

REVISION OF TITLE 27 OF THE CODE OF VIRGINIA

**REPORT OF
THE VIRGINIA CODE COMMISSION
To
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA**



170 18, 1970

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1970

MEMBERS

A. L. PHILPOTT, *Chairman*
WILLIAM H. HODGES, *Vice-Chairman*
FREDERICK T. GRAY
JOHN WINGO KNOWLES
G. M. LAPSLEY
ROBERT D. McILWAINE, III
W. CARRINGTON THOMPSON

STAFF

G. M. LAPSLEY
WILDMAN S. KINCHELOE, JR.
FRANK R. DUNHAM
MARY SPAIN
JOHN A. BANKS, JR.
SALLY WARTHEN
DAVID T. WALKER
KATHERINE GOOLSBY

COUNSEL

HUGH R. THOMPSON, JR.

REVISION OF TITLE 27 OF THE CODE OF VIRGINIA

REPORT OF

THE VIRGINIA CODE COMMISSION

TO

THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, October 1, 1969

The General Assembly at its Regular Session of 1968 directed the Virginia Code Commission, by Chapter 679 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 27, relating to "Fire Protection".

Extracts from Chapter 679 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions should be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 27, 33, 34, 35, 36, 40, 41, 42, 43 and 53 of the Code of Virginia and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-nine, a report of its recommendations, together with suggestive legislation necessary to carry such recommendations into effect. No substantive change shall be incorporated in such revisions, however, the Commission may suggest substantive change in each title being revised and submit separately legislation purposed to carry out each such recommendation."

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar, was retained as the Commission's general counsel for these undertakings.

The Virginia Code Commission examined the provisions of this Title in detail and consulted officials of the State agencies interested in and affected by this Title. The Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials.

As a result of its efforts, the Commission has caused counsel to prepare a draft of revision of Title 27 in the usual form, i.e., a bill suitable for introduction at the 1970 Session of the General Assembly of Virginia.

The draft purports to reflect the Commission's careful consideration of all recommendations and suggestions either brought to its attention or resulting from its own observations, inquiries and deliberations. It incorporates, among others, the following changes:

1. Amendment of the following sections to give counties the same powers as cities and towns: §§ 27-7, 27-8, 27-9, 27-10, 27-11, 27-13, 27-19, 27-21 and 27-30.

2. Amendment of the following sections to give cities and towns generally the same powers as counties: §§ 27-32, 27-36, 27-41, 27-43 and 27-46.

3. Amendment of the following sections for the reasons indicated:

§ 27-7, to permit counties, cities and towns generally to provide for the compensation of officers and employees of fire departments;

§ 27-8, to permit counties with two or more fire companies using the same station to have a combined personnel strength of not less than twenty;

§ 27-9, to require that the principal officer of a fire company be known as "the chief";

§ 27-10, to permit governing bodies of counties, cities and towns to dissolve fire companies;

§ 27-11, to permit rules and regulations, as well as ordinances and by-laws, to govern attendance of fire companies;

§ 27-13, to broaden the authority of localities with respect to the appointment of fire company and department officers;

§ 27-19, to increase, from five dollars to one hundred dollars, the maximum fine for refusing or neglecting to obey commands of an officer at a fire;

§ 27-20, to conform usage of "chief or other officer" in lieu of "principal engineer or warden commanding in his absence";

§ 27-34, to increase the powers at fires of deputies of the fire marshal;

§ 27-83, to substitute the language "court having appropriate criminal jurisdiction" for "trial justice having jurisdiction", and to delete the unnecessary last sentence relating to appeals, and

§ 37-84, to delete the unnecessary and constitutionally questionable last sentence thereof.

4. Transfer for better sequence and redesignation of §§ 27-26, 27-36.1, 27-26.2, 27-26.3, 27-26.4, 27-27, 27-27.1, 27-28, 27-29 and 27-29.1, respectively, as §§ 27-23.1 to 27-23.8. Although these are indicated in the draft of the bill attached as repealed and new sections, their relocation is without substantive change.

5. Addition of the following sections for the reasons indicated:

§ 27-6.1, to permit the governing bodies of counties, cities and towns generally to establish fire departments;

§ 27-8.1, to redefine the term "fire company";

§ 27-15.1, to broaden the authority of fire company and department officers to maintain order generally at and in the vicinity of fires;

§ 27-15.2, to authorize counties, cities and towns generally to require the standardization of both public and private fire fighting equipment;

§ 27-23.9, to establish a general rule for the coordination of supervision and control of fire companies and departments on joint undertakings;

- § 27-23.10, to authorize counties, cities and towns to enact and enforce ordinances to effect the purposes of § 27-23.9;
- § 27-32.1, to more adequately provide for search warrants for the discovery of evidence of arson and related offenses;
- § 27-34.1, to authorize the fire marshal and his designated representatives to take and preserve property constituting evidence of arson and related offenses found at the scene of a fire.
6. Repeal of the following sections as obsolete: §§ 27-6, 27-12, 27-15, 27-16, 27-18, 27-23, 27-24, 27-25, 27-25.1, 27-27 and 27-28.

RECOMMENDATIONS

The Commission considers the accompanying draft of revision of Title 27 as a substantial improvement over the present Title 27 and recommends its introduction at the 1970 Session of the General Assembly.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the officials of the State agencies affected by this Title.

Respectfully submitted,

A. L. Philpott, Chairman

William H. Hodges, Vice-Chairman

G. M. Lapsley, Secretary

Frederick T. Gray

John Wingo Knowles

Robert D. McIlwaine, III

W. Carrington Thompson

A BILL to generally revise and amend Title 27 of the Code of Virginia, relating to Fire Protection, by amending and reenacting §§ 27-4, 27-7, 27-8, 27-9, 27-10, 27-11, 27-13, 27-14, 27-17, 27-19, 27-20, 27-21, 27-30, 27-32, 27-34, 27-36, 27-39, 27-41, 27-43, 27-46, 27-83 and 27-84 thereof, as severally amended, by adding therein §§ 27-6.1, 27-8.1, 27-15.1, 27-15.2, 27-23.1, 27-23.2, 27-23.3, 27-23.4, 27-23.5, 27-23.6, 27-23.7, 27-23.8, 27-23.9, 27-23.10, 27-32.1 and 27-34.1, and by repealing §§ 27-6, 27-12, 27-15, 27-16, 27-18, 27-23, 27-24, 27-25, 27-25.1, 27-26, 27-26.1, 27-26.2, 27-26.3, 27-26.4, 27-27, 27-27.1, 27-28, 27-29 and 27-29.1 thereof, all of which amended, new and repealed sections relate to fire protection; to provide how this act shall be construed, and to prescribe when this act shall become effective.

Be it enacted by the General Assembly of Virginia:

1. That §§ 27-4, 27-7, 27-8, 27-9, 27-10, 27-11, 27-13, 27-14, 27-15, 27-19, 27-20, 27-21, 27-30, 27-32, 27-34, 27-36, 27-39, 27-41, 27-43, 27-46, 27-83 and 27-84, as severally amended, of the Code of Virginia, are amended and reenacted and that the Code of Virginia is further amended by adding, in Title 27 thereof, 27-6.1, 27-8.1, 27-15.1, 27-15.2, 27-23.1, 27-23.2, 27-23.3, 27-23.4, 27-23.5, 27-23.6, 27-23.7, 27-23.8, 27-23.9, 27-23.10, 27-32.1 and 27-34.1, as follows:

§ 27-4. Contract of county to furnish fire protection.—Any county which operates fire fighting equipment as provided for in * § 27-15.2 and any county mentioned in * § 27-23.6 * may contract with towns in, adjacent to, or near such county for fire protection in the manner provided for in § 27-2.

§ 27-6.1. *The governing body of any city, town or county may establish as a department of government a fire department and may designate it by any name consistent with the names of its other governmental units. The head of such fire department shall be known as "the chief". As many other officers and employees may be employed in such fire department as the governing body may approve.*

§ 27-7. *The governing body of any city, * town or county may empower the fire department therein to make by-laws to promote its objects consistent with the laws of the State and ordinances of the city, * town or county, and may provide for the compensation of the officers and employees of such department.*

§ 27-8. *Any number of persons, not less than twenty, * may form themselves into a company for extinguishing fires.—In any county in which two or more companies for extinguishing fires shall join together and singly use one fire station, the number of persons in the combined companies shall be not less than twenty.*

§ 27-8.1. *A fire company is a volunteer fire-fighting organization organized pursuant to § 27-8 in any town, city or county of the State, with the approval of the governing body thereof.*

§ 27-9. *A writing stating the formation of such company, with the names of the members thereof thereto subscribed, shall be recorded in the court of * the city or the court of the county wherein such * fire company is. After which, the members of the company may * make regulations for effecting its objects consistent with the laws of the State, the ordinances of * the city, * town or county, and the by-laws of the fire department thereof. The principal officer of such fire company shall be known as "the chief".*

§ 27-10. *Whenever the fire department of * the city, * town, or county to which any fire company belongs shall ascertain that such company has failed, for three months successively, to consist of twenty effective members, or ascertain that it has failed for the like period to have or keep in good and serviceable condition, an engine, hose, and other proper implements, or the governing body of the county, city or town for any reason deems it advisable, such * governing body * may dissolve the company.*

§ 27-11. **Duty of members on alarm of fire.**—*Every member of the company shall, upon any alarm of fire, attend according to the ordinances of the city, * town or county or the by-laws, rules or regulations * of the fire department or the company's regulations, and endeavor to extinguish such fire.*

§ 27-13. *In every city, * town or county in which there is any such company, there shall be appointed, at such time and in such manner as the governing body of such city, * town or county may prescribe, * a chief and as many * other officers as such governing body may direct.*

§ 27-14. *Such governing body may make such ordinances in relation to the powers and duties of fire departments, companies, * chiefs and * other officers as it may deem proper.*

§ 27-15.1. *While any fire department or fire company is in the process of answering an alarm of fire or extinguishing a fire and returning to station the chief or other officer in charge of such fire department or company at that time shall have the authority to: Maintain order at the fire or its vicinity, direct the actions of the firemen at the fire, keep bystanders or other persons at a safe distance from the fire and fire equipment, facilitate the speedy movement and operation of fire fighting equipment and firemen and until the arrival of a police officer, direct and control traffic in person or by deputy and facilitate the movement of traffic. The fire chief or other officer in charge shall display his fireman's badge,*

or other proper means of identification. Notwithstanding any other provision of law, this authority shall extend to the activation of traffic control signals designed to facilitate the safe egress and ingress of fire fighting equipment at a fire station. Any person or persons refusing to obey the orders of the fire chief or his deputies or other officer in charge at that time shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. The chief or other officer in charge shall have the power to make arrests for violation of the provisions of this section.

§ 27-15.2. The governing body of every city, town or county shall have power to provide for the purchase, operation, manning and maintenance of suitable equipment for fighting fires in or upon the property of the city, town or county and of 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. All equipment purchased after the effective date of this act shall be equipped with threads of USA Standard B2.3, B2.4 of the American Standards Association.

§ 27-17. **Entry of buildings on fire and premises adjoining.**—The chief * of * any fire department, or company or other authorized officer in * command at a fire, and his subordinates, upon his order or direction, shall have the right at any time of the day or night to enter any building or upon any premises where a fire is in progress, or any building or premises adjacent thereto for the purpose of extinguishing the same.

§ 27-19. If any person at a fire refuse or neglect to obey any order duly given by the * chief or * other officer in command, he shall *, upon conviction of such offense *, be fined not to exceed one hundred dollars. *

§ 27-20. **Destruction of property to prevent spread of fire.**—The * chief, or * other officer commanding in his absence, may direct the pulling down or destroying of any fence, house, or other thing which he may judge necessary to be pulled down or destroyed, to prevent the further spreading of the fire, and for this purpose may require such assistance from all present as he shall judge necessary.

§ 27-21. **Owner may recover amount of actual damage.**—The owner of such property shall be entitled to recover from the city, * town or county the amount of the actual damage which he may have sustained by reason of the same having been pulled down or destroyed under such direction.

§ 27-23.1. The governing bodies of the several counties of this State may create and establish by defined metes and bounds, fire zones or districts in such counties, within which may be located and established one or more fire departments, to be equipped with apparatus for fighting fires and protecting property within such zones or districts from loss or damage by fire.

In the event of the creation of such zones or districts in any county, the county governing body may acquire, in the name of the county, real or personal property to be devoted to the uses aforesaid, and shall prescribe rules and regulations for the proper management, control and conduct thereof, and such governing body shall also have authority to contract with, or secure the services of, any individual corporation, organization or municipal corporation, or any volunteer firemen for such fire protection as may be required.

To raise funds for the purposes aforesaid, the governing body of any county in which such zones or districts are established may levy annually a tax not exceeding ten cents on the hundred dollars of the assessed value of all property real and personal within such zones or districts, subject to local taxation, which

tax shall be extended and collected as other county taxes are extended and collected; provided, that in any county having a population between twenty-five thousand and twenty-five thousand five hundred, the maximum rate of tax under this section shall be thirty cents on the one hundred dollars of assessed value.

The amount realized from such levy shall be kept separate from all other moneys of the county and shall be applied to no other purpose than the maintenance and operation of the fire departments established under the provisions of this section.

§ 27-23.2. The board of supervisors of any county in this State may advance funds, not otherwise specifically allocated or obligated, from the general fund to a fire district to assist the fire district to exercise the powers set forth in § 27-23.1.

§ 27-23.3. Notwithstanding the provisions of any law, the governing body shall direct the treasurer to reimburse the general fund of the county from the proceeds of any funds to the credit of the fire district, not otherwise specifically allocated or obligated to the extent that the county has made advances to the fire district from such general fund to assist the district to exercise the powers set forth in § 27-23.1.

§ 27-23.4. The advancement of any funds heretofore advanced from the general fund by the board of supervisors of any county in this State for the benefit of a fire district in exercising the lawful powers of such fire district is hereby validated and confirmed.

§ 27-23.5. The governing body of any county having a fire district created under the provisions of § 27-23.1 may, prior to June one of any calendar year, alter the boundaries of such fire district for the purpose of excluding an area of any such fire district which is also within the boundaries of a sanitary district providing fire protection or under contract to a sanitary district providing fire protection.

Any area excluded from a fire district as provided by this section shall not be subject to the levy set forth in § 27-23.1 for the year such area is excluded.

§ 27-23.6. The counties of Gloucester, Lancaster, Northumberland, Richmond, Goochland, Louisa, Henrico, and Caroline may contract with any volunteer fire fighting companies or associations in any of such counties or towns therein for the fighting of fire in any county so contracting or town therein. If any contract be entered into by any such counties the fire fighting company shall be deemed to be an instrumentality of the contracting county and as such exempt from suit for damages done incident to fighting fires therein. The contracting county may elect to provide for the matters authorized in §§ 27-4 and 27-39.

§ 27-23.7. Chapter 207 of the Acts of 1930, approved March 22, 1930 (codified as § 3144k of Michie Code of 1942), as amended by Chapter 297 of the Acts of 1938, approved March 28, 1938, Chapter 392 of the Acts of 1940, Approved April 1, 1940, and Chapter 40 of the Acts of 1945, approved April 5, 1945, relating to special levy for fire protection in counties adjacent to a county containing more than five hundred inhabitants a square mile, is continued in effect.

The following amendment to Chapter 207 of the Acts of 1930, as amended, continue in effect by this section, is incorporated in this Code by this reference:

Chapter 41 of the Acts of 1956.

§ 72-23.8. Chapter 8 of the Acts of 1950, approved February 9, 1950, relating to trial board for members of fire departments in any county having a population of more than two thousand per square mile is incorporated in this Code by this reference.

The following amendment to Chapter 8 of the Acts of 1950 is incorporated in this Code by this reference:

Chapter 409 of the Acts of 1954.

§ 27-23.9. *Whenever two or more fire companies or departments are called to provide joint services in any district or political subdivision, the commander of the first company to arrive shall have general supervision and control of all such participating companies and departments until an officer of such district or political subdivision who is otherwise authorized by law to do so shall assume such general supervision and control.*

§ 27-23.10 *Every county, city and town is authorized to enact and enforce appropriate ordinances to effectuate the purposes of § 27-23.9.*

§ 27-30. **Appointment of fire marshal.**—An officer, who shall be called a “fire marshal”, may be appointed for each *county, city * or town, ** by the governing body thereof, whenever, in the opinion of such body, the appointment shall be deemed expedient.

§ 27-32. **Summoning witnesses and taking evidence.**—In making such investigation the fire marshal may issue a summons directed to a sheriff or sergeant of any county, ** city or town* commanding the officer to summon witnesses to attend before him at such time and place as he may direct. Any such officer to whom the summons is delivered, shall forthwith execute it, and make return thereof to the fire marshal at the time and place named therein.

Witnesses, on whom the summons before mentioned is served, may be compelled by the fire marshal to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a justice of the peace in a criminal case. They shall be sworn by the fire marshal before giving evidence, and their evidence shall be reduced to writing by him, or under his direction, and subscribed by them respectively.

§ 27-32.1. *If in making such an investigation, the fire marshal shall make complaint under oath that there is good cause of suspicion or belief that the burning of or explosion on any land, building or vessel or of any object was caused by any act constituting a crime as defined in Article 1, Chapter 3, of Title 18.1 of the Code of Virginia and that he has been refused admittance to the land, building or vessel or to examine the object in or on which any fire or explosion occurred within 15 days after the extinguishment of such, any justice of the peace of the city or county where the land, building, vessel or object is located may issue a warrant to the sheriff of the county or the sergeant of the city requiring him to enter such land, building or vessel or the premises upon which the object is located in the company of the fire marshal for the purposes of conducting a search for evidence showing that such fire or explosion was caused by any act defined in Article 1, Chapter 3, of Title 18.1 of the Code of Virginia.*

§ 27-34. **Duties and powers at fires.**—Whenever any fire occurs, it shall be the duty of such fire marshal *or his designated representative* to be present at the same and advise and act in concert with such officers of police as may be present; and, for preserving order at and during the existence of such fire, and for the protection of property, he shall have concurrent powers with the officers of police, *** and the chief ** or other officer in charge*, but shall not exercise any authority which will conflict with the powers of any chief *** or other officer in command of any fire department in the discharge of his special duties as such.

§ 27-34.1. *The fire marshal or his designated representative is authorized to take and preserve any property found at the scene of a fire or explosion*

during his presence there while in the act of extinguishing such or found later with the consent of the owner or pursuant to § 27-32.1 which property indicates the fire or explosion was intentionally caused. Any person whose property is so taken and held may petition the hustings or corporation court of the city or the circuit court of the county in which the property was taken or judge in vacation, for return of the property, and the court may order restitution upon such conditions as are appropriate for preservation of evidence, including the posting of bond.

§ 27-36. Appointment, powers and duties of assistant fire marshals.

—The governing body of any city or town or of any county may, at the time of appointing a fire marshal, appoint one or more assistants, * who, in the absence of the fire marshal, * shall have the powers and perform the duties of the fire marshal. *

§ 27-39. Any county, *city or town* which operates fire fighting equipment * may provide for the relief of any fireman injured while in the service of the county, *city or town* or any political subdivision with which it contracts or has contracted for fire protection, * whether such fireman be a member of a fire company of the county in which the injury occurred or of a political subdivision with which it contracts for fire protection.

§ 27-41. Relief provided for.—Financial relief shall be extended by the counties, cities *and towns* of Virginia to volunteer firemen who are killed or injured while engaged in fighting fire or while responding to an alarm or returning from the scene of a fire, such relief to be paid in amounts and manner as herein-after set forth.

§ 27-43. Payment on death.—Should any volunteer fireman be killed while actually engaged in fighting fire, or while going to a fire in answer to an alarm or returning therefrom, the governing body of the county, * *city or town* in which his company is located shall pay to his personal representative, for the benefit of his estate, the sum of one thousand dollars.

§ 27-46. Payment for hospital and medical services.—In addition to the relief set forth in the three preceding sections, all necessary hospital charges and all necessary and proper medical, surgical, laboratory and operating room charges for any volunteer fireman arising out of any injury set forth in such sections shall be paid by such county, * *city or town*.

§27-83. Who shall prosecute violations; notice to Governor; jurisdiction; appeals.—The Commission, Chief Fire Marshal, or any of their agents or employees, and any other officer authorized to enforce this law or any rule or regulation issued hereunder, when informed of any violation thereof, shall prosecute the person responsible therefor as in the case of other misdemeanors. The Chief Fire Marshal shall notify the Governor in writing in case of any violation of this law, or rule or regulation issued thereunder, involving any building owned directly or indirectly or occupied by the State or by any political subdivision thereof, and shall at the same time notify the official in charge of such building of such violation. Any * *court having appropriate criminal jurisdiction* to try misdemeanors and any court of record having criminal jurisdiction is empowered to try persons for such violations. Appeals from the judgment of any such * *court*, or from any such court of record shall be governed by general laws. *

§ 27-84. Penalties for violations.—The violation of or failure to comply with any requirement of this law or of any rule or regulation adopted and promulgated in pursuance thereof shall constitute a misdemeanor. Upon conviction the person found guilty shall be punished by confinement in jail not more than twelve months or fined not more than five hundred dollars, either or both. Each day of any such violation or failure to comply shall constitute a separate offense. *

2. That §§ 27-6, 27-12, 27-15, 27-16, 27-18, 27-23, 27-24, 27-25, 27-25.1, 27-26, 27-26.1, 27-26.2, 27-26.3, 27-26.4, 27-27, 27-27.1, 27-28, 27-29 and 27-29.1 of the Code of Virginia are repealed.

3. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

4. This act shall become effective October 1, 1970.

