

OP. NO. 02-122

TAXATION: REVIEW OF LOCAL TAXES – COLLECTION BY TREASURERS, ETC. – LOCAL OFFICERS – TREASURERS.

COUNTIES, CITIES AND TOWNS: JOINT ACTIONS BY LOCALITIES – JOINT EXERCISE OF POWERS – CERTAIN LOCAL GOVERNMENT OFFICERS – PROHIBITION ON DUAL OFFICE HOLDING.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).

County treasurer has no authority to serve as agent for town treasurer or finance director to collect town taxes. Appointment of county treasurer as treasurer for town located within county served by treasurer.

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May 20, 2003

Issue Presented

You ask whether the Fauquier County treasurer is permitted to act as agent for the collection of real and personal property taxes, including delinquent real and personal property taxes, for the town of Warrenton.

Response

It is my opinion that a county treasurer has no authority to serve as agent for a town treasurer or finance director for the purpose of collecting town taxes. A county treasurer, however, may be appointed to serve as treasurer for a town located within the county served by the treasurer, provided the treasurer agrees to assume such additional duties.

Background

You relate that the town of Warrenton is located within the boundaries of Fauquier County. The finance director¹ for the town is responsible for collecting taxes. You state that the charter for the town of Warrenton requires the town manager to appoint department heads, such as the finance director.² You further relate that the town charter does not specifically provide for a treasurer. You indicate that the finance director desires to engage the county treasurer as an agent to collect the town's real and personal property taxes, including delinquent taxes. You ask whether state law permits such a relationship.

Applicable Law and Discussion

A city or county treasurer is a constitutional officer whose "duties and compensation ... shall be prescribed by general law or special act."³ The powers and duties of a local treasurer are set out generally in Article 2, Chapters 31⁴ and

39⁵ of Title 58.1. The treasurer is responsible for collecting taxes and other revenues payable into the treasury of the locality he serves.⁶ Section 58.1-3919 grants local treasurers the authority to collect delinquent taxes by distress.⁷ Section 15.2-1534(A) prohibits a treasurer from holding any other such office simultaneously; however, § 15.2-1534(B)(2) provides that subsection A does not prohibit "[a] treasurer of a county from serving as appointed treasurer of a town located in the county." Conversely, I find no authority for a county treasurer to act as agent for a finance director or treasurer of a town.⁸

Virginia follows the Dillon Rule of strict construction, which provides that "municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable."⁹ The powers of local governments are also limited to "those conferred expressly or by necessary implication."¹⁰ Any doubt as to the existence of a power must be resolved against the locality.¹¹ Accordingly, because local governments are subordinate creatures of the Commonwealth, they possess only those powers conferred upon them by the General Assembly.¹² These rules are also applicable to constitutional officers, such as county treasurers.¹³

In instances where the General Assembly grants the power to do something, but does not specifically direct implementation, the local government may elect a reasonable method to exercise such power.¹⁴ The General Assembly specifically has answered the question whether a county treasurer may act on behalf of a town by providing in § 15.2-1534(B)(2) that the dual officeholding prohibition in § 15.2-1534(A) shall not preclude "[a] treasurer of a county from serving as appointed treasurer of a town located in the county." In addition, § 58.1-3919.1 permits local treasurers, with the approval of their governing bodies, to employ private collectors to collect local taxes, other than real estate taxes, that have been delinquent for six months or more. Section 58.1-3934(A) authorizes a governing body, with the approval of the local treasurer, to hire attorneys to collect any local taxes that are delinquent for six months or more. Alternatively, § 58.1-3934(B) authorizes the governing body to "place [such] taxes or other charges ... in the hands of the sheriff of the county or city for collection, or employ a local delinquent tax collector." Nothing in any of these statutes provides for the treasurer of one jurisdiction to act on behalf of the treasurer or finance director of another jurisdiction in the collection of taxes.

You cite §§ 15.2-1300 through 15.2-1310 as possible sources of authority to allow a county treasurer to act on behalf of a town.¹⁵ Section 15.2-1300(A) provides for two or more political subdivisions to exercise jointly any power, privilege or authority otherwise capable of being exercised by each such political subdivision, "except where an express statutory procedure is otherwise provided for the joint exercise." Section 15.2-1300(B) allows two or more political subdivisions to enter into agreements for joint action pursuant to the provisions of § 15.2-1300.

The purpose of § 15.2-1300 is to allow a more efficient and economical exercise of existing powers by two or more political subdivisions, rather than grant additional substantive authority or modify existing duties.¹⁶ Thus, the power sought to be exercised in each instance must exist in each political subdivision before the power may be exercised jointly.¹⁷ Therefore, provided that each political subdivision has the authority to exercise certain powers independently, they may jointly conduct such activities.¹⁸

Section 58.1-3919.1, therefore, would allow the treasurer of any county or town, subject to the approval of the local governing body, to engage private tax collectors for certain delinquent taxes. Both counties and towns have the same authority pursuant to this provision and could, subject to the requirements in § 15.2-1300, jointly engage private tax collectors. The provisions for the exercise of joint powers, however, do not permit an agency relationship between a town and a county for the collection of taxes.

A 1983 opinion of this Office states that a treasurer has no authority to collect taxes owed to a jurisdiction he does not serve.¹⁹ That opinion is still applicable. A county treasurer also appointed to serve as town treasurer would, therefore, collect the town's taxes as its treasurer. Thus, such an arrangement does not conflict with the prior opinion. Absent appointment as the town treasurer, however, the county treasurer has no authority to collect town taxes. I also note that it is within a treasurer's discretion to accept such an appointment and assume the corresponding additional duties.²⁰ Prior to the appointment of a county treasurer to also serve as town treasurer, a determination should be made that the appointment is consistent with the charter for the town of Warrenton.²¹

Conclusion

It is my opinion that a county treasurer has no authority to serve as agent for a town treasurer or finance director for the purpose of collecting town taxes. A county treasurer, however, may be appointed to serve as treasurer for a town located within the county served by the treasurer, provided the treasurer agrees to assume such additional duties.

¹In some localities, a finance director or other officer performs the duties of treasurer. See Va. Code Ann. § 58.1-3123 (Michie Repl. Vol. 2000).

²1964 Va. Acts ch. 47, at 77, 79-80 (citing §§ 6-1, 6-2, relating to appointment of town manager by town council and appointment and removal of town officers and employees by town manager).

³Va. Const. art VII, § 4; Va. Code Ann. § 15.2-1600(A) (Michie Repl. Vol. 1997) (codifying parallel statute).

⁴Sections 58.1-3123 to 58.1-3172.1 (Michie Repl. Vol. 2000 & LexisNexis Supp. 2002). For purposes of Chapter 31 of Title 58.1, the term "treasurer" applies to city, county and town treasurers and to directors of finance and other officers performing the duties of treasurer, unless the context indicates otherwise. Section 58.1-3123 (Michie Repl. Vol. 2000).

⁵Sections 58.1-3910 to 58.1-3939 (Michie Repl. Vol. 2000 & LexisNexis Supp. 2002). Chapter 39 of Title 58.1, §§ 58.1-3900 to 58.1-3993, addresses collection of local taxes. Chapter 39 does not define the term "treasurer." Further, some statutes within Chapter 39 refer to "county and city treasurer" while others refer to "treasurer," without apparent distinction, and some statutes apply to collection by the local governing body.

⁶Sections 58.1-3127(A) (Michie Repl. Vol. 2000), 58.1-3910 (LexisNexis Supp. 2002).

⁷1997 Op. Va. Att'y Gen. 203, 204.

⁸See 1983-1984 Op. Va. Att'y Gen. 342 (construing § 58-958, predecessor to §§ 58.1-3127, 58.1-3910).

⁹Commonwealth v. County Bd., 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977) (quoting Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975)).

¹⁰*Id.* at 573-74, 232 S.E.2d at 40 (quoting *Horne*, 216 Va. at 117, 215 S.E.2d at 455).

¹¹2A Eugene McQuillin, *The Law of Municipal Corporations* § 10.19, at 369 (3d ed. 1996 & Supp. 1999), *cited in* 2002 Op. Va. Att'y Gen. 85, 87.

¹²See *Gordon v. Bd. of Supvrs.*, 207 Va. 827, 153 S.E.2d 270 (1967) (finding that county board of supervisors did not abuse its discretion in voting to lend money to airport authority; power exercised by board was expressly implied from legislative act allowing local governing body to lend real property to any authority it created).

¹³1984-1985 Op. Va. Att'y Gen. 284, 284.

¹⁴*City of Va. Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999).

¹⁵Any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." Va. Code Ann. § 2.2-505(B) (LexisNexis Repl. Vol. 2001).

¹⁶1972-1973 Op. Va. Att'y Gen. 126, 126 (citing § 15.1-21, predecessor to § 15.2-1300).

¹⁷*Id.*; *see also* 1965-1966 Op. Va. Att'y Gen. 71, 72 (concluding that where each of three counties has authority to establish and operate police training facility, counties may establish joint facility).

¹⁸1977-1978 Op. Va. Att'y Gen. 131, 133 (citing § 15.1-21(a), predecessor to § 15.2-1300(A)).

¹⁹1983-1984 Op. Va. Att'y Gen., *supra* note 8, at 343.

²⁰"The treasurer shall exercise all the powers conferred and perform all the duties imposed upon treasurers by law. He *may* perform such other duties, not inconsistent with his office, as the governing body may request.... He shall be elected as provided by general law for a term of four years." (Emphasis added.) Va. Code Ann. § 15.2-1608 (Michie Repl. Vol. 1997). Absent specific legislation, local governing bodies have no authority to specify the duties of constitutional officers. *See* Op. Va. Att'y Gen.: 2000 at 204, 205; 1995 at 47, 48; 1978-1979 at 289; *see also* § 15.2-1636 .("The commissioner of the revenue shall exercise all the powers conferred and perform all the duties imposed upon such officer by

general law. He *may* perform such other duties, not inconsistent with his office, as the governing body may request. He shall be elected for a term of four years as provided by general law." [Emphasis added]).

²¹A town may elect to appoint a treasurer charged with the responsibility to collect taxes and a finance director charged with other financial responsibilities. Such an arrangement, however, must not conflict with the town charter or any other applicable statute.

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