

# DINOSAURS?!



# OR PARTNERS IN GOVERNANCE?



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## **WORKING WITH CONSTITUTIONAL OFFICERS IN THE SHARED SANDBOX OF LOCAL GOVERNMENT**

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**WE HAVE MET  
THE ENEMY  
AND HE IS US.**





# SHARING SOMETIMES IS HARD – BUT IT COULD BE WORSE!

- ***Constitution of 1870*** gave us four of our present five officers, more or less in present form – but there were dozens more independent elected officials!
- Elected at county level:
  - Sheriff
  - Commonwealth's Attorney
  - Clerk of Circuit Court (and County in most instances)
  - Treasurer
  - Superintendent of the Poor
- Three-year terms *except* Clerk, who got four

# IN ADDITION TO COUNTY-WIDE OFFICERS

- Counties divided into “townships,” which EACH elected:
  - A supervisor
  - Township clerk
  - Assessor
  - Collector
  - Commissioner of Roads
  - Overseer of the Poor
  - Justice of the Peace
  - Constable
  
- Each of the township “supervisors,” when they met together, formed the “Board of Supervisors” for the county (thus your name!).

# BUT WAIT! THERE ARE *MORE!*

- Each *township* was divided into one or more school districts
  - School Trustee who supervised schools could be elected *or* appointed
- Minimum size for school district = 100 *inhabitants* (not school-age students – total inhabitants)

# **AND EVEN MORE!** **(FOR ROADS, OF COURSE!)**

- In addition to the township officers, each county was divided into multiple “road districts,” separate and distinct from the townships
- Each road district had an elected Overseer of Roads
- And, just for good measure, the Constitution of 1870 made clear that the General Assembly could create whatever other local officers it saw fit

# BY 1902, THIS LOVE FOR ELECTIONS HAD DIED DOWN A BIT

- ***Constitution of 1902*** gave us our present five constitutional officers in counties, close to present form
  - Sheriff
  - Commonwealth's Attorney
  - Clerk of Circuit Court (and County in most instances)
  - Treasurer
  - Commissioner of the Revenue (elected or appointed)
- In addition, each county and city had an elected
  - Superintendent of the Poor
  - County Surveyor

# YOUR JOBS ARE BEGINNING TO LOOK MORE FAMILIAR BY 1902

- The former “townships” are now known as “magisterial districts” (from Latin, *magister* = teacher, or (medieval usage) person in authority)
- No more magisterial districts can be created – we are *done* with proliferating townships!
- Minimum size is 30 square miles
- Each magisterial district elects a supervisor
- When all of the supervisors of the county are assembled, they form the Board of Supervisors

# YOUR JOBS ARE BEGINNING TO LOOK MORE FAMILIAR BY 1902

- Job description of the Supervisors:
  - *"The supervisors of the districts shall constitute the board of supervisors of the county, which shall meet at stated periods and at other times as often as may be necessary, lay the county and district levies, pass upon all claims against the county, subject to such appeal as, may be provided by law, and perform such duties as may be required by law."* (Section 111)
- And there are some things that even supervisors aren't responsible for!
  - *"Counties shall not be made responsible for the acts of the sheriffs."* (Section 114)



# GREAT THINGS ABOUT CONSTITUTIONAL OFFICERS





# GREAT THINGS ABOUT CONSTITUTIONAL OFFICERS

- They run for, and want to do, messy jobs you don't have to do:
  - Collect taxes (ugh!)
  - Assess property & business income (double ugh!)
  - Have people shoot at them
  - Throw folks in jail
  - Decide who gets prosecuted
  - Ask juries to put folks in jail
  - Maintain court records, land records, marriage licenses, hundreds of other records – and keep judges happy!

# GREAT THINGS ABOUT CONSTITUTIONAL OFFICERS, *continued*

- They represent the whole county – so have a **lot** of folks voting for them
  - Extreme example: Fairfax County, 2019 sheriff's race:
    - 285,290 votes
    - Incumbent sheriff got 223,285 of those votes
    - To put this in perspective – this is as much or more than typical winning congressional district vote
- For most of you, your constitutional officer will have been elected by somewhere between five and ten times as many voters as you have

# GREAT THINGS ABOUT CONSTITUTIONAL OFFICERS, *continued*

- They often have been around a long time
  - Gene Harding (Charlottesville) – became a Deputy City Sergeant (now called Deputy Sheriff) in 1946, City Sergeant (Sheriff) in 1948, Treasurer in 1956 – 46 years as elected constitutional officer
  - Obviously, something in the Charlottesville water – the Commissioner of the Revenue Ora Maupin, served a mere 45 years in that office
- Longevity is good, not in and of itself, but for the experience it brings
- As the Farmer's Insurance Guy says, they know a thing or two, because they've seen a thing or two





# WHY IS WORKING TOGETHER SO IMPORTANT?



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- The responsibilities of these offices are core government functions – public safety, law enforcement, raising of the revenues, maintenance of the judicial system.
- The time ended, years ago, when state funding was sufficient to run these offices properly.
- The sad truth is that the Commonwealth did not even make the statutorily-required contributions for **two decades**
- The shortfall reached nearly **\$50 million** a year – money you should have been receiving, but weren't

# WHY IS WORKING TOGETHER SO IMPORTANT? (*continued*)

- Over the past several years, the Commonwealth has ***finally*** begun meaningfully to address these shortfalls in the state share.
- Treasurers' and Commissioners' offices now have full state funding . . . but only for the Comp Board approved positions.
- On top of this: Comp Board's staffing standards show ***many*** more positions are needed.
  - Commonwealth's Atty: 112 ACAs, 91 staff
  - Treasurer 131, Commissioners 70, Clerks 55
  - Sheriffs, by statute, are entitled to one law-enforcement deputy per 1,500 inhabitants. Need to reach this ratio = 327 positions

# WHY IS WORKING TOGETHER SO IMPORTANT? (*continued*)

- What unites you & your COs is much greater than that which, from time to time, divides you.
- COs generally are not competing policymakers (and don't want to be). They exercise essentially **executive** functions (for instance, collecting revenues, exercising police powers, running probate, exercising prosecutorial discretion)
- This is even reflected in the way the CO organizations and VACo work together on legislative matters.
  - My mantra: responsibility for details of **how** the ox is gored falls to Treasurers and Commissioners – but **whose ox is gored** falls to VACo and VML.



# WHY IS WORKING TOGETHER SO IMPORTANT? (*continued*)

- More examples
  - Sheriffs advocate on how jails are operated – but VACo and VML advocate on the funding to run them
  - Commonwealth's Attorneys advocate as to crimes and criminal procedure – VACo and VML have been important partners to obtain additional positions to deal with a changing landscape (ex: body cameras)
- We have a great partnership at the state level. We look out for each other's interests, coordinate our efforts, and usually end up with good results.
- Replicating this kind of partnership – and teamwork – at the local level is even more important.

# PARTNERSHIP BEGINS WITH UNDERSTANDING

- Reach out to your officers
  - Schedule a visit, take a tour
  - Ask what the greatest challenges are
  - Take your constituent concerns to the officer herself
  - Get to know the work of the statewide associations – they are doing great work in training, standards, addressing real public policy issues.
- Get them on the Board agenda for reports and question time. *It's amazing what talking can do.*
- Don't undermine them. They are elected just like you. They have hard jobs, and they are full-timers, just like your other agency heads. They need your support if we, jointly, are going to serve the citizens well.

# STATEWIDE ASSOCIATIONS CAN BE A GREAT RESOURCE





**BUT WHAT ABOUT THE  
DINOSAURS?! (you promised)**



# SHOULDN'T WE REALLY JUST GET RID OF THE DINOSAURS?

- The people don't seem to think so.
  - Last successful contested election to eliminate a CO: 1976 (Roanoke County, treasurer & commissioner)
  - Roanoke County hated it so much that they went back to elected T & C four years later.
  - Hanover tried to eliminate T & C through "back door," by changing form of government, in 1994. Failed badly. Code changed in 1995 to require double referendum.
  - Multiple counties that have explored elimination of finance officers since then have found little support – at home or in legislature.

# SHOULDN'T WE REALLY JUST GET RID OF THE DINOSAURS?

- The people don't seem to think so (*continued*).
  - Referenda to eliminate law-enforcement duties of sheriff, and establish county police force, have failed by large margins in Hanover (two unsuccessful attempts, including 1988 referendum defeated 3:1), York
  - Roanoke County is only locality where referendum to remove sheriff's law enforcement duties has succeeded – and that was 35 years ago, with unusual circumstances including dispute over cattle grazing!
  - 2022 exploration of eliminating Loudoun sheriff law-enforcement duties, creating county police dep't dropped in face of public opposition & fiscal impact.
  - The refrain we hear over and over is that the people don't want to give up the right to elect the people that handle these core functions.

# SHOULDN'T WE REALLY JUST GET RID OF THE DINOSAURS? (*continued*)

- The General Assembly doesn't seem to think so.
  - Proposal to eliminate the Comp Board and create a block grant system failed in 1990. (And beware what you ask for! History teaches localities that block grants are easily forgotten; Chapter 599 police dep't funds are a great example.)
  - "Hanover loophole" closed in 1995 (no "back door" elimination by change in form of gov't)
  - Recent proposals to gut offices through city charter changes failed (Petersburg, 2019 (HB 2076, SB 1363))

# SHOULDN'T WE REALLY JUST GET RID OF THE DINOSAURS? (*continued*)

- Do you *really* want these headaches on your plate?
  - Multiple proposed bills to allow someone other than treasurer to waive penalty and interest on delinquent taxes have typically ended badly. (Do you really want paying tax bills to become a matter of negotiation??)
  - Urbanizing/suburbanizing counties: do you really want to take over the challenges of running a police department (including the litigation), rather than keeping them with an independently-elected sheriff?
  - Do you really want the Supreme Court or the local judges to pick who manages all of the 800+ functions served by circuit court clerk?



# BUT CAN'T WE AT LEAST GET RID OF THE BAD ONES?!



# IN A WORD, YES -- REMOVAL IS POSSIBLE

- As in all human endeavors, COs occasionally fall short
  - Corruption
  - Personal challenges
- What can be done?
  - Automatic forfeiture on final conviction of felony or offense requiring sex offender registration (§ 24.2-231)
  - Automatic removal on judicial determination of mental incompetence (§ 24.2-232)
  - Upon petition of 10% of last-election voters, commencement of proceeding for removal by circuit court (grounds on next slide)

# CIRCUIT COURT REMOVAL

- Grounds (§ 24.2-233)
  - Neglect of a clear, ministerial duty of the office
  - Misuse of the office
  - Incompetence in performance of duties
  - + material adverse effect on conduct of office
- Additional grounds
  - Certain drug-related convictions + material adverse effect on conduct of office
  - Hate crime conviction
  - Conviction for enumerated forms of criminal sexual assault

# OTHER “INVOLUNTARY EXITS”

- Public corruption prosecution
  - Recent example: Norfolk former sheriff (jail services contracting), federal investigation & prosecution
  - Often do not come to trial until officer is out of office
- US Dep’t of Justice Public Integrity Section
  - Prosecuted almost **5,000** local public officials over past 20 years
  - Conviction rate: 90%+
  - 30 lawyers with expertise in corruption, extortion, bribery, election crimes, criminal conflicts of interest
- State investigation: State Police lead



**BOTTOM LINE: MAKE FRIENDS  
WITH THE DINOSAURS. YOU NEED  
EACH OTHER.**



# QUESTIONS – OR FRUSTRATIONS

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