

**2009 BOYD-GRAVES CONFERENCE**

**SUBCOMMITTEE REPORT**

**Claims v. Counties; Amendments to Va. Code §§ 15.2-1245-1248**

Honorable Joanne Alper  
Leonard Brown  
Gifford Hampshire  
Tim Oksman  
Steve Pearson  
Joe Rapisarda  
Rhysa South

John Keith, Chair

**Claims v. Counties; Amendments to Va. Code §§ 15.2-1245-1248**

The Committee to study this issue consisted of Judge Joanne Alper, Leonard Brown, Gifford Hampshire, John Keith, Tim Oksman, Steve Pearson, Joe Rapisarda and Rhysa South. The committee met by conference call and by electronic mail.

The Issues. Va. Code §§ 15.2-1245 through 1248 govern administrative claims against counties. They provide that no civil action can be brought against a county unless a claim is first presented according to those provisions. There are, however, several problems in these statutes, which can, and occasionally do, place claimants in a quandary. Here are three issues identified by the committee:

1. These provisions do not require a county to provide a claimant with notice of when it will consider such a claim.
2. The Code does not affirmatively require a county to act on a claim at all. Section 15.2-1247 says that if a county “refuses or neglects” to act on a claim, its failure to do so will not constitute a bar to an action in circuit court, but does not specify the period within which the county must act on a claim before its failure to act constitutes such refusal or neglect.
3. There is a lack of detail in § 15.2-1246 as to the requirements for the appeal bond.

Conclusion. The committee unanimously agreed that the suggested revisions to §§ 15.2-1245 – 1248 would address the issues identified. We felt that a county should be required to give a claimant notice of when his or her claim will be considered; that a claimant should not be held “in limbo” for an excessive period of time while the county refrains from acting on its claim; and that some additional detail would be helpful in several places.

John Keith

**Suggested Amendments to Va. Code §§ 15.2-1245 -1248**

**§ 15.2-1245. Procedure for allowance of claims.**

A. No account shall be allowed by the governing body of the county unless made out in separate items with the nature of each item specifically stated. When no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account shall be verified by affidavit, which shall be filed with the account. The attorney for the Commonwealth, or the county attorney if there is one, shall represent the county before the board and advise the board of any claim which in his opinion is illegal or not before the board in proper form or upon proper proof, or which for any other reason ought not to be allowed. The clerk of the governing body shall serve the claimant or his agent with written notice of the date that the governing body will consider any claim. The clerk shall serve such written notice by first class mail, postage prepaid to the address provided by the claimant.

B. If any claim has been allowed by the governing body against the county which in the opinion of such attorney is improper as to form or proof or illegal, the attorney shall seek the advice of the Attorney General as to legality or the State Auditor of Public Accounts as to matters of accounting. If any claim has been allowed by the governing body against the county which, in the opinion of any six owners of land within the county is improper as to form or proof or illegal, such landowners may appeal the decision of the governing body to the circuit court for the county. If either the Attorney General or the State Auditor of Public Accounts is of the opinion the claim is illegal or in improper form, the attorney for the Commonwealth shall appeal from the decision of the governing body to the circuit court for the county. In the event of any such appeal, the moving party shall serve a written notice of the appeal on the clerk of the governing body and the party in whose favor the claim is allowed within thirty days after the making of such decision. If the court finds and states in its order that the claim was improperly allowed but that the consideration received or to be received by the county for payments made or to be made was or will be for value, it shall dismiss the appeal. If the court finds otherwise, it shall remand the claim to the governing body for appropriate action.

C. Whenever any claim allowed by a county governing body is declared illegal by a court of competent jurisdiction, the attorney for the Commonwealth, or the county attorney if there is one, in the name of the county, shall institute proper proceedings in the circuit court of his county within two years from the entry of the order declaring the claim illegal, if such amount has already been paid. Such attorney shall be available to the governing body and give his legal opinion when requested.

D. Nothing in this section shall prevent any county governing body from disallowing any account, in whole or in part, when rendered and verified consistent with subsection A, or requiring any other evidence of the truth and propriety of any account as it thinks proper.

(Code 1950, §§ 15-257, 15-258; 1962, c. 623, §§ 15.1-550, 15.1-551; 1968, c. 450; 1980, c. 58; 1982, c. 173; 1984, c. 617; 1997, c. 587.)

**§ 15.2-1246. Appeal from disallowance of claim.**

When a claim of any person against a county is disallowed in whole or in part by the governing body, if such person is present, he may appeal from the decision of the governing body within thirty days from the date of the decision. If the claimant is not present, the clerk of the governing body shall serve a written notice of the disallowance on him or his agent, and he may appeal from the decision within thirty days after service of such notice. In no case shall the appeal be taken after the lapse of six months from the date of the decision. The appeal shall be filed with the circuit court for the county. No appeal shall be allowed unless the amount disallowed exceeds ten dollars. The disallowance may be appealed by serving written notice on the clerk of the governing body and executing a cash or surety bond or irrevocable letter of credit to the county in the amount of \$500.00, with condition for the faithful prosecution of such appeal, and the payment of all costs imposed on the appellant by the court.

**Deleted:** with sufficient surety to be approved by the clerk of the governing body,

(Code 1950, § 15-259; 1962, c. 623, § 15.1-552; 1983, c. 114; 1997, c. 587; 2000, c. 300.)

**§ 15.2-1247. When disallowance of claim final; exception; when no execution to be issued.**

The determination of the governing body of any county disallowing a claim, in whole or in part, shall be a bar to any action in any court founded on such claim, unless (i) the decision of the governing body disallowing the claim is appealed; (ii) the governing body consents to the institution of an action by the claimant against the county; or (iii) the governing body fails to act upon any claim within six (6) months of the date the claim is received in the office of the governing body or its clerk. No execution shall be issued upon any judgment recovered against a county, board of supervisors, or against any officer of the county, when the judgment should be paid by the county. Any judgment against the county shall be provided for by the governing body in the next county levy and paid by the treasurer as other county charges.

**Deleted:** refuses or neglects

**Deleted:** duly presented to it

(Code 1950, § 15-260; 1962, c. 623, § 15.1-553; 1997, c. 587.)

**§ 15.2-1248. No action against county until claim presented to governing body.**

No action shall be maintained by any person against a county upon any claim or demand until such person has presented his claim to the governing body of the county, unless the governing body has entered into a binding arbitration agreement or there is a provision in a written contract with the county to submit to arbitration any controversy thereafter arising. When there exists such a provision in a contract or there is a written agreement to arbitrate, the provisions of the Uniform Arbitration Act, Article 2 (§ 8.01-581.01 et seq.) of Chapter 21 of Title 8.01, shall apply.

(Code 1950, § 15-261; 1962, c. 623, § 15.1-554; 1987, c. 483; 1997, c. 587.)