

OP. NO. 03-049

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (EXEMPT PROPERTY) ³/₄ FUTURE CHANGES (AMENDMENTS) ³/₄ LEGISLATURE (GENERAL LAWS).

TAXATION: TAX EXEMPT PROPERTY.

Local property tax exemptions granted by General Assembly prior to January 1, 2003, either by designation or classification, are valid and are not repealed by ratified amendment to Article X, § 6(a)(6). Authority of General Assembly to repeal classification or designation tax exemptions granted prior to January 1, 2003.

The Honorable William J. Howell
Speaker of the House of Delegates
August 5, 2003

Dear Mr. Speaker:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire regarding the effect of the November 2002 amendment to Article X, § 6(a)(6) of the Constitution of Virginia, relating to local property tax exemptions granted by the General Assembly, either by classification or by designation, prior to January 1, 2003. Specifically, you ask whether exemptions from local property taxation granted to organizations, either by a designation or classification exemption statute prior to January 1, 2003, continue to be valid, or whether the amendment to Article X, § 6(a)(6) repeals such exemptions. You also inquire whether the General Assembly, or a locality acting under an ordinance adopted pursuant to Article X, § 6(a)(6), has the authority to repeal exemptions granted prior to January 1, 2003.

Response

It is my opinion that local property tax exemptions granted by the General Assembly prior to January 1, 2003, either by designation or classification, remain valid and are not repealed by the ratified amendment to Article X, § 6(a)(6). It is further my opinion that only the General Assembly has authority to repeal classification or designation tax exemptions granted prior to January 1, 2003.

Applicable Law and Discussion

Pursuant to Article XII, § 1 of the Constitution of Virginia, the 2002 and 2001 Sessions of the General Assembly agreed to an amendment to Article X, § 6(a)(6), relating to property made exempt from taxation "by classification or designation by ... *an ordinance adopted by the local governing body*"¹ "on and

after January 1, 2003."² The voters ratified the amendment to § 6(a)(6) at the general election held on November 5, 2002³ ("ratified amendment"). Prior to ratification,⁴ Article X, § 6(a)(6) required that property tax exemptions be granted by "a three-fourths vote ... of the General Assembly."⁵ The General Assembly grants exemptions from local property taxation either by general classification or by specific designation.⁶

The ratified amendment to Article X, § 6 provides:

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

....

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by ~~a three-fourths vote of the members elected to each house of the General Assembly~~ *an ordinance adopted by the local governing body* and subject to such restrictions and conditions as ~~may be prescribed~~ *provided by general law.*^[7]

The 2003 Session of the General Assembly added Article 4.1 in Chapter 36 of Title 58.1, consisting of § 58.1-3651.⁸ Section 58.1-3651(A) limits property tax exemptions to "the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes." Section 58.1-3651(B) establishes certain requirements for notifying the public of a hearing regarding the proposed adoption of an ordinance exempting property pursuant to subsection A, and sets forth questions to be considered by the local governing body before adopting such an ordinance. Section 58.1-3651(D) provides, in part:

Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of a classification exemption claimed by an organization, or a designation exemption granted by the General Assembly, prior to January 1, 2003, that was still effective on December 31, 2002, pursuant to Article 3 (§ 58.1-3609 et seq.) or 4 (§ 58.1-3650 et seq.) of [Chapter 36], and no locality shall recognize a classification exemption first claimed by an organization pursuant to Article 3 (§ 58.1-3609 et seq.) of [Chapter 36] after January 1, 2003. [A designation] exemption granted pursuant to Article 4 (§ 58.1-3650 et seq.) of [Chapter 36] may be revoked in accordance with the provisions of § 58.1-3605.

You ask whether the ratified amendment to Article X, § 6(a)(6) repeals designation and classification property tax exemptions granted prior to January 1, 2003. "Questions of constitutional construction are in the main governed by the same general rules as those applied in statutory construction."⁹ It is well-settled that, "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."¹⁰ Furthermore, "every word employed in the Constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or

enlarge it."¹¹ "It is the duty of the court in construing the Constitution to give effect to an express provision, rather than to an implication."¹²

Article X, § 6(a)(6) now permits local governing bodies to grant property tax exemptions, by ordinance, within the parameters established by the General Assembly. Prior to ratification, these exemptions were granted only by "a three-fourths vote of the members elected to each house of the General Assembly."¹³ The amendment is plain and unambiguous. The ratified amendment to § 6(a)(6) contains no language repealing existing property tax exemptions.

Moreover, the continued validity of the prior property tax exemptions is not inconsistent with the ratified amendment.¹⁴ Some courts suggest that the test for an inconsistency to invalidate a previously enacted statute is whether the legislature still could enact the statute after the constitutional amendment takes effect.¹⁵ Under this test, a *substantive* inconsistency would invalidate a previously enacted statute.¹⁶ For example, a statute prohibiting a certain tax exemption would not survive new constitutional language specifically permitting the exemption. In Article X, § 6(a)(6), however, there is no substantive difference in the language that existed prior to the ratified amendment, i.e., permitting property tax exemptions for organizations that use their property for religious, charitable and other similar purposes. The inconsistency in this case is merely *procedural*, in the sense that the exemptions existing prior to January 1, 2003, were granted by the General Assembly and not by localities. Therefore, there is nothing in the ratified amendment that repeals any property tax exemption existing prior to January 1, 2003.

Furthermore, the Act placing the amendment on the ballot for the November 2002 general election provides that, "[i]f a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2003."¹⁷ This language is prospective and does not suggest that property tax exemptions existing at the time of the amendment would be subject to repeal or that the continued validity of those exemptions is inconsistent with the amendment. Interpreting the amendment to § 6(a)(6) to include a repeal of previously granted exemptions would require an enlargement of the amendatory language without any grounds to do so. Therefore, the ratified amendment to § 6(a)(6) does not repeal exemptions granted prior to January 1, 2003.

Additionally, I find nothing in § 58.1-3651 that repeals any existing property tax exemptions. Article X, § 6(a)(6) allows a local governing body to grant property tax exemptions, by ordinance, subject to parameters established by the General Assembly. Section 58.1-3651 sets forth those parameters. In addition, § 58.1-3651(D) prohibits a locality from revoking a property tax exemption "granted by the General Assembly, prior to January 1, 2003, that was still effective on December 31, 2002, pursuant to [§ 58.1-3609 or § 58.1-3650]."

Sections 58.1-3609 and 58.1-3650 grant a large majority of the property tax exemptions.¹⁸ Other statutory provisions, however, provide property tax exemptions by designation or classification.¹⁹ Although § 58.1-3651 makes specific reference to §§ 58.1-3609 and 58.1-3650, there is no indication that the General Assembly intended to repeal any existing property tax exemption. "Repeal of a statute by implication is not favored, and, indeed, there is a presumption against a legislative intent to repeal "where express terms are not used."²⁰ As noted previously, there is no language in § 58.1-3651 repealing any existing property tax exemptions. There are no express terms repealing any existing property tax exemptions and no language that would overcome a

presumption against repeal by implication; therefore, neither Article X, § 6(a)(6) nor § 58.1-3651 repeals property tax exemptions granted by the General Assembly prior to January 1, 2003.

You next ask whether a local governing body or the General Assembly may repeal an exemption granted prior to January 1, 2003. "The Dillon Rule of strict construction controls our determination of the powers of local governing bodies. This rule provides that [local governments] have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable."²¹ The ratified amendment to Article X, § 6(a)(6) makes no reference to any authority on the part of a locality to repeal any property tax exemption previously established by the General Assembly. Additionally, as noted above, § 6(a)(6) does not affect exemptions granted by the General Assembly prior to January 1, 2003. Therefore, Article X, § 6(a)(6) contains no explicit or implicit power by which a locality may repeal previous tax exemptions granted by the General Assembly. The General Assembly is vested with the power to repeal any law that it previously has passed.²²

Therefore, the General Assembly has the sole authority to repeal property tax exemptions granted prior to January 1, 2003.

Conclusion

It is my opinion that local property tax exemptions granted by the General Assembly prior to January 1, 2003, either by designation or classification, remain valid and are not repealed by the ratified amendment to Article X, § 6(a)(6). It is further my opinion that only the General Assembly has authority to repeal classification or designation tax exemptions granted prior to January 1, 2003.

¹2002 Va. Acts chs. 825, 630, at 1999, 2000, 895, 896, respectively; 2001 Va. Acts ch. 786, at 1074, 1075.

²Va. Code Ann. § 58.1-3651(A) (LexisNexis Supp. 2003).

³A "general election" is held "on the Tuesday after the first Monday in November ... for the purpose of filling offices regularly scheduled by law to be filled at those times." Va. Code Ann. § 24.2-101 (LexisNexis Supp. 2003) (defining "general election," as that term is used in Title 24.2, which governs elections held in the Commonwealth).

⁴See 2002 Va. Acts ch. 630, § 1, *supra* note 1, at 896 (directing officers of election to "take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to [Article X, § 6]" at the November 5, 2002 election).

⁵2002 Va. Acts, *supra* note 1, at 2000, 896; 2001 Va. Acts, *supra* note 1, at 1075 (providing for submission to voters of proposed amendment to Article X, § 6(a)(6), replacing language requiring that exemptions be granted by "a three-fourths vote of the members elected to each house of the General Assembly," with "*an ordinance adopted by the local governing body*," subject to restrictions and conditions as "*provided by general law*").

⁶See §§ 58.1-3606, 58.1-3607 (Michie Repl. Vol. 2000) (continuing to exempt real and personal property classified or designated as exempt from taxation on July 1, 1971, pursuant to authority granted in Article X, § 6(a)(6)); §§ 58.1-3609 to 58.1-3622 (Michie Repl. Vol. 2000) (exempting as of July 1, 1971, real and personal property classified for purposes set forth in Article X, § 6(a)(6)); §§ 58.1-3650 to 58.1-3650.1001 (Michie Repl. Vol. 2000 & LexisNexis Supp. 2003, not set out in Virginia Code) (exempting as of July 1, 1971, real and personal property designated for purposes set forth in Article X, § 6(a)(6)).

⁷2002 Va. Acts, *supra* note 1, at 1999-2000, 896; 2001 Va. Acts, *supra* note 1, at 1075.

⁸2003 Va. Acts ch. 1032, § 3, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP1032> (declaring that Chapter 1032 "is in force on and after January 1, 2003").

⁹4C Michie's Jur. *Constitutional Law* § 7, at 36 (1999).

¹⁰Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944), cited in 2003 Op. Va. Att'y Gen. 02-146 (Jan. 27, 2003), available at <http://www.vaag.com/media%20center/Opinions/2003opns/jan03ndx.htm>.

¹¹Lipscomb v. Nuckols, 161 Va. 936, 945, 172 S.E. 886, 889 (1934) (quoting Quesinberry v. Hull, 159 Va. 270, 274-75, 165 S.E. 382, 383 (1932) (further citation omitted)).

¹²*Id.* at 945-46, 172 S.E. at 889.

¹³See cites *supra* note 5.

¹⁴See Swift & Co. v. City of Newport News, 105 Va. 108, 115, 52 S.E. 821, 824 (1906) (noting that only where prior law is inconsistent with new constitution or amendment is existing law nullified).

¹⁵State *ex rel.* Stokes v. Probate Court, 17 Ohio App. 2d 247, 250-51, 246 N.E.2d 607, 611 (1969); see also 16 Am. Jur. *Constitutional Law* § 49, at 407 & n.70 (1998) (citing State *ex rel.* Agnew v. Schneider, 253 N.W.2d 184 (N.D. 1977)).

¹⁶Agnew, 253 N.W.2d at 184; Stokes, 17 Ohio App. 2d at 251, 246 N.E.2d at 611-12.

¹⁷2002 Va. Acts ch. 630, § 2, *supra* note 1, at 897.

¹⁸Section 58.1-3650 provides an exemption for the individually designated properties listed in Article 4, Chapter 36 of Title 58.1, §§ 58.1-3650.1 to 58.1-3650.1001.

¹⁹See, e.g., §§ 58.1-3606, 58.1-3607 (exempting property from taxation by classification and designation, respectively).

²⁰Hughes v. Cole, 251 Va. 3, 14, 465 S.E.2d 820, 828 (1996) (quoting Bd. of Supvrs. v. Marshall, 215 Va. 756, 761, 214 S.E.2d 146, 150 (1975) (quoting New

Market & Sperryville Turnpike Co. v. Keyser, 119 Va. 165, 170, 89 S.E. 251, 253 (1916))).

²¹City of Chesapeake v. Gardner Enters., Inc., 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997).

²²See Va. Const. art. IV, § 15.

[Back to August 2003 Index](#)