

REVISED ORGANIC ACT OF 1954

(Act of Congress, July 22, 1954, Ch. 558, 68 Stat. 497)

SECTION ANALYSIS

1. Short title
2. Geographical scope of Act; territorial designation; lawsuits by and against government; capital; supervision of Secretary of Interior

BILL OF RIGHTS

3. Rights and prohibitions

FRANCHISE

4. Voting franchise; discrimination prohibited; authority to lower voting age

LEGISLATIVE BRANCH

5. Legislature; creation, composition, districts, election
6. Legislature; terms of office, qualifications, appointment of electoral officers, immunity, compensation, limitations, general powers, vacancies
7. Time, frequency, and duration of regular sessions; special sessions; place of holding
8. Legislative powers and activities
9. Legislative procedure
10. General elections; time; transfer of Council functions to government of the Virgin Islands

EXECUTIVE BRANCH

11. Governor and Lieutenant Governor; election; powers and duties generally
12. Initiative and recall
13. [Repealed.]
14. Disability or absence of Governor or Lieutenant Governor
15. Clerk hire allowance and transportation expenses of Delegate to U.S. House
16. Reorganization of government
17. Transfer of functions from government comptroller for the Virgin Islands to the Inspector General, Department of the Interior

ORGANIC ACTS

SYSTEM OF ACCOUNTS

18. Establishment and maintenance of system of accounts; scope
19. [Repealed.]
20. Salaries and expenses of Governor, Lieutenant Governor, department heads, officers and employees, members of legislature

JUDICIAL BRANCH

21. District Court of the Virgin Islands and local law courts; jurisdiction of local law courts; rules
22. Jurisdiction of District Court
23. Relations between courts; appellate review by Court of Appeals for the Third Circuit; reports to Congress; rules
- 23A. Appellate review by District Court of Virgin Islands; review of rulings of District Court
24. Appointment, terms of office and compensation of judges of District Court, chief judge; assignment of other judges; payment of compensation and expenses; application of statutes and rules of United States governing criminal procedure; marshal
25. Judicial Divisions; places for holding court
26. Trial by jury
27. Appointment of United States attorney; powers and duties

FISCAL PROVISIONS

28. Disposition of revenues

MISCELLANEOUS PROVISIONS

29. United States citizenship requirement of government officials
30. Reports by Governor; jurisdiction of Secretary of the Interior; exceptions
31. Lease, sale, and control of public property
32. Amendment of 1890 Act relating to importation of diseased animals
33. Amendment of 1903 Act relating to prevention of introduction and dissemination of contagious diseases of animals, poultry, etc.
34. Effective date; temporary continuation of functions and of incumbents in offices; preservation of term of office of district court judge in office

- 35. Appropriations
- 36. Separability of provisions

HISTORY

Title of Act. The title to the above-cited act July 22, 1954, ch. 558, 68 Stat. 497, set out below, reads as follows: "AN ACT To revise the Organic Act of the Virgin Islands of the United States."

Constitution for Virgin Islands. Act April 6, 1971, No. 2973, Sess. L. 1971, p. 86, as amended by Acts Nov. 15, 1971, No. 3148, §§ 1, 2, Sess. L. 1971, p. 383, March 21, 1972, No. 3193, Sess. L. 1972, p. 48, provided for the convening of a constitutional convention to adopt and submit to the people of the Virgin Islands and, if approved, to the Congress of the United States, a proposed constitution for the Virgin Islands. A proposed constitution was adopted and submitted to the voters of the Virgin Islands in November 1972, and failed to receive the approval of a majority of the voters participating in the election.

Act May 6, 1977, No. 3974, Sess. L. 1977, p. 54, as amended by Acts June 28, 1977, No. 4000, Sess. L. 1977, p. 106, August 10, 1977, No. 4040, §§ 1-4, Sess. L. 1977, p. 235, 236, provided for the convening of constitutional convention to adopt and submit to the Congress of the United States and to the people of the Virgin Islands a proposed constitution for the Virgin Islands. A proposed constitution was adopted and submitted to the Congress of the United States, which approved the proposed Constitution (Pub. L. 97-21, July 9, 1981, 95 Stat. 105). The proposed constitution was submitted to the voters of the Virgin Islands in November 1981, and failed to receive the approval of a majority of the voters participating in the election.

ANNOTATIONS

1. Generally. The Revised Organic Act is the Virgin Islands analogue of a state constitution, and was intended to serve as a basic charter of government for the territory. *Brown v. Hansen*, C.A.3d 1992, 27 V.I. 440.

Cited. Cited in *Government of the Virgin Islands v. Iles*, D.C.V.I. 1989, 24 V.I. 283; *Moorhead v. Farrelly*, D.C.V.I. 1989, 24 V.I. 318, 723 F. Supp. 193; *Joseph v. de Castro*, D.C.V.I. 1992, 27 V.I. 297.

§ 1. [Short title]

That this Act may be cited as the "Revised Organic Act of the Virgin Islands".—July 22, 1954, ch. 558, § 1, 68 Stat. 497.

ANNOTATIONS

1. Scope and intent of Act. The Revised Organic Act of 1954 declared the Virgin Islands to be an unincorporated territory, and completely reorganized its government, abolishing the two existing municipalities with their separate municipal councils and joint legislative assembly, and creating a single territorial government with a single legislature. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The Act made comprehensive and complete provisions for the legislative, executive and judicial branches of the government, defining their powers and duties and imposing many specific limitations upon them. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

It was a clear legislative intent that the Revised Organic Act should become a new basic charter of government for the territory to take the place of the somewhat makeshift Organic Act of 1936 which had proved unnecessarily cumbersome and inefficient and that the new Act should grant a greater degree of autonomy, economic as well as political, to the people. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

In many respects this Act parallels the Organic Act of 1936; but in a great many other instances the provisions of this Act diverge from the provisions of the former Act with respect to similar subject matter. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

In conferring upon the people of the Virgin Islands a new and up-to-date charter of government, Congress could not have intended at the same time to impose upon them the well-nigh impossible task of sorting out those provisions of the old Act which were so inconsistent with the new Act as to be repealed by it from those provisions of the old Act which were to remain in force because they were not sufficiently inconsistent with the new law. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The fact that the Act of 1954 is described in its title as "An Act to revise the Organic Act of the Virgin Islands of the United States" and in its first section as the "Revised Organic Act of the Virgin Islands" indicates that it was intended to supersede and take the place of the Organic Act of 1936 and not merely to amend or repeal portions of it. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The Revised Organic Act makes more detailed provisions for the government of the islands, with executive, legislative and judicial branches, than had been provided in the Organic Act of 1936. *Smith v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 136, 375 F.2d 714.

2. Repeal of 1936 Act. The Revised Organic Act of 1954 operated to repeal the Organic Act of 1936. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

Those provisions of the Act of 1936 which were inconsistent with provisions of the Revised Organic Act were repealed by implication by the latter Act. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

There is no indication in the Revised Organic Act that Congress intended any part of the Act of 1936 to remain in force after the Revised Act took effect, except those provisions of the Act of 1936 which had made certain laws of the United States applicable to the Virgin Islands, which appear in section 8(c) of the Revised Organic Act. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

§ 2. [Geographical scope of Act; territorial designation; lawsuits by and against government; capital; supervision of Secretary of Interior]

(a) The provisions of this Act, and the name "Virgin Islands" as used in this Act, shall apply to and include the territorial domain, islands, cays, and waters acquired by the United States through cession of the Danish West Indian Islands by the convention between

the United States of America and His Majesty the King of Denmark entered into August 4, 1916, and ratified by the Senate on September 7, 1916 (39 Stat. 1706). The Virgin Islands as above described are hereby declared an unincorporated territory of the United States of America.

(b) The government of the Virgin Islands shall have the powers set forth in this Act and shall have the right to sue by such name and in cases arising out of contract, to be sued: Provided, That no tort action shall be brought against the government of the Virgin Islands or against any officer or employee thereof in his official capacity without the consent of the legislature constituted by this Act.

The capital and seat of government of the Virgin Islands shall be located at the city of Charlotte Amalie, in the island of Saint Thomas.

(c) The relations between such government and the Federal Government in all matters not the program responsibility of another Federal department or agency shall be under the general administrative supervision of the Secretary of Interior.—July 22, 1954, ch. 558, § 2, 68 Stat. 497; amended Aug. 23, 1968, Pub. L. 90-496, § 13, 82 Stat. 842.

HISTORY

Amendments—1968. Subsection (c): Added.

Effective date. Section 16 of Pub. L. 90-496 provided:

“Sec. 16. Those provisions of this Act necessary to authorize the holding of an election for Governor and Lieutenant Governor on November 3, 1970, shall be effective on January 1, 1970. All other provisions of this Act, unless otherwise expressly provided herein, shall be effective January 4, 1971.”

Referendum to choose status. Act March 22, 1988, No. 5332, § 3(a), Sess. L. 1988, p. 118, as amended by Acts March 20, 1989, No. 5417, § 1(c), Sess. L. 1989, p. 8; Aug. 4, 1989, No. 5426, § 2, Sess. L. 1989, p. 31; Oct. 10, 1989, No. 5469, § 1, Sess. L. 1989, p. 107; Sept. 17, 1990, No. 5612, § 3B, Sess. L. 1990, p. 301; June 13, 1991, No. 5712, § 1(a), (c), Sess. L. 1991, p. 41; Aug. 25, 1993, No. 5886, § 2, Sess. L. 1993, p. 207, provided: “A referendum shall be held to enable the voters of the Virgin Islands to choose between the categories of: (1) ‘Complete Integration with the United States’ (Statehood or Incorporated Territory); (2) ‘Continued or Enhanced Territorial Status with the United States’ (Compact of Federal Relations Commonwealth or Status Quo); and (3) ‘Removal of United States Sovereignty’ (Free Association or Independence). In the event one of the categories obtains a majority of the valid votes cast on a date certain to be subsequently set by law, a second referendum shall be held on a date certain, to be subsequently set by law, to enable the voters to choose between the options represented by the winning category. In the event none of the categories obtain a majority of the valid votes cast on the first referendum date, a runoff referendum shall be held on a date certain, to be subsequently set by law, in which categories that obtained the first and second highest number of votes cast in the initial referendum shall appear on the ballot, to be followed by a third

referendum to be held on a date certain, to be subsequently set by law, in which the options represented by the winning category in the second referendum shall appear on the ballot. In the event none of the options obtain a majority of the valid votes cast, a runoff referendum shall be held on January 17, 1994 in which the options receiving the first and second highest number of votes shall appear on the ballot."

Effect of status chosen by referendum—Generally. Act Aug. 4, 1989, No. 5426, § 5, Sess. L. 1989, p. 33, which added Act March 22, 1988, No. 5332, § 3(d), Sess. L. 1988, and which was amended by Act Sept. 17, 1990, No. 5612, § 3E, Sess. L. 1990, p. 302, provided: "The status that is chosen by the electorate of the Virgin Islands in the referendum authorized to be held under this Section shall be binding, but the provisions of the status bill corresponding to the option chosen are nonbinding and shall serve to establish guidelines for the Government of the Virgin Islands' negotiations with the United States Government."

—Rescheduling of subsequent status referendum elections. Act Aug. 25, 1993, No. 5886, § 4, Sess. L. 1993, p. 207, provided: "Notwithstanding any other provisions of law to the contrary, and pursuant to the provisions of Section 2 of this Act [which amended provisions set out in a note above], in the event that no status referendum run off elections are necessary, the Joint Boards of Elections are authorized to reschedule subsequent status referendum elections for the dates originally scheduled for the status referendum run off elections."

Constitutional convention; 1964, 1965. Act April 2, 1964, No. 1174, Sess. L. 1964, p. 180, as amended by Act Aug. 11, 1964, No. 1246, Sess. L. 1964, p. 375, authorized a constitutional convention to be held at Charlotte Amalie, St. Thomas, on the first Monday in December, 1964. On Feb. 26, 1965, the convention adopted a draft, for the Congress of the United States, of a second revised organic act of the Virgin Islands, which contained the following major proposals for greater autonomy:

1. Elective Governor; 4-year term.
2. Elective Lieutenant Governor; 4-year term.
3. Unicameral legislature of 11 senators (3 from St. Croix District; 3 from St. Thomas District; 1 from St. John District; and 4 at large). Term of 2 years. No limitation on voting for members at large.
4. Resident commissioner or delegate to U.S. House of Representatives.
5. Right to vote for U.S. President and Vice-President in national elections.
6. Franchise vested in residents 18 years of age or over.
7. Veto of local laws by U.S. President abolished.
8. Comptroller appointed by Governor with consent of legislature. Term of 10 years.
9. Proposal of organic act amendment by legislature, or to legislature by popular initiative, or by constitutional convention.

—1964, 1965 Convention to draft Organic Act. Act Apr. 2, 1964, No. 1174, Sess. L. 1964, p. 180, as amended by Act Aug. 11, 1964, No. 1246, Sess. L. 1964, p. 375, provided:

"Section 1. [Convention.] A convention comprised of delegates elected as provided herein, shall convene at Charlotte Amalie, St. Thomas, on the first Monday in December 1964 at 10:00 a.m.

"Section 2. [Duties.] The convention shall prepare and agree upon a draft of an organic act for the government of the Virgin Islands, and said draft shall include a bill of rights, a framework of government and a procedure for amendment. The convention may also prepare and agree to amendments to the Organic Act designed

to give greater self-government to the people of the Virgin Islands, including an elected Governor, increased powers for the Legislature of the Virgin Islands, reapportionment of legislative districts and a delegate to Congress.

“Section 3. [Termination.] The convention shall complete and agree upon its proposals on or before the 1st day of February 1965.

“Section 4. [Delegates.] (a) Senators elected to the Legislature in the general elections to be held on November 3, 1964, shall be delegates to the Convention.

“(c) [sic] Each legislative district shall be entitled to choose additional delegates in twice the number as the district is presently entitled to senators in the Legislature.

“(d) An additional 12 delegates shall be elected at large by the qualified electors of the Virgin Islands.

“(e) The ballot for the election of delegates to the convention shall provide for voting by a symbol for a full slate of candidates, as a unit. Such ballot shall also permit the electors to vote for candidates on two or more slates, or to insert names of candidates; Provided, That no candidate or slate of candidates shall use the symbol of any political party, recognized in accordance with the provisions of Title 18 of the Virgin Islands Code, without the express consent in writing from the Territorial Committee of such party, and filed with the Supervisor of Elections on or before August 15, 1964.

“(f) Election of delegates to the Convention shall take place at the general election to be held in 1964.

“(g) Any qualified elector shall be eligible to be a delegate to the Convention.

“Section 5. [Nominations.] Nominating papers shall be filed with the Supervisor of Elections or with his deputy in the legislative district in which the candidate resides not less than 30 nor more than 45 days before the election, and not later than the ordinary closing hour of the office of the Supervisor of Elections or such deputy on the last day for the filing thereof, provided that any nominating papers which have been signed or circulated prior to the date of the amendment of this Act [August 11, 1964] are hereby validated. Each nominating petition shall be signed by qualified electors of the Virgin Islands and shall comply with the provisions of sections 345, 346, 347 and 348 of Title 18 of the Virgin Islands Code, except that the requirements for party membership shall not apply.

“Section 6. [Symbols.] Two or more candidates for nomination as delegate may in their nominating petitions request that their names be grouped and bracketed under a symbol to be designated by them and that such common symbol shall be printed with their names on the official election ballot. If more than one candidate or group shall select the same symbol the petition first filed shall be entitled, if it otherwise complies with this Act, and Title 18 of the Virgin Islands Code, to the use of such symbol and the Supervisor of Elections shall so notify all candidates or groups whose petitions are thereafter filed with the same symbol and such candidates or group shall within 2 days select a new symbol.

“Section 7. [Ballots.] In all legislative districts there shall be used for the election of delegates a paper ballot separate from any other ballot used for any election on that day. Ballots shall be printed on colored paper clearly distinguishable from any other ballots and from the color of sample ballots in connection therewith. The position of the names of candidates shall be determined by the drawing of lots as in general elections in the manner provided by Title 18 of the Virgin Islands Code. The duly selected designation of each candidate or group of candidates shall be printed upon the ballot, above, below, or to the right of the name or names of each candidate

or group and the names of such candidates as may have duly petitioned to bracket their names together with a single symbol shall be so printed.

"Section 8. [Objections, appeals, vacancies.] Objections to petitions, the determination of their validity, recourse to the courts by candidates believing themselves aggrieved and amendment of defective petitions, shall conform to the provisions of Title 18 of the Virgin Islands Code relating to petitions directly nominating candidates. Vacancies in nominations which occur for any reason may be filled in the same manner as the original nominating petition filed with the Supervisor of Elections.

"Section 9. [Conduct of election.] The procedure for the conduct of elections of delegates to the convention shall conform to the procedure for the conduct of election of Senators to the Legislature as set forth in Title 18 of the Virgin Islands Code.

"Section 10. [First meeting, procedure.] The President of the Legislature shall open the convention and preside at its first meeting until permanent officers are elected. The convention shall be the judge of the qualifications of its members, their election or appointment. It shall have the power by the vote of two-thirds of the delegates to choose a president and secretary and all other appropriate officers.

"Section 11. [Rules.] The convention shall maintain and follow the same rules of parliamentary procedure as are presently followed by the Fifth Legislature of the Virgin Islands; provided that all decisions of the Convention, other than procedural decisions, shall be adopted by a two-thirds vote of the delegates present and voting, a quorum being present.

"Section 12. [Vacancies.] If any delegate shall die, resign, remove from the territory or otherwise become disqualified from serving, or if a vacancy occurs for any reason whatsoever, the vacancy shall be filled by an appointment made by the remaining delegate or delegates from the district or from the remaining delegates at large as the case may be.

"Section 13. [Proposals.] When the Convention by a vote of two-thirds of the delegates shall have agreed upon its proposals, the same shall be forthwith submitted to the President of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives and the Chairmen and members of the respective Committees on Territories of the said Senate and House, the Governor of the Virgin Islands and the President of the Legislature of the Virgin Islands. The Convention shall then adjourn *sine die* and the delegates shall be discharged from their duties.

"Section 14. [Oath.] A delegate to the Convention, before taking his seat, shall take the same oath of office as that provided for a member of the Legislature, except that the word 'Delegate' shall be substituted in the oath for the word 'Senator'.

"Section 15. [Compensation.] (a) Delegates shall receive a compensation of \$20 per day or fraction thereof, for their services while attending sessions of the Convention. Delegates who are away from the island of their residence shall also receive all reasonable and necessary transportation expenses plus a per diem in lieu of subsistence of \$30 per day or fraction thereof while in attendance at the convention.

"(b) The Staff of the Legislature of the Virgin Islands shall furnish clerical assistance to the Convention, and the Convention shall engage such staff, clerical and other assistants and may purchase such supplies and contract for such technical and research services as may be needed to effectively promote the work of the Convention.

"Section 16. [Appropriation.] There is appropriated the sum of \$20,000 from the General Fund in the Treasury of the Virgin Islands, fiscal year 1964-1965 to carry out the purposes of this Act."

Caribbean Organization; affiliation with. Resolution Sept. 28, 1959, app. Oct. 2, 1959, No. 137, Sess. L. 1959, p. 211, authorized the Governor to take necessary action to affiliate Virgin Islands as a member of the Caribbean Organization, and to cause contributions to be made to such organization of 7.97% of its budget or an annual contribution of \$25,200.00. Resolution further provided that the Legislature shall incorporate in its annual budget an appropriation sufficient to meet such responsibility of the territory.

—**Text of resolution.** Resolution Sept. 28, 1959, app. Oct. 2, 1959, No. 137, provided:

“Whereas a Special Session of the West Indian Conference held in St. Thomas, Virgin Islands, July 28 to August 7, 1959, recommended to the Governments of the Republic of France, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, a draft of agreement for the establishment of a Caribbean Organization as the successor of the Caribbean Commission; and

“Whereas the Virgin Islands of the United States are eligible to become members of the said Caribbean Organization; and

“Whereas it is to the interest of the people of the Virgin Islands that the territory of the Virgin Islands shall be a member of the Caribbean Organization, Now, Therefore, “Be it Resolved and it is hereby Resolved by the Legislature of the Virgin Islands:

“Section 1. The Governor of the Virgin Islands be and he is hereby authorized to take such action as may be necessary for the Territory of the Virgin Islands of the United States to be affiliated with and to become a member of the Caribbean Organization. The Governor of the Virgin Islands be and he is hereby further authorized to execute any notification, agreement, or other declaration which may be necessary to secure affiliation and membership of the Virgin Islands with the Caribbean Organization.

“Section 2. The Governor of the Virgin Islands be and he is hereby authorized to cause to be contributed to the Caribbean Organization from the Territory of the Virgin Islands the share of the Territory of the Virgin Islands in the Budget of the Caribbean Organization with a percentage of 7.97% of the Organization’s total budget or an annual contribution of \$25,200.00.

“Section 3. The Legislature of the Virgin Islands shall incorporate in its annual budget of expenses for the Government of the Virgin Islands an appropriation sufficient to meet the responsibility of the Territory as set forth in this Resolution.”

Conveyance of tidelands to Virgin Islands government. Conveyance of tidelands, submerged lands and filled lands, by Secretary of the Interior, to government of the Virgin Islands and governments of other territories, authorization, etc., see Act of Congress Nov. 20, 1963, Pub. L. 88-183, 77 Stat. 338; 48 U.S.C. 1704 et seq.

CROSS REFERENCES

Tort claims against government, see sections 3401 et seq. of Title 33.

ANNOTATIONS

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|---------------------------------|---------------------------------------|
| Actions against, 5 | Immunity of officers and employees, 8 |
| By special act, 6 | Powers of government, 3 |
| Construction, 1 | Status, 2 |
| Construction with other laws, 7 | |
| Federal authority, 4 | |

1. **Construction.** Revised Organic Act, intended to operate as a new basic charter of government for the territory, is the Virgin Islands’ equivalent of a constitution,

and as such is the body of law that defines the jurisdictional boundaries of the Virgin Islands courts. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1021.

2. Status. The three separate coordinate and coequal branches of government of the Virgin Islands are not constitutionally mandated but granted by federal Congress. *Territorial Court of the Virgin Islands v. Richards*, D.C.V.I. 1987, 673 F. Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 380 (1988).

Since the Virgin Islands are an organized territory all the provisions of 48 U.S.C. § 1471, which prohibits the passage of special laws, were fully applicable to them. *Smith v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 136, 375 F.2d 714.

The Virgin Islands is a territory of the United States; however, its status is that of an unincorporated territory. *Government v. Bodle*, C.A.3d 1970, 7 V.I. 507. *Collins v. Government*, C.A.3d 1966, 5 V.I. 622, 366 F.2d 279, cert. denied, 386 U.S. 958 (1967). *Government of the Virgin Islands v. Rijos*, D.C.V.I. 1968, 6 V.I. 475, 285 F. Supp. 126.

While the Virgin Islands constitute an "unincorporated" territory, it does not follow from this that they are also an "unorganized" territory. *Smith v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 136, 375 F.2d 714.

In adopting the Revised Organic Act of the Virgin Islands in 1954, Congress made it clear that although it was providing a detailed frame of government for the Islands this was not to be taken as an indication that it had destined the territory for statehood, and therefore expressly declared in subsection (b) of this section that the Virgin Islands are an "unincorporated territory of the United States of America." *Smith v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 136, 375 F.2d 714.

Since the Virgin Islands are an organized territory all the provisions of 48 U.S.C. § 1471, which prohibits the passage of special laws, were fully applicable to them. *Smith v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 136, 375 F.2d 714.

The Virgin Islands are an unincorporated territory of the United States. *Government of the Virgin Islands v. Rivera Solis*, C.A.3d 1964, 4 V.I. 615, 334 F.2d 517.

3. Powers of government. The powers of the Government of the Virgin Islands are derived from and set forth in the Revised Organic Act of 1954. *Government of the Virgin Islands v. Rivera Solis*, C.A.3d 1964, 4 V.I. 615, 334 F.2d 517.

4. Federal authority. Federal Congress is empowered to make all necessary rules and regulations concerning the territory of the Virgin Islands. *Territorial Court of the Virgin Islands v. Richards*, D.C.V.I. 1987, 673 F. Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 551 (1988).

Inspector General's Office had authority, by means of Insular Areas Act, to audit Territorial Court of Virgin Islands, and contention that objective of audit was improper was not sufficient to prevent enforcement of subpoena to allow such audit. *Territorial Court of the Virgin Islands v. Richards*, D.C.V.I. 1987, 673 F. Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 551 (1988).

Inspector General can order audit of Territorial Court of Virgin Islands without violating separation of powers doctrine, since relationship between them is vertical, and not one between coequal branches of same government. *Territorial Court of the Virgin Islands v. Richards*, D.C.V.I. 1987, 673 F. Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 551 (1988).

The Virgin Islands, as an unincorporated territory, is subject to the power of Congress which is empowered to make suitable rules and regulations to govern the territory, pursuant to Article 4, Section 3, of the United States Constitution. *Government of the Virgin Islands v. Rijos*, D.C.V.I. 1968, 6 V.I. 475, 285 F. Supp. 126.

Where the federal government has not elected to exercise its jurisdiction in a given area of law, the state laws may function. 1 V.I.Op.A.G. 226.

5. Actions against. Sovereign immunity does not protect prison officials sued in their individual capacity by inmate injured by fellow inmate; therefore, limitation of liability did not extend thereto. *Frett v. Government of Virgin Islands*, C.A.3d 1988, 839 F.2d 968.

The Government of Virgin Islands can be held liable for injuries sustained by inmate stabbed by another inmate, when corrections officer who witnessed the beginning of the incident and anticipated the results chose not to call for assistance or intervene in any form with reckless disregard of plaintiff's rights. *Frett v. Government of Virgin Islands*, C.A.3d 1988, 839 F.2d 968.

When circumstances suggested need for isolation for inmate, failure to do so and prevent attacks on fellow inmates made prison officials liable for injuries sustained by plaintiff. *Frett v. Government of Virgin Islands*, C.A.3d 1988, 839 F.2d 968.

Under subsection (b) of this section, a government employee is accorded immunity from suit only when sued in his official capacity, so that the suit, in reality, is one against the government; no immunity is accorded an employee who is sued in his individual capacity since the underlying public policy of protecting the public treasury is not being undermined. *Small v. Government of the Virgin Islands*, Terr. Ct. St. T. and St. J. 1983, 20 V.I. 65.

Subsection (b) of this section which provides that the territorial government has the right to sue and be sued in cases arising out of contract applies to contract entered into by any branch of government. *Creque v. Roebuck*, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 197.

Subsection (b) of this section which prohibits the bringing of a tort action against the Government of the Virgin Islands or against any officer or employee in his official capacity without the consent of the Legislature does not apply to a civil rights action for damages against a police officer in his individual, private capacity. *Ocasio v. Bryan*, C.A.3d 1967, 6 V.I. 43, 374 F.2d 11.

Section 2(b) of this section was intended to bar tort action against the Government of the Virgin Islands without its consent; it therefore provides against evasion of its policy of sovereign immunity in tort through the device of a suit against an officer or employee of the government in his official capacity and so construed, that provision envelops government officer with immunity only where the suit is in reality against the government itself, so that an adverse judgment would require payment out of public funds, rather than a payment by an individual in his private capacity. *Ocasio v. Bryan*, C.A.3d 1967, 6 V.I. 43, 374 F.2d 11.

Since an award of damages on a recovery under the Civil Rights Act, 42 U.S.C. § 1981 et seq., does not directly affect the Government or the public treasury, the immunity of the Government from suit is no bar to a private action and the consent of the Legislature of the Virgin Islands is not a condition to the institution or maintenance of such a suit. *Ocasio v. Bryan*, C.A.3d 1967, 6 V.I. 43, 374 F.2d 11.

The prohibition in subsection (b) of this section is directed to actions to recover damages for torts. *Ocasio v. Bryan*, D.C.V.I. 1966, 5 V.I. 677, 261 F. Supp. 409, aff'd, C.A.3d 1967, 6 V.I. 43, 374 F.2d 11.

The Government of the Virgin Islands cannot be sued, except with its own consent. *Collins v. Government*, C.A.3d 1966, 5 V.I. 622, 366 F.2d 279, cert. denied, 386 U.S. 958, 87 S.Ct. 1026 (1967).

The Government of the Virgin Islands, like the states of the Union and the United States, is immune from suits in action sounding in tort. *Collins v. Government*, C.A.3d 1966, 5 V.I. 622, 366 F.2d 279, cert. denied, 386 U.S. 958, 87 S.Ct. 1026 (1967).

The Government of the Virgin Islands can declare in what court it may be sued, and prescribe the forms of pleading and the rules of practice to be observed in such suits. *Collins v. Government*, C.A.3d 1966, 5 V.I. 622, 366 F.2d 279, cert. denied, 386 U.S. 958, 87 S.Ct. 1026 (1967).

The prohibition of this section restricting actions against the government, its officers and employees without legislative consent is directed to actions to recover damages for torts alleged to have been committed by the government through its offices or employees and it has no application to an equitable action which does not ask for damages but which merely seeks an injunction restraining future enforcement against the plaintiff of an exclusive franchise granted by the government. *Southerland v. St. Croix Taxicab Association*, C.A.3d 1963, 4 V.I. 397, 315 F.2d 364.

Government of the Virgin Islands is subject to suit in contract without its consent but in tort only with its consent. *Felix v. Government of the Virgin Islands*, D.C.V.I. 1958, 3 V.I. 399, 167 F. Supp. 702.

An employee of the Department of Social Welfare could not maintain a tort action against the Government if injured in a motor vehicle accident while acting in the course of his employment, but he would be entitled to workmen's compensation. 3 V.I.Op.A.G. 232.

A client of the Department of Social Welfare cannot maintain an action against the Government if injured while being transported by the Department, but if negligence of a Government employee caused the injury, the client may petition for relief. 3 V.I.Op.A.G. 232.

The Virgin Islands Government has sovereign immunity from tort actions. 3 V.I.Op.A.G. 226.

Under the doctrine of sovereign immunity, the Government is free from liability for damage to a personal vehicle, used in the course of employment, of a Government employee. 3 V.I.Op.A.G. 251.

Under the doctrine of sovereign immunity, the Government is free from liability where a Government employee driving an official or personal vehicle collides with a privately-owned vehicle and damages it. 3 V.I.Op.A.G. 251.

Under the rule of sovereign immunity, there could be no Government tort liability where a Government vehicle driven by a Government employee collided with a vehicle owned by another person. 3 V.I.Op.A.G. 234.

6. —By special act. Legislative waiver of the sovereign immunity of the Virgin Islands Government, done in an ad hoc fashion and on behalf of individual who drowned while on way home from school on a day of heavy rains and flooding, was an enactment of a special law, proscribed by federal statute prohibiting legislatures of the territories from passing special laws which, inter alia, grant any individual any special or exclusive privilege, immunity or franchise whatever, and which provided that where a general law is applicable no special law may be enacted. *Thomas v. Government of the Virgin Islands*, D.C.V.I. 1971, 8 V.I. 259.

7. Construction with other laws. While the Virgin Islands Code also appears to define jurisdictional limits of the Virgin Islands courts, whatever power the Virgin Islands legislature possesses to vest jurisdiction in the Territorial Court and divest jurisdiction from the District Court must derive from the Revised Organic Act. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1021.

A claimant's failure to comply with sections 3408-3414 of Title 33, the procedural requirements of the tort claims act, can effectively nullify the government's waiver of immunity and consent to be sued, and thus, under subsection (b) of this section, deprive the court of subject matter jurisdiction. *Mercer v. Government of the Virgin Islands*, Terr. Ct. St. T. and St. J. 1982, 18 V.I. 171.

The limitation imposed by subsection (b) of this section applies to the Civil Rights Act (42 U.S.C. § 1983), thus in order to maintain a suit against an officer of the Virgin Islands under that act it is necessary for the plaintiff to aver that he has obtained consent to such suit from the Legislature of the Virgin Islands. *Ocasio v. Bryan*, D.C.V.I. 1966, 5 V.I. 677, 261 F. Supp. 409, aff'd, C.A.3d 1967, 6 V.I. 43, 374 F.2d 11.

8. Immunity of officers and employees. No tort action may be brought against any officer or employee of the Virgin Islands in his official capacity. *Ohlsen v. Government of the Virgin Islands*, D.C.V.I. 1986, 22 V.I. 411.

In personal injury action for damages where the third-party complaint alleged that one of the third-party defendants, a police officer, was operating a police vehicle involved in the accident from which the claim arose, the police officer's motion to dismiss was denied because no immunity is granted to an employee of the Government of the Virgin Islands who is sued in his individual capacity; subsection (b) of this section grants immunity to a government employee only when sued in his official capacity, so that the suit is in reality one against the Government itself, and any monetary recovery would be from the public treasury. *Quetel v. Brutus*, Terr. Ct. St. T. and St. J. 1981, 17 V.I. 212.

Doctrine of sovereign immunity did not prevent court from acquiring both personal and subject matter jurisdiction over action styled by plaintiff as one for mandamus, underlying basis of which was statutory contract freely entered into by Government of the Virgin Islands. *Rouss v. Government*, Terr. Ct. St. C. 1977, 13 V.I. 203.

President and Dean of College of the Virgin Islands were acting in their discretion when they ordered the arrest of plaintiff-students suing them for false arrest, and complaint against them would be dismissed on ground that they were acting within the scope of their authority and were thus immune from personal liability under this section. *Dennis v. College of the V.I.*, D.C.V.I. 1975, 12 V.I. 117.

Doctrine of sovereign immunity applied to former government officials with respect to actions taken while in office, so that tort action against them, alleging they had misrepresented their authority, was barred. *Sargent, Webster, Crenshaw & Foley v. Paiewonsky*, D.C.V.I. 1974, 10 V.I. 544.

Sovereign immunity prevented suit against law enforcement officer concededly acting within the scope of his employment when he allegedly committed assault and battery upon plaintiff, where legislature, by 33 V.I.C. § 3408, consented to suits against the government, but not against officers and employees acting in their official capacity. *Simon v. Lovgren*, D.C.V.I. 1973, 10 V.I. 302.

A court confronted with the interpretation of the heretofore unconstrued provision in subsection (b) of this section giving officers and employees of the Government tort immunity when acting in an official capacity would probably not be inclined to apply immunity to ordinary employees. 3 V.I.Op.A.G. 234.

Cited. Cited in *Gutcliffe v. Magens Bay Authority*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 393; *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1983, 19 V.I. 453;

Freeman Associates Caribbean, Inc. v. Government of the Virgin Islands, D.C.V.I. 1983, 19 V.I. 575; Saludes v. Ramos, C.A.3d 1984, 744 F.2d 992; Kock v. Government of the Virgin Islands, C.A.3d 1984, 744 F.2d 997; Williams v. Government of the Virgin Islands, Terr. Ct. St. T. and St. J. 1984, 20 V.I. 239; Bryan v. Bernier, D.C.V.I. 1985, 21 V.I. 333; Hobson v. Government of the Virgin Islands Fire Division, Terr. Ct. St. T. and St. J. 1986, 22 V.I. 87; Wiltshire v. Government of the Virgin Islands, C.A.3d 1990, 893 F.2d 629; Prince v. Willocks, Terr. Ct. St. C. 1991, 26 V.I. 99.

BILL OF RIGHTS

§ 3. [Rights and prohibitions]

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.

No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Slavery shall not exist in the Virgin Islands.

Involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly¹ and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

No political or religious test other than an oath to support the Constitution and the laws of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands, shall be required as a qualification to any office or public trust under the Government of the Virgin Islands.

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; article VI, clause 3; the

¹ As written in original.

first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments; Provided, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22(a) and (c) of this Act may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.

All laws enacted by Congress with respect to the Virgin Islands and all laws enacted by the territorial legislature of the Virgin Islands which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency.—July 22, 1954, ch. 558, § 3, 68 Stat. 497; amended Aug. 28, 1958, Pub. L. 85-851, § 1, 72 Stat. 1094, Aug. 23, 1968, Pub. L. 90-496, § 11, 82 Stat. 841; Dec. 8, 1983, Pub. L. 98-213, § 5(d), 97 Stat. 1460; Oct. 5, 1984, Pub. L. 98-454, Title VII, § 701, 98 Stat. 1737.

HISTORY

Amendments—1984. Rewrote the provisions in the next to last paragraph.

—1983. Inserted “article VI, clause 3,” preceding “the first to ninth amendments inclusive” in the next to last paragraph.

—1968. Added last two paragraphs referring to applicability of specific portion of the Constitution of the United States to the Virgin Islands and repeal of inconsistent laws.

—1958. Added third to last paragraph relating to prohibition against political or religious tests.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984.

CROSS REFERENCES

Child labor, regulation of, see sections 401 et seq. of Title 24.

Offenses on federal property in Virgin Islands, judgment of conviction or acquittal under laws of United States or Virgin Islands as bar to further prosecution, see history note under section 84 of Title 14.

ANNOTATIONS

Bail, 17	Impairment of contracts, 12
Confrontation, 8	Invasion of privacy, 14
Discriminatory classification, 3	Jury trial, 16
Double jeopardy, 18	Presentment by grand jury, 10
Due process, 2	Privilege against self-incrimination, 19
Equal protection of the laws, 4	Proper parties, 5
Establishment of religion, 6	Protection of life, public health or public safety, 13
Fifth Amendment, 20	Sixth Amendment, 7
Freedom of speech and press, 9	Taxation, 11
Full faith and credit, 21	
Generally, 1	
Government spending, 15	

1. **Generally.** Since 1968 the Fourth Amendment has had the same force and effect in the Virgin Islands as it has in any state of the United States. *United States v. Hyde*, D.C.V.I. 1993, 29 V.I. 106.

This section expresses congressional intent to make the federal Constitution applicable to the Virgin Islands to the fullest extent possible consistent with its status as a territory. *Government of the Virgin Islands v. Commissioning*, D.C.V.I. 1988, 698 F. Supp. 604.

Only the most fundamental constitutional rights extend to territory of Virgin Islands, where Congress is silent on the subject. *Territorial Court of the Virgin Islands v. Richards*, D.C.V.I. 1987, 673 F. Supp. 152.

Since Congress excluded the Eleventh Amendment from provision of the Revised Organic Act making most of the provisions of the United States Constitution applicable to the Virgin Islands, it appears that Congress did not intend that the Eleventh Amendment apply to the Virgin Islands. *Tonder v. M/V The Burkholder*, D.C.V.I. 1986, 22 V.I. 231, 630 F. Supp. 691.

A cause of action by state or municipal employees who allege that they have been discharged solely because of their partisan political affiliation constitutes a cognizable claim directly under the First and Fourteenth Amendments as well as under the Civil Rights Act. *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1982, 19 V.I. 65.

The Fourth and Fifth Amendments are applicable to the Virgin Islands. *Government in the Interest of: Evan S., Terr. Ct. St. T. and St. J.* 1979, 16 V.I. 180.

Although the Bill of Rights contained in the Revised Organic Act of the Virgin Islands is conferred by act of Congress, it expresses the congressional intention to make the federal Constitution applicable to the Virgin Islands to the fullest extent possible consistent with its status as a territory; therefore, a claim of violation of such Bill of Rights amounts in substance to a claim of unconstitutionality. In the *Matter of Brown*, C.A.3d 1971, 8 V.I. 313, 439 F.2d 47.

2. **Due process.** Retroactive application of section 284(b) of Title 24, which eliminates the borrowed employee doctrine as a defense in workmen's compensation cases, does not violate the due process clause of this section, since it is rationally related to the legitimate governmental purposes of protecting workmen's compensation resources and Virgin Islands' workers. *Prevost v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1986, 22 V.I. 340, 640 F. Supp. 1220, modified, C.A.3d 1987, 819 F.2d 1237, cert. denied, 484 U.S. 963, 108 S.Ct. 452, 98 L.Ed.2d 392 (1987).

Assuming, *arguendo*, that workmen's compensation is an implied term of the employment contract, retroactive application of section 284(b) of Title 24, which elimi-

nates the borrowed employee doctrine as a defense in workmen's compensation cases, passes constitutional muster as an appropriate means to accomplish the legitimate public purposes of protecting workmen's compensation resources. *Prevost v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1986, 22 V.I. 340, 640 F. Supp. 1220, modified, C.A.3d 1987, 819 F.2d 1237, cert. denied, 484 U.S. 963, 108 S.Ct. 452, 98 L.Ed.2d 392 (1987).

The forum state does not exceed its powers if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state, even where the forum related sales are derived solely through its distribution network. *Watley v. Virgin Islands Industrial Gases, Inc.*, D.C.V.I. 1983, 19 V.I. 550.

Where plaintiff alleged that a defective product manufactured by nonresident corporation caused an accident in the Virgin Islands which subjected him to tortious injury, since the Virgin Islands had a strong interest in the litigation, it was a convenient forum for plaintiff, exercise of jurisdiction over the corporation would impose no undue surprise since it maintained distributorship agreements with seven local firms and maintenance of the suit in the territory would not impose any measurable burden on the corporation, subjecting it to the court's jurisdiction was consistent with due process guarantees. *Watley v. Virgin Islands Industrial Gases, Inc.*, D.C.V.I. 1983, 19 V.I. 550.

Jurisdiction over a foreign corporation may be exercised consistent with due process restrictions when as a parent corporation it exercises such control and domination over its local subsidiary that they do not in reality constitute separate and distinct corporate entities. *Dickson v. Hertz Corp.*, D.C.V.I. 1983, 19 V.I. 501.

Under the due process clause, mere ownership of the stock of a local subsidiary or interlocking directorships between parent and subsidiary are not by themselves sufficient to establish jurisdiction over the foreign parent corporation. *Dickson v. Hertz Corp.*, D.C.V.I. 1983, 19 V.I. 501.

To the extent that a foreign corporation exercises the privilege of conducting activity within a state or territory, it enjoys the benefits and protections of the laws of that state or territory, thereby, subjecting itself to certain concomitant duties, and by enjoying such privileges within the forum, the foreign corporation has clear notice that it is subject to suit there. *Tuky Air Transport v. Edinburgh Insurance Co.*, D.C.V.I. 1982, 19 V.I. 238.

If an authorized representative of a foreign corporation is physically present in the state of the forum and is there engaged in activities appropriate to accepting service or receiving notice on its behalf, there is no unfairness in subjecting that corporation to the jurisdiction of the courts of that state through such service of process upon that representative. *Tuky Air Transport v. Edinburgh Insurance Co.*, D.C.V.I. 1982, 19 V.I. 238.

Since a foreign insurance corporation, by virtue of its certificate to do business in the United States Virgin Islands, is thereby put on notice of its amenability to suit in the territory and statutes governing service of process on such entities draw no distinction between an action brought by a nonresident and an action brought by a resident, the considerations of fairness and notice mandated by the due process clause are in no way jeopardized where the court exercises in personam jurisdiction over it in a suit brought by a nonresident of the forum. *Tuky Air Transport v. Edinburgh Insurance Co.*, D.C.V.I. 1982, 19 V.I. 238.

A foreign corporation which is authorized to do business in the Virgin Islands and which has designated an agent for accepting service of process is subject to the

jurisdiction of the courts of the territory, even though the cause on which it is sued arose outside the territory and even though the action is brought by a nonresident. *Tuky Air Transport v. Edinburgh Insurance Co.*, D.C.V.I. 1982, 19 V.I. 238.

Where foreign insurance corporation had, as a condition to doing business in the Territory of the Virgin Islands, expressly designated a resident agent for the purpose of receiving service of process and held a certificate to transact business in the territory as an alien insurer, it purposely availed itself of the privilege of conducting activities within the territory in a way that would justify bringing it before the courts of the territory. *Tuky Air Transport v. Edinburgh Insurance Co.*, D.C.V.I. 1982, 19 V.I. 238.

A foreign corporation is subject to the jurisdiction of a Virgin Islands court only if its contacts with the forum meet the requirements of the long-arm statute and the due process clause of the United States Constitution. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

Due process requires that a defendant be sued only where he has such minimum contacts with the forum that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

Due process limitations protect defendants from the inconvenience of litigating in an unconnected jurisdiction, as well as insure that state or territorial tribunals do not surpass the limits of their sovereignty. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

In order to determine whether the due process requirements for exercising jurisdiction over a nonresident defendant are met, several factors are balanced; the relevant considerations include the interest of the forum in resolving the dispute, the interest of the plaintiff in obtaining relief at the particular forum, the pertinent contacts of the defendant with the forum, and the burden placed on the defendant in having to come to the forum to defend. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

As a matter of constitutional principle, service is proper if that service gives the defendant notice of the proceedings. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

In action on an insurance policy, where the endorsement of defendant insurer was delivered in the Virgin Islands, the premium for the policy was paid by a Virgin Islands resident and the property insured was located in the Virgin Islands, the Virgin Islands had a vigorous interest in the lawsuit, and since the insurer voluntarily availed itself of the privilege of conducting a business transaction relating to the Virgin Islands by agreeing to insure the property and alleged no special hardship other than inconvenience which would result if it were required to defend in the Virgin Islands, the court's exercise of jurisdiction over the insurer was constitutionally permissible. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

The status or terms of employment conferred on a public employee by local law will determine the extent of his property interest in his position and thereby determine the type of procedural safeguards to which he is entitled under the due process clause of the Fourteenth Amendment. *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1982, 19 V.I. 65.

Due process is not accorded to one who is not made a party, or otherwise represented, in a court action which undertakes to deprive him of his property. *Modeste v. Benjamin*, D.C.V.I. 1981, 18 V.I. 619.

A lien interest in a particular piece of property cannot be deprived without due process of law. *Modeste v. Benjamin*, D.C.V.I. 1981, 18 V.I. 619.

The due process clause of the Fifth Amendment of the United States Constitution, applicable to the Virgin Islands under this section, requires that at a minimum, absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. *Defoe v. Lesley*, D.C.V.I. 1981, 18 V.I. 307.

A cost requirement, valid on its face, may offend due process because under the circumstances it operates to foreclose a particular party's opportunity to be heard. *Defoe v. Lesley*, D.C.V.I. 1981, 18 V.I. 307.

Where the Territorial Court vacated a default judgment, entered against defendant in an action filed by plaintiff, who sought damages for injuries sustained when he was attacked with a cutlass by defendant, on the condition that defendant post a bond in the full amount of the judgment, plus costs and attorney's fees, but due to his financial circumstances defendant was unable to comply with the cost requirement that served no overriding state interest, defendant was denied his right to due process. *Defoe v. Lesley*, D.C.V.I. 1981, 18 V.I. 307.

The Fourteenth Amendment to the United States Constitution, applicable in the Virgin Islands under this section, does not create property interests; rather it protects established entitlements, the primary source of which is state law. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

Where a complaint alleges deprivation of a property interest in violation of the Fourteenth Amendment to the United States Constitution, made applicable in the Virgin Islands by this section, plaintiffs must establish that a property interest existed and demonstrate that due process was violated in the deprivation of the property interest. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

An individual's liberty interest, protected by the Fourteenth Amendment to the United States Constitution, is deprived without due process of law when a governmental entity, in the course of terminating the individual's employment, prepares a report which is false, published, and stigmatizing, and the governmental entity fails to give the individual notice and an opportunity to be heard on the contents of the report. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

When a probational government employee is dismissed from his employment, the due process clause requires no more than notice of dismissal and the availability of a post-termination hearing on the issue of discrimination on the basis of nonmerit factors. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

Since section 530 of Title 3, governing discharge of government employees, has created a clear and legitimate expectation of continued employment for regular government employees, absent a showing of cause for discharge, a regular government employee has a claim of entitlement and thus a property interest which cannot be denied without due process in his or her position. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

Where plaintiffs, who brought suit against the officials who dismissed them from their employment as juvenile corrections officers, received notice of their dismissals, an explanation of the reasons for the dismissals, and had a statutory right to a hearing if they believed that their dismissals were based on nonmerit factors, their complaint did not assert a cognizable claim based on deprivation of property rights without due process, insofar as plaintiffs were probational employees. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

Where plaintiffs, who brought suit against the officials who dismissed them from their employment as juvenile corrections officers, alleged that they received notices of their dismissals which cited false and possibly stigmatizing reasons for their dis-

missals, that they were afforded no hearing on their dismissals, and the reasons for the dismissals had to be entered in the records of the Office of the Director of Personnel, their complaint asserted a cognizable constitutional claim based on deprivation of their liberty interests without due process, regardless of plaintiffs' status as probational or regular employees at the time of their dismissals. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

The Revised Organic Act of the Virgin Islands assures that private property may not be taken for public use except upon payment of just compensation. *Grubel v. MacLaughlin*, D.C.V.I. 1968, 6 V.I. 490, 286 F. Supp. 24.

The "due process" and "equal protection" clauses of the Revised Organic Act of the Virgin Islands restrain only such discriminatory legislation as amounts to a denial of due process. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

A lessee evicted under the terms of a lease agreement empowering the lessor, an instrumentality of the United States, to terminate the agreement at any time, is not denied due process, even though the president of the instrumentality verbally assured the lessee that it would not be evicted except in a national emergency. *College of the Virgin Islands v. Vitex Mfg. Co., Ltd.*, Mun. Ct. St. T. and St. J. 1965, 5 V.I. 34.

It was not denial of due process of law because Governor was appointing authority who approved employee's dismissal, and who would have been called upon, if employee had appealed to Government Employees Service Commission under section 531 of Title 3, to review recommendations of Commission regarding her dismissal, and, as Governor, is also official who, under said section, must give final approval to his own decision as appointing authority. *Phaire v. Merwin*, D.C.V.I. 1958, 3 V.I. 320, 161 F. Supp. 710.

Subsection (b) of section 2102 of Title 14 [as existed prior to 1977 amendments], which subjected to punishment any person who, being brought before a court and charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained and could not give an account to satisfaction of court how he came by same, was invalid under due process clause of this section and U.S. Const. Amend. 5, and was not in accord with fundamental principle of common law that one accused of crime is presumed to be innocent until he has been proved guilty beyond reasonable doubt. *Government of the Virgin Islands v. Torres*, D.C.V.I. 1958, 3 V.I. 333, 161 F. Supp. 699.

3. Discriminatory classification. If work, though private, is such that the exclusion of aliens is in fact necessary to the protection of the public welfare, such exclusion is within the police power of the territory. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

The test of discriminatory classification is whether the classification is based on a reasonable ground, or whether it is purely arbitrary and founded on an immaterial fact. 1 V.I.Op.A.G. 74.

Where a calling or occupation is injurious to the community, or likely to become so, the state, under its police power, can limit it to its own citizens, and deny the right to all others. 1 V.I.Op.A.G. 59.

4. Equal protection of the laws. The equal protection clause of this section does not constitute an absolute ban on the legislature's drawing of statutory lines which treat one class of individuals different from another class. *Lindquist v. Xerox Corp.*, D.C.V.I. 1983, 20 V.I. 227.

The Legislature's decision to exempt partnerships from raising the defense of usury was a valid exercise of its police power rationally related to the public purpose

of encouraging more construction in the territory and thereby making more housing available, since it was a reasonable assumption that allowing these business concerns to freely negotiate for loans would result in more money lent within the business community and that this money would stimulate greater business activity; since the classification was rational, promoted legitimate government ends and treated all within the class equally, it was not a denial of equal protection. *Lindquist v. Xerox Corp.*, D.C.V.I. 1983, 20 V.I. 227.

A defendant who invokes the defense of selective enforcement of the laws has the burden of proving by a preponderance of the evidence that the selection was based on an impermissible standard such as race, religion or other "arbitrary classification;" mere selectivity is not constitutionally prohibited. *United States of America v. Wilson*, D.C.V.I. 1982, 19 V.I. 12.

To support a defense of selective or discriminatory prosecution, a defendant must establish, at least prima facie, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith. *United States of America v. Wilson*, D.C.V.I. 1982, 19 V.I. 12.

Where defendants, who moved to dismiss the judgment against them for conspiracy and unlawful distribution of a controlled substance, on the grounds that the incidence of arrests and convictions for black and Puerto Rican individuals in the Virgin Islands for violation of the drug laws was so disproportionately high as to violate their right to equal protection, did not show that white individuals, "similarly situated," were not charged or prosecuted despite evidence of an identical kind or quality which the government found to support the filing of information against black and Puerto Rican defendants, an impermissible motive at some crucial stage in the procedures leading to the initiation of prosecution, nor any discriminatory policies underlying the selection of cases for prosecution, their motion would be denied. *United States of America v. Wilson*, D.C.V.I. 1982, 19 V.I. 12.

What the Virgin Islands Legislature could not grant, it could not deny in the sense of the Equal Protection Clause of the 14th Amendment; so that where it did not have the power to abolish the District of St. John, which was over-represented in the Legislature, it did not have the power to accord, and was not denying, equal protection as applied to the Virgin Islands by this section, which applies the Equal Protection Clause of the 14th Amendment to the Virgin Islands, and as articulated in the reapportionment decisions. *Moolenaar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd on other grounds, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

The differentiation between an adult and a juvenile as to their rights of appeal is a relevant one and not disparate and, therefore, not violative of the equal protection clause of this section, nor of the Fifth Amendment, by reason of the Constitution of the United States having been made applicable to the Virgin Islands by Act of Congress dated August 23, 1968. In *re Brown*, C.A.3d 1970, 7 V.I. 545.

A provision of the statutes which required that an attempted vote for seven or more candidates be counted as a vote for the indicated straight party ticket and be disregarded as an attempted vote for the other individual candidate or candidates whose name or names were marked operated to deprive independent candidates for elective office of the equal protection of the laws guaranteed to them by this section. *Melchior v. Todman*, D.C.V.I. 1968, 7 V.I. 583, 296 F. Supp. 900.

The Act of February 25, 1964, as amended, relating to employment of nonresident alien workers was not invalid in that it violates the equal protection clause of this

section on the ground that it discriminates against a nonresident alien worker because he must be replaced when a resident worker becomes available, since the short answer to this contention is that this is the congressional mandate. *Gannet Corporation v. Stevens*, D.C.V.I. 1968, 6 V.I. 309, 282 F. Supp. 437.

Equal protection clause does not prohibit those equalities which may result from singling out one particular class for taxation or exemption therefrom, and only if it appears that there is no national basis for the classification so that it is patently arbitrary, may it be set aside as unconstitutionally discriminatory. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

Even singling out of a group of taxpayers for special relief conditional upon a showing of individual hardship is not necessarily invalid. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041; reh'g denied, 392 U.S. 917.

The "equal protection" clause of this section does not detract from the right of the territory justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection; but it does require that classification not be arbitrary, but based on a real and substantial difference having a reasonable relation to the subject matter of the particular legislation. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

The equal protection clause of this section which is taken from U.S. Const. Amend. 14, imposes no rigid rules of equality of taxation. *Port Construction Co. v. Government of the Virgin Islands*, C.A.3d 1966, 5 V.I. 549, 359 F.2d 663.

The equal protection clause of this section does not prohibit those inequalities which may result from singling out one particular class for taxation or exemption therefrom, and only if it appears that there is no rational basis for the classification so that it is patently arbitrary, may it be set aside as unconstitutionally discriminatory. *Port Construction Co. v. Government of the Virgin Islands*, C.A.3d 1966, 5 V.I. 549, 359 F.2d 663.

A lessee evicted under the terms of a lease agreement empowering the lessor, an instrumentality of the United States, to terminate the agreement at any time, is not denied equal protection of the laws, even though other lessees similarly situated are not evicted. *College of the Virgin Islands v. Vitex Mfg. Co., Ltd.*, Mun. Ct. St. T. and St. J. 1965, 5 V.I. 34.

5. Proper parties. Only persons who can show injury are in a position to attack the constitutionality of a statute. *Antilles Surveys, Inc. v. De Jongh*, C.A.3d 1966, 5 V.I. 560, 358 F.2d 787.

6. Establishment of religion. It would not be objectionable on constitutional grounds for the Department of Education to provide for the transportation of children to and from Catholic parochial high schools. 1 V.I.Op.A.G. 325.

7. Sixth amendment. Sixth Amendment to the United States Constitution applies to Territorial offenses prosecuted in Territorial Court of the Virgin Islands. *Government of the Virgin Islands v. King*, Terr. Ct. St. T. and St. J. 1990, 25 V.I. 114.

8. Confrontation. Constitutional right of confrontation has been limited to assurance of right of cross-examination of witness before his testimony may be used at later trial. *Government of the Virgin Islands v. Aquino*, C.A.3d 1967, 6 V.I. 395, 378 F.2d 540.

Right of confrontation is not absolute, even in instances where, as in some states, the constitutional provision is cast in terms of a right to meet the witness "face to

face". *Government of the Virgin Islands v. Aquino*, C.A.3d 1967, 6 V.I. 395, 378 F.2d 540.

In addition to benefit which defendant has in testing reliability of a witness against him by cross-examination, confrontation ordinarily secures a secondary advantage in making it possible for tribunal before whom witness appears to judge from his demeanor the credibility of his testimony. *Government of the Virgin Islands v. Aquino*, C.A.3d 1967, 6 V.I. 395, 378 F.2d 540.

Although demeanor evidence is in reality of such high significance, it is nevertheless well settled that it is not an essential ingredient of the confrontation privilege, and the privilege is satisfied if defendant is accorded right of cross-examination. *Government of the Virgin Islands v. Aquino*, C.A.3d 1967, 6 V.I. 395, 378 F.2d 540.

9. Freedom of speech and press. The First Amendment of the United States Constitution guarantees freedom of speech and freedom of the press. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

When balancing the competing interests of freedom of speech and of the press against the rights of others to be free from defamation, the First Amendment rights should be given added weight, in order to assure to those rights that "breathing space" essential to their fruitful exercise. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

It is appropriate to limit the opportunity for public officials to recover for alleged defamation, due to the profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

The constitutional guarantees of freedom of speech and of the press require a rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice," that is, with knowledge that it was false or with reckless disregard of whether it was false or not. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

In libel actions the "public official" designation applies to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

If the public has an "independent interest" in the qualifications and performance of a person who is in governmental service, that person is a public official. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

In order for a public official to prove that a newspaper acted with malice in publishing defamatory statements regarding his performance of his official duties, the evidence must be such as to support a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

Where plaintiff was Director of the Division of Utilities and Sanitation of the Virgin Islands Department of Public Works, an appointed government position, the duties of which included authority over potable water distribution, and alleged defamatory statements which gave rise to plaintiff's defamation action concerned plaintiff's job performance in the distribution of water in the Virgin Islands, plaintiff could not recover unless he proved that the defendant newspaper acted with "malice" in publishing the statements. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

Where affidavit of reporter, who wrote newspaper article containing alleged defamatory letter written by Lieutenant Governor in response to complaints concern-

ing plaintiff's performance of his duties as a public official, stated that prior to publication of the article she discussed the complaints against plaintiff with the recipient of the letter and contacted plaintiff, who refused to comment on the matter, since plaintiff did not provide specific facts which contradicted the reporter's affidavit, the facts as stated in the affidavit were deemed to be established; therefore, since there was no proof that defendant newspaper acted with malice in publishing the letter, its motion for summary judgment would be granted. *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155.

Since all patronage dismissals of public employees are not prohibited by the First Amendment, in order to test the constitutional validity of such dismissals the court must determine in each case whether or not political party affiliation is a legitimate criterion for holding the government position in question. *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1982, 19 V.I. 65.

Where former public employee's complaint against the government alleged that he was discharged because of his partisan political affiliation, and the government did not establish what the responsibilities of that position were and the extent to which the post contemplated, if at all, a policy making function, while the government might be entitled to summary judgment upon a sufficient showing that political affiliation was a rational criterion in the filling or the termination of plaintiff's position, it was not entitled to a dismissal or judgment based merely on the pleadings filed. *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1982, 19 V.I. 65.

An individual is entitled to relief if he or she is discharged from governmental employment as punishment for exercising First Amendment rights of free speech. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

Where a complaint alleges that an individual's employment with the government was terminated as punishment for exercising First Amendment rights of free speech, the complainant has the burden of showing that his speech was constitutionally protected and was a motivating factor in the defendants' decision to dismiss him; if this burden is met, the defendants then have the burden of showing that the complainant would have been dismissed even in the absence of the protected speech in question. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

Where plaintiffs, who brought suit against the officials who dismissed them from their employment as juvenile corrections officers, alleged that, in the past, they had called attention to inefficiencies at the juvenile corrections facility and that the real reason for their dismissals was the desire of the director of the Youth Services Administration to conceal those inefficiencies, their complaint asserted a cognizable claim for relief based on their First Amendment rights of free speech. *Schuster v. Thraen*, D.C.V.I. 1981, 18 V.I. 287.

The provisions of this section guaranteeing to the inhabitants of the Virgin Islands freedom of speech and of the press involve the same safeguards as are embodied in the First and Fourteenth Amendments. *Government of the Virgin Islands v. Brodhurst and Dreyer*, D.C.V.I. 1968, 6 V.I. 509, 285 F. Supp. 831.

A limitation may be placed on the exercise of the freedom of the press when it conflicts with the maintenance of absolute fairness in the judicial process. *Government of the Virgin Islands v. Brodhurst and Dreyer*, D.C.V.I. 1968, 6 V.I. 509, 285 F. Supp. 831.

Any attempt to restrict those liberties must be justified by a clear public interest, threatened not doubtfully or remotely, but by clear present danger. *Government of the Virgin Islands v. Brodhurst and Dreyer*, D.C.V.I. 1968, 6 V.I. 509, 285 F. Supp. 831.

While it is settled that the constitutional rights of freedom of speech and of the press embrace the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment, it remains true that where the line is to be drawn in a particular case does not rest on generalities but rather on the concrete clash of particular interests and the community's relative evaluation, both of these interests and how the one will be affected by a specific restriction and the other by its absence. *Government of the Virgin Islands v. Brodhurst and Dreyer*, D.C.V.I. 1968, 6 V.I. 509, 285 F. Supp. 831.

10. Presentment by grand jury. It was constitutional for Congress to leave the establishment of grand juries in the hands of the Virgin Islands Government, and for the Government to choose to prosecute by information. *Ballentine v. Hendricks*, D.C.V.I. 1972, 9 V.I. 268.

Even if federal statute making it United States policy that litigants in federal courts who are entitled to jury trial shall have the right to grand jury selected at random from a fair cross section of the community implies that right to a grand jury is itself intended, it is no more than a general policy statement, which can and has been overridden by Acts of Congress specifically exempting the Virgin Islands from such a requirement. *Ballentine v. Hendricks*, D.C.V.I. 1972, 9 V.I. 268.

The right of presentment by grand jury is merely a remedial right which is not among the fundamental rights which congress in legislating for a territory not incorporated into the United States, such as the Virgin Islands, must secure to its inhabitants. *Rivera v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 155, 375 F.2d 988.

11. Taxation. It is not a valid objection to the payment of unemployment tax or contributions, which in other respects conform to the requirements of "due process" and "equal protection", that the benefits paid and the persons to whom they are paid are unrelated to the persons taxed. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

12. Impairment of contracts. Though the language of the contract clause of this section is facially absolute, its prohibition must be balanced against the inherent police power of the territory to safeguard the vital interests of its people. *Prevost v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1986, 22 V.I. 340, 640 F. Supp. 1220, modified, C.A.3d 1987, 819 F.2d 1237, cert. denied, 484 U.S. 963, 108 S.Ct. 452, 98 L.Ed.2d 392.

Workmen's compensation is incidental to the employment relationship and not an implied term of the employment contract; therefore, retroactive application of section 284(b) of Title 24, which eliminates the borrowed employee doctrine as a defense in workmen's compensation cases, does not violate the contract clause of section 3 of the Revised Organic Act. *Prevost v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1986, 22 V.I. 340, 640 F. Supp. 1220, modified, C.A.3d 1987, 819 F.2d 1237, cert. denied, 484 U.S. 963, 108 S.Ct. 452, 98 L.Ed.2d 392.

13. Protection of life, public health or public safety. This section provides in specific terms that the Legislature has power to enact laws for the protection of life, the public health or the public safety. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

The public policy which undergirds the Unemployment Compensation Act statute, section 301 of Title 24, is not inconsistent with the grants of power in this section of the Revised Organic Act of 1954 to enact laws for the protection of life, the public health, or the public safety. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

14. Invasion of privacy. Ordinarily, the release of personally identifiable information by government officials constitutes an unwarranted invasion of privacy, in direct violation of existing laws designed to protect individual rights to privacy. 10 V.I.Op.A.G. 2.

Request by Office of the Inspector General for a list of Virgin Islands residents who were eligible for or receiving public assistance came within exceptions to right-to-privacy laws and was specifically allowable under both local and federal law. 10 V.I.Op.A.G. 2.

15. Government spending. If funds specifically appropriated to the Community Action Agency were spent by an agency unilaterally created by the governor to perform functions similar to those performed by the Community Action Agency, those funds would be spent in violation of existing appropriations. *Bell v. Luis*, D.C.V.I. 1981, 18 V.I. 633.

A government contract which is not executed in conformity with a legislative appropriation of funds is void. *F. D. Rich Housing of the Virgin Islands, Inc. v. Government of the Virgin Islands*, D.C.V.I. 1980, 17 V.I. 410.

The existence of a government "appropriation" of funds does not require that the funds be allocated to a particular department within the executive branch; instead, as long as the legislature has designated funds for use by the executive branch and the appropriation measure has received executive approval, an "appropriation" has been made. *F. D. Rich Housing of the Virgin Islands, Inc. v. Government of the Virgin Islands*, D.C.V.I. 1980, 17 V.I. 410.

That legislature, by three resolutions, authorizing and approving a building project, did not satisfy section 3 of the Revised Organic Act, section 249 of Title 31, and section 3101 of Title 33 which require that no contracts be executed except in conformity with legislative appropriation of funds; and to the extent local funds were in issue, the contract was void where there was no appropriation, but to the extent that federal grant funds were encumbered, the contract was valid. *Sargeant v. Government of the Virgin Islands*, D.C.V.I. 1973, 10 V.I. 245.

Where contract with government was executed in violation of requirement that funds be appropriated to cover the contract, estoppel did not apply to bar government from raising the violation in action against government on the contract, nor could quantum meruit recovery be had. *Sargeant v. Government of the Virgin Islands*, D.C.V.I. 1973, 10 V.I. 245.

Plaintiffs who sought to collect from government under architect's contract had notice contract was void with respect to territorial funds where statutes forbade such contracts unless the funds had been appropriated, and such notice prevented collection in equity. *Sargeant v. Government of the Virgin Islands*, D.C.V.I. 1973, 10 V.I. 245.

The government cannot be held liable under any contract in the absence of an appropriation by the legislature; and where government contracted to pay teacher-trainees an annual salary in bi-weekly payments for the period September 1, 1972 through August 31, 1973 and the contracts provided that payment was "subject to availability of funds after June 30, 1973," and the funds appropriated to pay the salaries were sufficient to pay the salaries only through July 7, 1973, the government was not obligated to pay the salaries from July 7 through August 31. 7 V.I.Op.A.G. 263.

The creation of a monthly annuity for an individual by Bill No. 410 of the Municipal Council of St. Thomas and St. John did not obligate future legislatures to continue the payments. 3 V.I.Op.A.G. 203.

Appropriation by each legislature is necessary to enable Commissioner of Finance to pay an annuity created for an individual by a prior legislature. 3 V.I.Op.A.G. 203.

The word "Legislature" in the provision regarding payment of money from the Treasury, means "present Legislature," the purpose of the provision being to give each Legislature control of government income and tax receipts during its incumbency. 3 V.I.Op.A.G. 203.

16. Jury trial. The constitutional right to a jury trial for Virgin Islands residents, adopted by amendment of the Organic Act, is satisfied by a jury not less than six. *Government of the Virgin Islands v. Nicholas*, D.C.V.I. 1983, 20 V.I. 179.

The right to a jury trial of twelve is statutorily created in the Virgin Islands and not a constitutional requirement. *Government of the Virgin Islands v. Nicholas*, D.C.V.I. 1983, 20 V.I. 179.

The Seventh Amendment of the Constitution does not apply per se to the Virgin Islands and is applicable only by statute. *Caron v. First Pennsylvania Bank, N.A.*, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 169.

There is no right to a jury trial in a Virgin Islands divorce action. *Penn v. Penn*, Terr. Ct. St. T. and St. J. 1978, 14 V.I. 522.

Right to a jury trial in divorce cases did not exist at time of adoption of the Seventh Amendment and thus is not granted by the amendment. *Penn v. Penn*, Terr. Ct. St. T. and St. J. 1978, 14 V.I. 522.

The Constitutional guarantee of a trial by jury in all criminal prosecution is deemed a remedial right which is not among the fundamental rights which Congress in legislation for an unincorporated territory such as the Virgin Islands must secure to its inhabitants. *Government v. Bodle*, C.A.3d 1970, 7 V.I. 507.

17. Bail. The Bail Reform Act (18 U.S.C. § 3146) does apply to first degree murder cases in the District Court of the Virgin Islands. *Government v. Bolones*, C.A.3d 1970, 7 V.I. 516.

18. Double jeopardy. The double jeopardy clause of the Fifth Amendment of the United States Constitution, applicable in the Virgin Islands pursuant to this section, serves three primary purposes; first, it protects against a second prosecution for the same offense after an acquittal; second, it protects against a second prosecution for the same offense after a conviction; third, it protects against multiple punishments for the same offense. *Government of the Virgin Islands v. Quinonez*, D.C.V.I. 1981, 18 V.I. 332.

Where defendant's conviction for third degree burglary under section 444 of Title 14 required proof of breaking, entering and an attempt to commit larceny, which intent was present at the time of the breaking and entry, and his conviction for grand larceny under section 1083 of Title 14 required proof of unlawful taking of the property of another, which property was valued at over \$100.00, neither offense required proof of the same facts required for conviction of the other offense; therefore, defendant's consecutive sentences for both convictions did not violate the double jeopardy clause of the Fifth Amendment of the United States Constitution. *Government of the Virgin Islands v. Quinonez*, D.C.V.I. 1981, 18 V.I. 332.

In the Virgin Islands, the applicability of double jeopardy depends not on whether a second trial will jeopardize life or limb but rather depends on whether any type of criminal punishment may be inflicted in a second trial. *Government in the Interest of Evan S.*, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 310.

Defendant's constitutional and Organic Act Bill of Rights guarantees against double jeopardy were violated where, after not guilty verdict to charge of wilfully and

unlawfully failing to file reports and pay Gross Receipts Taxes for January 1966 up to and including June 1968, he was later tried and found guilty of wilful and unlawful failure to file reports and pay Gross Receipts Taxes for January 1968 up to and including February 1969, because the first part of time period for which he was convicted included the last part of the time period for which he had been acquitted. *Government of the Virgin Islands v. Smith*, C.A.3d 1971, 8 V.I. 389, 445 F.2d 1089.

19. Privilege against self-incrimination. Although the privilege against self-incrimination contained in the federal Bill of Rights states that “no person shall be compelled to be a witness against himself” while that contained in the Virgin Islands Bill of Rights states that “no person may be compelled to give evidence against himself,” there is no functional difference between the two clauses, since the legislative history of the Virgin Islands self-incrimination clause does not suggest Congressional intent to confer a broader privilege. *Government of the Virgin Islands v. Roberts*, D.C.V.I. 1982, 19 V.I. 196.

20. Fifth amendment. Although the fifth amendment was made applicable to the Virgin Islands by this section, this section did not make all federal statutes uniformly applicable to the Virgin Islands. *United States of America v. Santiago*, C.A.3d 1978, 15 V.I. 609.

21. Full faith and credit. The Full Faith and Credit Clause of the United States Constitution is applicable to the Virgin Islands. *Kettle Creek Assocs. v. Bonanno*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 56.

The District Court of the Virgin Islands sitting pursuant to its original general jurisdiction to hear common law actions to collect on a foreign judgment or debt could not disturb Michigan court’s determination as to an award of mediation sanctions and attorney’s fees; judgment was entitled to full faith and credit. *Babcock v. Gold*, D.C.V.I. 1990, 25 V.I. 325.

Cited. Cited in *In re M. S.*, Terr. Ct. St. T. and St. J. 1981, 17 V.I. 289; *Government of the Virgin Islands v. Prescott*, Terr. Ct. St. C. 1981, 18 V.I. 110; *Department of Education, Government of the Virgin Islands v. Virgin Islands Water and Power Authority*, D.C.V.I. 1981, 18 V.I. 255; *Burgess v. McLaughlin*, D.C.V.I. 1981, 18 V.I. 340; *Benjamin v. Government of the Virgin Islands*, D.C.V.I. 1981, 18 V.I. 408; *Majestic Concrete Pumping, Inc. v. West Indian Co., Ltd.*, D.C.V.I. 1981, 18 V.I. 547; *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1982, 542 F. Supp. 213; *Government of the Virgin Islands v. Diaz*, Terr. Ct. St. C. 1982, 18 V.I. 168; *Government of the Virgin Islands, Department of Conservation v. Virgin Islands Paving, Inc.*, D.C.V.I. 1983, 714 F.2d 283; *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349; *Deary v. Evans*, D.C.V.I. 1983, 19 V.I. 581; *JDS Realty Corp. v. Government of the Virgin Islands*, D.C.V.I. 1984, 593 F. Supp. 199, dismissed, C.A.3d 1985, 770 F.2d 1071, vacated C.A.3d 1985, 852 F.2d 66 (1988); *Government of the Virgin Islands v. Fabiani-Ogno*, Terr. Ct. St. T. and St. J. 1984, 20 V.I. 404; *Government of the Virgin Islands v. Joseph*, C.A.3d 1985, 765 F.2d 394; *JDS Realty Corp. v. Government of the Virgin Islands*, D.C.V.I. 1984, 21 V.I. 111; *Government of the Virgin Islands v. Kramer*, D.C.V.I. 1986, 22 V.I. 317, 636 F. Supp. 458; *West Indian Co. v. Government of the Virgin Islands*, D.C.V.I. 1986, 22 V.I. 358, 643 F. Supp. 869, aff’d, C.A.3d 1988, 812 F.2d 134; *Virgin Islands Bar Ass’n v. Government of the Virgin Islands*, D.C.V.I. 1986, 648 F. Supp. 170, modified, C.A.3d 1988, 857 F.2d 163; *Government of the Virgin Islands v. Douglas*, C.A.3d 1987, 812 F.2d 822; *Nieves v. Hess Oil Virgin Islands Corp.*, C.A.3d 1987, 819 F.2d 1237; *West Indian Co. v. Government of the Virgin Islands*, D.C.V.I. 1987, 658 F. Supp. 619, aff’d

844 F.2d 1007, cert. denied, 488 U.S. 802, 109 S.Ct. 31, 102 L.Ed.2d 31, reh'g denied, 488 U.S. 975, 109 S.Ct. 517, 102 L.Ed.2d 551 (1988); *Hollar v. Government of the Virgin Islands*, C.A.3d 1988, 857 F.2d 163; *United States v. Kennings*, C.A.3d 1988, 861 F.2d 831; *West Indian Co. v. Government of the Virgin Islands*, D.C.V.I. 1987, 23 V.I. 176; *Government of the Virgin Islands v. Rodriguez*, Terr. Ct. St. C. 1988, 23 V.I. 386; *Prevost v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1988, 23 V.I. 395; *LaVallee Northside Civil Ass'n v. Virgin Islands Coastal Zone Management Comm'n*, D.C.V.I. 1988, 23 V.I. 406; *Government of the Virgin Islands ex rel. Suarez v. Suarez*, Terr. Ct. St. C. 1988, 24 V.I. 3; *LaVallee Northside Civic Ass'n v. Virgin Islands Board of Land Use Appeals*, D.C.V.I. 1988, 24 V.I. 88, aff'd in part, rev'd in part, and vacated in part sub nom. *LaVallee Northside Civic Ass'n v. Virgin Islands Coastal Zone Management Comm'n*, C.A.3d 1989, 866 F.2d 616; *Government of the Virgin Islands v. Zachry*, Terr. Ct. St. T. and St. J. 1989, 24 V.I. 244; *General Offshore Corp. v. Farrelly*, D.C.V.I. 1990, 25 V.I. 226, 743 F. Supp. 1177; *Warner v. Lawrence*, D.C.V.I. 1991, 754 F. Supp. 449; *Government of the Virgin Islands v. Roberts*, D.C.V.I. 1991, 756 F. Supp. 898; *Prince v. Willocks*, Terr. Ct. St. C. 1991, 26 V.I. 99; *Government of the Virgin Islands v. Santiago*, D.C.V.I. 1992, 27 V.I. 232; *Polychrome International Co. v. Krigger*, C.A.3d 1993, 29 V.I. 311.

FRANCHISE

§ 4. [Voting franchise; discrimination prohibited; authority to lower voting age]

[Vesting of franchise and qualification prohibitions]

(a) The franchise shall be vested in residents of the Virgin Islands who are citizens of the United States, twenty-one years of age or over. Additional qualifications may be prescribed by the legislature: Provided, however, That no property, language, or income qualifications shall ever be imposed upon or required of any voter, nor shall any discrimination in qualification be made or based upon difference in race, color, sex, or religious belief.

[Authority to lower voting age]

(b) The legislature shall have authority to enact legislation establishing the voting age for residents of the Virgin Islands at an age not lower than eighteen years of age, if a majority of the qualified voters in the Virgin Islands approve in a referendum election held for that purpose.—July 22, 1954, ch. 558, § 4, 68 Stat. 498; amended Oct. 16, 1970, Pub. L. 91-460, 84 Stat. 978.

HISTORY

Amendments—1970. Original language retained and designated as subsec. (a) and a new subsec. (b) added.

ANNOTATIONS

1. Validity of referendum—1970. Section of voting age referendum act providing for adoption of lowering voting age “If at the general election in the year 1970, a

majority of the electors voting at the election vote in favor of lowering the voting age" was a nullity insofar as it linked the referendum to the general election and made the outcome dependent on the votes of a majority of the electors voting at that election as it was inconsistent with provision of the Revised Organic Act that age could be lowered "if a majority of the qualified voters in the Virgin Islands approve in a referendum election held for that purpose." *Euwema v. Todman*, D.C.V.I. 1971, 8 V.I. 224.

2. **Lowering of age.** Where 13,416 votes were cast on referendum question whether to lower the voting age and if so, to 20, 19 or 18, and 7,469 qualified voters voted to lower the age to 18, there was a clear majority vote to lower the voting age to 18, and 18 year olds were thus entitled to vote, under Revised Organic Act provision that age be lowered "if a majority of the qualified voters in the Virgin Islands approve in a referendum" of the establishment of a lower voting age. *Euwema v. Todman*, D.C.V.I. 1971, 8 V.I. 224.

LEGISLATIVE BRANCH

§ 5. [Legislature; creation, composition, districts, election]

[Designation and unicameral character]

(a) The legislative power and authority of the Virgin Islands shall be vested in a legislature, consisting of one house, to be designated the "Legislature of the Virgin Islands", herein referred to as the legislature.

[Composition; legislative districts; method of elections]

(b) The legislature shall be composed of fifteen members to be known as senators. The apportionment of the legislature shall be as provided by the laws of the Virgin Islands: Provided, That such apportionment shall not deny to any person in the Virgin Islands the equal protection of the law: And provided further, That every voter in any district election or at large election shall be permitted to vote for the whole number of persons to be elected in that district election or at large election as the case may be. Until the legislature shall provide otherwise, four members shall be elected at large, five shall be elected from the District of Saint Thomas, five from the District of Saint Croix, and one from the District of Saint John, as those Districts were constituted on July 22, 1954.—July 22, 1954, ch. 558, § 5, 68 Stat. 498; amended Aug. 30, 1966, Pub. L. 89-548, § 1, 80 Stat. 371.

HISTORY

Amendments—1966. Increased number of senators from 11 to 15, to be apportioned as provided by Virgin Islands law.

Effective date. Section 2 of the 1966 amending Act provided: "This Act shall be effective with respect to the legislature to be elected at the regular general election in November 1966, and thereafter."

Reapportionment—1967. For legislation regarding reapportionment of the Legislature, see Acts Feb. 15, 1967, No. 1850; Sept. 18, 1967, No. 2054, set out in note preceding chapter 1 of Title 18.

—1966. Resolution March 17, 1966, No. 346, Sess. L. 1966, p. 318, provided:

“Be it Resolved by the Legislature of the Virgin Islands that the Governor is hereby requested to call a special session of the Legislature, pursuant to authority under Section 7 of the Revised Organic Act of the Virgin Islands, within 15 days after the approval of H.R. 13277 or of any corresponding bill by the President of the United States, and in the call therefor to specify as a matter of legislation to be considered the reapportionment of the Legislature pursuant to the provisions of said H.R. 13277 or of the corresponding bill enacted; be it further

“Resolved that in the event that H.R. 13277 or any corresponding bill enacted by Congress permits the Legislature of the Virgin Islands to provide one representative for the People of St. John, every member of the Legislature voting in favor of this Resolution hereby commits himself, irrevocably and without reservation or qualification, to vote, at the special session requested above, for a bill of reapportionment of the Legislature pursuant to the provisions of said H.R. 13277 or of such corresponding bill and in accordance with the following formula:

3 Senators elected by the electors from the District of St. Croix;

3 Senators elected by the electors from the District of St. Thomas;

1 Senator elected by the electors from the District of St. John;

4 Senators elected at large, with every elector voting for four at large candidates; provided, that the Districts of St. Croix and St. Thomas, and St. John shall remain the same as defined by Section 5(B) of the Revised Organic Act of the Virgin Islands; be it further

“Resolved that after the approval of H.R. 13277 or of any corresponding bill, such members voting in favor of this Resolution also commit themselves to amend Title 18 of the Virgin Islands Code to provide that the representation plan passed during the special session requested above shall be amended or revised by an affirmative vote of not less than two-thirds of all members of the Legislature, and be it finally

“Resolved that copies of this Resolution shall be transmitted forthwith to the Governor of the Virgin Islands, to the Secretary of the United States Department of the Interior, and to every member of the Committees on Interior and Insular Affairs of both the United States Senate and of the United States House of Representatives.”

Prior legislative bodies—Colonial Councils. The Danish Government established in the Virgin Islands two legislative bodies, known respectively as the Colonial Council of St. Thomas and St. John, and the Colonial Council of St. Croix. See, particularly, section 13 et seq. of the Colonial Law of November 27, 1863, and section 13 et seq. of the Colonial Law of April 6, 1906, the latter also being set out in the Historical Documents preceding the Organic Acts of this Code.

When the United States acquired possession of the Virgin Islands by purchase effective March 31, 1917, the Congress retained the two existing Colonial Councils. The Congress, by Act July 12, 1921, ch. 44, § 1, 42 Stat. 123; 48 U.S.C. § 1393, set new eligibility standards by providing that no person owing allegiance to any country other than the United States should be eligible to hold office as a member of either Council.

—**Municipal Councils.** By the Organic Act of the Virgin Islands, approved June 22, 1936, also set out in the Historical Documents preceding the Organic Acts of this Code, the Congress created the Municipal Council of St. Thomas and St. John, and

the Municipal Council of St. Croix, as successors to the Colonial Councils. See sections 5 and 6 of that Act, and the repealed provisions of 48 U.S.C. §§ 1405d, 1405e.

—**Legislative Assembly of the Virgin Islands.** A Legislative Assembly of the Virgin Islands, to consist of the two Municipal Councils sitting together, was established by section 7 of the 1936 Organic Act, and 48 U.S.C. § 1405f. It was provided that the Assembly should meet to enact islandwide legislation upon call of the Governor, at least once during each calendar year, and also whenever both Municipal Councils should determine by resolutions.

ANNOTATIONS

Abdication of authority to Governor, 5	Due process, 8
Actions, 9	Equal protection, 7
Apportionment and districting, 6	Law governing, 1
Congressional power, 3	Powers of legislature, 2
	Separation of powers, 4

1. **Law governing.** This section contains the only power granted by Congress to the Virgin Islands Legislature with respect to the composition of such Legislature. *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd on other grounds, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

Revised Organic Act provisions are controlling with respect to the composition of the legislature. 7 V.I.Op.A.G. 29.

2. **Powers of legislature.** Revised Organic Act, as amended, establishes Legislative Branch of Virgin Islands which is charged, among other things, with responsibility to create crimes and define applicable punishment. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

The legislative power of the territory is vested in the Legislature and that power and authority extends to all rightful subjects of legislation. *Creque v. Roebuck*, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 197.

3. **Congressional power.** If Congress chose to amend this section to increase the membership of the Virgin Islands Legislature from 11 to 15 and to leave the apportionment of those 15 seats to the Legislature, Congress was well within its rights, for article IV, section 3 of the U.S. Constitution charges Congress with the duty of making "all needful Rules and Regulations respecting the Territory or other property belonging to the United States." *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd on other grounds, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

4. **Separation of powers.** Revised Organic Act, as amended, applies the separation of powers doctrine to the Virgin Islands. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

5. **Abdication of authority to Governor.** Since legislature is vested with authority to create crimes, that body could not abdicate its crime-creating authority to the Governor. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

6. **Apportionment and districting.** The Virgin Islands Legislature has the power under this section to create new legislative districts, including a separate district for St. John, provided that constitutional equal protection requirements are adhered to. *Moolenar v. Todman*, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

The only power granted the Virgin Islands Legislature by subsection (b) of this section is the power of apportionment. *Moolenar v. Todman*, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

Subsection (b) of this section, granting the Virgin Islands Legislature the power of apportionment, does not empower that Legislature to redistrict. *Moolenar v. Todman*, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

7. Equal protection. What the Virgin Islands Legislature could not grant, it could not deny in the sense of the Equal Protection Clause of the 14th Amendment; so that where it did not have the power to abolish the District of St. John, which was over-represented in the Legislature, it did not have the power to accord, and was not denying equal protection as applied to the Virgin Islands by section 3 of the Revised Organic Act, which applies the Equal Protection Clause of the 14th Amendment to the Virgin Islands, and as articulated in the reapportionment decisions. *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

Subsection (b) of this section does not violate the 14th Amendment by reason of the fact that it does not grant the Virgin Islands Legislature the power to redistrict electoral districts, resulting in a continuing unequal representation in favor of the District of St. John, because the 14th Amendment, by its own terms, does not apply to acts of Congress. *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd, C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

8. Due process. That Congress gave the Virgin Islands Legislature the power to apportion its electoral districts, but not the power to redistrict them, resulting in a continuation of the over-representation of the District of St. John, did not constitute a violation of the Due Process Clause. *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd C.A.3d 1970, 8 V.I. 3, 433 F.2d 359.

9. Actions. District Court had jurisdiction to hear and determine action for declaratory and injunctive relief asking court to compel constitutional reapportionment and declare certain acts dealing with reapportionment invalid as against due process and equal protection. *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd on other grounds, C.A.3d 1970, 8 V.I. 3 433 F.2d 359.

Cited. Cited in Territorial Court v. Richards, D.C.V.I. 1987, 23 V.I. 285, 673 F. Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 380 (1988); *Government of the Virgin Islands v. Bryan*, D.C.V.I. 1990, 738 F. Supp. 946; *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74; *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

§ 6. [Legislature; terms of office, qualifications, appointment of electoral officers, immunity, compensation, limitations, general powers, vacancies]

[Terms of office]

(a) The term of office of each member of the legislature shall be two years. The term of office of each member shall commence on the second Monday in January following his election: Provided, however, That the term of office of each member elected in November 1958 shall commence on the second Monday in April 1959 and shall continue until the second Monday in April 1961, and the term of office of each member elected in November 1960 shall commence on the second Monday in April 1961 and continue until the second Monday in January 1963.

[Qualifications of members]

(b) No person shall be eligible to be a member of the legislature who is not a citizen of the United States, who has not attained the age of twenty-one years, who is not a qualified voter in the Virgin Islands, who has not been a bona fide resident of the Virgin Islands for at least three years next preceding the date of his election, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights. Federal employees and persons employed in the legislature, executive or judicial branches of the government of the Virgin Islands shall not be eligible for membership in the legislature.

[Appointment of electoral officers]

(c) All officers and employees charged with the duty of directing the administration of the electoral system of the Virgin Islands and its representative districts shall be appointed in such manner as the legislature may by law direct: Provided, however, That members of boards of elections, which entities of government have been duly organized and established by the government of the Virgin Islands, shall be popularly elected.

[Immunity of members]

(d) No member of the legislature shall be held to answer before any tribunal other than the legislature for any speech or debate in the legislature and the members shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the legislature and in going to and returning from the same.

[Compensation and allowances]

(e) Each member of the legislature shall be paid such compensation and shall receive such additional allowances or benefits as may be fixed under the laws of the Virgin Islands. Such compensation, allowances, or benefits, together with all other legislative expenses, shall be appropriated by, and paid out of funds of, the government of the Virgin Islands.

[Limitations on holding other office]

(f) No member of the legislature shall hold or be appointed to any office which has been created by the legislature, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, or during one year after the expiration of such term.

[General powers; parliamentary rules]

(g) The legislature shall be the sole judge of the elections and qualifications of its members, shall have and exercise all the authority and attributes, inherent in legislative assemblies, and shall have the power to institute and conduct investigations, issue subpoena to witnesses and other parties concerned, and administer oaths. The rules of the Legislative Assembly of the Virgin Islands existing on the date of approval of this Act shall continue in force and effect for sessions of the legislature, except as inconsistent with this Act, until altered, amended, or repealed by the legislature.

[Vacancies]

(h) The Legislature of the Virgin Islands shall by law provide the procedure for filling any vacancy in the office of member of the legislature.—July 22, 1954, ch. 558, § 6, 68 Stat. 499; amended Sept. 16, 1959, Pub. L. 86-289, § 2(a) (b), 73 Stat. 568; July 30, 1965, Pub. L. 89-98, 79 Stat. 423, Aug. 23, 1968, Pub. L. 90-496, § 8(b), 82 Stat. 839; Aug. 17, 1972, Pub. L. 92-389, 86 Stat. 563; Oct. 19, 1973, Pub. L. 93-130, 87 Stat. 460.

HISTORY

Amendments—1973. Subsection (h): Amended generally.

—1972. Subsection (b): Lowered age requirement from “twenty-five” to “twenty-one”.

—1968. Subsection (c): Added proviso.

—1965. Subsection (e): Amended generally by deleting references to \$600 annual salary, to time of payment and to \$20 per diem payment for members away from island of residence.

—1959. Subsection (a): Advanced commencement of term from second Monday in April to second Monday in January and provided that members elected in 1958 through 1960 would operate under the old schedule.

Subsection (e): Revised pay schedule generally to conform to new session dates and raised per diem pay for members away from island of residence from \$10 to \$20; added proviso relating to per diem pay by Virgin Islands Legislature.

Effective date of 1973 amendment. Section 2 of Pub. L. 93-130 provided: “Sec. 2. The amendment made by the first section of this Act [amending subsection (h) of this section] shall apply with respect to vacancies occurring on or after the date of enactment of this Act [approved Oct. 19, 1973].”

Effective date of 1968 amendment. See history note set out under section 2 of this Act.

Membership in former Mun. C. St. Croix. Ordinance of Mun. C. St. C. app. Jan. 6, 1940 (Bill no. 44), provided that appointees in the executive or judicial branch of the federal or municipal government were excluded from membership in the former Municipal Council of St. Croix.

Prior laws relating to compensation and allowances. Prior provisions with respect to compensation, and per diem and travel allowances for members of the former councils and the former Legislative Assembly were contained in the following laws:

Legislative Assembly. Act Nov. 21, 1953 (when it became law without approval) (Bill no. 76); Acts app. Aug. 11, 1952 (Bill no. 49, § 3); Sept. 19, 1950 (Bill no. 3).

Municipal Council of St. Thomas and St. John. Ordinances app. June 30, 1949 (Bill no. 53); Dec. 31, 1946 (Bill no. 336); Mar. 24, 1944 (Bill no. 181); Feb. 16, 1942; Feb. 10, 1939; Dec. 20, 1937. Resolution passed Jan. 14, 1937, app. Jan. 15, 1937.

Municipal Council of St. Croix. Ordinances app. Sept. 12, 1951 (Bill no. 69); June 12, 1951 (Bill no. 37); Dec. 8, 1949 (Bill no. 71); Mar. 30, 1949 (Bill no. 22); Dec. 21, 1948 (Bill no. 70); Nov. 24, 1948 (Bill no. 60); Nov. 24, 1947 (Bill no. 68); Sept. 23, 1942 (Bill no. 106); Jan. 17, 1938 (Bill no. 71); Oct. 19, 1937; July 6, 1937 (Bill no. 27).

Colonial Council of St. Croix. Resolution passed Aug. 6, 1921, app. Aug. 15, 1921.

Commercial transactions with former Mun. C. St. Croix. Ordinance Mun. C. St. C. app. July 3, 1945 (Bill no. 43), as amended by Ord. Mun. C. St. C. app. July 5, 1950 (Bill no. 23), prescribed the conditions under which members of the former Municipal Council of St. Croix might engage in commercial transactions with the Municipality of St. Croix.

Rules—Legislature. Standing Rules of the Legislature of the Virgin Islands were adopted by the Legislature on February 1, 1955. They have been amended from time to time, and are published in the "Virgin Islands Legislative Manual."

Committees—Legislature; standing committees. Rule XI, section 2, Standing Rules of the Legislature, passed Feb. 1, 1955, as amended by Res. April 14, 1959, No. 115, Sess. L. 1959, p. 136, and Res. Jan. 14, 1963, No. 217, Sess. L. 1963, p. 348, provided, without reference to the Committee on Rules referred to below, for seven "Standing Committees of the Legislature", as follows:

- Finance (7 members);
- Public Works, Agriculture, Labor and Public Safety, (5 members);
- Health, Education and Welfare (5 members);
- Housing, Community Renewal and Commerce (5 members);
- Judiciary (3 members);
- Government Operations (5 members); and
- Interstate Corporation (5 members).

—**Committee on Rules.** Rule XI, section 1, par. (b), of the Standing Rules of the Legislature of the Virgin Islands, passed Feb. 1, 1955, as amended by Resolutions of April 14, 1959 and Jan. 14, 1963, provided that the Committee on Rules shall be comprised of the President, who shall be the Chairman, and the chairmen of the Committee on Finance; the Committee on Public Works, Agriculture, Labor and Public Safety; the Committee on Health, Education and Welfare; and the Committee on Housing, Community Renewal and Commerce.

—**Committee of the Whole.** Section 9 (now 13) of Rule XI of the Standing Rules of the Legislature, adopted February 1, 1955, as renumbered by Resolutions of April

14, 1959 and Jan. 14, 1963, provides that the Legislature, at any time, upon motion by a member, or by order of the President, may constitute itself into a Committee of the Whole for the consideration of any subject it may deem proper; powers of the committee are defined; and provisions made for the rising of the committee and for its report back to the Legislature.

—**Investigations.** Sections 7 and 10 (now sections 11 and 14, respectively), of Rule XI of the Standing Rules of the Legislature, adopted February 1, 1955, as renumbered by Resolutions of April 14, 1959 and Jan. 14, 1963, empower standing committees of the Legislature to conduct investigations during or between sessions of the Legislature and to do all things necessary in connection therewith, including the issuance of summonses and subpoenas to witnesses, compelling attendance and the giving of testimony, oral and documentary, etc., and contain provisions relating to expenditures. Section 11 thereof (now section 15), provides that, except as provided by such rules, no committee for the investigation of any special subject "shall be appointed except pursuant to a resolution which shall be approved by a vote of a majority of the members elected to the legislature. The subject and purpose of the investigation shall be expressed in the title of the resolution and the scope of the investigation shall be consistent with the subject and purpose so expressed. No such committee shall have authority to extend its investigation to subjects not so expressed, nor beyond the scope indicated in the resolution."

For additional provisions relating to investigations by the Legislature or committees thereof, see section 1 et seq. of Title 2 of this Code.

—**Temporary Manpower-Screening and Government Spending Committee.** Resolution March 9, 1965, No. 318, Sess. L. 1965, Pt. I, p. 319, created a special committee to be known as the "Temporary Manpower-Screening and Government Spending Committee", to be composed of five members of the Legislature and the Director of the Budget and the Director of Personnel as members ex officio, with investigative powers relating generally to employment of government personnel and government spending, with all the powers of a standing committee of the Legislature, and to exist until the submission of its final report during the regular session of the Legislature in 1967.

—**Home Rule Committee.** Act Feb. 17, 1965, No. 1298, Sess. L. 1965, Pt. I, p. 19, created a Special Temporary Committee of the Legislature, composed of seven senators and to be known as the Virgin Islands Home Rule Committee, and clothed it with certain powers and duties with respect to achieving increased self-government for the Virgin Islands, such committee in existence for the life of the Sixth Legislature, and made an appropriation for the purpose.

Prior provisions on the subject were contained in Res. Feb. 20, 1963, No. 225, Sess. L. 1963, p. 359; Res. May 10, 1961, No. 177, Sess. L. 1961, p. 179.

—**Special Advisory Committee on Public Works.** Resolution March 14, 1963, No. 238, Sess. L. 1963, p. 375, created a Special Advisory Committee on Public Works, comprised of five citizens appointed by the President of the Legislature, to make recommendations to the Legislature on all matters relating to public works including water supply systems and sewerage disposal systems. Committee members may, when authorized by the President of the Legislature, travel between points in the Virgin Islands and from the Virgin Islands to other parts of the United States, and perform such related functions as may be delegated to them by the President of the Legislature. Resolution provided for appropriation of funds for committee purposes.

—**Former Legislative Assembly.** Standing committees of the former Legislative Assembly, as adopted by Res. passed Aug. 7, 1952, were as follows: (1) Committee on Education and Labor; (2) Committee on Health and Welfare; (3) Committee on Public Works & Public Safety; and (4) Committee on Finance and Expenditures.

—**Former Legislative Assembly; investigations.** Resolution of Leg. Assembly, passed Aug. 7, 1952, empowered the standing committees created, by such resolution, for that former legislative body, to conduct investigations of all matters within the Virgin Islands and its (former) municipalities, including legislation and appointments, relating to their respective fields, and to subpoena witnesses and documents and take testimony under oath in accordance with section 11 of the Organic Act of the Virgin Islands, approved June 22, 1936.

—**Former Mun. Council St. T. and St. J.; investigations.** Resolution of Mun. C. St. T. and St. J., passed April 2, 1946 (Bill no. 205), created a standing committee designated as the "Council Committee on Investigations", which consisted of three members elected by the members of that former council for terms of one year in each case, and among other things empowered such committee to conduct investigations, issue subpoenas, etc., in connection with all matters administered by the former Municipal Government of St. Thomas and St. John.

Resolution of Mun. C. St. T. and St. J., passed March 7, 1949, which purported to be an amendment of the resolution referred to above, provided that two substitutes be elected from among the Municipal Council's members to serve on that former Council's Committee on Investigations whenever the regular members thereof were disqualified by death, resignation, absence from the Virgin Islands or inability to serve on the committee.

—**Former legislative bodies.** Sections 39, respectively, of the Colonial Law of Nov. 27, 1863, and the Colonial Law of April 6, 1906, provided for the adoption of rules of business for the two former colonial councils, viz., the Colonial Council of St. Thomas and St. John, and the Colonial Council of St. Croix.

Acting, presumably, under authority of the law of 1863, the Colonial Council of St. Croix adopted, on Aug. 9, 1865, Rules of Business for that Council, which were approved by the Danish Government on Jan. 3, 1866; and Rules of Business for the Colonial Council of St. Thomas and St. John were adopted by that body on Aug. 9, 1866 and approved by the Danish Government on Feb. 5, 1867.

The rules of the two colonial councils were not affected by the change in sovereignty over the Virgin Islands from Denmark to the United States, effective March 31, 1917. Resolution of the Colonial Council of St. Thomas and St. John, passed Feb. 21, 1929, and approved Feb. 27, 1929, clarified certain provisions of that Council's Rules of Business, approved Feb. 5, 1867, referred to above. Even at the time, and after, such councils were succeeded, respectively, by the former Municipal Council of St. Thomas and St. John, and the former Municipal Council of St. Croix, which had been established by sections 5 and 6 of the Organic Act of the Virgin Islands, approved June 22, 1936, such rules were not affected. Section 11 of that Act provided that the existing rules of the former colonial councils should continue in force and effect, except as inconsistent with that Act, until altered, amended, or repealed by the municipal councils.

On January 15, 1942, the Municipal Council of St. Thomas and St. John adopted a new set of rules.

The two municipal councils continued to operate under their respective rules until January 10, 1955, when, under the terms of section 10 of this Act, the functions,

property, etc., of the government of the municipality of St. Thomas and St. John, and the municipality of St. Croix, were transferred to the government of the Virgin Islands. Other provisions of this Act established the Legislature of the Virgin Islands as the sole local legislative body, which succeeded, not only to the functions of the two municipal councils, but, also to those of the Legislative Assembly, which had been composed of both councils, and which had operated under its own body of rules. The last set of rules under which the Legislative Assembly operated were adopted by that body on December 12, 1945.

For history of the several prior legislative bodies referred to herein, see historical notes under section 5 of this Act.

—**Municipal Committee of former Municipal Council of St. Croix.** Ordinance of Mun. C. St. C. app. July 6, 1937 (Bill no. 17), created by-laws and rules of business for the Municipal Committee of the former Municipal Council of St. Croix.

CROSS REFERENCES

Filling of vacancies in Legislature, see section 111 of Title 2

Legislature's standing Committee on Interstate Cooperation, see section 131 et seq. of Title 1.

ANNOTATIONS

Compensation and allowances, 3	Legislative immunity, 5
Employees, 1	Legislative rules, 6
Investigations by Legislature, 2	Qualifications of members, 4

1. **Employees.** Clerical employees of the former Municipal Councils who were not appointed by the Legislature should not be paid from Virgin Islands or federal funds. 1 Govt. Compt. Dec. 1, Feb. 1, 1955.

2. **Investigations by Legislature.** The power conferred by this Act to institute and conduct investigations is not limited to those times when the Legislature is in session. *Finance Committee v. De Jongh*, D.C.V.I. 1956, 3 V.I. 212, aff'd, C.A.3d 1957, 3 V.I. 609, 242 F.2d 902.

The Legislature already had the power, under the Revised Organic Act, to create investigating committees by simple resolution, with power to act between sessions, without the need of pointing to any specific statute delegating to the Legislature the power to so act. *Finance Committee v. De Jongh*, C.A.3d 1957, 3 V.I. 609, 242 F.2d 902.

3. **Compensation and allowances.** Where a member of the Legislative Assembly received a per diem allowance for days when he was away from his residence, he was not entitled to additional compensation for board and room, since board and room is generally included in the per diem. 2 V.I.Op.A.G. 213.

4. **Qualifications of members.** Legislature's determination that senator did not meet the express conditions of eligibility for office set forth in subsection (b) of this section necessarily implied that he had no entitlement which could trigger a due process claim under *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), and its progeny. *Mapp v. Lawaetz*, C.A.3d 1989, 882 F.2d 49.

Where senator was found ineligible for office because he failed to meet the residency and voting requirements of subsection (b) of this section, application of rule of the legislature requiring a two-thirds vote to expel a member of the legislature for ethical misconduct was a matter entrusted to that body for its final resolution, and removal of senator by a majority vote did not violate due process. *Mapp v. Lawaetz*, C.A.3d 1989, 882 F.2d 49.

5. Legislative immunity. This section was designed to protect the integrity of the legislative process by insuring the independence of individual legislators. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Since the purposes of the two immunity provisions are so closely parallel, the interpretation given to the speech or debate clause in article 1, § 6, of the Federal Constitution, while not dispositive as to the meaning of the legislative immunity provision for the Virgin Islands, is, nevertheless, highly instructive. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Legislative immunity protects only acts generally done in the course of the process of enacting legislation. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Legislative immunity precludes inquiry into the motives or purposes of a legislative act. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Legislative immunity protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts; the immunity, however, does not prohibit inquiry into a legislature's activities simply because the activities have some nexus to the legislative functions or casually or incidentally relate to legislative affairs. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Legislators must feel uninhibited in their pursuit of information, for a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Fact-finding, information gathering and investigative activities are essential prerequisites to the drafting of bills and the enlightened debate over proposed legislation; therefore, fact-finding occupies a position of sufficient importance in the legislative process to justify the protection afforded by legislative immunity. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

While the legislative privilege clearly protects manifestly legislative acts, it does not automatically extend to acts which are purportedly or apparently legislative in nature. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

The burden of establishing the applicability of the privilege of legislative immunity, by a preponderance of the evidence, rests with the party asserting the privilege. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

Where a member of the legislature asserted that his private conversation and meetings in New York and Washington were official in nature, and involved information gathering, and thus protected by legislative immunity, the legislator's assertions could not preclude a court of competent jurisdiction from determining whether the conversations were, in fact, legislative in nature so as to trigger the immunity. *Government of the Virgin Islands v. Lee*, C.A.3d 1985, 775 F.2d 514.

6. Legislative rules. Subsection (g) of this section, providing that internal rules of Legislature shall continue in force until altered, amended or repealed by Legislature, was ambiguous and was not the sort of clear constitutional or statutory mandate that would permit court to interfere with internal workings of co-equal branch of government. *Brown v. Hansen*, C.A.3d 1992, 27 V.I. 440.

Senators who reconvened and adopted legislation following departure of minority faction of Legislature from chambers did not violate subsection (g) of this section by seeking to amend internal rules by bare majority vote; rather than mandating two-thirds vote to amend rules, subsection committed issue to discretion of Legislature. *Brown v. Hansen*, C.A.3d 1992, 27 V.I. 440.

Authority to declare its own rules is within sole province of Legislature. *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

Evidence did not support theory that Congress intended to incorporate then existing legislative rules into Revised Organic Act. *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

Legislative rule requiring two-thirds vote to amend an internal procedural rule was not incorporated into Revised Organic Act as a result of its almost continuous adoption by successive Legislatures. *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

Where Legislature's actions were within the realm of constitutionally permissible conduct, it was not for Court to determine whether majority of duly elected legislators violated their own procedural rules. *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

Cited. Cited in *Richards v. B & L Development, Inc.*, D.C.V.I. 1980, 18 V.I. 85; *Moorhead v. Government of the Virgin Islands*, Terr. Ct. St. C. 1982, 18 V.I. 237; *In re Subpoenas of the Legislature*, D.C.V.I. 1985, 21 V.I. 409; *Standing Committee on Conservation, Recreation, and Cultural Affairs v. Virgin Islands Port Authority*, Terr. Ct. St. T. and St. J. 1985, 21 V.I. 584; *Democratic Party of the Virgin Islands v. Board of Elections, St. Thomas-St. John*, D.C.V.I. 1986, 22 V.I. 465, 649 F. Supp. 1549; *Legislature of the Virgin Islands v. Mapp*, D.C.V.I. 1989, 24 V.I. 304.

§ 7. [Time, frequency, and duration of regular sessions; special sessions; place of holding]

(a) Regular sessions of the legislature shall be held annually, commencing on the second Monday in January (unless the legislature shall be law fix a different date), and shall continue for such term as the legislature may provide. The Governor may call special sessions of the legislature at any time when in his opinion the public interest may require it. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the Governor to the legislature while in such session. All sessions of the legislature shall be open to the public.

(b) Sessions of the legislature shall be held in the capital of the Virgin Islands at Charlotte Amalie, Saint Thomas.—July 22, 1954, ch. 558, § 7, 68 Stat. 500; amended Sept. 16, 1959, Pub. L. 86-289, § 2(c), 73 Stat. 569, Aug. 23, 1968, Pub. L. 90-496, § 1, 82 Stat. 837, eff. Aug. 23, 1968.

HISTORY

Amendments—1968. Subsection (a): Amended generally by omitting references to 1959-1961 sessions, limitation on length of regular sessions and special sessions. Added last sentence "all sessions of the legislature shall be open to the public".

—1959. Subsection (a): Advanced date for commencement of regular annual sessions from the second Monday in April to the second Monday in January, starting in 1962.

Changes in dates for regular sessions. The 1966 Regular Session was set for January 17, 1966 by Act Nov. 29, 1965, No. 1532, Sess. L. 1965, Pt. I, p. 518.

The 1967 Regular Session was set for January 16, 1967, by Act Dec. 6, 1966, No. 1829, Sess. L. 1966.

ANNOTATIONS

1. **Legislative power.** The phrase "local application", as used in the statutes defining the power of the legislative body of the Virgin Islands, was no broader than "all rightful subjects of legislation" and implied limitation to subjects having relevant ties within the territory, to laws growing out of the needs of the Islands and governing relations within them. *Granville-Smith v. Granville-Smith*, 1955, 3 V.I. 701, 349 U.S. 1, 75 S.Ct. 553, 99 L.Ed. 773.

2. **Special session legislation.** Resolution passed by Legislature at special session at which its subject matter was not specified in Governor's call for session or in any special message sent by him to Legislature, as required by this section, and which was not approved by Governor or passed over his veto, as provided in section 9 of this Act, does not have force of law. *Government of the Virgin Islands v. Massac*, D.C.V.I. 1958, 3 V.I. 328, 161 F. Supp. 704, vacated in part on other grounds, C.A.3d 1960, 4 V.I. 185, 277 F.2d 660.

Cited. Cited in *Dennis v. Luis*, C.A.3d 1984, 741 F.2d 628.

§ 8. [Legislative powers and activities]

[Scope of authority; limitation on enactments and taxation]

(a) The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands, but no law shall be enacted which would impair rights existing or arising by virtue of any treaty or international agreement entered into by the United States, nor shall the lands or other property of nonresidents be taxed at a higher rate than the lands or other property of residents.

[Government bonds; sale, interest, etc.]

(b)(i) The legislature of the government of the Virgin Islands may cause to be issued on behalf of said government bonds or other obligations for a public improvement or public undertaking authorized by an act of the legislature. Such bonds or obligations shall be payable solely from the revenues directly derived from and attributable to such public improvement, public undertaking, or other project. Bonds issued pursuant to this paragraph (i) may bear such date or dates, may be in such denominations, may mature in such amounts and at such time or times, not exceeding thirty years from the date thereof, may be payable at such place or places, may carry such registration privileges as to either principal and interest, or principal only, and may be executed by such officers and in such manner as shall be prescribed by the government of the Virgin Islands. Said

bonds may be redeemable (either with or without premium) or non-redeemable. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signature, whether manual or facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. The bonds so issued shall bear interest at a rate not to exceed that specified by the legislature, payable semiannually. All such bonds issued by the government of the Virgin Islands or by its authority shall be exempt as to principal and interest from taxation by the Government of the United States, or by the government of the Virgin Islands, or by any State, Territory, or possession or by any political subdivision of any State, Territory or possession, or by the District of Columbia. Such bonds shall under no circumstances constitute a general obligation of the Virgin Islands or of the United States.

(ii)(A) Subject to the provisions of this paragraph (ii), the legislature of the government of the Virgin Islands may cause to be issued such negotiable general obligation bonds or other evidence of indebtedness as it may deem necessary and advisable to construct, improve, extend, better, repair, reconstruct, acquire, and equip hospitals, schools, libraries, gymnasias, athletic fields, sewers, sewage-disposal plants, and water systems: Provided, That no public indebtedness of the Virgin Islands shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in the Virgin Islands. Bonds issued pursuant to this paragraph (ii) shall bear such date or dates, may be in such denominations, may mature in such amounts and at such time or times, not exceeding thirty years from the date thereof, may be payable at such place or places, may be sold at either public or private sale, may be redeemable (either with or without premium) or non-redeemable, may carry such registration privileges as to either principal and interest, or principal only, and may be executed by such officers and in such manner, as shall be prescribed by the legislature of the government of the Virgin Islands. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signature, whether manual or facsimile, shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. The bonds so issued shall bear interest at a rate not to exceed that specified by the legislature and

payable semiannually. All such bonds shall be sold for not less than the principal amount thereof plus accrued interest. All bonds issued by the government of the Virgin Islands, including specifically interest thereon, shall be exempt from taxation by the Government of the United States, or by the government of the Virgin Islands or any political subdivision thereof, or by any State, territory, or possession or by any political subdivision of any State, territory, or possession, or by the District of Columbia.

(B) The proceeds of the bond issues or other obligations herein authorized shall be expended only for the public improvements set forth in the preceding subparagraph, or for the reduction of the debt created by such bond issue or obligation, unless otherwise authorized by the Congress.

(C) Bonds or other obligations issued pursuant to this paragraph (ii) shall not be a debt of the United States, nor shall the United States be liable thereon.

(iii)(A) The legislature of the government of the Virgin Islands may cause to be issued after September 30, 1984, industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954).

(B) Except as provided in subparagraph (C), any obligation issued under subparagraph (A) and the income from such obligation shall be exempt from all State and local taxation in effect on or after October 1, 1984.

(C) Any obligation issued under subparagraph (A) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

(D) For purposes of this paragraph—

(I) The term “State” includes the District of Columbia.

(II) The taxes imposed by counties, municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.

(E) For exclusion of interest for purposes of Federal income taxation, see section 103 of the Internal Revenue Code of 1954.

[Applicability of laws and ordinances; amendment or repeal]

(c) The laws of the United States applicable to the Virgin Islands on the date of approval of this Act, including laws made applicable to the Virgin Islands by or pursuant to the provisions of the Act of June 22, 1936 (49 Stat. 1807), and all local laws and ordinances in force in the Virgin Islands, or any part thereof, on the date of approval of this

Act shall, to the extent they are not inconsistent with this Act, continue in force and effect until otherwise provided by the Congress: Provided, That the legislature shall have power, within its jurisdiction and not inconsistent with the other provisions of this Act, to amend, alter, modify, or repeal any local law or ordinance, public or private, civil or criminal, continued in force and effect by this Act, except as herein otherwise provided, and to enact new laws not inconsistent with any law of the United States applicable to the Virgin Islands, subject to the power of Congress to annul any such Act of the legislature.

[Commission to survey field of Federal statutes; recommendations to Congress; compensation and allowances]

(d) [Repealed.]

[Code of laws]

(e) [Repealed.]

[Customs duty]

(f)(1) The Legislature of the Virgin Islands may impose on the importation of any article into the Virgin Islands for consumption therein a customs duty. The rate of any customs duty imposed on any article under this subsection may not exceed—

(A) if an ad valorem rate, 6 per centum ad valorem; or

(B) if a specific rate or a combination ad valorem and specific rate, the equivalent or 6 per centum ad valorem.

(2) Nothing in this subsection shall prohibit the Legislature of the Virgin Islands from permitting the duty-free importation of any article.

(3) Nothing in this subsection shall be construed as empowering the Legislature of the Virgin Islands to repeal or amend any provision in law in effect on the day before the date of the enactment of this subsection which pertains to the customs valuation or customs classification of articles imported into the Virgin Islands.—July 22, 1954, ch. 558, § 8, 68 Stat. 500; amended Aug. 28, 1958, Pub. L. 85-851, §§ 2, 3, 10, 72 Stat. 1094, 1095; Nov. 19, 1963, Pub. L. 88-180, 77 Stat. 335, 336; Oct. 13, 1966, Pub. L. 89-643, 80 Stat. 890, Aug. 23, 1968, Pub. L. 90-496, § 15, 82 Stat. 842; Oct. 15, 1977, Pub. L. 95-134, § 301(c), 91 Stat. 1163; Oct. 19, 1982, Pub. L. 97-357, Title III, § 305, 96 Stat. 1709; Oct. 5, 1984, Pub. L. 98-454, Title II, § 201, 98 Stat. 1732.

HISTORY

References in text. Section 103 of the Internal Revenue Code of 1954, referred to in subsec. (b)(iii), is classified to 26 U.S.C. § 103.

Travel Expense Act of 1949, referred to in subsec. (d) of this section was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632, and is now covered by 5 U.S.C. §§ 5701, 5702, 5704-5708.

Amendments—1984. Subsection (b)(i): Deleted “shall be sold at public sale and” preceding “may be redeemable” in the fourth sentence.

Subsection (b)(iii): Added.

—1982. Subsection (d): Repealed.

Subsection (e): Repealed.

—1977. Subsection (f): Added.

—1968. Subsection (b)(i): Deleted references to limitation in amount of outstanding bonds and sale price. Substituted new provisions relative to setting interest rate.

—1966. Subsection (b)(i): Amended subsec. (b)(i) to (1) preclude the issuance of bonds or other obligations for nongovernmental projects intended to promote the economic development of the Virgin Islands; (2) increase the outstanding revenue bond ceiling at any one time from \$10 to \$30 million; (3) exclude from the new bond ceiling those bonds or obligations which are held by the Federal Government as a result of a sale of property to the government of the Virgin Islands; (4) provide that not more than \$10 million of such bonds or obligations may be outstanding at any one time for public improvements or undertakings other than water or power projects; (5) delete the word “specific” each time that it appeared in the first and second sentences of this section; and (6) provide that bonds may be redeemable (either with or without premium) or nonredeemable.

—1963. Subsection (b): Redesignated existing subsec. (b) as par. (i) thereof, and struck out last sentence of existing subsection which prohibited legislature to incur any obligation which may be a general obligation of the Virgin Islands government; added par. (ii).

—1958. Subsection (a): Substituted “all rightful subjects of legislation” for “all rightful subjects of local application”.

Subsection (e): Struck out provision for printing supplements for Virgin Islands Code.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and 90 consecutive days therefrom was Jan. 3, 1985.

Authorization to issue government bond; United States guarantee. Aug. 19, 1976, Pub. L. 94-392, §§ 1-4, as amended by Pub. L. 96-205, Title IV, § 407, March 12, 1980, 94 Stat. 89, and further amended by Pub. L. 97-357, Title III, § 308(g), Oct. 19, 1982, 96 Stat. 710, provided:

“Section 1. That (a) in addition to the authority conferred by section 8(b) of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1574(b)), the legislature of the government of the Virgin Islands is authorized to cause to be issued bonds or other obligations of such government in anticipation of revenues to be received under section 28(b) of such Act (26 U.S.C. 7652). The proceeds of such bonds or other

obligations may be used for any purpose authorized by an act of the legislature. The legislature of the government of the Virgin Islands may initiate, by majority vote of the members, a binding referendum vote to approve or disapprove the amount of any such bond or other obligation and/or any purpose for which such bond or other obligation is authorized.

(b) The legislature of the government of the Virgin Islands may provide, in connection with any issue of bonds or other obligations authorized to be issued under subsection (a) the proceeds of which are to be used for public works or other capital projects, that a guarantee of such bonds or obligations by the United States should be applied for under section 2 of this Act.

(c) Except to the extent inconsistent with the provisions of this Act, the provisions of section 8(b)(ii) of the Revised Organic Act of the Virgin Islands (other than the limitation contained in the proviso to the first sentence of subparagraph (A)) shall apply to bonds and other obligations authorized to be issued under subsection (a).

“Sec. 2. (a) When authorized under subsection (b) of the first section of this Act, the government of the Virgin Islands may apply to the Secretary of the Interior (hereinafter referred to as the ‘Secretary’) for a guarantee of any issue of bonds or other obligations authorized to be issued under subsection (a) of the first section of this Act. Any such application shall contain such information as the Secretary may prescribe.

(b) The Secretary is authorized, with the approval of the Secretary of the Treasury, to guarantee and to enter into commitments to guarantee, upon such terms and conditions as he may prescribe, payment of principal and interest on bonds and other obligations issued by the government of the Virgin Islands under subsection (a) of the first section of this Act. No guarantee or commitment to guarantee shall be made unless the Secretary determines—

(1) that the proceeds of such issue will be used only for public works or other capital projects;

(2) taking into account anticipated expenditures by the government of the Virgin Islands while the bonds or other obligations forming a part of such issue will be outstanding, all outstanding obligations of the government of the Virgin Islands which will mature while the bonds or other obligations forming a part of such issue will be outstanding, and such other factors as he deems pertinent, that the revenues expected to be received under section 28(b) of the Revised Organic Act of the Virgin Islands will be sufficient to pay the principal of, and interest on, the bonds or other obligations forming a part of such issue;

(3) that credit is not otherwise available on reasonable terms and conditions and that there is reasonable assurance of repayment, and

(4) that the maturity of any obligations to be guaranteed does not exceed thirty years or 90 per centum of the useful life of the physical assets to be financed by the obligation, whichever is less as determined by the Secretary.

(c) The Secretary shall charge and collect fees in amounts sufficient in his judgment to cover the costs of administering this section. Fees collected under this subsection shall be deposited in the revolving fund created under subsection (g).

(d) Any guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation for such guarantee, and the validity of any guarantee so made shall be incontestable, except for fraud or material misrepresentation, in the hands of the holder of the guaranteed obligation. Such guarantee shall constitute a pledge of the full faith and credit of the United States for such obligation.

(e) The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.

(f) The aggregate principal amount of obligations which may be guaranteed under this Act shall not exceed \$61,000,000. No commitment to guarantee may be issued by the Secretary, and no guaranteed but unobligated funds may be obligated by the government of the Virgin Islands after October 1, 1984. After October 1, 1984, any unobligated proceeds of bonds or other obligations issued by the government of the Virgin Islands pursuant to this section shall be repaid immediately by the government of the Virgin Islands to the lenders with the agreed upon interest. Should there be any delay in the government of the Virgin Islands' making such repayment, the Secretary shall deduct the requisite amounts from moneys under his control that would otherwise be paid to the government of the Virgin Islands under section 28(b) of the Revised Organic Act of the Virgin Islands.

(g)(1) There is hereby created within the Treasury a separate fund (hereinafter referred to as 'the fund') which shall be available to the Secretary without fiscal year limitation as revolving fund for the purpose of this Act. A business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by law (sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847-849)) for wholly owned Government corporations.

(2) All expenses, including reimbursements to other government accounts, and payments pursuant to operations of the Secretary under this Act shall be paid from the fund. If at any time the Secretary determines that moneys in the fund exceed the present and any reasonably prospective future requirements of the fund, such excess may be transferred to the general fund of the Treasury.

(3) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities under guarantees under this Act, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations which are hereby authorized for this purpose. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"Sec. 3. Each issue of bonds or other obligations issued under subsection (a) of the first section of this Act shall have priority for payment of principal and interest out of revenues received under section 28(b) of the Revised Organic Act of the Virgin Islands in the order of the date of issue, except that issues guaranteed under section 2 shall have priority, according to the date of issue, over issues not so guaranteed and the revenues received under section 28(b) of the Revised Organic Act of the Virgin Islands shall be pledged for the payment of such bonds or other obligations."

Income, ten percent surtax levy. August 19, 1976, Pub. L. 94-392, § 5, provided, in part: “[n]otwithstanding any other provision of law, the Legislature of the Virgin Islands is authorized to levy a surtax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the government of the Virgin Islands.”

Repeal of Acts authorizing bonds or of Acts relating thereto. Act March 16, 1962, No. 850, Sess. L. 1962, p. 91, repealed the following Acts formerly summarized in notes under this section:

1. Act May 27, 1960, No. 565, Sess. L. 1960, p. 68, enacted pursuant to Res. “No. 143 (Bill no. 1026)” (but probably Res. Sept. 30, 1959, No. 144 (Bill no. 1027), Sess. L. 1959, p. 220, was intended), approving issuance of bonds for purpose of establishing, etc., a hotel and other commercial facilities by Sidney Kessler and Associates.

2. Act May 27, 1960, No. 566, Sess. L. 1960, p. 69, enacted pursuant to Res. Sept. 29, 1959, No. 143, Sess. L. 1959, p. 219, approving issuance of bonds for purpose of establishing, etc., a hotel and other commercial facilities by Howard Lundgren and Associates.

3. Act June 3, 1960, No. 577, Sess. L. 1960, p. 78, enacted pursuant to Res. Jan. 20, 1960, No. 147, Sess. L. 1960, p. 23, approving issuance of bonds for purpose of establishing, etc., a hotel and other commercial facilities by Leslie Huntt and Associates.

4. Act June 12, 1961, No. 743, Sess. L. 1961, p. 88, requiring that authorizations of bonds or other obligations approved by Legislature pursuant to subsec. (b) of this section, be effectuated by rules and regulations prescribed by Commissioner of Finance and approved by Governor, and prescribing certain provisions to be covered in the rules and regulations.

In addition, such 1962 Act repealed all other Acts or parts of Acts “relating to or authorizing the issuance of bonds or other obligations heretofore approved by the Legislature pursuant to Section 8(b) of the Revised Organic Act of the Virgin Islands [subsec. (b) of this section]”. It would seem that this general repeal also affected the following Resolutions (heretofore set out in full or in part in notes under this section), if not theretofore obsolete:

5. Resolution Sept. 30, 1959, No. 146, Sess. L. 1959, p. 223, authorizing and directing issuance of revenue bonds or other obligations for construction of a dock at Frederiksted, St. Croix.

6. Resolution Jan. 20, 1960, No. 149, Sess. L. 1960, p. 25, authorizing issuance of revenue bonds or other obligations for purpose of establishing a hotel, golf course, and other commercial facilities (the possibility of the establishment of which having been explored by Bolongo Bay Hotel Corporation), subject to approval by Legislature of specific plans.

7. Resolution June 1, 1960, No. 164, Sess. L. 1960, p. 172, authorizing issuance of revenue bonds or other obligations for purpose of establishing a hospital and other facilities for convalescent and long-term patients by the Virgin Islands Medical Center, subject to approval by Legislature of specific plans.

ANNOTATIONS

Bonds, 6	Money bills, 5
Conflicts of interest, 3	Power of Congress, 11
Construction with other law, 2	Powers, 4
Generally, 1	Private and special laws, 9
Inherent powers, 8	Taxation, 10
Loans, 7	

1. Generally. The Revised Organic Act of the Virgin Islands gives the territorial legislature the general power to adopt civil or criminal laws so long as they are not inconsistent with any law of the United States applicable to the Virgin Islands. *Hodge v. Government of the Virgin Islands*, D.C.V.I. 1983, 19 V.I. 602.

Every enactment of the Virgin Islands Legislature must be measured against the power granted by subsection (a) of this section. *Norman's on the Waterfront, Inc. v. Wheatley*, D.C.V.I. 1970, 8 V.I. 69, 317 F. Supp. 247, *aff'd*, C.A.3d 1971, 8 V.I. 372, 444 F.2d 1011.

Under the language of subsection (a) of this section Congress intended that the legislative jurisdiction of the Territory of the Virgin Islands should cover the ordinary sovereign legislative power, limited and circumscribed only by the Revised Organic Act and the laws of the United States made applicable to the Virgin Islands, and subject to the power of Congress to annul any Act of the Territorial Legislature. *Gannet Corporation v. Stevens*, D.C.V.I. 1968, 6 V.I. 309, 282 F. Supp. 437.

Subject to the power of Congress to annul any act, the legislature was given general power to adopt civil or criminal laws, so long as they were not inconsistent with any law of the United States applicable to the Virgin Islands. *Smith v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 136, 375 F.2d 714.

There is no reason to believe that Congress, which was intent on providing a greater degree of autonomy to the people of the territory through a newly created territorial legislature, intended to shackle that legislature with restrictions which had been placed in 1936 upon the municipal councils as the direct successors of the old Danish colonial councils but which Congress had omitted from the revised Act. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569; *cert. denied*, 390 U.S. 1041, *reh'g denied*, 392 U.S. 917.

Those provisions of the Act of 1936 which dealt with and limited the powers of organs of the former municipalities such as the municipal councils fell with the abolition of the organs of government to which they related. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, *cert. denied*, 390 U.S. 1041; *reh'g denied*, 392 U.S. 917.

2. Construction with other law. Provision of 18 V.I.C. § 664 that an application for an absentee ballot must be received at least 20 days before the election conflicts with Revised Organic Act § 11 provision for a runoff election on the 14th day after the general election in the event that no candidate for governor or no candidate for lieutenant governor receives a majority of the votes cast, and code provision could not be given effect because the power of the legislature is limited to enactment of laws not inconsistent with the Organic Act. 7 V.I.Op.A.G. 382.

3. Conflicts of interest. In the absence of controlling local legislation, municipalities could enter into commercial transactions with an individual who was a full-time municipal or federal employee. 1 V.I.Op.A.G. 213.

In the absence of controlling local legislation, municipalities could enter into commercial transactions with a partnership in which a full-time municipal or federal employee was a partner. 1 V.I.Op.A.G. 213.

In the absence of controlling local legislation, municipalities could enter into commercial transactions with a corporation in which a full-time municipal or federal employee was either a majority or minority stockholder. 1 V.I.Op.A.G. 213.

4. Powers. The legislative power of the territory is vested in the Legislature and that power and authority extends to all rightful subjects of legislation. *Creque v. Roebuck*, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 197.

The purpose of the 1958 amendment of subsection (a) of this section was to broaden the legislative power of the Virgin Islands to "cover the ordinary area of sovereign legislative power" limited only by the provisions of the Revised Organic Act and the laws of the United States made applicable to the Virgin Islands, the latter phrase meaning those federal statutes applicable to the United States generally which, either by their own terms or by legislation, are also made applicable to the Virgin Islands. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The presently existing power of the Virgin Islands Legislature to deal with all rightful subjects of legislation is not limited by the provisions of section 36 of the Organic Act of 1936. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The limiting proviso of the final sentence of section 36 of the Organic Act of 1936 that no new export duties shall be levied in the Virgin Islands except by Congress was not operative as a limitation upon the power of the Legislature. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The final sentence of section 36 of the Organic Act of 1936 providing that no new export duties shall be levied by Congress was not operative in 1965 and 1966 to render invalid the Watch Production Act and its amendatory Act, assuming that the tax which those Acts levied was an export duty. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The power of the Virgin Islands Legislature, granted by the United States Congress, extends to all rightful subjects of legislation not inconsistent with [chapter 7] or the laws of the United States made applicable to the Virgin Islands, and absent restrictions elsewhere such a grant of power places the Legislature on a par with the legislature of the several states as to all matters properly comprehended within the grant. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

Power of the Virgin Islands Legislature, which is on a parity with state legislatures, to discriminate against aliens on public works and in the exploitation of natural resources has been recognized. *Government of the Virgin Islands v. Huggins*, Mun. Ct. St. T. and St. J. 1967, 6 V.I. 3.

General principle is that the Legislature has the power to take away by statute that which has been given by statute except when to do so would amount to an impairment of a vested right but the recall of a privilege, an expectancy, a possibility or an exemption does not involve vested rights. *The Pentheny, Ltd. v. Government of the Virgin Islands*, C.A.3d 1966, 5 V.I. 575, 360 F.2d 786.

The Legislature of the Virgin Islands has authority to define and proscribe criminal offenses. *Government of the Virgin Islands v. Rivera Solis*, C.A.3d 1964, 4 V.I. 615, 334 F.2d 517.

The power to grant a Government employee an increase in pay, coupled with an assignment of new duties, distinct in character from her former duties, rests with the Legislature, not with the Executive, since it amounts to the creation of a new office. 1 V.I.Op.A.G. 114.

5. Money bills. A bill to provide funds for Government expenses should take the form of an ordinance rather than a resolution and should provide specific fees to be paid to specific persons or companies. 1 V.I.Op.A.G. 117.

6. Bonds. The Legislature was free to repeal the issuance of government bonds and rescind its judgment that a private project being promoted, for profit, would

promote the public interest of the Virgin Islands by economic development. *Huntt v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 48, 382 F.2d 38.

The provisions of the 1954 Revised Organic Act of the Virgin Islands, which provided for the issuance of bonds or other obligations for public improvement or undertakings, did not merely clothe the Virgin Islands Legislature with the authority to issue government obligations within specific gross limits and restrictions as to maturity, interest and source of payment. *Huntt v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 48, 382 F.2d 38.

The determination as to which projects government obligations might be issued was unequivocally committed by the law to the judgment of the Legislature of the Virgin Islands. *Huntt v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 48, 382 F.2d 38.

The acts of the legislature in authorizing issuance of bonds, but committing to the approval of the Governor the ultimate duty to determine the conditions and qualifications to be met, involved discretionary functions and not ministerial. *Huntt v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 48, 382 F.2d 38.

Where an Act of the Virgin Islands Legislature authorized the issuance of bonds on behalf of an individual for the construction of a hotel on the island of St. Croix, the Legislature may not repeal such legislation on the grounds that such bonds are not in the public interest, in view of the broad authorization for such legislation in subsec. (b) of this section and in view of the importance of tourism in the economy of the Virgin Islands. *Huntt v. Government of the Virgin Islands*, C.A.3d 1964, 5 V.I. 166, 339 F.2d 309.

Even if an Act of the Virgin Islands Legislature authorizing the issuance of bonds on behalf of an individual for the construction of a hotel on the island of St. Croix were to be held invalid because prohibited by law, the individual on whose behalf the bonds were issued may be entitled to damages for out-of-pocket expenditures and time spent by him in reliance on such legislation. *Huntt v. Government of the Virgin Islands*, C.A.3d 1964, 5 V.I. 166, 339 F.2d 309.

Bonds of the Government of the Virgin Islands issued strictly in accordance with Federal statute for a specific public improvement or a specific public undertaking are obligations of the Government of the Virgin Islands redeemable only out of revenues derived from the public undertaking, and not payable out of general funds, nor would the same be a general obligation of the Territory. 4 V.I.Op.A.G. 5.

7. Loans. Virgin Islands government may legally borrow funds to replace the \$14,000,000 in operating revenues that was anticipated from a federal grant expected to be received during the 1978 fiscal year and which apparently would not be received until the first quarter of the 1979 fiscal year, though the debt could be incurred only if authorized by the legislature under federal law; and the loan could be made from the territory's Industrial Development Fund if the loan was authorized by the legislature. 8 V.I.Op.A.G. 160.

Loans to the government from funds which the government holds in a fiduciary capacity, such as loans from the Government Insurance Fund and the Employees' Retirement Fund, constitute public indebtedness under the Revised Organic Act. 8 V.I.Op.A.G. 177.

8. Inherent powers. The Legislature had inherent power to authorize the sheriff to issue writs of attachment in specially defined proceedings, such as tax sales. 1 V.I.Op.A.G. 65.

9. **Private and special laws.** The operation of any general law shall not be suspended by the Legislature for the benefit of individuals, corporations or associations. *Smith v. Government of the Virgin Islands*, D.C.V.I. 1965, 5 V.I. 124, 240 F. Supp. 809.

An Act of the Virgin Islands Legislature authorizing the sale of escheated real property to a named private individual violates subsections (a) and (c) of this section and is unconstitutional. *Smith v. Government of the Virgin Islands*, D.C.V.I. 1965, 5 V.I. 124, 240 F. Supp. 809.

10. **Taxation.** The power to impose taxes is a part of the legislative power granted by Revised Organic Act to the territorial legislature and it has always been recognized as a rightful subject of legislation. *Virgo Corporation v. Paiewonsky*, C.A.3d 1967, 6 V.I. 256, 384 F.2d 569, cert. denied, 390 U.S. 1041, reh'g denied, 392 U.S. 917.

The Virgin Islands has wide legislative power in imposing taxes, limited by the requirement that it may not resort to a classification that is palpably arbitrary. *Virgin Islands Board of Realtors v. Wheatley, Commissioner of Finance*, D.C.V.I. 1968, 6 V.I. 185.

The Legislature of the Virgin Islands has power to impose an excise tax upon the manufacture of watches in the territory. *Virgin Islands Board of Realtors v. Wheatley, Commissioner of Finance*, D.C.V.I. 1968, 6 V.I. 185.

11. **Power of Congress.** Repeal by Virgin Islands of memorandum of understanding resolving dispute over dredging rights preserved to private company in treaty between Denmark and the United States is invalid, because it violates contract clause contained in U.S. Constitution and this section. *West Indian Co. v. Government of Virgin Islands*, C.A.3d 1988, 844 F.2d 1007, cert. denied, 488 U.S. 802, 109 S.Ct. 31, 102 L.Ed.2d 11, reh'g denied, 488 U.S. 976, 109 S.Ct. 517 (1988).

Since Virgin Islands is a territory rather than a sovereign state, Congress need not turn to court if it believes that a Virgin Islands' law encroaches upon Congress's undisputed, supreme power with regard to immigration matters, and Congress may simply, pursuant to this section providing, "[T]hat the legislature shall have power. . . to amend, alter, modify, or repeal any local law or ordinance. . . and to enact new laws not inconsistent with any law of the United States applicable to the Virgin Islands, subject to the power of Congress to annul any such Act of the legislature, . . ." annul any law it decides is impinging upon its authority. *Rogers v. Larsen*, D.C.V.I. 1975, 12 V.I. 517.

Cited. Cited in *JDS Realty Corp. v. Government of the Virgin Islands*. D.C.V.I. 1984, 21 V.I. 111; *Government of the Virgin Islands v. Dowling*, C.A.3d 1989, 866 F.2d 610; *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74; *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1021; *Polychrome International Co. v. Rigger*, C.A.3d 1993, 29 V.I. 311.

§ 9. [Legislative procedure]

[Quorum and method of voting on bills]

(a) The quorum of the legislature shall consist of eight of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.

[Enacting clause of acts]

(b) The enacting clause of all acts shall be as follows: "Be it enacted by the Legislature of the Virgin Islands".

[Governor's message and budget]

(c) The Governor shall submit at the opening of each regular session of the legislature a message on the state of the Virgin Islands and a budget of estimated receipts and expenditures, which shall be the basis of the appropriation bills for the ensuing fiscal year, which shall commence on the first day of July or such other date as the Legislature of the Virgin Islands may determine.

[Approval and disapproval of bills]

(d) Every bill passed by the legislature shall, before it becomes a law, be presented to the Governor. If the Governor approves the bill, he shall sign it. If the Governor disapproves the bill, he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If the Governor does not return the bill within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. When a bill is returned by the Governor to the legislature with his objections, the legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriations of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects, and the items, or parts or portions thereof, so objected to shall not take effect, unless the legislature, after reconsideration upon motion of a member thereof, passes such items, parts, or portions so objected to by a vote of two-thirds of all the members of the legislature.

[Use of prior appropriations upon failure to pass appropriation bills]

(e) If at the termination of any fiscal year the legislature shall have failed to pass appropriation bills providing for payment of the

obligations and necessary current expenses of the government of the Virgin Islands for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item.

[Journal of proceedings; contents]

(f) The legislature shall keep a journal of its proceedings and publish the same. Every bill passed by the legislature and the yeas and nays on any question shall be entered on the journal.

[Transmittal of laws to Secretary of the Interior and Congress]

(g) A listing of all laws enacted by the legislature each year shall be transmitted with the annual report to Congress required pursuant to section 11 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1591; 68 Stat. 503).—July 22, 1954, ch. 558, § 9, 68 Stat. 501, amended Aug. 23, 1968, Pub. L. 90-496, §§ 2, 3, 82 Stat. 839; Oct. 15, 1977, Pub. L. 95-134, § 301(b), 91 Stat. 1163; Aug. 18, 1978, Pub. L. 95-348, § 4(c)(1), 92 Stat. 490; Oct. 19, 1980, Pub. L. 96-470, Title II, § 206(d), 94 Stat. 2244.

HISTORY

Amendments—1980. Subsection (g): Amended generally.

—1978. Subsection (c): Added the phrase “or such other date as the Legislature of the Virgin Islands may determine”.

—1977. Subsection (d): Added at the end of the paragraph the words which began “unless the legislature, after reconsideration. . . .”

—1968. Subsection (a): Increased quorum to eight members.

Subsection (d): Deleted former 5th-10th sentences and substituted provisions relating to reconsideration of returned bills.

Effective date of 1968 amendments. Public Law 90-496, 82 Stat. 837, § 2, provided: “Effective on the date of the enactment of this Act [Aug. 23, 1968] section 9, subsection (a) of the Revised Organic Act of the Virgin Islands. . . is amended. . . .” See, also, note set out under § 2 of this Act.

Identification of laws enacted by former legislative bodies. Act Leg. Assem. app. Nov. 30, 1951 (Bill no. 2), provided that all laws, acts and ordinances enacted by the former Legislative Assembly should be identified in each case as “Insular Law” with appropriate number in sequence to be included in the text of such legislation as “I.L. —”; and that all laws and ordinances enacted by the former Municipal Council of St. Croix, or by the former Municipal Council of St. Thomas and St. John, should be identified as “Municipal Law” with appropriate number in sequence to be included in the text of such legislation as “M.L. —”.

ANNOTATIONS

Effective date of legislation, 3
 Failure to appropriate, 4
 Item veto, 5

Legislative rules, 6
 Resolutions, 2
 Veto of appropriation, 1

1. **Veto of appropriation.** Where Legislature passed appropriation bill but the governor vetoed it, the requirements of subsection (e) are not met and the last appropriation bill on the subject is not deemed reappropriated item by item. 2 Govt. Compt. Dec. 14, Aug. 11, 1955.

2. **Resolutions.** Where a resolution of the Legislature was never approved by the Governor or passed over his veto, it never acquired the force of law and was without legal effect. *Huntt v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 48, 382 F.2d 38.

Resolution passed by Legislature at special session at which its subject matter was not specified in Governor's call for session or any special message sent by him to Legislature, as required by section 7 of this Act, and which was not approved by Governor or passed over his veto, as provided in this section, does not have force of law. *Government of the Virgin Islands v. Massac*, D.C.V.I. 1958, 3 V.I. 328, 161 F. Supp. 704, vacated in part on other grounds, C.A.3d 1960, 4 V.I. 185, 277 F.2d 660.

3. **Effective date of legislation.** Legislation passed by the legislature becomes effective after it is signed by the governor, unless the legislation itself establishes a different effective date. 7 V.I.Op.A.G. 376.

The effective date of legislation need not be specified in the bill unless the bill is to take effect at some time other than the date of approval by the Governor. 2 V.I.Op.A.G. 302.

The phrase "become effective upon approval by the Governor" when inserted in legislation, is superfluous. 2 V.I.Op.A.G. 302.

4. **Failure to appropriate.** Subsection (e) of this section did not apply where the 1956 Legislature appropriated funds for payment of premiums for insurance on public buildings and the 1957 Legislature failed to further appropriate funds for such purpose for 1957. 3 V.I.Op.A.G. 286.

Subsection (e) is designed to meet extraordinary situations and avoid a breakdown in Government functions by continuing in force the appropriations for the previous fiscal period; it cannot continue in force each item of the previous appropriations. 3 V.I.Op.A.G. 286.

5. **Item veto.** Virgin Islands basic law gives item veto power to governor in case of any bill whether or not it may be characterized as appropriation measure, so long as included within that bill there are items of appropriations of money. *Government v. Eleventh Legislature*, D.C.V.I. 1976, 13 V.I. 53.

Power of governor extends to deletion of parts or portions of bill containing items of appropriation. *Government v. Eleventh Legislature*, D.C.V.I. 1976, 13 V.I. 53.

Where governor was authorized to veto item or part of item if measure contained several items of appropriation, item vetos of "one additional veterinary technician, St. Thomas" and "study leave for one employee" were proper. *Government v. Eleventh Legislature*, D.C.V.I. 1976, 13 V.I. 53.

Governor, in exercise of item veto, has power to delete certain language contained in several particular sections of a bill providing several items of appropriations for operation of Government of the Virgin Islands, rather than vetoing entire items. *Government v. Eleventh Legislature*, D.C.V.I. 1976, 13 V.I. 53.

Deliberate intent of U.S. Congress in omitting provision from Revised Organic Act allowing legislature to override item veto of governor, with respect to appropriations in light of congressional awareness of many state constitutional provisions permitting such override, showed desire that Legislature of the Virgin Islands be without authority to override item veto of the Governor of the Virgin Islands. *Government v. Eleventh Legislature, D.C.V.I. 1976, 13 V.I. 53.*

Where there is but one item of appropriation of money in legislative bill such measure is immune to item veto of governor. *Government v. Eleventh Legislature, D.C.V.I. 1976, 13 V.I. 53.*

Where legislature passed appropriations bill consisting of single section with five subsections, each stating purpose of particular subsection, at end of which there was total appropriation sum stated, purpose of which appeared to be to hamper governor's item veto power by drafting appropriations bill wherein separate and distinct items of appropriation were combined under guise of single item appropriation bill, and governor exercised what he viewed to be item veto power authorized by Revised Organic Act in striking phrase from one subsection and deleting another subsection of bill, and governor's authorization enabled him to veto item or part of item only if measure contained several items of appropriation of money, consideration of what constituted item or item of appropriation of money resulted in finding that item may combine purpose and specific monetary amount, but sometimes need only state subject or purpose or amount, depending on context in which it was found. *Government v. Eleventh Legislature, D.C.V.I. 1976, 13 V.I. 53.*

Where legislature passed appropriations bill consisting of single section with five subsections, each stating purpose of particular subsection, at end of which there was total appropriation sum stated, purpose of which appeared to be to hamper governor's item veto power by drafting appropriations bill wherein separate and distinct items of appropriation were combined under guise of single item appropriation bill, and governor exercised what he viewed to be item veto power authorized by Revised Organic Act in striking phrase from one subsection and deleting another entire subsection of bill, and governor's authorization enabled him to veto item or part of item only if measure contained several items of appropriation, item veto in each instance was properly exercised by governor. *Government v. Eleventh Legislature, D.C.V.I. 1976, 13 V.I. 53.*

Revised Organic Act of 1954 does not provide for legislative override of item veto of parts or portions of appropriation bills. *Government v. Eleventh Legislature, C.A.3d 1976, 13 V.I. 335.*

Where 1936 Organic Act explicitly gave President of United States absolute veto power of bills or portions of bills objected to by governor, and 1954 Revised Organic Act, as originally enacted, transferred absolute item veto power to governor, but otherwise kept with President, power to absolutely veto, and Act was subsequently amended to provide for elimination of President's absolute veto power, 1954 Act would be interpreted as merely altering locus of absolute veto power and it would be for Congress to decide whether continued existence of governor's absolute veto power, after change brought by most recent amendment to Act, was anachronism as contended by legislature. *Government v. Eleventh Legislature, C.A.3d 1976, 13 V.I. 335.*

Despite absence of provision in 1954 Revised Organic Act authorizing legislative override of item veto, possibility exists that each item within money appropriation bill, subjected to item veto by governor, could be repassed by legislature as separate piece of legislation subject to return veto by governor but not to item veto, therefore

subjecting such veto to override. *Government v. Eleventh Legislature*, C.A.3d 1976, 13 V.I. 335.

Legislative bill containing several items of appropriation is governed like any other bill by provision of this section of Revised Organic Act of 1954 providing that every bill passed by legislature shall be presented to governor for his approval, but if governor disapproves bill, he shall return it, with his objections, to legislature within 10 days, and if governor does not return bill within such period, it shall be law in like manner as if he had signed it, unless legislature by adjournment prevents its return. *Government v. Eleventh Legislature*, C.A.3d 1976, 13 V.I. 335.

6. **Legislative rules.** Senate vice-president properly assumed president's chair once president left senate chambers, and actions of defendant senators in subsequently reconvening and adopting legislation did not violate subsection (a) of this section requiring that legislation be "passed at a meeting." *Brown v. Hansen*, C.A.3d 1992, 27 V.I. 440.

Cited. Cited in *Luis v. Dennis*, D.C.V.I. 1983, 20 V.I. 873; *Luis v. Dennis*, C.A.3d 1984, 751 F.2d 604; *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

§ 10. [General elections; time; transfer of Council functions to government of the Virgin Islands]

The next general election in the Virgin Islands shall be held on November 2, 1954. At such time there shall be chosen the entire membership of the legislature as herein provided. Thereafter the general elections shall be held on the first Tuesday after the first Monday in November, beginning with the year 1956, and every two years thereafter. The Municipal Council of Saint Thomas and Saint John, and the Municipal Council of Saint Croix, existing on the date of approval of this Act, shall continue to function until January 10, 1955, at which time all of the functions, property, personnel, records, and unexpended balances of appropriations and funds of the governments of the municipality of Saint Thomas and Saint John and the municipality of Saint Croix shall be transferred to the government of the Virgin Islands.—July 22, 1954, ch. 558, § 10, 68 Stat. 502.

HISTORY

Legislature—Creation of positions and salaries. Resolution No. 3 (Bill no. 14), passed by the Legislature on Feb. 4, 1955, acting under subsec. 1(i) of Rule VII of the Standing Rules of the Legislature which were adopted Feb. 1, 1955 (according to which the President of the Legislature shall appoint the employees, subject to confirmation by the Legislature), established various positions and salaries in the Office of the Legislature of the Virgin Islands, and further provided that they should become effective as of January 10, 1955, and that the appointments thereto should be effective for a period not exceeding one year. Rule VII(i), Rules of the Legislature, provides that the President of the Legislature shall appoint all employees, subject to confirmation by the Legislature, at salaries and compensation determined by Resolution of the Legislature. Rule VIII authorizes the fiscal officer of the government, by whatever his current title may be, to draw his warrants in favor of the employees and attachés of the Legislature as certified and approved by the President.

—Retention of former personnel. Resolution No. 1 (Bill no. 7), passed by the Legislature on Feb. 1, 1955, retained, as the personnel of the Legislature, the personnel of the two former Municipal Councils of St. Thomas and St. John, and St. Croix, respectively, at the same salaries and compensation formerly received, and provided that such personnel should continue in the respective positions until the Legislature should otherwise determine.

Under Res. Jan. 12, 1965, No. 304, Sess. L. 1965, Pt. I, p. 305, all personnel employed in the offices of the Fifth Legislature at the time of its termination were carried over by the Sixth Legislature in the same positions and salaries to June 30, 1965. Such Resolution further provided that the Rules Committee should immediately study the administrative functions of the offices of the Legislature and report with recommendations for revising the duties, responsibility, positions, salaries and other pertinent matters related to the personnel of the legislative offices; and that, if the Legislature were not in session upon the filing of such report, the President should put into effect the recommendations thereof effective July 1, 1965, for the balance of the term of the Sixth Legislature.

Former Legislative Assembly—Fee for transcribing record of proceedings. Act Leg. Assem. app. Aug. 11, 1952 (Bill no. 49), § 1, eff. July 7, 1952, provided as follows:

“For the transcription and presentation to the Chairman of both [former] Municipal Councils [of St. Thomas and St. John, and St. Croix] of the verbatim record of the Proceedings of all public Legislative Assembly meetings of the Legislative Assembly of the Virgin Islands, the transcriber shall be paid a fee of Two (\$2.00) Dollars per thousand words transcribed. Provided, however, that the total cost shall not exceed Three Hundred (\$300) Dollars per session. This price shall cover an original and two copies of said record.”

Section 3 of such Act repealed Act Leg. Assem., which became law June 5, 1948 (Bill no. 8), eff. April 19, 1948, section 1 of which related to the same subject.

—Use of former Council employees. Act Leg. Assem. app. Aug. 11, 1952 (Bill no. 49), § 2, eff. July 7, 1952, provided as follows:

“The regular employees of the [former] Municipal Council of St. Thomas and St. John and the [former] Municipal Council of St. Croix as may be required shall receive compensation for work performed for the Legislative Assembly of the Virgin Islands while in session. Compensation shall be on a per diem basis and shall be at a rate equal to 90 percent of the daily rate of pay received by the employee for regular services. In no case shall the employee be required to be on a ‘leave status’ from his regular employment in order to receive the compensation herein authorized.”

Section 3 of such Act repealed Act Leg. Assem. which became law June 5, 1948 (Bill no. 8), eff. April 19, 1948, section 2 of which related to the same subject, and also repealed Ord. Mun. C. St. T. and St. J. of Dec. 20, 1937, as amended, which provided for compensation for the Assistant and Messenger of the former Municipal Council of St. Thomas and St. John.

Former Colonial Council of St. Croix—Auditor. Resolution of Col. C. St. C., passed Nov. 25, 1918, app. Dec. 12, 1918, provided for the appointment of an auditor, at 2,500 francs per annum, to function under the direction of the two members of that former Council elected under authority of the same Resolution for the purpose of frequently examining the cash in the treasury of the Municipality of St. Croix, and comparing the amounts in the account books. Such Resolution authorized the said two Council members, for reasonable cause, to dismiss the auditor, with the approval

of the Governor, and it referred to section 64 of the former Colonial Law (of 1906), set out preceding Title 1, as the authority for providing in such manner for examination of the cash and accounts.

EXECUTIVE BRANCH

ANNOTATIONS

Cited. Cited in *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

§ 11. [Governor and Lieutenant Governor; election; powers and duties generally]

The executive power of the Virgin Islands shall be vested in an executive officer whose official title shall be the "Governor of the Virgin Islands". The Governor of the Virgin Islands, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the legislature of the Virgin Islands. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both officers. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest numbers of votes cast. The first election for Governor and Lieutenant Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified. No person who has been elected Governor for two full successive terms shall be again eligible to hold that office until one full term has intervened. The term of the elected Governor and Lieutenant Governor shall commence on the first Monday of January following the date of election.

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless he is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona fide resident of the Virgin Islands and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain his official residence in the Government House on Saint Thomas during his incumbency, which house, together with land appurtenant thereto, is hereby transferred to the government of the Virgin Islands. While in Saint Croix the Governor

may reside in Government House on Saint Croix, which house, together with land appurtenant thereto is also transferred to the government of the Virgin Islands.

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of the Virgin Islands. He may grant pardons and reprieves and remit fines and forfeitures for offenses against local laws. He may veto any legislation as provided in this Act. He shall appoint, and may remove, all officers and employees of the executive branch of the government of the Virgin Islands, except as otherwise provided in this or any other Act of Congress, or under the laws of the Virgin Islands, and shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Virgin Islands and the laws of the United States applicable in the Virgin Islands. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion or imminent danger thereof, or to prevent or suppress lawless violence, he may summon the posse comitatus or call out the militia or request assistance of the senior military or naval commander of the Armed Forces of the United States in the Virgin Islands or Puerto Rico, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities. He may, in case of rebellion or invasion or imminent danger thereof, when the public safety requires it, proclaim the islands, insofar as they are under the jurisdiction of the government of the Virgin Islands, to be under martial law. The members of the legislature shall meet forthwith on their own initiative and may, by a two-thirds vote, revoke such proclamation.

The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall transmit the comprehensive annual financial report to the Inspector General of the Department of the Interior who shall audit it and report his findings to the Congress. The Governor shall also

make such other reports at such other times as may be required by the Congress or under applicable Federal law. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken or contemplated on Federal audit recommendations within sixty days after the issuance date of the audit report. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the legislature and give expression to his views on any matter before that body.

There is hereby established the office of Lieutenant Governor of the Virgin Islands. The Lieutenant Governor shall have such executive powers and perform such duties as may be assigned to him by the Governor or prescribed by this Act or under the laws of the Virgin Islands.—July 22, 1954, ch. 558, § 11, 68 Stat. 503, Aug. 23, 1968, Pub. L. 90-496, § 4, 82 Stat. 837; Oct. 19, 1982, Pub. L. 97-357, Title III, § 309(a), 96 Stat. 1710; Oct. 5, 1984, Pub. L. 98-454, Title V, § 502, 98 Stat. 1735.

HISTORY

Amendments—1984. Substituted “which house, together with land appurtenant thereto is also transferred to the government of the Virgin Islands” for “free rent” following “Government House on Saint Croix” in the third sentence of the second paragraph.

—1982. Rewrote the fourth paragraph.

—1968. Provided for popular election of Governor and Lieutenant Governor.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and 90 consecutive days therefrom was Jan. 3, 1985.

Effective date of 1968 amendment. See note set out under § 2 of this Act.

Executive order review by Legislature. Act March 28, 1972, No. 3197, § 14, provided: “Any executive order issued by the Governor relating to this Act or any other executive order issued by the Governor relating to any other subject shall be reviewed by the Legislature within 15 days after issuance. The President of the Legislature shall refer such executive order to the appropriate legislative committee to determine whether such executive order conflicts with any applicable law and for recommendations for appropriate legislation on the same subject of the executive order, if the Legislature is in agreement with the provisions of said executive order.”

Publication of executive orders. Act May 18, 1977, No. 3983, § 4, Sess. L. 1977, p. 74, provided:

“(a) The Governor is hereby authorized and directed to cause to be published in a timely manner an accurate summary of each Executive Order he shall issue after the date of enactment of this act [May 18, 1977].

(b) Publication under subsection (a) of this section shall consist of causing the summary of the Executive Order to be printed in at least one newspaper of general circulation in the District of St. Thomas-St. John and in at least one newspaper of general circulation in the District of St. Croix. Such publication shall be within one week after the date the Executive Order is signed by the Governor and shall state within the summary the effective date of the Executive Order.

(c) An accurate copy of each Executive Order issued after the date of enactment of this act [May 18, 1977] shall be forwarded to the President of the Legislature and each senator within 48 hours after the hour in which it is signed by the Governor."

ANNOTATIONS

Approval of legislation, 5	Extradition, 6
Construction with other law, 2	Generally, 1
Crimes, 7	Government property, 14
Deposition, 10	Holidays, 11
Elections, 15	Impounding of funds, 12
Executive clemency, 8	Judicial review, 13
Executive orders, 4	Separation of powers, 3
Expenditures, 9	

1. **Generally.** Revised Organic Act of 1954, as amended, grants the governor power to declare martial law in cases of rebellion, invasion or imminent danger, and to dispatch military forces in the Virgin Islands in the event of disaster, imminent danger or insurrection. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

Revised Organic Act, as amended, vests the executive power of the Virgin Islands in the Governor, who has control of all departments, instrumentalities, and agencies of the executive branch. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

Although the Governor is a presidential appointee and under the supervision of the Secretary of the Interior under this section, he carries out many of the same functions as the Governor of any of the 50 sovereign states, he therefore holds a quasi-gubernatorial position which is peculiar to the unincorporated territory of the Virgin Islands. *Virgo Corporation v. Paiewonsky*, D.C.V.I. 1966, 5 V.I. 328.

2. **Construction with other law.** A legislative act which ratified a collective bargaining agreement governing employment relations between the Department of Law and a union which included all assistant attorneys general showed no clear intention by the legislature to abrogate the wording in this section to the effect that the governor shall appoint and may remove all officers and employees of the executive branch, and, therefore, the Department of Law, or of section 113 of Title 3, vesting the governor with the power to appoint and remove assistant attorneys general; therefore, the governor was the proper party to remove assistant attorneys general. *Finch-Sheen v. United Industrial Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf Lakes & Inland Waters District, AFL-CIO*, D.C.V.I. 1983, 20 V.I. 125.

Provision of 18 V.I.C. § 664 code provision that an application for an absentee ballot must be received at least 20 days before the election conflicts with this sec-

tion's provision for a runoff election on the 14th day after the general election in the event that no candidate for governor or no candidate for lieutenant governor receives a majority of the votes cast, and code provision could not be given effect because the power of the legislature is limited to enactment of laws not inconsistent with the Organic Act. 7 V.I.Op.A.G. 382.

3. Separation of powers. Revised Organic Act, as amended, applies the separation of powers doctrine to the Virgin Islands. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

4. Executive orders. This section provides that the governor of the Virgin Islands may not issue executive orders that conflict with existing legislation. *Bell v. Luis*, D.C.V.I. 1981, 18 V.I. 633.

Where an executive order promulgated by the governor, which purported to create new entities to administer funding of federal and territorial antipoverty programs to replace entities created by section 26 of Title 3 [repealed 1987] for that purpose, was in conflict with valid and existing law enacted by the legislature, the executive order was null and void. *Bell v. Luis*, D.C.V.I. 1981, 18 V.I. 633.

Where provisions of an executive order promulgated by the governor conflicted with prior acts of the legislature which delegated authority to administer and operate a number of local and federal anti-poverty programs, the executive order violated the governor's powers set forth in this section. *Bell v. Luis*, D.C.V.I. 1981, 18 V.I. 633.

Authority for the issuance of rules prohibiting conflicts of interest by local employees must be sought within the framework of the grant of executive authority to the Governor by this section which confers adequate authority for issuance of an executive order covering conflict of interest. 4 V.I.Op.A.G. 194.

If the Government desires to act in an emergency situation, pending passage of legislation, an Executive Order is proper, setting forth the factual situation of the emergency. 1 V.I.Op.A.G. 199.

5. Approval of legislation. A bill, though called a resolution, which is in substance a grant, requires approval of the Executive before it becomes law. 1 V.I.Op.A.G. 196.

6. Extradition. The Executive is without authority to detain an alien upon his arrival in the Virgin Islands unless he was charged with some crime in a foreign jurisdiction and a request for extradition had been made to the authorities in the Virgin Islands. 1 V.I.Op.A.G. 327.

7. Crimes. Revised Organic Act, as amended, vests no authority in the Governor to create any crime, whether misdemeanor or felony. *Government of the Virgin Islands v. Steele*, Terr. Ct. St. T. and St. J. 1991, 26 V.I. 190.

8. Executive clemency. Under this section, which vests power to grant a pardon in the executive branch, and limits that power to offenses against local laws, the Governor of the Virgin Islands could not grant a pardon to an individual whose name had been deleted from the ballot in a general election on the ground that his past imprisonment for a felony disqualified him from holding public office, since the crime for which he was convicted had not been committed in the Virgin Islands. *Moorhead v. Government of the Virgin Islands*, Terr. Ct. St. C. 1982, 18 V.I. 237.

An executive pardon absolves the offender from all guilt, and a commutation of sentence continues the established guilt of the offender but reduces the punishment imposed by the Court. 1 V.I.Op.A.G. 96.

Under the executive pardoning power, the Governor has authority to commute sentences, and so could reduce the suspension of a motor vehicle operator's license to whatever period he sees fit. 1 V.I.Op.A.G. 96.

9. Expenditures. The Executive may not spend more than the budgeted amounts, but he may always spend less. 1 V.I.Op.A.G. 119.

10. Deposition. Where plaintiff alleged that Governor had acted arbitrarily in the allocation of reserve watch units, justice required that he submit to oral deposition despite policy exempting heads of state from deposing lest it interfere with their administrative duties. *Virgo Corporation v. Paiewonsky*, D.C.V.I. 1966, 5 V.I. 328.

11. Holidays. While the Governor has authority to declare as legal holidays days other than those set forth in the Ordinance of July 22, 1938, he does not have authority to permit trading on days or hours of a particular day prohibited by specific provisions of the law. 1 V.I.Op.A.G. 139.

12. Impounding of funds. The executive power to supervise and control a department, bureau or office of the Government of the Virgin Islands does not include the power to impound the funds appropriated by legislative act to such department, bureau or office. 1 V.I.Op.A.G. 180.

13. Judicial review. So long as Governor observes the laws and acts within limits of powers conferred on him his actions in respect of discretionary and political power are not reviewable by the courts. *Felix v. Government of the Virgin Islands*, D.C.V.I. 1958, 3 V.I. 399, 167 F. Supp. 702.

14. Government property. The executive branch of the government has full power to manage, control and dispose of government-owned property without the need for obtaining the concurrence or authorization of the Legislature. 4 V.I.Op.A.G. 235.

15. Elections. Ballots which were left entirely blank or blank as to governor and lieutenant governor were not to be counted in determining the majority of the votes cast in the Virgin Islands election. *Todman v. Boschulte*, C.A.3d 1983, 694 F.2d 939.

A candidate for Governor or Lieutenant Governor must file with a running mate. 7 V.I.Op.A.G. 307.

Cited. Cited in *Moorhead v. Government of the Virgin Islands*, D.C.V.I. 1982, 19 V.I. 155; *Cyntje v. Todman*, D.C.V.I. 1982, 19 V.I. 259; *Luis v. Dennis*, D.C.V.I. 1983, 20 V.I. 373; *Luis v. Dennis*, C.A.3d 1984, 751 F.2d 604; *General Engineering Corp. v. Virgin Islands Water and Power Authority*, D.C.V.I. 1985, 21 V.I. 436; *Lettsome v. Waggoner*, Terr. Ct. St. T. and St. J. 1986, 22 V.I. 94, *aff'd*, D.C.V.I. 1987, 672 F. Supp. 858; *Territorial Court v. Richards*, D.C.V.I. 1987, 23 V.I. 285, 673 F. Supp. 152, *aff'd*, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 551 (1988); *David v. United States Postal Service*, D.C.V.I. 1990, 25 V.I. 414.

§ 12. [Initiative and recall]

(a) The people of the Virgin Islands shall have the rights of initiative and recall to be exercised as provided in subsection (b) and subsection (c), respectively.

(b)(1) An initiative may enact, amend, or repeal any law, except that an initiative shall not be used to repeal a law declared by the legislature at the time of passage to be an emergency law necessary for the preservation of the public health, safety, or peace.

(2) An initiative that proposes a reduction of taxes shall also provide for an equivalent reduction of expenditures or an equivalent increase in revenues from other sources.

(3) An initiative shall address one subject only and matters reasonably related to that subject.

(4) The ballot question shall be in such form that a "yes" vote is a vote in favor of the proposal and a "no" vote is a vote against the proposal.

(5) A copy of the proposed initiative petition, including a complete text of the proposed law and containing signatures equal to at least 1 percent of the voters of each legislative district or 4 percent of all voters of the Virgin Islands must be submitted to the Supervisor of Elections prior to circulation for ballot qualification. The Supervisor of Elections must determine within 10 days after the submission whether the preliminary signatures are sufficient. If so determined, the Supervisor of Elections shall refer the preliminary petition to an initiative titling board consisting of the Attorney General, the Supervisor of Elections, and the legislative counsel of the legislature. The board shall, in an open hearing, prepare the official ballot title, the submission question, and a summary of the initiative proposal, and this preparation shall be completed within 30 days after the referral.

(6) After the ballot title has been written, proponents of the initiative proposal shall have a maximum of 180 days to circulate the petition. Petitions containing signatures equal to at least 10 percent of the voters of each legislative district or 41 percent of all voters of the Virgin Islands must be submitted to the Supervisor of Elections. The Supervisor shall have 15 days to determine that the minimum number of valid signatures are contained in the petition and he shall forward the certified proposal to the legislature which must accept or reject the measure within 30 days. If approved, the initiative shall take effect in accordance with its terms. If the legislature does not approve, the initiative shall be submitted to the voters at the next general election, unless the legislature approves a special election for this purpose. The legislature may submit its own version of the initiative to the voters. Should both measures be approved by the voters, the measure receiving the higher number of votes shall prevail. The voters shall have a clear alternative of rejecting either version or the entire proposition.

(7) An initiative submitted to the voters shall take effect if the initiative is approved by a majority of persons voting and if a major-

ity of the voters of the Virgin Islands vote on the initiative. An initiative may not be vetoed by the Governor; and when approved by the voters, may not be amended or repealed by the legislature during the 3-year period after its approval unless the legislature acts by a two-thirds majority.

(8) The legislature may provide the manner in which petitions shall be circulated, filed, certified, and the ballot question shall be submitted to the voters.

(c)(1) An elected public official of the Virgin Islands may be removed from office by a recall election carried out under this subsection. The grounds for recall are any of the following: lack of fitness, incompetence, neglect of duty, or corruption.

(2) A recall election may be initiated by a two-thirds vote of the members of the legislature or by a petition under this subsection.

(3) Prior to circulation a recall petition which identifies by name and office the official being recalled and which states the grounds for recall shall be submitted to the Supervisor of Elections. The sponsors of the recall petition shall be allowed a period of 60 days after such submission for filing with the Supervisor of Elections a list of signatures equal in number to at least 50 percent of the whole number of votes cast for that office in the last general election at which that office was filled. The Supervisor of Elections shall have 15 days in which to determine whether the minimum number of valid signatures are contained in the recall petition.

(4) A special recall election shall be held with respect to an elected public official not earlier than 30 days after a vote of the legislature under paragraph (2) or a determination of the board of elections under paragraph (3), as the case may be, and not later than 60 days after such vote or determination.

(5) An official shall be removed from office upon approval of the recall in an election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such recall election.

(6) No recall election shall be held with respect to an elected public official—

(A) during the first year of the first term of office of the official; or

(B) less than 3 months before a general election for the office.

(d) As used in this section, the term—

(1) “law” means a law of the Virgin Islands; and

(2) “voter” means a registered voter who is eligible to vote on the issue or for the office involved.—July 22, 1954, ch. 558, § 12, 68 Stat. 503, amended Aug. 23, 1968, Pub. L. 90-496, § 5, 82 Stat. 838; Aug. 27, 1986, Pub. L. 99-396, § 1, 100 Stat. 837.

HISTORY

Amendments—1986. Amended generally.

—1968. Deleted former section 12 and substituted a new section 12.

Effective date of 1968 amendment. See note set out under § 2 of this Act.

Former § 12. This section, prior to the amendments of 1968, related to the the appointment of a Government Secretary and the position’s duties to record, preserve, and promulgate the laws and orders of the Governor and legislature.

Referendum on legalizing gambling; requisites for legislative Action. Act June 30, 1992, No. 5797, § 1, Sess. L. 1992, p. 93, provided that there shall be a referendum on November 3, 1992, pertaining to the legalization of gambling in the Virgin Islands and set forth the form of the question.

“Mark One Square Only

1. Are you in favor of the Legislature enacting legislation legalizing casino gambling?

[] []
 YES NO

Act June 30, 1992, No. 5797, §§ 2, 3, Sess. L. 1992, p. 94, provided:

“Section 2. For the purposes of this referendum, the Legislature specifically rejects the formula found in Section 12(b)(7) of the Revised Organic Act of 1954, and hereby adopts in lieu thereof, the formula found in Section 3 of this Act.

“Section 3. [(a)] Except as provided in subsection (b) of this Section, the Legislature shall not be required to take any action toward the establishment of casino gambling in the Territory, unless both: (1) a majority (fifty percent plus one) of the persons casting a ballot during the General Election on November 3, 1992, vote on the referendum issue set forth in Section 2 of this Act; and (2) a majority (fifty percent plus one) of those persons voting on the referendum issue vote in the affirmative.

“(b) If the referendum issue set forth in Section 1 of this Act does not receive the requisite number of votes territory-wide to satisfy the requirements of subsection (a) of this Section, but those requirements are satisfied in one of the electoral districts, then the Legislature may enact legislation establishing legalized casino gambling in that electoral district.”

ANNOTATIONS

Cited. Cited in *Brown v. Hansen*, D.C.V.I. 1992, 27 V.I. 175.

§ 13. Repealed. Aug. 23, 1968, Pub. L. 90-496, § 6, 82 Stat. 839, eff. Aug. 23, 1968.

HISTORY

Former § 13, which was derived from Act July 22, 1954, ch. 558, § 13, 68 Stat. 503, related to the appointment of administrative assistants for the Governor.

§ 14. [Disability or absence of Governor or Lieutenant Governor]

[Governor's temporary disability or absence]

(a) In case of the temporary disability or temporary absence of the Governor, the Lieutenant Governor shall have the powers of the Governor.

[Permanent vacancy or disability; Governor, Governor elect]

(b) In the case of a permanent vacancy in the office of Governor, arising by reason of the death, resignation, removal by recall or permanent disability of the Governor, or the death, resignation, or permanent disability of a Governor-elect, or for any other reason, the Lieutenant Governor or Lieutenant Governor-elect shall become the Governor, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Governor.

[Temporary disability or absence of Lieutenant Governor]

(c) In case of the temporary disability or temporary absence of the Lieutenant Governor, or during any period when the Lieutenant Governor is acting as Governor, the president of the legislature shall act as Lieutenant Governor.

[Permanent vacancy in office of Lieutenant Governor]

(d) In case of a permanent vacancy in the office of Lieutenant Governor, arising by reason of the death, resignation, or permanent disability of the Lieutenant Governor, or because the Lieutenant Governor or Lieutenant Governor-elect has succeeded to the office of Governor, the Governor shall appoint a new Lieutenant Governor, with the advice and consent of the legislature, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Lieutenant Governor.

[Temporary disability or absence of both Governor and Lieutenant Governor]

(e) In case of the temporary disability or temporary absence of both the Governor and the Lieutenant Governor, the powers of the Governor shall be exercised, as Acting Governor, by such person as the laws of the Virgin Islands may prescribe. In case of a permanent vacancy in the offices of both the Governor and Lieutenant Governor, the office of Governor shall be filled for the unexpired term in the manner prescribed by the laws of the Virgin Islands.

[Compensation of person acting as Governor or Lieutenant Governor]

(f) No additional compensation shall be paid to any person acting as Governor or Lieutenant Governor who does not also assume the office of Governor or Lieutenant Governor under the provisions of this Act.—July 22, 1954, ch. 558, § 14, 68 Stat. 504, amended Aug. 23, 1968, Pub. L. 90-496, § 7(a), 82 Stat. 839.

HISTORY

Amendments—1968. Designated the existing provisions of this section as subsec. (a), rewrote the first sentence of that subsection, and added subsecs. (b)–(f).

Effective date of 1968 amendment. See note set out under § 2 of this Act.

ANNOTATIONS

1. **Acting Governor.** While serving as Acting Governor, the Lieutenant Governor assumes only the duties and powers of Governor in the latter's temporary absence or disability, and not the office of Governor; and to receive additional compensation under statute providing that "No additional compensation shall be paid to any person acting as Governor who does not assume the office of Governor", the Lieutenant Governor would have to assume the office of Governor upon a permanent vacancy in the office of Governor. 7 V.I.Op.A.G. 35.

2. **Acting Lieutenant Governor.** There is no provision in the law for an Acting Lieutenant Governor upon a vacancy in the office of Lieutenant Governor, and the Governor, who under the Revised Organic Act shall appoint a new Lieutenant Governor with the advice and consent of the Legislature, may perform the duties of the Lieutenant Governor. 8 V.I.Op.A.G. 126.

Cited. Cited in *Moorhead v. Millin*, D.C.V.I. 1982, 19 V.I. 155; *Cyntje v. Todman*, D.C.V.I. 1982, 19 V.I. 259.

§ 15. [Clerk hire allowance and transportation expenses of Delegate to U.S. House]

Notwithstanding any other provision of law, the clerk hire allowance and the transportation expenses subject to reimbursement under Federal law of the Delegate from the Virgin Islands to the United States House of Representatives shall each be the same as allowed for members of the United States House of Representatives.—July 22, 1954, ch. 558, § 15, 68 Stat. 504; amended March 16, 1962, Pub. L. 87-419, § 2, 76 Stat. 35, May 27, 1975, Pub. L. 94-26, 89 Stat. 94.

HISTORY

Amendments—1975. Deleted former section 15 and substituted a new section 15.

—1962. Added provision for designation, by Governor or Acting Governor, of an officer or employee of the executive department to act as government secretary in event of vacancy in office or disability or while the government secretary is acting as Governor; defining powers of such designee and providing that no additional compensation be paid such designee.

Former § 15. This section, prior to the amendments of 1975, related to vacancies in offices or absence of Governor and Government Secretary.

Commissioner of Finance as Acting Governor. Order No. 2839, April 14, 1959, of the United States Secretary of the Interior, V.I. Reg., Vol. VI, No. 1, March 30, 1965, Pt. I, p. 1, provided:

"Section 1. *Designation.* In the case of a vacancy in the offices, or the disability or temporary absence, of both the Governor and the Government Secretary of the Virgin Islands, the Commissioner of Finance of the Virgin Islands shall act as Governor, and he shall have all the powers of the Governor for so long as such condition continues.

"Section 2. *Revocation.* Order No. 2801 (20 F.R. 6752) is revoked. (Sec. 15, act of July 22, 1954, 68 Stat. 497, 504 [this section]; 48 U.S.C. § 1596)."

§ 16. Reorganization of government

[Consolidation of departments, bureaus, etc.; limitation on creation of new departments]

(a) The Governor shall, within one year after the date of approval of this Act, reorganize and consolidate the existing executive departments, bureaus, independent boards, agencies, authorities, commissions, and other instrumentalities of the government of the Virgin Islands or of the municipal governments into not more than nine executive departments except for independent bodies whose existence may be required by Federal law for participation in Federal programs. The head of each executive department other than the department of law shall be designated as the commissioner thereof, and the commissioner of finance shall be bonded. The head of the department of law shall be known as the attorney general of the Virgin Islands. Members of school boards, which entities of government have been duly organized and established by the government of the Virgin Islands, shall be popularly elected.

[Changes after examination from time to time]

(b) The Governor shall, from time to time, after complying with the provisions of subsection (a) of this section, examine the organization of the executive branch of the government of the Virgin Islands, and shall make such changes therein, subject to the approval of the legislature, not inconsistent with this Act, as he determines are necessary to promote effective management and to execute faithfully the purposes of this Act and the laws of the Virgin Islands.

[Appointment of department heads; tenure; removal; powers and duties]

(c) The heads of the executive departments created by this Act shall be appointed by the Governor, with the advice and consent of

the legislature. Each shall hold office during the continuance in office of the Governor by whom he is appointed and until his successor is appointed and qualified, unless sooner removed by the Governor. Each shall have such powers and duties as may be prescribed by the legislature. The chairman and members of any board, authority, or commission established by the laws of the Virgin Islands shall, if the laws of the Virgin Islands hereafter provide, also be appointed by the Governor with the advice and consent of the legislature, if such board, authority, or commission has quasi-judicial functions: Provided, That no law of the Virgin Islands dealing with the chairmanship, membership, or chairmanship and membership of any such board, authority, or commission, and requiring an appointment or appointments to be made with the advice and consent of the legislature, shall relate to more than one such board, authority, or commission, nor shall it relate to any other legislative matter.—July 22, 1954, ch. 558, § 16, 68 Stat. 504; amended Aug. 30, 1957, Pub. L. 85-224, 71 Stat. 510; Sept. 16, 1959, Pub. L. 86-289, § 3, 73 Stat. 569, Aug. 23, 1968, Pub. L. 90-496, § 8(a), 82 Stat. 839.

HISTORY

Amendments—1968. Subsection (a): Deleted reference to approval of Secretary of the Interior to creation of certain departments, bureaus, etc. Provided for popular election of school boards.

—1959. Subsection (a): Inserted the words “other than the department of law”.

—1957. Subsection (c): Added last sentence, which begins with words “The chairman and members”.

Effective date of 1968 amendment. See note set out under § 2 of this Act.

Reorganization of government. The reorganization of the executive departments, bureaus, etc., of the Virgin Islands government, directed by this section, was effected by the Governor’s Executive Order No. 1, eff. Jan. 10, 1955, as amended, and by his Executive Order No. 9, eff. July 21, 1955. See history notes under section 61 of Title 3. The provisions of such executive orders have been executed, with some changes made by the codifiers, throughout the Code. The changes made by the codifiers, which are pointed out in appropriate history notes, were restricted to transfers of functions and a change in name of one department, and did not exceed the restriction in this section that, after the reorganization by the Governor had been effected, no other department, bureau, etc., shall be created, organized, or established by the Governor of the legislature, without the prior approval of the Secretary of the Interior, unless required by Federal law for participation in Federal programs.

ANNOTATIONS

Basis of government, 4
Changes in structure, 6
Confirmation of gubernatorial appointments, 7

Historical, 5
Holdovers, 3
Structure of government, 1
Tenure, 2

1. **Structure of government.** Under this section, Government of Virgin Islands comprises not only executive departments and departmental boards and commissions, but also independent boards, agencies, authorities, commissions and other instrumentalities required by Federal law for participation in Federal programs. *Virgin Islands H. & R. Authority v. 19.1078 Acres of Land*, D.C.V.I. 1958, 3 V.I. 309, 161 F. Supp. 475.

2. **Tenure.** The purpose of constitutional or statutory provisions that a public officer shall continue in office until his successor is elected or appointed and qualified is to prevent a hiatus in the government between the terms of successive government officers. 1 V.I.Op.A.G. 262.

3. **Holdovers.** One who holds over after the expiration of his legal term, where no provision is made by law for his holding over, is commonly regarded as a de facto officer, and the period during which he serves is to be credited to the term of his successor, upon the qualification of such successor. 1 V.I.Op.A.G. 262.

4. **Basis of government.** The administrative set-up of the Government of the Virgin Islands is established by the Organic Act of the Virgin Islands. 1 V.I.OP.A.G. 149.

5. **Historical.** Under this section, a former Governor's transfer of the functions of the Board for Vocational Education to the Board of Education was without legal authority and effect insofar as it sought to abolish the Board for Vocational Education, the continued existence of which was required for participation in a federal program. 3 V.I.Op.A.G. 223.

6. **Changes in structure.** The Governor had authority under subsection (b) of this section to transfer management control of the Alexander Hamilton Airport from the Department of Property and Procurement to the Department of Public Works. 3 V.I.Op.A.G. 293.

7. **Confirmation of gubernatorial appointments.** When Congress passed subsection (c) of this section, granting to the Legislature the right to advise on and consent to executive appointments, it was intended that the democratically-elected legislative branch of the Virgin Islands act as a check and balance on the Governor's power; at the same time, by granting the Governor the right to make executive appointments, subject to the advice and consent of the Legislature, Congress intended to give the Governor substantial power in choosing those persons who would represent his views of how the key executive departments and the government should function. *Dennis v. Luis*, C.A.3d 1984, 741 F.2d 628.

The Senate of the United States, by failing to indicate otherwise, intended that the procedures in subsection (c) of this section for confirmation of gubernatorial appointments follow the pattern for federal appointments; therefore, when the Governor submits an appointment for confirmation to the Legislature, a majority of those present and voting, a quorum being present, would be sufficient to confirm the appointment. *Luis v. Dennis*, D.C.V.I. 1983, 20 V.I. 373, vacated on other grounds, C.A.3d 1984, 751 F.2d 604.

Act of the Legislature which added section 65c of Title 3, providing that a majority of all members of the Legislature had to vote affirmatively in order to confirm the appointment of the head of an executive department, was an indirect and coercive influence of the Legislature on the Governor and therefore invalid as a violation of the doctrine of separation of powers since, although the Legislature would not do the

actual appointing or nominating, by requiring that an absolute majority of the Legislature, rather than a quorum of those present and voting, give its advice and consent, the Governor could be frustrated or hampered in his appointment power. *Luis v. Dennis*, D.C.V.I. 1983, 20 V.I. 373, vacated on other grounds, C.A.3d 1984, 751 F.2d 604.

§ 17. [Transfer of functions from government comptroller for the Virgin Islands to the Inspector General, Department of the Interior]

[Functions, powers and duties transferred]

(a) The following functions, powers, and duties heretofore vested in the government comptroller for the Virgin Islands are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of the Virgin Islands:

(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of the Virgin Islands, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of the Virgin Islands including those pertaining to trust funds held by the government of the Virgin Islands.

(2) The authority to report to the Secretary of the Interior and the Governor of the Virgin Islands all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law.

[Scope of authority granted]

(b) The authority granted in paragraph (a) shall extend to all activities of the government of the Virgin Islands, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended.

[Transfer of personnel, assets, liabilities, etc. of office of government comptroller of the Virgin Islands to the Office of Inspector General, Department of the Interior]

(c) In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for the Virgin

Islands related to its audit function are hereby transferred to the Office of Inspector General, Department of the Interior.—July 22 1954, ch. 558, § 17, 68 Stat. 505; amended Aug. 28, 1958, Pub. L. 85-851, §§ 4, 5, 72, Stat. 1094, 1095; March 20, 1962, Pub. L. 87-421, 70 Stat. 43; Oct. 19, 1982, Pub. L. 97-357, Title III, § 309(b), 96 Stat. 1710.

HISTORY

Amendments—1982. Deleted former section 17 and substituted a new section 17

—1962. Subsection (a): Provided that salary of comptroller shall receive an annual salary at the rate provided by the Classification Act of 1949, as amended.

—1958. Subsection (a): Struck out words “not to exceed” which preceded “\$12,500 per annum.”

Subsection (e): Provided for appeal to Secretary of the Interior instead of to the Governor, and that Governor concur in the taking of appeal.

Subsection (f): Provided that if Secretary of the Interior confirms prior decision or if Governor does not concur in appeal, legislative relief may be sought.

Former § 17. This section, prior to the amendments of 1982, related to the appointment of a government comptroller and the position's powers and duties.

ANNOTATIONS

Cited. Cited in *United States of America v. Canel*, D.C.V.I. 1982, 19 V.I. 295.

SYSTEM OF ACCOUNTS

§ 18. [Establishment and maintenance of system of accounts scope]

The Governor shall establish and maintain systems of accounting and internal control designed to provide—

(a) full disclosure of the financial results of the government's activities;

(b) adequate financial information needed for the government's management purposes;

(c) effective control over and accountability for all funds, property, and other assets for which the government is responsible, including appropriate internal audit; and

(d) reliable accounting results to serve as the basis for preparation and support of the government's request for the approval of the President or his designated representative for the obligation and expenditure of the internal revenue collections as provided in section 26, the Governor's budget request to the legislature, and for controlling the execution of the said budget.—July 22, 1954, ch. 558, § 18, 68 Stat. 505.

§ 19. Repealed. Aug. 23, 1968, Pub. L. 90-496, § 14, 82 Stat. 842, eff. Aug. 23, 1968.

HISTORY

Former § 19, which was derived from Act July 22, 1954, ch. 558, § 19, 68 Stat. 505, related to annual review of the Virgin Islands' Government Comptroller by the U.S. Comptroller General.

§ 20. [Salaries and expenses of Governor, Lieutenant Governor, department heads, officers and employees, members of legislature]

The salaries and travel allowances of the Governor, Lieutenant Governor, the heads of the executive departments, other officers and employees of the government of the Virgin Islands, and the members of the legislature shall be paid by the government of the Virgin Islands at rates prescribed by the laws of the Virgin Islands.—July 22, 1954, ch. 558, § 20, 68 Stat. 505; amended Aug. 28, 1958, Pub. L. 85-851, § 6(a), 72 Stat. 1095; Aug. 23, 1968, Pub. L. 90-496, § 10, 82 Stat. 841.

HISTORY

Amendments—1968. Amended generally.

—1958. Subsection (c): Provided for payment of salaries by United States rather than by Virgin Islands to comptroller and members of his immediate staff. This amendment was made effective July 1, 1959, by section 6(b) of amendatory act.

Effective date of 1968 amendment. See note set out under § 2 of this Act.

ANNOTATIONS

Cited. Cited in *Joseph v. de Castro*, D.C.V.I. 1992, 27 V.I. 297; *Smith v. Magras*, Terr. Ct. St. T. and St. J. 1993, 29 V.I. 11.

JUDICIAL BRANCH

§ 21. [District Court of the Virgin Islands and local law courts; jurisdiction of local law courts; rules]

(a) The judicial power of the Virgin Islands shall be vested in a court of record designated the "District Court of the Virgin Islands" established by Congress, and in such appellate court and lower local courts as may have been or may hereafter be established by local law.

(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive

jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22(a) and (c) of this Act.

(c) The rules governing the practice and procedure of the court established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.—July 22, 1954, ch. 558, § 21 68 Stat. 506; amended Oct. 5, 1984, Pub. L. 98-454, Title VII, § 702 98 Stat. 1737.

HISTORY

Amendments—1984. Designated the existing provisions of the section as subsection (a), rewrote that subsection, and added subsecs. (b) and (c).

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454 the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive date therefrom was Jan. 3, 1985.

CROSS REFERENCES

Appellate review by District Court, see § 23A of Revised Organic Act.
 Relations between courts, see § 23 of Revised Organic Act.

ANNOTATIONS

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| Admission of attorneys, 5 | Sentencing authority of Territorial Court, 6 |
| Generally, 1 | Status of district court, 2 |
| Law governing, 3 | Subject matter jurisdiction, 4 |
| Orders, 7 | |

1. **Generally.** Civil actions include all types of actions, other than criminal proceedings, brought to enforce, redress, or protect private rights. In re Application of Moorhead, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

The judicial power of the territory is delegated to the district court and other courts created by law. Creque v. Roebuck, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 197.

2. **Status of district court.** The District Court of the Virgin Islands is not a constitutional court. Government of the Virgin Islands v. Bell, C.A.3d 1968, 6 V.I. 451 392 F.2d 207; Government of the Virgin Islands v. Bryan, D.C.V.I. 1990, 738 F. Supp. 946.

Section 25 of this Act, which made the federal rules of civil procedure applicable to the District Court of the Virgin Islands, did not make that Court a district court of the United States within meaning of Title 28 of the United States Code. Callwood v. Callwood, D.C.V.I. 1954, 3 V.I. 61, 127 F. Supp. 179.

3. **Law governing.** Local legislature has authority to divest District Court of jurisdiction over local matters which it had hitherto possessed. In re Application of Moorhead, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

All power and authority of the District Court of the Virgin Islands stems from the Revised Organic Act rather than from any act of the the Legislature of the Virgin Islands. In the Matter of the Application of Deverita Carty Sturdivant for Admissio

to the Bar of the Virgin Islands, D.C.V.I. 1982 (Miscellaneous No. 82-162) cited with approval in *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

4. Subject matter jurisdiction. The District Court of the Virgin Islands has the original federal question and diversity jurisdiction conferred upon it by the Revised Organic Act and shares this jurisdiction concurrently with the Territorial Court. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1027.

The Virgin Islands legislature has statutory authority to create federal question jurisdiction in territorial courts concurrent with that of federal district courts. *Estate of Mall v. Territorial Court*, C.A.3d 1991, 923 F.2d 258.

As a court of general original jurisdiction, the subject matter jurisdiction of the District Court is limited only by the terms of the Revised Organic Act, and the Act only limits subject matter jurisdiction concerning cases to which exclusive jurisdiction has been conferred on the Territorial Court. *Carty v. Beech Aircraft Corp.*, C.A.3d 1982, 679 F.2d 1051.

5. Admission of attorneys. Effective October 1, 1991, Territorial Court has jurisdiction to admit attorneys to practice before Virgin Islands bar. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

Jurisdiction over local bar admissions is vested in courts established by local law, and since Appellate Division of District Court and District Court itself are courts established by federal law, they are incapable of having jurisdiction over admissions to Virgin Islands bar. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

Since Territorial Court is the only court of the Virgin Islands established by local law, it is the only legal repository of jurisdiction over admissions to Virgin Islands bar. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

District Court did not lose its jurisdiction over admissions to local bar upon effective date of 1984 amendments to Revised Organic Act, and its actions between that date and October 1, 1991 in admitting and disciplining attorneys were not ultra vires. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

Since petition for readmission to local bar is a local civil action, Territorial Court has exclusive jurisdiction to entertain it. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

6. Sentencing authority of Territorial Court. The Territorial Court is not prevented from sentencing defendants to the increased penalties required by the Habitual Offender Statute, 14 V.I.C. §§ 61-62, because the prescribed ten year minimum sentence falls outside the ambit of the court's subject matter jurisdiction grant; the court's jurisdictional grant only determines the types of cases the court may hear, and does not limit the length of sentence a court may impose. *Government of the Virgin Islands v. Ortiz*, D.C.V.I. 1985, 21 V.I. 417.

7. Orders. Orders of the District Court are superior in effect to that of any inferior court. *Virgin Islands Housing Finance Authority v. Smith*, D.C.V.I. 1991, 26 V.I. 248.

Cited. Cited in *United States v. Kennings*, C.A.3d 1988, 861 F.2d 381; *Government of the Virgin Islands v. Dowling*, C.A.3d 1989, 866 F.2d 610; *Territorial Court v. Richards*, D.C.V.I. 1987, 23 V.I. 285, 673 F. Supp. 152, *aff'd*, C.A.3d 1988, 847 F.2d 108, *cert. denied*, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 380 (1988); *Government of the Virgin Islands v. Bryan*, D.C.V.I. 1990, 738 F. Supp. 946; *Maduro v. Donovan*, D.C.V.I. 1993, 29 V.I. 118.

§ 22. [Jurisdiction of District Court]

(a) The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1954 shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 27 of this Act.

(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of \$500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of \$100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands

lands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section.—July 22, 1954, ch. 558, § 22, 68 Stat. 506; amended Nov. 6, 1978, Pub. L. 95-598, § 336(a), 92 Stat. 2680; Oct. 5, 1984, Pub. L. 98-454, Title VII, § 703(a), Title X, § 1001, 98 Stat. 1738, 1745.

HISTORY

Amendments—1984. Designated the existing provisions of the section as subsec. (a), rewrote that subsection, and added subsecs. (b) and (c).

—1978. Inserted the words “and a bankruptcy court” after the words “jurisdiction of a district court” in the first sentence.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive day therefrom was Jan. 3, 1985.

Effective date of 1978 amendment. Nov. 6, 1978, Pub. L. 95-598, § 402(e), 92 Stat. 2682, as amended by Pub. L. 98-249, § 1(a), March 31, 1984, 98 Stat. 116; Pub. L. 98-271, § 1(a), April 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 1(a), May 25, 1984, 98 Stat. 214, provided that this amendment would take effect June 21, 1984.

Effect of 1984 amendment upon pending actions. Oct. 5, 1984, Pub. L. 98-454, Title VII, § 703(b), 98 Stat. 1738, provided: “The provisions of this section shall not result in the loss of jurisdiction of the District Court of the Virgin Islands over any complaint or proceeding pending in it on the day preceding the effective date of this amendatory Act and such complaint and proceeding may be pursued to final determination in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, and the Supreme Court, notwithstanding the provisions of this amendatory Act.”

Repeal of Pub. L. 95-598. Oct. 5, 1984, Pub. L. 98-454, Title X, § 1001, 98 Stat. 1745, repealed section 336 of Pub. L. 95-598, which amended this section.

CROSS REFERENCES

Judicial organization and local courts established by U.S. Virgin Islands legislation, see Title 4.

ANNOTATIONS

Jurisdiction, 4-12	Jurisdiction (cont.)
Admiralty and maritime laws, 5	Federal question, 9
Apportionment and districting, 7	Generally, 4
Civil rights, 10	Habeas corpus, 11
Diversity of citizenship, 8	Local, 6
Domestic relations, 12	Law governing, 2
	Orders, 3
	Status of court, 1

1. **Status of court.** Territorial Court of the Virgin Islands does not carry out an constitutionally mandated functions, and in fact it is not a constitutional court. *Territorial Court v. Richards*, D.C.V.I. 1987, 23 V.I. 285, 673 F. Supp. 152, aff'd, C.A.3-1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 380 (1988)

Congress, in enacting broad grant of jurisdiction to the District Court of the Virgin Islands, has clearly evidenced an intention to integrate the District Court of the Virgin Islands into the federal judicial system, as nearly and completely as possible. *Ferguson v. Kwik-Chek Winn-Dixie Stores, Inc.*, D.C.V.I. 1970, 7 V.I. 639

2. **Law governing.** Tenant's argument that District Court lacked subject matter jurisdiction to enter order confirming arbitration award, because Congress impose new limitations on that court's jurisdiction, was rejected, since Congress explicit reserved District Court's jurisdiction over cases pending on effective date of limitations statute, and case was pending on that date. *Isidor Paiewonsky Assocs. v. Shar Properties, Inc.*, C.A.3d 1993, 28 V.I. 448, 998 F.2d 145.

Code section conferring original jurisdiction over all local civil actions on Virgin Islands Territorial Courts did not divest District Courts of subject matter jurisdiction to hear appellant's injunctive relief action; nonetheless, because neither Territory of Virgin Islands nor its officers acting in official capacities were "persons under governing injunctive relief code, appellant's action for injunctive relief to prevent further violation of civil rights failed to state claim for which relief could be granted. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1027.

District Court's partial reliance on Virgin Islands Code section to define its jurisdiction was incorrect, because the current form of that section was inconsistent with the amendments to the Revised Organic Act. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1021.

All power and authority of the District Court of the Virgin Islands stems from the Revised Organic Act rather than from any act of the the Legislature of the Virgin Islands. In the Matter of the Application of Deverita Carty Sturdivant for Admission to the Bar of the Virgin Islands, D.C.V.I. 1982 (Miscellaneous No. 82-162) cited with approval in *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74

3. **Orders.** Orders of the District Court are superior in effect to that of any inferior court. *Virgin Islands Housing Finance Authority v. Smith*, D.C.V.I. 1991, 26 V.I. 248.

4. **Jurisdiction—Generally.** The District Court of the Virgin Islands has exclusive jurisdiction over all civil proceedings in the Virgin Islands regarding the income tax laws applicable to the Virgin Islands, and all other civil proceedings over which United States District Court has exclusive jurisdiction. *Brow v. Farrelly*, C.A.3 1993, 28 V.I. 345, 994 F.2d 1027.

Civil actions include all types of actions, other than criminal proceedings, brought to enforce, redress, or protect private rights. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

No monetary value is necessary to constitute a civil action. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

Territorial Court pre-enforcement challenge to subpoena did not confer jurisdiction thereupon. *Territorial Court of the Virgin Islands v. Richards*, D.C.V.I. 1987, 673 F. Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 390, 102 L.Ed.2d 380 (1988).

Where no monetary damages are sought, the amount in controversy must be determined by examining the value of the underlying right to be protected. *Government of the Virgin Islands v. Sun Island Car Rentals, Inc.*, C.A.3d 1987, 819 F.2d 431

Aggregation of claims to reach the jurisdictional minimum is permitted when a single plaintiff joins all of its claims against a single defendant or jointly liable multiple defendants. *Government of the Virgin Islands v. Sun Island Car Rentals, Inc.*, C.A.3d 1987, 819 F.2d 430.

District court had subject matter jurisdiction over complaint seeking invalidation of statutory liens on 70 rental cars subject to 352 parking and traffic tickets where the face amount for each ticket was \$25 and payment of an additional \$25 in territorial court costs per ticket was required to discharge a lien, since aggregation of the underlying claims involved an amount exceeding \$500. *Government of the Virgin Islands v. Sun Island Car Rentals, Inc.*, C.A.3d 1987, 819 F.2d 430.

The District Court has general original jurisdiction in all cases arising under the laws of the Virgin Islands, except those in which exclusive jurisdiction is vested in the local courts. *Creque v. Creque*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 408.

Principles of comity require the Territorial Court to abstain from exercising its jurisdiction once the District Court has acted. *Creque v. Creque*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 408.

As a court of general original jurisdiction, the District Court has subject matter jurisdiction over all cases except those to which exclusive jurisdiction has been conferred on the Territorial Court. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

Where District Court was exercising its adjudicatory power over a contract dispute as a local tribunal of general original jurisdiction, rather than under its grant of federal jurisdiction, the principles of abstention did not apply. *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138.

The District Court has general original jurisdiction in all causes in the Virgin Islands, exclusive jurisdiction over which is not conferred upon the inferior courts. *John v. Government of the Virgin Islands*, D.C.V.I. 1980, 18 V.I. 3.

5. — **Admiralty and maritime laws.** Virgin Islands federal District Court is a legislative, not constitutional, court, and may be a court of the United States for some purposes but not for others; any particular statute, and any definitions therein, must be read to determine which is the case, as statutory powers granted courts of the United States are not automatically applicable to the Virgin Islands District Court. *United States of America v. Lewis*, C.A.3d 1972, 8 V.I. 500.

Admiralty and maritime laws are exclusively within the Federal jurisdiction. 1 V.I.Op.A.G. 226.

6. — **Local.** Territorial Court has inherent authority to issue writs of habeas corpus with respect to prisoners sentenced and confined by that court pursuant to its expanded jurisdiction; likewise, District Court, acting in its capacity of a local territorial court, is the most appropriate if not exclusive forum to act with respect to habeas petitions by prisoners convicted, sentenced and confined by District Court on local crimes. *Joseph v. de Castro*, D.C.V.I. 1992, 27 V.I. 297.

Local legislature has authority to divest District Court of jurisdiction over local matters which it had hitherto possessed. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

Since petition for readmission to local bar is a local civil action, Territorial Court has exclusive jurisdiction to entertain it. *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

This section does not *ex proprio vigore* divest the District Court of jurisdiction over local matters but authorizes such divestment upon enactment by Virgin Islands

legislature of a law calling for exclusive jurisdiction in territorial courts in certain actions. *Estate of Mall v. Territorial Court*, C.A.3d 1991, 923 F.2d 258.

7. —**Apportionment and districting.** District Court had jurisdiction to hear and determine action for declaratory and injunctive relief asking court to compel constitutional reapportionment and declare certain acts dealing with reapportionment invalid as violating due process and equal protection. *Moolenar v. Todman*, D.C.V.I. 1970, 8 V.I. 96, 317 F. Supp. 226, rev'd on other grounds, C.A.3d 1970, 8 V.I. 3, 435 F.2d 359.

8. —**Diversity of citizenship.** The District Court of the Virgin Islands has the original federal question and diversity jurisdiction conferred upon it by the Revised Organic Act and shares this jurisdiction concurrently with the Territorial Court *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1027.

District Court of the Virgin Islands had jurisdiction to entertain suit founded or diversity of citizenship and to act on plaintiff's motion for a transfer of the cause *Ferguson v. Kwik-Chek Winn-Dixie Stores, Inc.*, D.C.V.I. 1970, 7 V.I. 639.

9. —**Federal question.** The District Court of the Virgin Islands has the original federal question and diversity jurisdiction conferred upon it by the Revised Organic Act and shares this jurisdiction concurrently with the Territorial Court. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1027.

The Virgin Islands legislature has statutory authority to create federal question jurisdiction in territorial courts concurrent with that of federal district courts. *Estate of Mall v. Territorial Court*, C.A.3d 1991, 923 F.2d 258.

A cause of action arises under the laws of the United States only if the complainant seeks a remedy expressly granted by federal law or if it requires the construction of a federal statute on a distinctive policy or a federal statute requires the application of federal legal principles for its disposition. *Richardson v. Virgin Islands Housing Authority*, D.C.V.I. 1981, 18 V.I. 1981, 18 V.I. 352.

Where low income tenants brought suits to determine whether the Virgin Islands Housing Authority had a duty under a lease to supply them with safe potable water the fact that parts of the lease were subject to federal regulation did not confer federal question jurisdiction over the Secretary of Housing and Urban Development. *Richardson v. Virgin Islands Housing Authority*, D.C.V.I. 1981, 18 V.I. 1981, 18 V.I. 352.

10. —**Civil rights.** Provision in section 73 of Title 10 that Civil Rights Commission may bring action in the Municipal Court [now Territorial Court] for enforcement of chapter 5 of Title 10 did not give such court exclusive original jurisdiction over all offenses under the chapter for this section grants the District Court jurisdiction over all causes unless the act has granted exclusive original jurisdiction or the Municipal Court and the chapter has granted the Municipal Court exclusive original jurisdiction only as to all civil action wherein the matter of controversy does not exceed the value or sum of \$500. *Samuel v. Virgin Islands Telephone Corp.* D.C.V.I. 1975, 12 V.I. 64.

11. —**Habeas corpus.** Virgin Islands Territorial Court had jurisdiction to hear local habeas corpus cases, since such cases were local civil cases, Territorial Court was essentially court of local jurisdiction, and amended section of governing code unambiguously gave court original jurisdiction in all civil actions regardless of amount in controversy, and legislative history of amendment to Revised Organic Act of 1954 supported such an analysis. *Josiah v. Farrelly*, Terr. Ct. St. T. and St. J. 1993, 28 V.I. 101.

Territorial Court has inherent authority to issue writs of habeas corpus with respect to prisoners sentenced and confined by that court pursuant to its expanded jurisdiction; likewise, District Court, acting in its capacity of a local territorial court, is the most appropriate if not exclusive forum to act with respect to habeas petitions by prisoners convicted, sentenced and confined by District Court on local crimes. *Joseph v. de Castro*, D.C.V.I. 1992, 27 V.I. 297.

12. —**Domestic relations.** The Territorial Court does not have exclusive jurisdiction over divorce cases or over disposition of the homestead; instead, the jurisdiction is concurrent with that of the District Court. *Creque v. Creque*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 408.

Cited. Cited in *Excavation Construction, Inc. v. Quinn*, C.A.3d 1982, 673 F.2d 78; *Dennis v. Luis*, C.A.3d 1984, 741 F.2d 628; *Ocean Barge Transport Co. v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1984, 598 F. Supp. 45, aff'd, 760 F.2d 257, 259 (1985); *Hoheb v. Muriel*, C.A.3d 1985, 753 F.2d 24; *Ocean Barge Transport Co. v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1984, 21 V.I. 87; *Ingvoldstad v. Kings Wharf Island Enterprises, Inc.*, D.C.V.I. 1984, 21 V.I. 130; *General Engineering Corp. v. Martin Marietta Alumina*, C.A.3d 1986, 783 F.2d 352; *CAT Aircraft Leasing, Inc. v. Cessna Aircraft Co.*, D.C.V.I. 1986, 22 V.I. 442, 650 F. Supp. 57; *Government of the Virgin Islands v. Douglas*, C.A.3d 1987, 812 F.2d 822; *Cay Divers, Inc. v. Raven*, C.A.3d 1987, 812 F.2d 866; *United States v. Kennings*, C.A.3d 1988, 861 F.3d 381; *Government of the Virgin Islands v. Dowling*, C.A.3d 1989, 866 F.2d 610; *St. Croix Hotel Corp. v. Government of the Virgin Islands*, C.A.3d 1989, 867 F.2d 169; *Government of the Virgin Islands v. Frett*, D.C.V.I. 1988, 23 V.I. 433; *Thorstenn v. Barnard*, C.A.3d 1989, 883 F.2d 217; *Moorhead v. Farrelly*, D.C.V.I. 1989, 24 V.I. 329, 727 F. Supp. 193; *Government of the Virgin Islands v. Bryan*, D.C.V.I. 1990, 738 F. Supp. 946; *Babcock v. Gold*, D.C.V.I. 1990, 25 V.I. 325; *United States v. Joshua*, C.A.3d 1992, 28 V.I. 177, 976 F.2d 844; *United States v. Brann*, C.A.3d 1993, 28 V.I. 274, 990 F.2d 98; *United States v. Martinez-Hidalgo*, C.A.3d 1993, 28 V.I. 365, 993 F.2d 1052; *Abdallah v. Calendar*, C.A.3d 1993, 28 V.I. 416, 1 F.3d 141; *United States v. Xavier*, C.A.3d 1993, 29 V.I. 279, 2 F.3d 667; *Wade-Greaux v. Whitehall Laboratories, Inc.*, D.C.V.I. 1994, 29 V.I. 206; *Christopher v. Davis Beach Co.*, C.A.3d 1994, 29 V.I. 388; *In re Penn*, C.A.3d 1994, 29 V.I. 396.

§ 23. [Relations between courts; appellate review by Court of Appeals for the Third Circuit; reports to Congress; rules]

The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction to review by writ of cer-

tiorari all final decisions of the highest court of the Virgin Islands from which a decision could be had. The Judicial Council of the Third Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.—July 22, 1954, ch. 558, § 23, 68 Stat. 506; amended Oct. 5, 1984, Pub. L. 98-454, Title VII, § 704, 98 Stat. 1739.

HISTORY

Amendments—1984. Amended section generally.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive day therefrom was Jan. 3, 1985.

Former § 23. This section, prior to the amendments of 1984, related to the jurisdiction of inferior courts, transfer of actions, status as committing court, bail, and court rules.

CROSS REFERENCES

Judicial organization and local courts established by U.S. Virgin Islands legislation, see Title 4.

ANNOTATIONS

Abstention, 4

Actions against legislature, 3

Law governing, 1

Rules of Municipal Court, 2

1. Law governing. District Court did not lose its jurisdiction over admissions to local bar upon effective date of 1984 amendments to Revised Organic Act, and its actions between that date and October 1, 1991 in admitting and disciplining attorneys were not ultra vires. In re Application of Moorhead, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

All power and authority of the District Court of the Virgin Islands stems from the Revised Organic Act rather than from any act of the Legislature of the Virgin Islands. In the Matter of the Application of Deverita Carty Sturdivant for Admission to the Bar of the Virgin Islands, D.C.V.I. 1982 (Miscellaneous No. 82-162) cited with approval in In re Application of Moorhead, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74.

2. Rules of Municipal Court. Under Rule 7 of the rules governing the Municipal Court, promulgated by the District Court pursuant to this section, the practice and procedure in the Municipal Court is to conform as nearly as may be to that in the District Court in like cases, except where there is an express provision in the law or those rules to the contrary. Government of the Virgin Islands v. Semic Corp., Mun. Ct. St. T. and St. J. 1967, 6 V.I. 621.

This section gives the District Court authority to establish rules for the Municipal Courts, and pursuant to this authority the Municipal Court Rules have been adopted by the District Court. *Homer v. Lorillard*, Mun. Ct. St. C. 1967, 6 V.I. 558.

3. **Actions against legislature.** The territorial court has subject matter jurisdiction over civil action against Legislature where the amount in controversy is less than \$50,000. *Creque v. Roebuck*, Terr. Ct. St. T. and St. J. 1979, 16 V.I. 197.

4. **Abstention.** Principles of comity require the Territorial Court to abstain from exercising its jurisdiction once the District Court has acted. *Creque v. Creque*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 408.

Cited. Cited in *Carson v. Skandia Insurance Co.*, D.C.V.I. 1982, 19 V.I. 138; *Government of the Virgin Islands v. O'Brien*, Terr. Ct. St. T. and St. J. 1985, 21 V.I. 549; *Government of the Virgin Islands v. Dowling*, C.A.3d 1989, 866 F.2d 610; *Hamdallah v. Virgin Islands Water and Power Authority*, D.C.V.I. 1988, 23 V.I. 441; *Moorhead v. Farrelly*, D.C.V.I. 1989, 24 V.I. 329, 727 F. Supp. 193; *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1021; *Government of the Virgin Islands v. deJongh*, D.C.V.I. 1993, 28 V.I. 153; *Government of the Virgin Islands v. D.W.*, C.A.3d 1993, 29 V.I. 297, 3 F.3d 697.

§ 23A. [Appellate review by District Court of Virgin Islands; review of rulings of District Court]

(a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the District Court of the Virgin Islands shall have such appellate jurisdiction over the courts of the Virgin Islands established by local law to the extent now or hereafter prescribed by local law: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

(b) Appeals to the District Court of the Virgin Islands shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24(a) of this Act:

Provided, That no more than one of them may be a judge of a court established by local law. The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure. Appeals pending in the district court on the effective date of this Act shall be heard and determined by a single judge.

(c) The United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the district court on appeal from the courts established by local law. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

(d) Upon the establishment of the appellate court provided for in section 21(a) of this Act all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the district court over any appeal then pending in it. The rulings of the district court on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.—Added Oct. 5, 1984, Pub. L. 98-454, Title VII, § 705, 98 Stat. 1739.

HISTORY

Effective date. Pursuant to section 1005 of Pub. L. 98-454, this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive day therefrom was Jan. 3, 1985.

CROSS REFERENCES

Judicial organization and local courts established by U.S. Virgin Islands legislation, see Title 4.

ANNOTATIONS

Cited. Cited in *Virgin Islands Housing Authority v. David*, C.A.3d 1987, 823 F.2d 764; *Diaz v. Pueblo International, Inc.*, Terr. Ct. St. C. 1988, 23 V.I. 382; *Mapp v. Lawaetz*, C.A.3d 1989, 882 F.2d 49; *Moorhead v. Farrelly*, D.C.V.I. 1989, 24 V.I. 329, 727 F. Supp. 193; *In re Application of Moorhead*, Terr. Ct. St. T. and St. J. 1992, 27 V.I. 74; *Christian v. Joseph*, C.A.3d 1993, 29 V.I. 404.

§ 24. [Appointment, terms of office and compensation of judges of District Court, chief judge; assignment of other judges; payment of compensation and expenses; application of statutes and rules of United States governing criminal procedure; marshal]

(a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or a recalled senior judge of the District Court of the Virgin Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.

(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom: Provided, That the terms "Attorney for the government" and "United States attorney" as used in the Federal Rules of Criminal Procedure, shall, when applicable to causes arising under the income tax laws applicable to the Virgin Islands, mean the Attorney General of the Virgin Islands or such

other person or persons as may be authorized by the laws of the Virgin Islands to act therein: Provided further, That in the district court all criminal prosecutions under the laws of the United States, under local law under section 22(c) of this Act, and under the income tax laws applicable to the Virgin Islands may be had by indictment by grand jury or by information: Provided further, That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.

(c) The Attorney General shall appoint a United States marshal for the Virgin Islands, to whose office the provisions of chapter 33 of Title 28, United States Code, shall apply.— July 22, 1954, ch. 558, § 24, 68 Stat. 506; amended Aug. 28, 1958, Pub. L. 85-851, § 7, 72 Stat. 1095; June 2, 1970, Pub. L. 91-272, § 3(b), 84 Stat. 294; Oct. 5, 1984, Pub. L. 98-454, Title VII, § 706(a), (b), 98 Stat. 1740.

HISTORY

Amendments—1984. Subsection (a): Amended generally.

Subsection (b): Amended generally.

—1970. Provided for appointment of an additional judge.

—1958. Eliminated provision for appointment of deputy United States marshal.

Effective date of 1984 amendments. Pursuant to section 1005 of Pub. L. 98-454, the amendments to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive day therefrom was Jan. 3, 1985.

Effect of 1984 amendment upon present chief judge. Oct. 5, 1984, Pub. L. 98-454, Title VII, § 706(c), 98 Stat. 1740, provided: "The provisions of subsection (a) of this section regarding the determination and qualifications of the chief judge of the District Court of the Virgin Islands shall not apply to a person serving as chief judge of said court on the effective date of this Act."

Provisions of former § 25. The amendments of 1984 moved the subjects of court rules of practice and procedure and the manner of prosecution by information and indictment from former section 25 of this Act to this section.

CROSS REFERENCES

Judicial organization and local courts established by U.S. Virgin Islands legislation, see Title 4.

Judicial procedure established by U.S. Virgin Islands legislation, see Title 5.

ANNOTATIONS

Appeals, 1, 2	Indictment under former § 25, 3
Prior law, 1	Information under former § 25, 4
Scope of review, 2	Procedural rules under former § 25, 5

1. **Appeals—Prior law.** Under prior law, on appeal from the District Court of the Virgin Islands, the Court of Appeals for the Third Circuit reviewed the record de novo. *Berger v. Berger*, C.A.3d 1954, 3 V.I. 477, 210 F.2d 403; *Callwood v. Callwood*, D.C.V.I. 1954, 3 V.I. 61, 127 F. Supp. 179.

Under prior law, the Circuit Court of Appeals for the Third Circuit on an appeal from a conviction of first degree murder in the District Court, reviewed the case on both the law and the facts. *Soto v. U.S.*, C.C.A.3d 1921, 1 V.I. 536, 273 F. 628.

2. —**Scope of review.** This Act limits the scope of review by the Court of Appeals of decisions of the District Court of the Virgin Islands by making the Federal Rules of Civil Procedure applicable to such review. *Callwood v. Callwood*, C.A.3d 1956, 3 V.I. 579, 233 F.2d 784.

In view of this section making the Federal Rules of Civil Procedure applicable to the District Court of the Virgin Islands, and Rule 52(a) of such rules, on appeal in this case the inquiry of the Court of Appeals was not directed to the weight or preponderance of the evidence but only to its legal sufficiency to support the findings. *Callwood v. Callwood*, C.A.3d 1956, 3 V.I. 579, 233 F.2d 784.

3. **Indictment under former § 25.** The right of presentment by grant jury is merely a remedial right which is not among fundamental rights which Congress must secure for the inhabitants of an unincorporated territory of United States, such as the Virgin Islands. *Government of the Virgin Islands v. Rijos*, D.C.V.I. 1968, 6 V.I. 475, 285 F. Supp. 126.

The right to grand jury presentments is not among the fundamental rights and therefore does not apply to the Virgin Islands without Congressional approval. *Government of the Virgin Islands v. Rijos*, D.C.V.I. 1968, 6 V.I. 475, 285 F. Supp. 126.

Under the provisions of this section and the Federal Rules of Civil Procedure indictment by grand jury is not required in the Virgin Islands. *Rivera v. Government of the Virgin Islands*, C.A.3d 1967, 6 V.I. 155, 375 F.2d 988.

4. **Information under former § 25.** Rule 54(a)(1) of the Federal Rules of Criminal Procedure and section 25 of the Revised Organic Act, which authorize the procedure of information in all offenses against the United States or the Virgin Islands, are constitutional. *Government of the Virgin Islands v. Rijos*, D.C.V.I. 1968, 6 V.I. 475, 285 F. Supp. 126.

5. **Procedural rules under former § 25.** This section makes the Federal Rules of Civil Procedure applicable to civil cases in the District Court of the Virgin Islands and to appeals therefrom. *Calistro v. Kean*, C.A.3d 1968, 6 V.I. 443, 389 F.2d 619; *Homer v. Lorillard*, Mun. Ct. V.I. 1967, 6 V.I. 558.

This Act makes the Federal Rules of Civil Procedure and not local rules applicable to appeals from the District Court of the Virgin Islands. *Skeoch v. Ottley*, D.C.V.I. 1968, 6 V.I. 99, 278 F. Supp. 314.

The Congress of the United States, in enacting this section of the Revised Organic Act of 1954, made the Federal Rules of Civil Procedure applicable to the District Court of the Virgin Islands. *Government of the Virgin Islands v. Senc Corp.*, Mun. Ct. V.I. 1967, 6 V.I. 621.

Cited. Cited in *Government of the Virgin Islands v. Dowling*, C.A.3d 1989, 866 F.2d 610; *Joseph v. Roebuck*, D.C.V.I. 1987, 23 V.I. 312, 672 F. Supp. 219; *Moorhead v. Farrelly*, D.C.V.I. 1989, 24 V.I. 329, 727 F. Supp. 193; *Good Timez, Inc. v. Phoenix Fire and Marine Insurance Co.*, D.C.V.I. 1991, 754 F. Supp. 459; *Lempert v. Singer*, D.C.V.I. 1991, 26 V.I. 326; *Dunn v. Owens-Corning Fiberglass*, D.C.V.I. 1991, 774 F. Supp. 929, aff'd in part, 1 F.3d 1362, vacated in part, 1 F.3d 1371; *United States v. Hyde*, D.C.V.I. 1993, 29 V.I. 106.

§ 25. [Judicial Divisions; places for holding court]

The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays.—July 22, 1954, ch. 558, § 25, 68 Stat. 507; amended Nov. 6, 1978, Pub. L. 95-598, Title III, § 336(b), 92 Stat. 2680; Oct. 5, 1984, Title VII, § 707, Title X, § 1001, 98 Stat. 1741, 1745; Dec. 12, 1989, Pub. L. 101-219, Title II, § 203, 103 Stat. 1874.

HISTORY

Amendments—1989. Deleted the second sentence.

—1984. Amended section generally.

—1978. Substituted “2075 of Title 28, United States Code, in cases under Title 11, United States Code,” for “30 of the Bankruptcy Act in bankruptcy cases”.

Former § 25. This section, prior to the 1984 amendments, provided for the type of rules and procedures to be adopted by the District Court, and for the prosecution of criminal matter by information and grand jury. These subjects are now addressed in section 24 of this Act.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive day therefrom was Jan. 3, 1985.

Repeal of Pub. L. 95-598. Oct. 5, 1984, Pub. L. 98-454, Title X, § 1001, 98 Stat. 1745, repealed section 336 of Pub. L. 95-598, which amended this section.

CROSS REFERENCES

Judicial organization and local courts established by U.S. Virgin Islands legislation, see Title 4.

ANNOTATIONS

Cited. Cited in *Government of the Virgin Islands v. Bradshaw*, D.C.V.I. 1980, 18 V.I. 34; *Tranberg v. Maidman*, D.C.V.I. 1981, 18 V.I. 556; *Wells v. Rockefeller*, D.C.V.I. 1983, 19 V.I. 481; *Fountain Valley Corp. v. Wells*, D.C.V.I. 1983, 19 V.I. 607; *Ocean Barge Transport Co. v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1984, 21 V.I. 87; *Wilson v. Daily News of the Virgin Islands*, C.A.3d 1989, 881 F.2d 82.

§ 26. [Trial by jury]

All criminal cases originating in the district court shall be tried by jury upon demand by the defendant or by the Government. If no jury

is demanded the case shall be tried by the judge of the district court without a jury, except that the judge may, on his own motion, order a jury for the trial of any criminal action. The legislature may provide for trial in misdemeanor cases by a jury of six qualified persons.— July 22, 1954, ch. 558, § 26, 68 Stat. 507; amended Aug. 28, 1958, Pub. L. 85-851, § 8, 72 Stat. 1095.

HISTORY

Amendments—1958. Phraseology of first sentence changed, without change in substance.

CROSS REFERENCES

Jury trial in criminal cases; manner of demanding, etc., see section 3601 of Title 5, and Rule 23.1 of the District Court's Local Rules of Criminal Procedure.

ANNOTATIONS

Demand, 2

Generally, 1

Ordering of jury trial by court, 3

Waiver, 4

1. Generally. The Constitutional guarantee of a trial by jury in all criminal prosecution is deemed a remedial right which is not among the fundamental rights which Congress in legislation for an unincorporated territory such as the Virgin Islands must secure to its inhabitants; however, Congress has provided the right to jury trial in criminal cases to inhabitants of the Virgin Islands by virtue of the Revised Organic Act of 1954. *Government v. Bodle*, C.A.3d 1970, 7 V.I. 507.

The right to trial by jury is not among the fundamental rights and therefore does not apply to the Virgin Islands without Congressional approval. *Government of the Virgin Islands v. Rijos*, D.C.V.I. 1968, 6 V.I. 475, 285 F. Supp. 126.

2. Demand. Where an accused chooses to defend himself without counsel, the court is required to advise him of his right to demand a trial by jury. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

Although a defendant in a criminal case may refuse to invoke his right to demand a trial by jury, the government may effectively ensure a jury trial by making its own demand which cannot be waived by defendant. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

Where the government has timely demanded a trial by jury, a defendant's preference for a bench trial must be denied because of the demand authority granted to the government by this section, and because a defendant has no fundamental right to be tried without a jury. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

Where a demand for trial by jury made by substitute counsel at defendant's arraignment was not in writing, defendant's attorney was legitimately absent from the arraignment, there was no consultation or discussion regarding the type of trial between counsel or substitute counsel and defendant prior to the demand, and defendant had not been clearly and positively informed that while he had a right to demand a jury trial, he also had the option not to demand one or that once he demanded a trial by jury, a later attempt to waive it in favor of a bench trial would not be self-executing, the attempt by substitute counsel to demand a jury trial for defendant was not effectively invoked and was, therefore, null and void. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

Defendant subjected to requirement that one entitled to jury trial demand one in order to receive it, who did not demand one, was not denied the right to jury trial. *Government of the Virgin Islands v. Parrott*, C.A.3d 1973, 10 V.I. 564.

Defendant entitled to jury trial must demand it; trial court must inform him of his right to one on demand only if he is not represented by counsel. *Government of the Virgin Islands v. Russell*, C.A.3d 1973, 10 V.I. 572.

3. **Ordering of jury trial by court.** The trial judge may, on his own motion, order a jury for the trial of any criminal action, without regard to the wishes of the defendant or the government. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

4. **Waiver.** A defendant's knowing and intelligent decision not to invoke a proper demand is considered to be a waiver of Sixth Amendment right to a trial by jury, and this waiver is not subject to the consent of the government. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

In order to determine that there has been a knowing and intelligent waiver of the right to trial by jury, there must be a showing of a conscious decision by the defendant, who must have had a direct role in deciding whether to demand or waive his right. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

Rule 23 of the Federal Rules of Criminal Procedure, which requires an accused who does not desire to exercise his right to a jury trial to so advise the court, and in the absence of such a statement allows the court to assume that the accused desires a jury trial, was superseded by congressional amendment to this section, which requires an accused desiring to enjoy the right to a jury trial to demand it of the court, and in the absence of such a demand allows the court to assume that the accused does not desire a jury trial. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

Standard practice in Virgin Islands courts, whereby defendant, through his counsel at arraignment, demands trial by jury orally in open court and executes a written document only where a waiver of trial by jury is requested, is contrary to the mandate of this section and Rule 12 of the Rules of the District Court [now Rule 23.1 of the District Court's Local Rules of Criminal Procedure] governing demand for jury trial in criminal cases. *Government of the Virgin Islands v. Harthman*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 349.

§ 27. [Appointment of United States attorney; powers and duties]

The President shall, by and with the advice and consent of the Senate, appoint a United States attorney for the Virgin Islands to whose office the provisions of chapter 35 of Title 28, United States Code, shall apply. Except as otherwise provided by law it shall be the duty of the United States attorney to prosecute all offenses against the United States and to conduct all legal proceedings, civil and criminal, to which the Government of the United States is a party in the district court and in the courts established by local law. He shall also prosecute in the district court in the name of the government of the Virgin Islands all offenses against the laws of the Virgin Islands

which are cognizable by that court unless, at his request or with his consent, the prosecution of any such case is conducted by the attorney general of the Virgin Islands. The United States attorney may, when requested by the Governor or the attorney general of the Virgin Islands, conduct any other legal proceedings to which the government of the Virgin Islands is a party in the district court or the courts established by local law.—July 22, 1954, ch. 558, § 27, 68 Stat. 507; amended Aug. 28, 1958, Pub. L. 85-851, § 9, 72 Stat. 1095; Sept. 16, 1959, Pub. L. 86-289, § 4, 73 Stat. 569; June 2, 1971, Pub. L. 92-24, 85 Stat. 76; Oct. 5, 1984, Pub. L. 98-454, Title VII, § 708, 98 Stat. 1741.

HISTORY

Amendments—1984. Substituted “courts established by local law” for “inferior courts of the Virgin Islands” in the second and fourth sentences and deleted the fifth and sixth sentences.

—1971. Substituted reference to “chapter 35” for “chapter 31” and deleted limitation on appointment of assistant United States attorney.

—1959. Rewrote the section generally.

—1958. Substituted “United States attorney” for “district attorney” wherever the latter words appeared.

Effective date of 1984 amendment. Pursuant to section 1005 of Pub. L. 98-454, the amendment to this section became effective on the ninetieth day following enactment. The date of enactment was Oct. 5, 1984, and the ninetieth consecutive day therefrom was Jan. 3, 1985.

CROSS REFERENCES

Attorney General, and Department of Justice for the U.S. Virgin Islands, see section 111 et seq. of Title 3.

ANNOTATIONS

1. **Agencies of government, representation.** Under this section, United States attorney or his assistant is required to appear for Virgin Islands Housing and Re-development Authority (now Department of Housing, Parks, and Recreation) in eminent domain proceeding instituted by it, irrespective of 29 V.I.C. § 33, authorizing Authority to employ counsel, and section 35 of such title authorizing Authority to sue in its own name, for eminent domain proceeding is a civil proceeding, and Authority is an agency of Government of Virgin Islands within meaning of this section and section 16 of this Act. *Virgin Islands H. & R. Authority v. 19.1078 Acres of Land*, D.C.V.I. 1958, 3 V.I. 309, 161 F. Supp. 475.

2. **Conflict of interest.** Where United States Attorney had statutory authority to both prosecute and defend criminal charge brought in district court against federal officer, and under this section the Virgin Islands Attorney General could prosecute cases in the district court at the request or with the consent of the United States Attorney, and United States Attorney consented to prosecution of such a charge by the Virgin Islands Attorney General, there was no conflict of interest. *Government of the Virgin Islands v. May*, D.C.V.I. 1974, 11 V.I. 52.

Cited. Cited in *Government of the Virgin Islands v. Briggs*, Terr. Ct. St. T. and St. J. 1983, 19 V.I. 390.

FISCAL PROVISIONS

§ 28. [Disposition of revenues]

[Use of certain proceeds for expenditure; income tax obligations of inhabitants]

(a) The proceeds of customs duties, the proceeds of the United States income tax, the proceeds of any taxes levied by the Congress on the inhabitants of the Virgin Islands, and the proceeds of all quarantine, passport, immigration, and naturalization fees collected in the Virgin Islands (less the cost of collecting such duties, taxes and fees as may be directly attributable (as certified by the Comptroller of the Virgin Islands) to the importation of petroleum products until January 1, 1982: Provided, That any other retained costs not heretofore remitted pursuant to the Act of August 18, 1978, shall be immediately remitted to the Treasury of the Virgin Islands notwithstanding any other provision of law) shall be covered into the treasury of the Virgin Islands, and shall be available for expenditure as the Legislature of the Virgin Islands may provide: Provided, That the term "inhabitants of the Virgin Islands" as used in this section shall include all persons whose permanent residence is in the Virgin Islands, and such persons shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands: Provided further, That nothing in this Act shall be construed to apply to any tax specified in section 3811 of the Internal Revenue Code.

[Amendment of Internal Revenue Code of 1939]

(b) Subchapter B of chapter 28 of the Internal Revenue Code is amended by adding to section 3350 thereof the following subsection:

"(c) DISPOSITION OF INTERNAL REVENUE COLLECTIONS.—Beginning with the fiscal year ending June 30, 1954, and annually thereafter, the Secretary of the Treasury shall determine the amount of all taxes imposed by, and collected during the fiscal year under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 per centum and less the estimated amount of refunds or credits shall be subject to disposition as follows:

"(i) There shall be transferred and paid over to the government of the Virgin Islands from the amounts so determined a sum equal to

the total amount of the revenue collected by the government of the Virgin Islands during the fiscal year, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine: Provided, That the approval of the President or his designated representative shall be obtained before such moneys may be obligated or expended.

“(ii) There shall also be transferred and paid over to the government of the Virgin Islands during each of the fiscal years ending June 30, 1955, and June 30, 1956, the sum of \$1,000,000, or the balance of the internal revenue collections available under this subsection (c) after payments are made under the preceding paragraph (i), whichever amount is greater. The moneys so transferred and paid over shall be deposited in the separate fund established by the preceding paragraph (i), but shall be obligated or expended for emergency purposes and essential public projects only, with the prior approval of the President or his designated representative.

“(iii) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

“If at the end of any fiscal year the total of the Federal contribution made under (i) above at the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for approved emergency relief purposes and essential public projects as provided in (ii) above. The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only, including payments under (ii) above, shall not exceed the sum of \$5,000,000 at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for emergency relief purposes and essential public projects only to exceed the sum of \$5,000,000 shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts.”

[Import provisions with respect to trade-marks]

(c) Section 42 of the Trade Mark Act of 1946 (60 Stat. 440, 15 U.S.C., 1952 Edition, sec. 1124), and section 526 of the Tariff Act of 1930 (46 Stat. 741, 19 U.S.C., 1952 Edition, sec. 1526), shall not apply to importations into the Virgin Islands of genuine foreign merchan-

dise bearing a genuine foreign trade-mark, but shall remain applicable to importations of such merchandise from the Virgin Islands into the United States or its possessions; and the dealing in or possession of any such merchandise in the Virgin Islands shall not constitute a violation of any registrant's right under said Trade Mark Act.

[Import duties on articles entering United States from Virgin Islands]

(d) All articles coming into the United States from the Virgin Islands shall be subject to or exempt from duty as provided for in section 301 of the Tariff Act of 1930 and subject to internal-revenue taxes as provided for in section 7652(b) of the Internal Revenue Code of 1954.—July 22, 1954, ch. 558, § 28, 68 Stat. 508; amended Sept. 1, 1954, ch. 1213, Title IV, § 402(a), 68 Stat. 1140; Aug. 18, 1978, Pub. L. 95-348, § 4(c)(3), 93 Stat. 491; March 12, 1980, Pub. L. 96-205, § 403(a), 94 Stat. 89.

HISTORY

References in text. The reference in subsec. (a) to section 3811 of the Internal Revenue Code is a reference to section 3811 of the Internal Revenue Code of 1939. Section 3811 was classified to 26 U.S.C. § 3811 and has been repealed. Its provisions were superseded by section 7651 of Title 26 of the Internal Revenue Code of 1954, which references the Revised Organic Act of the Virgin Islands and provides for the administration and collection of taxes in the Virgin Islands.

The reference in subsec. (b) to section 3350 of subchapter B of chapter 28 of the Internal Revenue Code is a reference to the Internal Revenue Code of 1939. Subsection (c) of said section 3350, which was added to such section by said subsec. (b) of this section, was superseded by section 7652(b) of Title 26 of the Internal Revenue Code of 1954, which contains similar language to section 25(b) of this Act.

Amendments—1980. Subsection (a): Inserted "(less the cost of collecting such duties, taxes and fees as may be directly attributable (as certified by the Comptroller of the Virgin Islands) to the importation of petroleum products until January 1, 1982: Provided, That any other retained costs not heretofore remitted pursuant to the Act of August 18, 1978, shall be immediately remitted to the Treasury of the Virgin Islands notwithstanding any other provision of law)" following "fees collected in the Virgin Islands".

—1978. Subsection (a): Deleted the phrase "less the cost of collecting all of said duties, taxes, and fees".

CROSS REFERENCES

Administration, collection and enforcement of tax laws of United States in possessions of the United States generally, see 26 U.S.C. § 7651 et seq.

Application of income tax laws of United States to Virgin Islands generally, see 48 U.S.C. § 1397.

Coordination of United States and Virgin Islands income taxes, see 26 U.S.C. § 932.

Creation of Special Airport Fund out of monies received from certain income taxes and other sources, see 6 V.I.C. § 3.

Disposition of proceeds of customs duties by legislature, see 48 U.S.C. § 1642a.
 Limitation on reduction in income tax liability incurred to Virgin Islands, see 26 U.S.C. § 934.

ANNOTATIONS

Federal estate tax, 3
 Income tax, 2

Taxes generally, 1

1. **Taxes generally.** In enacting subsection (a) of this section, Congress intended that the taxpayer in the Virgin Islands should be governed by the same tax law applicable to taxpayers on the mainland. 4 V.I.Op.A.G. 292.

The term "Applicable Taxing Statutes of the United States" found in subsection (a) of this section, embraces not only the statutes themselves, but also regulations and administrative policies adopted by the Commissioner of Internal Revenue in the interpretation and enforcement of the Internal Revenue Code. 4 V.I.Op.A.G. 292.

2. **Income tax.** Subsection (a) of this section is not a taxing statute. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

The purpose of the single filing requirement of subsection (a) of this section was to increase the Virgin Islands' tax revenues by subjecting to local taxation both the local and mainland income of residents. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

The definition of taxable income in subsection (a) of this section is a general rule of inclusion and, as such, is subject to all of the provisions of the Internal Revenue Code, including those authorizing exceptions to that rule. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

Provision of subsection (a) of this section that inhabitants "shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources" to the territory's treasury means nothing more than that the Internal Revenue Code is the tax code of the Virgin Islands. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

Provision of Tax Reform Act of 1986 which amended 26 U.S.C. § 7651(5)(B), governing administration of taxes in the Virgin Islands, repealed the rule that inhabitants of the Virgin Islands satisfy tax obligations to the United States by paying those taxes to the Virgin Islands rather than to the Internal Revenue Services. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

Subsection (a) of this section does not authorize the Virgin Islands to dispense with the source distinction of 26 U.S.C. § 882, governing tax on income of foreign corporations connected with Virgin Islands business, and tax a foreign corporation as if it were domestic. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

Subsection (a) of this section did not render inhabitant foreign corporation's income from sources outside the Virgin Islands tax-free. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 484 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

Income of foreign inhabitant corporation, all of which was derived from stateside sources, was exempt from taxation. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3d 1987, 820 F.2d 618, cert. denied, 48 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

Corporation organized under the laws of Nevada which maintained its only office and all corporate documents in the Virgin Islands, had a local bank account and pursuant to its bylaws, held its shareholder and director meetings in the Virgin Islands qualified as a Virgin Islands inhabitant for tax purposes. *Danbury, Inc. v. Olive*, D.C.V.I. 1986, 22 V.I. 183, 627 F. Supp. 513, rev'd on other grounds, C.A.3 1987, 820 F.2d 618, cert. denied, 48 U.S. 964, 108 S.Ct. 453, 98 L.Ed.2d 393 (1987).

A Virgin Islands corporation must pay its tax obligation on all of its income to the Virgin Islands regardless of how much income is generated in the continental U.S. and despite minimal contacts with the Virgin Islands. *Vitco, Inc. v. Government of the Virgin Islands*, C.A.3d 1977, 14 V.I. 67.

Term "inhabitants", as used in law providing that inhabitants of the Virgin Islands includes all persons whose permanent residence is in the Virgin Islands and such persons shall pay their income tax to the Virgin Islands on all income, whether derived from sources in or out of the territory, includes corporations as well as natural persons. *Vitco, Inc. v. Government of the Virgin Islands*, C.A.3d 1977, 14 V.I. 67.

Corporation not having employees, bank accounts or an office in the Virgin Islands, but chartered and maintaining a post office address in the territory, is a permanent resident in the Virgin Islands within meaning of law providing that inhabitants of the Virgin Islands includes all persons whose permanent residence is in the Virgin Islands and such persons shall pay their income tax to the Virgin Islands on all income, whether derived from sources in or out of the territory. *Vitco, Inc. v. Government of the Virgin Islands*, C.A.3d 1977, 14 V.I. 67.

With respect to who is an inhabitant or permanent resident in the Virgin Islands for purposes of territorial income tax and taxing power, precedents bearing on other areas of law, such as jurisdiction to adjudicate, *forum non conveniens*, venue, convenience of process, are not necessarily controlling, particularly in situation where Congress has authority to tax both United States and Virgin Islands corporations; the issue in instant case being whether corporation was, for purposes of Virgin Islands income tax, a permanent resident in the territory under provision that inhabitants includes all persons whose permanent residence is in the Virgin Islands and such persons shall pay their income tax to the territory. *Vitco, Inc. v. Government of the Virgin Islands*, C.A.3d 1977, 14 V.I. 67.

This section had the effect of requiring permanent residents to pay tax to the Virgin Islands on all their income regardless of source; thus all taxes which had been previously paid by permanent residents to the United States on United States source income were made payable to the Virgin Islands Treasury. *Chicago Bridge and Iron Co., Ltd. v. Wheatley*, D.C.V.I. 1969, 7 V.I. 126, 295 F. Supp. 240, rev'd C.A.3d 1970, 7 V.I. 555, 430 F.2d 973, cert. denied 401 U.S. 910 (1971).

Under subsec. (a) of this section, inhabitants of Virgin Islands are required to pay their tax on income from all sources both within and outside Virgin Islands into treasury of Virgin Islands. *Dudley v. Commissioner of Internal Revenue*, C.A.3 1958, 3 V.I. 685, 258 F.2d 182.

Although 26 U.S.C. § 7651(2) provides for collection under direction of Secretary of Treasury or his delegate of any tax imposed by Internal Revenue Code in any possession, this provision, by express terms of introductory paragraph of said section, is applicable in Virgin Islands only to extent not otherwise provided in subsec.

(a) of this section, and does not apply to income tax. *Dudley v. Commissioner of Internal Revenue*, C.A.3d 1958, 3 V.I. 685, 258 F.2d 182.

Subsection (a) of this section provides that the inhabitants of the Virgin Islands shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources, both within and outside the Virgin Islands, into the treasury of the Virgin Islands. 4 V.I.Op.A.G. 291.

3. **Federal estate tax.** Decedent, a citizen of the United States domiciled for 12 years and at his death in the Virgin Islands, was not a citizen of the United States within the meaning of section 802, Internal Revenue Code, for federal estate tax purposes. *Fairchild v. Commissioner of Internal Revenue*, Tax Court of U.S. 1955, 24 T.C. No. 45.

Cited. Cited in *United States of America v. Chabot*, D.C.V.I. 1982, 19 V.I. 28; *Vanterpool v. Hess Oil Virgin Islands Corp.*, D.C.V.I. 1984, 21 V.I. 40; *Brent v. Quinn*, D.C.V.I. 1984, 21 V.I. 73; *Government of the Virgin Islands v. O'Brien*, Terr. Ct. St. T. and St. J. 1985, 21 V.I. 549; *Miller v. Quinn*, C.A.3d 1986, 792 F.2d 392; *Johnson v. Quinn*, C.A.3d 1987, 821 F.2d 212; *Bizcap, Inc. v. Olive*, C.A.3d (1989), 892 F.2d 1163, cert. denied, 496 U.S. 905, 110 S.Ct. 2587.

MISCELLANEOUS PROVISIONS

§ 29. [United States citizenship requirement of government officials]

All members of the Legislature of the Virgin Islands, the Governor, the Lieutenant Governor, all judges and all officials of the government of the Virgin Islands who report directly to the Governor shall be citizens of the United States.—July 22, 1954, ch. 558, § 29, 68 Stat. 509; amended Dec. 8, 1983, Pub. L. 98-213, § 5(a), 97 Stat. 1460.

HISTORY

Amendments—1983. Amended section generally, and deleted written statement to be used.

ANNOTATIONS

Acting commissioner, 4
Application, 2
Construction, 1

Temporary and per diem employees,
3

1. **Construction.** Where an unequivocal meaning of “official” had evolved in legal parlance, and a distinct difference existed between a “governmental employee” and a “governmental official,” at the time Congress enacted provision of this section requiring all Government officials to be United States citizens, Congress would be deemed to have legislated with the definitions and distinctions in mind. *Chapman v. Gerard*, D.C.V.I. 1970, 8 V.I. 41.

The congressional proscription against non-citizen government “officials” contained in this section was not intended to include those who are more properly termed “employees”. *Chapman v. Gerard*, D.C.V.I. 1970, 8 V.I. 41.

2. **Application.** This section’s provision that all “officials” of the Virgin Islands Government shall be citizens of the United States, may not be used as a basis for

denying a non-citizen a scholarship under the Territorial Scholarship Fund of the Virgin Islands Government on the ground that the scholarships may be given only to those who agree to work for the Government upon completion of their education and that such provision prohibits non-citizens from being government officials, because the terms "officials" and "employees" are not, in legal parlance, equatable, and "officials", as used in such provision, does not include "employees". *Chapman v. Gerard* D.C.V.I. 1970, 8 V.I. 41.

The language of this section, providing for the loyalty oath, is not all inclusive and is not intended to apply to transient, occasional, unskilled per diem laborers hired at prevailing rates. 3 V.I.Op.A.G. 80.

3. Temporary and per diem employees. The loyalty oath required of all officials and employees of the Virgin Islands does not specifically exempt by its provision temporary and per diem employees. 3 V.I.Op.A.G. 80.

4. Acting commissioner. Governor cannot legally appoint a person who is not a citizen of the United States to the position of an acting commissioner, as this section expressly requires that all officials of the territorial government be United States citizens. 8 V.I.Op.A.G. 54.

§ 30. [Reports by Governor; jurisdiction of Secretary of the Interior; exceptions]

All reports required by law to be made by the Governor to an official of the United States shall hereafter be made to the Secretary of the Interior, and the President is hereby authorized to place all matters pertaining to the government of the Virgin Islands under the jurisdiction of the Secretary of the Interior, except matters relating to the judicial branch of said government which on the date of approval of this Act are under the supervision of the Director of the Administrative Office of the United States Courts, and the matter relating to the United States Attorney and the United States Marshal which on the date of approval of this Act are under the supervision of the Attorney General.—July 22, 1954, ch. 558, § 30, 68 Stat 509.

ANNOTATIONS

1. Supervision of Territorial Court. Congress did not intend to assign supervision of the Virgin Islands Territorial Court to the Administrative Office of the United States Courts. *Territorial Court v. Richards*, D.C.V.I. 1987, 23 V.I. 285, 673 I Supp. 152, aff'd, C.A.3d 1988, 847 F.2d 108, cert. denied, 488 U.S. 955, 109 S.Ct. 391, 102 L.Ed.2d 380 (1988).

2. Jurisdiction of courts. Revised Organic Act, intended to operate as a new basic charter of government for the territory, is the Virgin Islands' equivalent of a constitution, and as such is the body of law that defines the jurisdictional boundaries of the Virgin Islands courts. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1027.

While the Virgin Islands Code also appears to define jurisdictional limits of the Virgin Islands courts, whatever power the Virgin Islands legislature possesses to vest jurisdiction in the Territorial Court and divest jurisdiction from the District

Court must derive from the Revised Organic Act. *Brow v. Farrelly*, C.A.3d 1993, 28 V.I. 345, 994 F.2d 1027.

Cited. Cited in *Department of Education, Government of the Virgin Islands v. Virgin Islands Water and Power Authority*, D.C.V.I. 1981, 18 V.I. 255.

§ 31. [Lease, sale, and control of public property]

(a) The Secretary of the Interior shall be authorized to lease or to sell upon such terms as he may deem advantageous to the Government of the United States any property of the United States under his administrative supervision in the Virgin Islands not needed for public purposes.

(b)(1) All right, title, and interest of the United States in the property placed under the control of the government of the Virgin Islands by section 4(a) of the Organic Act of the Virgin Islands of the United States (48 U.S.C. 1405c(a)), not reserved to the United States by the Secretary of the Interior within one hundred and twenty days after the date of enactment of this subsection, is hereby conveyed to such government. The conveyance effected by the preceding sentence shall not apply to that land and other property which on the date of enactment of this subsection is administered by the Secretary of the Interior as part of the National Park System and such lands and other property shall be retained by the United States.

(2) Subject to valid existing rights, title to all property in the Virgin Islands which may have been acquired by the United States from Denmark under the Convention entered into August 16, 1916, not reserved or retained by the United States in accordance with the provisions of Public Law 93-435 (88 Stat. 1210) is hereby transferred to the Virgin Islands government.—July 22, 1954, ch. 558, § 31, 68 Stat. 510; amended Oct. 5, 1974, Pub. L. 93-435, § 3, 88 Stat. 1210; March 12, 1980, Pub. L. 96-205, § 401(a), 94 Stat. 88.

HISTORY

Amendments—1980. Subsection (b): Existing subsection designated as subdivision (1) and a new subdivision (2) added.

—1974. Subsection (b): Amended generally.

§ 32. [Amendment of 1890 Act relating to importation of diseased animals]

Section 6 of the Act of August 30, 1890 (26 Stat. 414, 416), as amended (21 U.S.C., 1946 Edition, sec. 104), is further amended by inserting the words “and the admission into the Virgin Islands” immediately following the words “Texas”, so that such section will read as follows:

“The importation of cattle, sheep, and other ruminants, and swine which are diseased or infected with any disease, or which shall have been exposed to such infection within sixty days next before their exportation, is prohibited: Provided, That the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, is authorized to permit the admission from Mexico into the State of Texas and the admission into the Virgin Islands of cattle which have been infested with or exposed to ticks upon being free therefrom. Any person who shall knowingly violate the foregoing provision shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding three years, and any vessel or vehicle used in such unlawful importation within the knowledge of the master or owner of such vessel or vehicle that such importation is diseased or has been exposed to infection as herein described, shall be forfeited to the United States.”—July 22, 1954, ch. 558, § 32, 68 Stat. 510.

HISTORY

References in text. Section 6 of the 1890 Act, which was amended by this section was later amended by Act of Congress Jan. 28, 1956, ch. 12, § 1, 70 Stat. 5.

§ 33. [Amendment of 1903 Act relating to prevention of introduction and dissemination of contagious diseases of animals, poultry, etc.]

Section 2 of the Act of February 2, 1903 (32 Stat. 791, 792), as amended (21 U.S.C., 1946 Edition, sec. 111), is hereby further amended by striking out the period and adding at the end thereof the following: “: Provided, That no such regulations or measures shall pertain to the introduction of live poultry into the Virgin Islands of the United States.”—July 22, 1954, ch. 558, § 33, 68 Stat. 510.

HISTORY

References in text. The proviso, added to section 2 of the 1903 Act by this section, was struck out by Act of Congress Jan. 28, 1956, ch. 12, § 2, 70 Stat. 5. For details of section 2 of the 1903 Act, as last amended by the 1956 Act, see history notes under section 121 of Title 7.

§ 34. [Effective date; temporary continuation of functions and of incumbents in offices; preservation of term of office of district court judge in office]

This Act shall take effect upon its approval, but until its provisions shall severally become operative as herein provided, the corresponding legislative, executive, and judicial functions of the existing gov-

ernment shall continue to be exercised as now provided by law or ordinance, and the incumbents of all offices under the government of the Virgin Islands shall continue in office until their successors are appointed and have qualified unless sooner removed by competent authority. The enactment of this Act shall not affect the term of office of the judge of the District Court of the Virgin Islands in office on the date of its enactment.—July 22, 1954, ch. 558, § 34, 68 Stat. 510.

§ 35. [Appropriations]

There are hereby authorized to be appropriated annually by the Congress of the United States such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act.—July 22, 1954, ch. 558, § 35, 68 Stat. 510.

§ 36. [Separability of provisions]

If any clause, sentence, paragraph, or part of this Act, or the application thereof to any person, or circumstances, is held invalid, the application thereof to other persons or circumstances, and the remainder of the Act, shall not be affected thereby.—July 22, 1954, ch. 558, § 36, 68 Stat. 511.