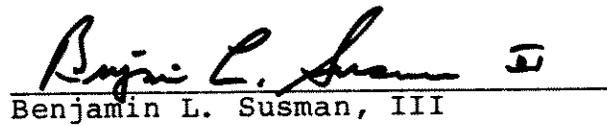
Respectfully submitted,


Wendell D. Hensley, Chairman


Harold S. Atkinson, Vice-Chairman


Edward A. Beck


William S. Hubbard


Benjamin L. Susman, III

APPENDIX A

MAP OF CITY OF STAUNTON
AND PROPOSED TIER-CITY



Source: Notice of Voluntary Agreements

Legend: Staunton City Limits 
Proposed Tier-City Boundary 

APPENDIX B

AREA AND POPULATION
CITY OF STAUNTON, COUNTY OF AUGUSTA,
AND CONSOLIDATED JURISDICTION

EXISTING POPULATION AND POPULATION DENSITIES

<u>Jurisdiction</u>	<u>Land Area</u>	<u>Population</u>	<u>Density</u>
County of Augusta	985.65	53,732	54.5
City of Staunton	8.88	21,857	2,461.4

POST-CONSOLIDATION POPULATION AND POPULATION DENSITIES

<u>Jurisdiction</u>	<u>Land Area</u>	<u>Population</u>	<u>Density</u>
Consolidated County	994.55	75,589	76.0
Tier-City	24.06	26,106	1,085.0
Fishersville Immunity Area	15.10	5,776	382.5
Verona Immunity Area	6.19	3,360	502.8