

OP. NO. 03-062

**PROFESSIONS AND OCCUPATIONS: MEDICINE AND OTHER
HEALING ARTS – BOARD OF MEDICINE**

Continuance of medical physician member's service on Board of Medicine when member's move into new congressional district is result of redistricting and subsequent voluntary move is within same district.

The Honorable Anita A. Rimler
Secretary of the Commonwealth
July 31, 2003

Issue Presented

You ask whether a medical physician member of the Board of Medicine, whose residence is changed from the Tenth to the Eleventh Congressional District by redistricting, and who then changes his residence within the Eleventh Congressional District, may continue to serve on the Board.

Response

It is my opinion that a medical physician member of the Board of Medicine, whose residence is changed from the Tenth to the Eleventh Congressional District by redistricting, and who then changes his residence within the Eleventh Congressional District, may continue to serve on the Board.

Background

You observe that § 54.1-2911 requires that one medical physician from each congressional district serve on the Board of Medicine. You also note that § 54.1-2911 provides that, in the event a medical physician member of the Board "ceases to reside in the district from which he was appointed, except by reason of redistricting, his office shall be deemed vacant."

You relate that in 2000, a medical physician was appointed from the Tenth Congressional District to serve a four-year term on the Board of Medicine. Pursuant to the redistricting of the congressional districts by the 2001 Special Session of the General Assembly,¹ the member's residence has changed from the Tenth to

the Eleventh Congressional District. You advise that in August 2003, the member will move his residence to another address within the Eleventh Congressional District. In addition, the new residence is in the geographical area that comprised the former Tenth Congressional District.

You, therefore, inquire whether the member, by moving his residence within the Eleventh Congressional District, continues to be eligible to serve on the Board of Medicine or whether his position will be deemed vacant.

Applicable Authorities and Discussion

Section 54.1-2911 provides for membership on the Board of Medicine:

The Board of Medicine shall consist of one medical physician from each congressional district If any medical physician member of the Board ceases to reside in the district from which he was appointed, except by reason of redistricting, his office shall be deemed vacant.

Use of the word "shall" in a statute ordinarily, but not always, implies that its provisions are mandatory.²

Several rules of statutory construction apply to your request. "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."³ In addition, statutes should not be construed to frustrate their purpose.⁴ "[T]ake the words as written' and give them their plain meaning."⁵ One must look to the entire statute to ascertain the intent of the General Assembly.⁶

In the situation you describe, the medical physician member's residence change, from the Tenth to the Eleventh Congressional District, is the direct result of the 2001 redistricting.⁷ The specific exception for redistricting contained in § 54.1-2911 is, therefore, applicable. Thus, the exception permits the member to continue to serve on the Board.⁸

The General Assembly does not specify that a physician member's subsequent move within the same congressional district to which he was redistricted will result in his office being deemed vacated. When the General Assembly intends to enact a mandatory requirement, it, of course, knows how to express its intention.⁹ The

clear and unambiguous language of § 54.1-2911 addresses the situation when a medical physician member of the Board of Medicine voluntarily changes congressional districts. In the facts you provide, the medical physician member's congressional district was changed solely by the redistricting process and not by his voluntary actions.

Conclusion

Accordingly, it is my opinion that a medical physician member of the Board of Medicine, whose residence is changed from the Tenth to the Eleventh Congressional District by redistricting, and who then changes his residence within the Eleventh Congressional District, may continue to serve on the Board.

¹2001 Va. Acts Spec. Sess. ch. 7, at 13 (adding § 24.2-302.1 and repealing § 24.2-302, relating to congressional districts).

²*Compare* Schmidt v. City of Richmond, 206 Va. 211, 217-18, 142 S.E.2d 573, 578 (1965) (noting that statute using "shall" required court to summon nine disinterested freeholders in condemnation case), *and* Ladd v. Lamb, 195 Va. 1031, 1034-37, 81 S.E.2d 756, 758-59 (1954) (noting that statute providing that clerk of court "shall forward" copy of conviction to Commissioner of Department of Motor Vehicles within fifteen days is not mandatory, but merely directory).

³Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁴See 1982-1983 Op. Va. Att'y Gen. 309, 311 (concluding that illogical result frustrates purpose of statute).

⁵Birdsong Peanut Co. v. Cowling, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989) (quoting Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985)), *cited in* Adkins v. Commonwealth, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998).

⁶See Commonwealth v. Jones, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (noting that to derive true purpose of act, "statute should be construed so as to give effect to its component parts.").

⁷See *supra* note 1.

⁸See 1971-1972 Op. Va. Att'y Gen. 310 (concluding that § 54-287, predecessor to § 54.1-2911, applies to voluntary removal from

district by physician appointed from that congressional district rather than removal by congressional redistricting when his place of residence remains unchanged).

⁹See 1998 Op. Va. Att'y Gen. 87, 88.

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