

**OP. NO. 03-015**

**ELECTIONS: THE ELECTION – SPECIAL ELECTIONS.**

**GENERAL ASSEMBLY: GENERAL ASSEMBLY AND OFFICERS THEREOF.**

**Local governments have no authority to expend funds on advertising in support or opposition of local or statewide referendum question; may prepare and distribute neutral, nonpartisan statement of explanation of referendum question.**

The Honorable Kevin G. Miller  
Member, Senate of Virginia  
May 27, 2003

#### **Issue Presented**

You ask whether the governing body of a county or city may purchase advertising, printed or otherwise, that supports or opposes statewide referenda.

#### **Response**

It is my opinion that local governments have no authority to expend funds on advertising in support of, or in opposition to, a local or statewide referendum question. It is further my opinion that local governments may, consistent with the procedures detailed in § 24.2-687, prepare and distribute a neutral, nonpartisan statement explaining a local referendum question.

#### **Applicable Law and Discussion**

The Commonwealth follows the rule of strict construction of statutory provisions. "The powers of boards of supervisors are fixed by statute and are only such as are conferred expressly or by necessary implication."<sup>1</sup> This rule is a corollary to the Dillon Rule, which provides that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.<sup>2</sup> "[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."<sup>3</sup>

Your inquiry concerns whether § 24.2-687 authorizes a county or city to purchase advertising, printed or otherwise, that supports or opposes statewide referenda. In 1996, the General Assembly enacted §§ 24.2-687 and 30-19.10, relating to the distribution of information on referendum elections.<sup>4</sup> Both sections contain similar wording. Section 24.2-687 authorizes the governing body of a county or city to provide an explanatory statement, consisting of "not more than 500 words" and presented in "plain English,"<sup>5</sup> of "each referendum question to be submitted to the voters" of the locality. Section 24.2-687 also authorizes the governing body to purchase advertisements in a newspaper with general circulation in the county or city before the voter registration deadline and before the referendum question is posed to the voters. Section 24.2-687 further provides that "[t]he explanation ... shall be limited to a neutral explanation, and shall not present arguments by

either proponents or opponents of the proposal." Section 24.2-687 also provides that its provisions "shall not be applicable to statewide referenda."

Section 30-19.10 addresses similar issues for the drafting and distribution of information regarding a statewide referendum question other than a constitutional amendment.<sup>6</sup> Section 30-19.10 directs the "Division of Legislative Services, in consultation with such agencies of state government as may be appropriate, including the Office of the Attorney General," to provide to interested persons, in "plain English,"<sup>7</sup> an explanation of the proposed ballot question to be submitted to the voters. Section 30-19.10 stipulates that the statement shall consist of "not more than 500 words." Like § 24.2-687, the statement authorized in § 30-19.10 is to "be limited to a neutral explanation, and shall not present arguments by either proponents or opponents of the proposal." Section 30-19.10 also directs the State Board of Elections to distribute the explanation to each general registrar for distribution to interested persons and to election officials for posting at polling places on election day. Section 30-19.10 directs the State Board to

cause the explanation to be published by paid advertisement in each daily newspaper with an average daily circulation of more than 50,000 in Virginia, and published in Virginia or in a contiguous state or district, once during the week preceding the final day for registration and once during the week preceding the referendum.

A 1974 and a 1980 opinion of this Office discuss the ability of a local government to offer neutral explanations of local referenda issues. The question in the 1974 opinion concerned the authority of a county board of supervisors to expend funds to print information explaining the purpose of a local bond referendum.<sup>8</sup> The proceeds from the issuance of the bonds were to be used to finance the construction of certain sanitation facilities within the county.<sup>9</sup> The opinion determined that the cost associated with the printing of information explaining the bond issue is a proper expenditure of funds, provided that the explanation is nonpartisan and neutral in nature.<sup>10</sup>

Similarly, a 1980 opinion concludes that a city council and the local school board may use public funds and facilities to communicate neutral information on a proposed referendum to request changes in the city charter affecting taxes.<sup>11</sup> The opinion notes that the views of governing bodies may be an essential element in the debate of a particular issue.<sup>12</sup> As such, it was proper for the council and school board to make appropriate comment on the effects of the proposed charter amendment and the impact of the amendment on the operation of government.<sup>13</sup> The opinion concludes that there is no prohibition against sending public school students home with explanatory materials that do not advocate a particular position.<sup>14</sup>

Each of these opinions addresses situations where the local governing body or school board provided information to voters on a local referendum question. Each opinion determined that it is appropriate for local governments to expend funds on materials that explain the purpose and effect on the locality of a proposed referenda question. Neither opinion addresses expenditure of funds by a locality pertaining to a statewide referendum.

The power of a governing body to spend funds is limited to those powers expressly granted and those necessarily or fairly implied therein.<sup>15</sup> The 1980 opinion rests on the proposition that providing an explanatory statement to voters

on a local issue is an implied power of the governing body's ability to expend funds for the administration of local government.<sup>16</sup> The 1974 opinion assumes that a locality has such power and does not explicitly address the issue.<sup>17</sup> Until 1996, there was no express grant of such authority. With the enactment of § 24.2-687, the General Assembly has expressly granted localities the authority to expend funds for the purposes set forth in the statute. The extent to which a locality may expend funds with regard to explaining referenda questions to the public is limited to that prescribed in § 24.2-687. The plain language of § 24.2-687 outlines a locality's authority to expend public funds for the dissemination of material related to explaining *local* referenda. Therefore, the General Assembly has taken that which was an implied power of a local government and created an express power with certain limitations. Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>18</sup>

The language in § 24.2-687, providing that the statute "shall not be applicable to statewide referenda," acknowledges that the responsibilities set forth in the section are to be undertaken by a local government only for *local* referenda, while § 30-19.10 requires the Division of Legislative Services to prepare an explanation for *statewide* referenda questions. No provision in § 24.2-687 confers authority for a local government to expend public monies for the purchase of advertising supporting or opposing a referendum question. This language is limiting by its very nature.

It is well accepted that statutes should not be read in isolation.<sup>19</sup> Statutes relating to the same subject should be considered *in pari materia*.<sup>20</sup> Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.<sup>21</sup> The enactment of §§ 24.2-687 and 30-19.10 acknowledges the importance of uniformity in the electoral process. By enacting § 30-19.10, the General Assembly recognized the problems associated with having each individual local government offer an explanation of statewide referenda questions. To allow each locality to produce an explanation on each statewide referendum creates the possibility of having a different explanation in each locality in the Commonwealth. Such a system, with no uniformity, would create confusion and undermine the electoral process. By enacting both statutes that assign the responsibilities of each entity on two different processes regarding referenda questions, the General Assembly has provided uniformity in the conduct of these elections. Such enactment further recognizes the policy decision of the General Assembly to prohibit differing governmental explanations on issues of statewide importance before the voters of the Commonwealth.

The 1974 and 1980 opinions of this Office focus on the role of local government in explaining *local* referenda questions.<sup>22</sup> The enactment of §§ 24.2-687 and 30-19.10 is consistent with these prior opinions; however, § 24.2-687 further limits the authority of a locality to expend funds in this context.<sup>23</sup> Like the authority recognized in the prior opinions, § 24.2-687 requires a locality to offer a brief neutral description of the referendum question informing the local citizenry of the issue before it in an upcoming election.

The General Assembly has expressed a locality's power to expend public funds for advertising in this area. Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>24</sup> In this instance, the General Assembly has prescribed the method and extent to which a local

governing body may expend public funds to present an explanatory statement to the general public on questions of local concern. Section 24.2-687 specifically precludes a local governing body's expenditure of public funds to publish or advertise statements explaining a statewide referendum question.<sup>25</sup> The General Assembly has assigned that responsibility in § 30-19.10 to the Division of Legislative Services and the State Board of Elections.

This statutory scheme, however, does not prohibit a local government from responding to inquiries from the public on proposed referenda questions. Nor does it prohibit a local governing body from expressing a viewpoint, through a resolution, supporting or opposing a local or statewide referendum question. Additionally, a local government may prepare nonadvocacy materials in order to efficiently respond to constituent inquires about proposed referenda questions.

Read together, §§ 24.2-687 and 30-19.10 are sensible limits on the government's ability to influence elections. While it is important to inform the citizenry of the issue before it in a referendum, it is equally important to restrain the government's ability to manufacture the consent of the governed by the use of taxpayer funds.<sup>26</sup> Sections 24.2-687 and 30-19.10 draw the line between explanatory statements and opinion-making comments.<sup>27</sup>

Recognizing this potential abuse, the General Assembly has enacted a statutory scheme addressing state and local governments' roles with regard to statewide and local referenda. This statutory scheme does not authorize a locality to expend funds to provide a neutral explanation of a statewide referendum question. Moreover, I can find no statutory authority for a locality to purchase advertising in support of, or in opposition to, a local or statewide referenda question. The General Assembly has expressly set forth the extent to which a locality may expend funds regarding local referenda questions and, at the same time, has detailed the process for distributing information regarding statewide referenda questions. Applying the rule of statutory construction that, when a statute creates a specific grant of authority,<sup>28</sup> the authority exists only to the extent specifically granted in the statute, together with Dillon's Rule of strict construction of a locality's power, I am compelled to conclude that a locality does not have authority to expend public funds to purchase advertising in support of, or in opposition to, a local or statewide referendum question.

### **Conclusion**

Accordingly, it is my opinion that local governments have no authority to expend funds on advertising in support of, or in opposition to, a local or statewide referendum question. It is further my opinion that local governments may, consistent with the procedures detailed in § 24.2-687, prepare and distribute a neutral, nonpartisan statement explaining a local referendum question.

<sup>1</sup>Johnson v. Goochland County, 206 Va. 235, 237, 142 S.E.2d 501, 502 (1965), *cited in* Gordon v. Bd. of Supvrs., 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967); *accord* County Bd. v. Brown, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985); *see also* Va. Code Ann. § 15.2-1200 (authorizing counties to adopt measures, which are consistent with state laws, that are deemed expedient to secure and promote citizens' health, safety and welfare); § 15.2-1201 (vesting county boards of supervisors with powers and authority of city and town councils) (Michie Repl. Vol. 1997).

<sup>2</sup>City of Richmond v. Bd. of Supvrs., 199 Va. 679, 684, 101 S.E.2d 641, 645 (1958).

<sup>3</sup>Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

<sup>4</sup>1996 Va. Acts ch. 297, at 543, 543-44.

<sup>5</sup>Section 24.2-687 defines an explanation presented in "plain English" as one "written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession."

<sup>6</sup>See Va. Code Ann. § 30-19.9 (Michie Repl. Vol. 2001) (providing procedure for distribution of information explaining proposed constitutional amendment(s) to be submitted to voters).

<sup>7</sup>Section 30-19.10 provides a definition of "plain English" identical to that in § 24.2-687. See *supra* note 5.

<sup>8</sup>1974-1975 Op. Va. Att'y Gen. 163.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>1979-1980 Op. Va. Att'y Gen. 76, 76-79.

<sup>12</sup>*Id.* at 77.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>See *supra* note 2

<sup>16</sup>1979-1980 Op. Va. Att'y Gen., *supra* note 11, at 77 (noting that General Assembly has conferred upon city and local school board broad governmental powers over city and school system from which may be implied authority to comment on referendum).

<sup>17</sup>See 1974-1975 Op. Va. Att'y Gen., *supra* note 8.

<sup>18</sup>See 2A Norman J. Singer, Sutherland Statutory Construction § 47:23 (West 6th ed. 2000) (explaining maxim of statutory construction, *expressio unius est exclusio alterius*); Op. Va. Att'y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

<sup>19</sup>2B Singer, *supra* note 18, § 51.02; Op. Va. Att'y Gen.: 1999 at 22, 22; 1998 at 19, 21; *id.* at 123, 124; 1996 at 197, 198; 1995 at 146, 147; 1993 at 135, 137; *id.* at 160, 162; 1992 at 108, 112.

<sup>20</sup> See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 Op. Va. Att'y Gen. 134, 135. "*In pari materia*" is the Latin phrase meaning "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7th ed. 1999).

<sup>21</sup> See 2A Singer, *supra* note 18, § 46:05; 2000 Op. Va. Att'y Gen. 182, 185.

<sup>22</sup> See Op. Va. Att'y Gen.: 1974-1975, *supra* note 8; 1979-1980, *supra* note 11.

<sup>23</sup> The authority in § 24.2-687 for a locality to provide an explanation is explicitly limited to "a neutral explanation, and shall not present arguments by either proponents or opponents of the proposal." This language codifies the direction given to localities in the 1974 and 1980 opinions requiring localities to give neutral, nonadvocacy information related to the local referendum question presented to the voters. See *supra* notes 8, 11.

<sup>24</sup> See *supra* note 18.

<sup>25</sup> See Va. Code Ann. § 24.2-687 (Michie Repl. Vol. 2000).

<sup>26</sup> See *Comment: Contemplating the Dilemma of Government as Speaker: Judicially identified limits on government speech in the context of Carter v. City of Las Cruces*, 27 N.M. L. Rev. 517, 523 (1997) (citing *Burt v. Blumenauer*, 299 Or. 55, 699 P.2d 168 (1985) (en banc)).

<sup>27</sup> Compare Va. Code Ann. §§ 24.2-687 and 30-19.10 (Michie Repl. Vols. 2000 & 2001, respectively) (providing that comments "shall be limited to a neutral explanation, and shall not present arguments by either proponents or opponents of the proposal").

<sup>28</sup> See *supra* note 18.

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