

99-021

**HOUSING: VIRGINIA FAIR HOUSING LAW.**

**COUNTIES, CITIES AND TOWNS: URBAN COUNTY EXECUTIVE FORM OF GOVERNMENT - HUMAN RIGHTS.**

**Localities with fair housing law ordinances in effect on January 1, 1991, may continue to enforce and amend such ordinances; authority for localities with no such ordinance in effect on that date to enact ordinance in conformance with Virginia Fair Housing Law before September 30, 1992. Express authority for localities to submit amended ordinances to HUD for determination of substantial equivalency.**

Mr. David P. Bobzien  
County Attorney for Fairfax County  
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You ask whether Fairfax County has the authority under § 36-96.21 of the *Code of Virginia* to amend its human rights ordinance in conformity with the Virginia Fair Housing Law<sup>1</sup> in order for the ordinance to be deemed by the United States Department of Housing and Urban Development ("HUD") to be substantially equivalent to the federal Fair Housing Act.

You state that Fairfax County has in effect a human rights ordinance that includes provisions protecting persons against unfair housing practices. You explain that, at the time the county enacted the ordinance, the Virginia Fair Housing Law was set out in Chapter 5 of Title 36, §§ 36-86 through 36-96. Section 36-96 authorized localities to enact ordinances in accordance with the provisions of Chapter 5.<sup>2</sup> In 1991, the General Assembly amended the Fair Housing Law by repealing Chapter 5 and enacting a new chapter numbered Chapter 5.1.<sup>3</sup> As amended in 1991, the Virginia Fair Housing Law no longer grants general authority to localities to enact fair housing law ordinances in accordance with the chapter. Section 36-96.21 of Chapter 5.1 provides, however, that localities with ordinances in effect on January 1, 1991, may continue to enforce and amend the ordinances and that localities may enact ordinances in accordance with the chapter prior to September 30, 1992.<sup>4</sup> Section 36-96.21 provides:

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ 36-86 et seq.), the Virginia Human Rights Act (§ 2.1-714 et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604—3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter and are enacted prior to September 30, 1992, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604—3606), as amended.

You state that the county's human rights ordinance was in effect on January 1, 1991, and that on numerous occasions since the 1970s, the county has submitted its ordinance to HUD for a determination of substantial equivalency.<sup>5</sup> You hesitate to conclude, however, that § 36-96.21 clearly authorizes the county to continue to enforce and amend its ordinance and to submit the amendments to HUD. Rather, you present two opinions with your request.<sup>6</sup> In your first opinion, you argue that, because the county's ordinance was adopted prior to January 1, 1991, § 36-96.21(A) authorizes the county to amend the ordinance to obtain a substantial equivalency determination from HUD. In your second opinion, you argue that § 36-96.21(B) permits amendments only until September 30, 1992, and that any subsequent amendments may be made only pursuant to authority found in some enabling legislation other than the Virginia Fair Housing Law. This argument views § 36-96.21 not as a continuing grant of authority to amend existing local ordinances, but rather as limiting the amendments a locality may make to those that are consistent with the Virginia Fair Housing Law and that were enacted prior to September 30, 1992.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature.<sup>7</sup> It is clear that, by including no corollary provision to § 36-96 in Chapter 5.1, the General Assembly intended to remove from localities the general authority to enact fair housing law ordinances in accordance with the chapter. It is equally clear that, by enacting § 36-96.21(A), the General Assembly intended to permit localities with such fair housing law ordinances in effect on January 1, 1991, to continue to enforce and amend the ordinances. Moreover, § 36-96.21(A) contains express authority for the localities to submit the amended ordinances to HUD.

I do not interpret § 36-96.21(B) as limiting the amendment authority granted under § 36-96.21(A) to amendments enacted prior to September 30, 1992. Had the General Assembly intended this result, it could easily have provided in § 36-96.21(A) that such amendments must be enacted prior to September 30, 1992. The apparent effect of § 36-96.21(B) is to permit localities that did not have a fair housing law ordinance in effect on January 1, 1991, and thus were not encompassed within § 36-96.21(A), to have until September 30, 1992, to enact such an ordinance.

It is my opinion that based on the clear language of § 36-96.21(A), Fairfax County may amend its ordinance and submit the amended ordinance to HUD for a determination of substantial equivalency. This conclusion assumes that the county had in effect on January 1, 1991, a fair housing ordinance in accordance with the provisions of the Virginia Fair Housing Law.<sup>8</sup>

<sup>1</sup>Tit. 36, ch. 5.1, §§ 36-96.1 to 36-96.23.

<sup>2</sup>Section 36-96 provided: "The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter; provided that no such ordinance shall permit the doing of any act which would be a discriminatory or unlawful housing practice under this chapter." 1975 Va. Acts ch. 345, at 573.

<sup>3</sup>See 1991 Va. Acts ch. 557, at 979.

<sup>4</sup>The 1991 amendments authorized new ordinances only until July 1, 1992. See 1991 Va. Acts, *supra*, at 988 (amending § 36-96.21(B)). A 1996 amendment extended this date to September 30, 1992, and added language requiring that the statute not be construed to prohibit the submission of amendments to HUD. See 1996 Va. Acts chs. 173, 369, at 333, 645, respectively (amending § 36-96.21(A), (B)).

<sup>5</sup>You explain that, in response to a November 1998 submission of its ordinance, HUD pointed out several changes needed in the ordinance. The board of supervisors is considering amending its human rights ordinance to conform the language of the ordinance to the language in the Virginia Fair Housing Law, which has been deemed by HUD to be substantially equivalent to the federal Fair Housing Act.

<sup>6</sup>Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

<sup>7</sup>See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>8</sup>You refer to the county ordinance as a human rights ordinance rather than a fair housing ordinance. You state, however, that the housing provisions of the county ordinance were enacted in conformity with and under the authority granted by the Virginia Fair Housing Law. While the title given the ordinance is not controlling, I note that human rights ordinances enacted solely under § 15.2-853, or its predecessor statute, § 15.1-783.1, are distinguishable from ordinances enacted under the Fair Housing Law. While such ordinances may contain provisions prohibiting discrimination in housing and real estate transactions, human rights ordinances are not subject to the enforcement provisions authorized under the Virginia Fair Housing Law. *Compare* §§ 15.2-853 and 15.2-854 *with* §§ 36-96.8 to 36-96.20.