

REPORT
ON THE
CITY OF DANVILLE—COUNTY OF PITTSYLVANIA
SETTLEMENT AGREEMENT



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

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PROCEEDINGS OF THE COMMISSION

On July 21, 1987 Pittsylvania County formally submitted to the Commission for review a proposed settlement agreement which had been negotiated with the City of Danville under the authority of Section 15.1-1167.1 of the Code of Virginia.¹ Consistent with the Commission's Rules of Procedure, the County's submission was accompanied by data and materials supporting the proposed agreement. Further, in accordance with statutory requirements, the County concurrently gave notice of the proposed settlement to nine other localities with which it was contiguous or with which it shared functions, revenues, or tax sources.² The proposed agreement contains provisions which would (1) deny the City of Danville the authority to initiate any proceeding for the annexation of a 115.99-acre parcel of property in the County, known as the Ringgold Industrial Park, during the 20-year period commencing January 1, 1988 and (2) require the City's refusal to accept the annexation of such property if proceedings are initiated by property owners or qualified voters under the authority of Section 15.1-1034 of the Code of Virginia.³ The proposed agreement represents the culmination of negotiations which have been conducted by the parties intermittently since the initiation of annexation and immunity actions by the City and County, respec-

¹County of Pittsylvania, Petition for Review of Agreement (hereinafter cited as County Petition for Review), July 1987. On July 24, 1987 the Commission received a petition from the City of Danville supporting the County's request for review of the settlement agreement.

²Sec. 15.1-945.7(A), Code of Va.

³See Appendix A for the complete text of the settlement agreement. The document has been formally identified as Agreement 2-B: Settlement Agreement between the City of Danville and Pittsylvania County (hereinafter cited as Settlement Agreement 2-B).

tively, in 1983.⁴

Following its receipt of notice of the proposed settlement, the Commission met with representatives of Pittsylvania County and the City of Danville on July 28, 1987 for the purpose of establishing a schedule for its review of the settlement agreement. Consistent with the schedule adopted at that meeting, the members of the Commission toured the area proposed for immunity and received oral presentations from the parties in support of the proposed agreement on September 21, 1987. In addition to its receipt and consideration of materials and testimony from the parties, the Commission solicited comment from other potentially affected political subdivisions and from the public. Each political subdivision receiving notice of the proposed agreement from Pittsylvania County was invited by this Commission to submit testimony on the agreement for consideration. Further, the Commission held a public hearing, advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, on the evening of September 21, 1987 at the Glenwood Elementary School in Pittsylvania County.⁵ The public hearing was attended by approximately 25 persons and produced testimony from five individuals. In order to receive additional citizen comment, the Commission agreed to keep open its record for the receipt of written submissions from the public through October 21, 1987.

⁴The agreement under review in this report was negotiated in concert with the development of a second interlocal accord (Settlement Agreement 2-A) which provided, *inter alia*, that the County would withdraw its appeals of the earlier trial court decisions in the immunity and annexation cases. As a result of the execution of Settlement Agreement 2-A, the City of Danville will annex, as of January 1, 1988, an area in the County containing approximately 26.5 square miles of territory.

⁵At the request of the Commission, copies of the settlement agreement and related materials were made available in the offices of the County Administrator of Pittsylvania County and the City Manager of the City of Danville for review by the public during normal working hours.

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations, petitions for partial county immunity, other local boundary change and transition issues, and interlocal agreements settling such issues prior to their being presented to the courts for ultimate disposition. Upon receipt of notice of such a proposed action or agreement, the Commission is directed "to hold hearings, make investigations, analyze local needs" and to submit a report containing findings of fact and recommendations regarding the issue.⁶ With respect to proposed agreements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia, such as that under review in this report, the Commission is required to determine "whether the proposed settlement is in the best interest of the Commonwealth."

REVIEW OF SETTLEMENT AGREEMENT

The State's fundamental interest in proposed agreements relative to local boundary change issues is, in our judgment, the preservation of the general viability of the local governments involved, and the provision of appropriate services to the affected areas. In this instance, the Commission is required to review a proposed settlement agreement which would immunize from annexation by the City of Danville for a 20-year period of time a 115.99 acre parcel of territory in Pittsylvania County.⁷ This parcel, known as the Ringgold Industrial Park, is expected to be a principal focal point for new industrial development in Pittsylvania County. While, at the present time, the predominant portion (95.2 acres) of the industrial park is undeveloped, that property contains facilities for two industrial firms which will

⁶Sec. 15.1-945.7(A), Code of Va.

⁷Testimony of William D. Sleeper, County Administrator, Pittsylvania County, Transcript of Presentation of Settlement Agreement (hereinafter cited as Transcript), p. 8.

soon begin their operations.⁸ With the availability of utilities, proximity to rail lines, and convenient road access, the Ringgold Industrial Park could, in time, contain a significant concentration of industrial activity.⁹ County officials have stated that the Ringgold Industrial Park "offers the best present hope of the County to regain part of its industrial base being lost by the annexation" to be granted Danville at the end of the current calendar year.¹⁰ Accordingly, the proposed settlement agreement which immunizes that industrial property from annexation for a 20-year period of time is clearly in the interest of Pittsylvania County.

With respect to the City of Danville, this Commission has no difficulty concluding that the proposed immunization of the Ringgold Industrial Park from annexation during the ensuing 20-year period poses no threat to the viability of that municipality. In this regard, it should be noted that the future viability of the City of Danville will be significantly enhanced as a result of the court-ordered annexation which will take effect at the end of the current calendar year. That annexation will bring within the boundaries of Danville an area of 26.5 square miles, containing approximately 10,600 persons and real estate and public service corporation property assessables currently estimated to be in excess of \$207 million.¹¹ Moreover, the area to be annexed by the City at the end of the current calendar year includes

⁸The two firms currently committed to facilities in the Ringgold Industrial Park are Intertape and E & M Trucking.

⁹The number of industries which can be located at the Ringgold Industrial Park will be dependent upon the lot requirements of the firms using the facility. County officials estimate that as many as six additional firms might be located at the industrial park. (Testimony of Sleeper, Transcript, pp. 10-11.) The County has expended in excess of \$2.0 million for the acquisition and improvement of the Ringgold Industrial Park. (Ibid., pp. 12-13.)

¹⁰County Petition for Review, p. 8.

¹¹Carter Glass IV, Special Counsel, City of Danville, communication with staff of Commission on Local Government, Oct. 26,

a number of sites suitable for new industrial development. In sum, the proposed immunization of the Ringgold Industrial Park from annexation by Danville for the next two decades should not threaten the viability of that municipality.

In terms of the impact of the proposed immunity on the provision of services to the Ringgold Industrial Park, Pittsylvania County has stated:

The area has or upon development will be provided by the County, its public service authority or by cooperative agreements all of the services and facilities set forth . . . [by law for consideration in immunity cases] that are needed for and appropriate to its development as an industrial park.¹²

Thus, the County asserts that services to the Ringgold Industrial Park will be expanded commensurate with the emerging needs of that area.

With respect to water, the Ringgold Industrial Park is presently served by a 12-inch water main owned by the Pittsylvania County Public Service Authority (PCPSA).¹³ Water to serve the industrial park will be purchased by the PCPSA from the City of Danville under the terms of an interlocal agreement.¹⁴ As a result of that agreement with the City, the County appears to have available adequate water to meet the currently foreseeable needs of the industrial park.¹⁵

In terms of sewerage service, the Ringgold Industrial Park is presently served by an 8-inch sewer line owned by the PCPSA.¹⁶

1987.

¹²County Petition for Review, p. 11.

¹³Testimony of Sleeper, Transcript, p. 17.

¹⁴Settlement Agreement 2-A, Sec. 1.

¹⁵According to the State Department of Health, the daily water consumption rates for standard factories would be 15-35 gallons per day (GPD) per employee per 8-hour shift. (See Virginia Department of Health, Water Works Regulations, Feb. 1, 1982, pp. 7--1-2).

¹⁶Sleeper, communication with staff of Commission on Local Government, Sep. 21, 1987.

Effluent from that park will be treated by the City pursuant to a long-standing interlocal agreement.¹⁷ Transportation of the effluent from the park to the City's treatment plant will be provided through the City's Fall Creek Interceptor. Danville has agreed to reserve for the County's use a 50,000 GPD capacity in that interceptor.¹⁸ The evidence indicates that such sewerage arrangements should meet the current needs of the industrial park.¹⁹

With respect to law enforcement services, eight deputies in the County Sheriff's Department are assigned duties in that portion of Pittsylvania County encompassing the Ringgold Industrial Park. With the assistance of those deputies, patrol service in that area is provided on a 24-hour basis.²⁰ Based on the industrial nature of the area and the data presented to the Commission, we have no basis for contending that the law enforcement services available to the Ringgold Industrial Park are inadequate for its needs.²¹

In terms of fire services, the Ringgold Industrial Park is served principally by two stations operated by the Ringgold Volunteer Fire Department (RVFD). Those two facilities are served collectively by 48 volunteers who have available six pieces of apparatus for their fire

¹⁷County's effluent is treated by the City of Danville's treatment facility under the provisions of the 1972 Water and Sewer Agreement negotiated by the two jurisdictions.

¹⁸Settlement Agreement 2-A, Sec. 1.

¹⁹According to design standards published jointly by the State Department of Health and the State Water Control Board, the capacity reserved for the County's use in the Fall Creek Interceptor should be sufficient to support in excess of 1,400 employees at the Ringgold Industrial Park. (See Virginia Department of Health and Virginia State Water Control Board, Sewerage Regulations, Feb. 1, 1977, p. 79.)

²⁰Mark R. Henne, County Administrator, Pittsylvania County, letter to staff of Commission on Local Government, Nov. 13, 1987.

²¹We note that Pittsylvania County has recently awarded a contract for the establishment of a high band radio system to address the Sheriff's Department's communications problems cited in our February 1984 report on the annexation and immunity issues. (See

suppression activity.²² While the RVFD is a volunteer operation, it does receive financial assistance from the County, with that assistance totaling approximately \$15,000 since July 1, 1987.²³ Although this Commission has previously expressed concern regarding the level of fire services in portions of Pittsylvania County, we believe that the fire protection needs of the Ringgold Industrial Park can be met.²⁴

In sum, we find that the proposed immunization of the Ringgold Industrial Park will not prevent the extension of needed services to that industrial area.²⁵

FINDINGS AND RECOMMENDATIONS

The Commission finds that the proposed agreement is consistent with the best interest of the Commonwealth, based upon its impact on the viability of the two jurisdictions and on the extension of needed

Report on the City of Danville Annexation Action and County of Pittsylvania Partial Immunity Action, p. 46.) The new system is expected to be fully operational by mid-February 1988. (Henne, letter to staff of Commission on Local Government. Nov. 13, 1987)

²²Henne, letter to staff of Commission on Local Government, Nov. 13, 1987.

²³Ibid.

²⁴See Report on the City of Danville Annexation Action and County of Pittsylvania Partial Immunity Action, pp. 51-58. The records of the Virginia Department of Fire Programs indicate that based on volunteer training and the average number of personnel (10) and apparatus (2) responding to fire calls (62) between January 1, 1987 and September 30, 1987, the RVFD can be expected to meet the current needs of the industrial park. (Joe F. Thomas, Jr., Deputy Director, Department of Fire Programs, communication with staff of Commission on Local Government, Nov. 30, 1987.) Further, the Commission has been advised that Pittsylvania County will have under consideration for possible adoption in early 1988 a fire prevention code. (Henne, letter to staff of Commission on Local Government, Nov. 13, 1987.)

²⁵During the course of the Commission's public hearing held on the evening of September 21, 1987, concern was expressed by several individuals regarding the extension of fire protection to that por-

services to the Ringgold Industrial Park. Accordingly, we recommend the court's approval of the settlement agreement.

While this Commission recommends the court's approval of the proposed settlement agreement, we do propose that the parties give consideration to two amplifying revisions. First, the proposed agreement contains provisions which would deny the City of Danville the authority to seek or accept the annexation of the "Ringgold Industrial Park."²⁶ We recommend that those provisions be modified to include the phrase "in whole or part." While it is the apparent intention of the parties that the immunization apply to the industrial park, "in whole or part," we recommend that the agreement be modified to make that understanding explicit.²⁷

Second, the proposed agreement contains a provision precluding the City's acceptance of annexations affecting the Ringgold Industrial Park initiated by property owners or qualified voters under the

tion of Pittsylvania County south and west of the corporate limits of the City of Danville. While service to that area is not directly related to the interlocal agreement under review in this report, the Commission requested Pittsylvania County and the City of Danville to respond publicly concerning the matter. The City of Danville has indicated that it is prepared to offer fire protection services to the area in question, if the County agrees to reimburse the City for the costs incurred. (See Glass, letter to staff of Commission on Local Government, Oct. 19, 1987.) Pittsylvania County has advised, however, that it currently plans to construct a fire services building in the area in question, with that facility having available the fire suppression equipment and volunteer fire personnel now operating from the Westover Hills Volunteer Fire Department, which will be closed after January 1, 1988. (See Myron C. Smith, Special Counsel, Pittsylvania County, letter to staff of Commission on Local Government, Nov. 5, 1987.) See Appendices B and C for the correspondence referenced in this note.

²⁶Settlement Agreement 2-B, Secs. 1-2.

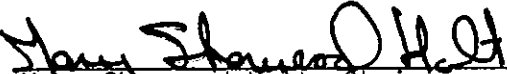
²⁷Counsel for the City of Danville and Pittsylvania County have indicated that the annexation restrictions were intended by the parties to apply to all, or any, portion of the Ringgold Industrial Park. (See Transcript, p. 55.)

authority of Section 15.1-1034 of the Code of Virginia.²⁸ That provision does not prescribe a duration of such preclusion. Again, while it is the apparent intent of the parties that this provision apply for the same 20-year period as that restricting annexation initiatives by the City, we recommend that the referenced section be amended to state expressly its duration.

In conclusion, we believe that these recommended modifications would address ambiguities in the agreement and remove sources of potential future contention.

²⁸Settlement Agreement 2-B, Sec. 2.

Respectfully submitted,


Mary Sherwood Holt, Chairman


Donald N. Johnston, Vice Chairman


Harold S. Atkinson


William S. Hubbard


Frank Raflo

AGREEMENT 2-B
SETTLEMENT AGREEMENT BETWEEN THE CITY OF
DANVILLE AND PITTSYLVANIA COUNTY

THIS AGREEMENT IS MADE AND ENTERED INTO THIS 10th day of December, 1986, by and between the CITY OF DANVILLE, a municipal corporation of the Commonwealth of Virginia, and the COUNTY OF PITTSYLVANIA, a county of the Commonwealth of Virginia.

WHEREAS, the parties hereto desire to work in harmony for the benefit of residents in the Danville-Pittsylvania County area; and

WHEREAS, the parties hereto desire to go forward with the industrial, residential, and commercial development of the Danville-Pittsylvania County area with unity of purpose and with all deliberate speed; and

WHEREAS, the County desires to proceed with the development of its Ringgold Industrial Park; and

WHEREAS, the City and County, pursuant to Chapter 26.1:1 of Title 15.1 of the Code of Virginia (1950), as amended, have reached this voluntary agreement which provides for the waiver of certain annexation rights;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and sufficient consideration, the City and the County agree as follows:

1. The City of Danville agrees that it will not initiate or institute any proceeding to annex that area within the County presently known as the Ringgold Industrial Park, as described by metes and bounds on Exhibit "A" attached hereto and as depicted on the map attached hereto as Exhibit "B", for a period of twenty years beginning on January 1, 1988.

2. In the event annexation proceedings are instituted by property owners or qualified voters with respect to the Ringgold Industrial Park, the City agrees, pursuant to Section 15.1-1034 of the Code of Virginia, that it will not support such proceedings and will not accept such annexation to the City without consent of the County.

3. The City and the County agree to initiate promptly the steps necessary and required by Chapter 26.1:1 of Title 15.1 of the Code of Virginia to obtain affirmation of this agreement by the Commission on Local Government. Following the issuance of the Commission's report, the City and the County agree to petition the Circuit Court of Pittsylvania County, pursuant to Chapter 26.1:1 of Title 15.1 of the Code, to affirm and approve this agreement and to give it full force and effect.

4. The City and the County agree that the consideration for this agreement is the successful implementation of the agreement between the City and County entitled "Agreement 2-A" attached hereto made a part of this agreement by reference.

5. This agreement may be amended, modified, or supplemented, in whole or in part, by mutual consent of the City and the County by a written document of equal formality and dignity, duly executed by the authorized representatives of the City and the County.

IN WITNESS WHEREOF, the governing bodies of the City and the County have each by ordinance or resolution caused this agreement to be duly executed in several counterparts, each of which shall constitute an original, by their respective officials and attested by their respective clerks,

CITY OF DANVILLE

By 
City Manager

ATTEST:


City Clerk

COUNTY OF PITTSYLVANIA

By 
Chairman, Board of Supervisors

ATTEST:


Board Clerk



MAYS & VALENTINE

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October 19, 1987

FILE NO.
DIRECT DIAL NO. (804) 697-

Mr. M. H. Wilkinson
Executive Director
Commonwealth of Virginia
Commission on Local Government
901 Ninth Street Office Building
Richmond, Virginia 23219

Re: Petition by Pittsylvania County and City of
Danville for Review of Agreement 2-B

Dear Mr. Wilkinson:

By letter dated September 24, 1987, you requested that we furnish the Commission with information concerning the status of negotiations between the City of Danville and Pittsylvania County relating to the possible provision of fire protection services to the area south of the City that will not be annexed on December 31, 1987.

Subsequent to the recent Commission hearing in this proceeding, a meeting was held between representatives of the City and the County to discuss fire protection for the so-called "River Bend" area pursuant to the general provisions contained in the proposed Agreement 2-B. Charles F. Church, the Danville City Manager, and David Lampley, the Chief of the City Fire Department, met with Mr. Neal, Mr. Keatts, and Mr. Richardson of the County Board of Supervisors to discuss the costs involved in the City providing such service. The City offered to provide fire protection services if the County would reimburse Danville for its costs incurred in providing such services generally, which were calculated by two different methods. The lowest figure was based on the per capita expenditures during 1986-87 of Danville's fire department. For that fiscal year, the City expended \$63.15 per capita, and the City representatives offered to provide fire protection services on the basis of that per capita amount multiplied by the estimated population of the River Bend area.

In addition, in the event the County determines to build a volunteer station to serve that area, the City offered to

Mr. M. H. Wilkinson
October 19, 1987
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provide fire protection services temporarily on a per-call basis until the volunteer facility is established. Also, the City offered to negotiate a mutual fire fighting assistance agreement between Danville and any such volunteer department.

As of this date, it is my understanding that the City and County representatives have not reached an agreement on this issue. If the Commission requires any additional information, please let me know.

Sincerely,

Carter

Carter Glass, IV

84/314
cc: Myron C. Smith, Esquire

LAW OFFICES
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ROBERT C. FITZGERALD
 MYRON C. SMITH
 JOHN F. CARLTON, JR.

AREA CODE 703
 273-0001

November 5, 1987

Mr. M. H. Wilkinson
 Executive Director
 Commission on Local Government
 Rm. 901, Ninth Street Office Bldg.
 Richmond, VA 23219

RE: Fire Service; River Bend Area,
 Pittsylvania County

Dear Mish:

I am advised that the County of Pittsylvania is currently planning to provide fire protection to the residents of the "River Bend" area, some of whom expressed their concern over same at the public hearing before the Commission on September 21, 1987.

The County plan, which has not yet been finalized, is to spend approximately \$30,000 to construct a fire service building within the "River Bend" area. The station will be provided with fire protection equipment from the existing Westover Hills Volunteer Fire Company which will cease operation after the effective date of annexation. Likewise, volunteer fire personnel from the Westover VFD will serve the planned River Bend station.

The matter is to be considered further by the County Board of Supervisors on November 17, 1987. I will provide the Commission with more information thereafter.

The additional Commission requested data are being assembled and will be forwarded in the very near future.

Please advise if additional information is desired.

Very truly yours,

Myron C. Smith
 Myron C. Smith

MCS:gk
 cc: Mr. Mark R. Henne
 W. Carlton White, Esq.
 Carter Glass, IV, Esq.

