

**OP. NO. 03-092**

**COUNTIES, CITIES AND TOWNS: SERVICE DISTRICTS; TAXES AND ASSESSMENTS FOR LOCAL IMPROVEMENTS.**

**GENERAL ASSEMBLY: VIRGINIA CODE COMMISSION.**

**Authority for local governing body to adopt ordinance exempting from taxation property within expanded portion of downtown service district.**

Mr. William M. Hackworth  
City Attorney for the City of Roanoke  
October 31, 2003

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 ask whether § 15.2-2402(1) permits the City of Roanoke to expand its downtown service district and exempt residential properties within the expanded area from the assessment of additional taxes. If not, you ask whether Article 1, Chapter 24 of Title 15.2 permits the city to repeal its existing ordinance and adopt a new ordinance expanding the geographic area of the downtown service district and exempting properties within the expanded area from additional taxation.

**Response**

It is my opinion that § 15.2-2402(1) does not permit the City of Roanoke to expand its downtown service district and exempt residential properties within the expanded area from additional taxation. Article 1, Chapter 24 of Title 15.2, however, permits the city to repeal its downtown service district ordinance and adopt an ordinance providing for expansion of the downtown service district's geographic area and exemption from additional taxation for properties within the expanded area.

**Applicable Law and Discussion**

You relate that the City of Roanoke created a downtown service district by ordinance adopted pursuant to §§ 15.1-18.2 and 15.1-18.3,<sup>1</sup> the predecessor statutes to Article 1, Chapter 24 of Title 15.2, §§ 15.2-2400 through 15.2-2403. For the purposes of this opinion, I shall assume that the city's downtown service district was created in 1986, the year of adoption of the applicable city ordinance.<sup>2</sup> You relate that the city seeks to expand the boundaries of the downtown service district, but desires to exempt any residential properties within the expanded area, since the additional taxes assessed in the district primarily are used to promote businesses within the district.

You note that the Attorney General concludes in a 1987 opinion that additional taxes imposed by cities that create service districts pursuant to § 15.1-18.3 must apply uniformly to all property or businesses in such district, and that cities may not exempt from the additional tax, either in whole or in part, certain property or

businesses in the district.<sup>3</sup> You observe that the 1990 Session of the General Assembly amended § 15.1-18.3 to provide that the ordinance or petition creating a service district shall "[s]et forth the name and describe the boundaries of the proposed district and any areas within the district that are to be excluded."<sup>4</sup>

Prior to July 1, 1990, § 15.1-18.2(a) permitted certain consolidated cities to maintain service districts to provide "additional or more complete services of government than are desired in the city as a whole."<sup>5</sup> Section 15.1-18.3 extended to counties, cities or towns the power to "designate service districts for the purposes set forth in subsection (a) of § 15.1-18.2."<sup>6</sup>

The 1990 Session of the General Assembly amended § 15.1-18.3 to provide that an ordinance for a service district must describe "any areas within the district that are to be excluded."<sup>7</sup> The 1997 Session of the General Assembly repealed § 15.1-18.3 as part of the recodification of Title 15.1,<sup>8</sup> however, the substance of former § 15.1-18.3 has been relocated to §§ 15.2-2400 and 15.2-2403.<sup>9</sup>

The 1997 Session of the General Assembly expressly repealed § 15.1-18.2 and added the new provisions of § 15.2-2402.<sup>10</sup> Section 15.2-2402 provides:

Any ordinance or petition to create a service district shall:

1. Set forth the name and describe the boundaries of the proposed district and specify any areas within the district that are to be excluded;
2. Describe the purposes of the district and the facilities and services proposed within the district;
3. Describe a proposed plan for providing such facilities and services within the district; and
4. Describe the benefits which can be expected from the provision of such facilities and services within the district.

Section 30-152 pertains to recodification of titles in the Virginia Code and provides:

Whenever in a title revision or recodification bill an existing section of a title of the Code of Virginia is repealed and replaced with a renumbered section and that section so repealed was effective with an uncodified enactment, the repeal of that section, alone, shall not affect the uncodified enactment. The title revision or recodification bill shall *expressly repeal* the uncodified enactment in order for the enactment to be repealed. [Emphasis added.]

When the General Assembly amends a statutory provision, a presumption arises that the legislature intended to change existing law.<sup>11</sup> A related presumption is that the amendment to a law is intended to have some meaning and is not intended to be unnecessary or vain.<sup>12</sup> In addition, the plain language of a statute should be given its clear and unambiguous meaning.<sup>13</sup> Section 30-152 clearly articulates that the recodification of a title shall expressly operate to repeal a

previously existing uncodified enactment. This statutory provision is aligned with the general premise that a legislative enactment evinces the legislature's intent to grant therein appropriate statutory authority.<sup>14</sup>

Consequently, § 15.2-2402(1) provides that an ordinance creating a service district after December 1, 1997, the effective date of the recodification of Title 15.1 as Title 15.2,<sup>15</sup> shall specify areas within the district that are to be excluded from taxation. As stated, I assume for the purposes of responding to your inquiry that the city's service district was created in 1986. Furthermore, you state that the city proposes to adopt an ordinance extending the existing service district rather than creating a new service district.

The language in § 15.2-2402(1) clearly provides that the ordinance creating the service district shall "specify any areas within the district that are to be excluded." "Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent."<sup>16</sup> Ordinarily, when a particular word in a statute is not defined therein, the word should be accorded its ordinary meaning.<sup>17</sup> In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.<sup>18</sup> "Generally, the words and phrases used in a statute should be given their ordinary and usually accepted meaning unless a different intention is fairly manifest."<sup>19</sup> "Create" generally means "to bring into existence"; "make out of nothing and for the first time"; "constitute by an act of law or sovereignty."<sup>20</sup> You state that the city proposes to "extend" the existing service district. The term "extend" generally means "to cause to be of greater area or volume"; "increase the size of"; "make greater in extent."<sup>21</sup> Therefore, I must conclude that the city is not creating a service district by its expansion of the existing service district.

Section 15.2-1427(D) permits a locality to repeal an ordinance "in the same manner, or by the same procedure, in which ... ordinances are adopted." "Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation."<sup>22</sup> The General Assembly has placed no restriction on the repeal of ordinances adopted pursuant to Article 1, Chapter 24 of Title 15.2 that create service districts. Therefore, it is the clear intention of the General Assembly that a locality may repeal an ordinance creating a service district in the same manner as such ordinance is adopted.

### **Conclusion**

Section 15.2-2402(1) does not permit the City of Roanoke to expand its downtown service district and exempt residential properties within the expanded area from additional taxation. Article 1, Chapter 24 of Title 15.2, however, permits the city to repeal its downtown service district ordinance and adopt an ordinance providing for expansion of the downtown service district's geographic area and exemption from additional taxation for properties within the expanded area.<sup>23</sup>

<sup>1</sup>See Roanoke, Va., Code § 32-102 (Ord. No. 28453, effective Dec. 8, 1986) (creating downtown service district for taxation purposes set forth in § 32-102.3), available at [www.roanokegov.com](http://www.roanokegov.com).

<sup>2</sup>See cite *supra* note 1.

<sup>3</sup>1986-1987 Op. Va. Att'y Gen. 111, 112 (citing § 15.1-18.3, predecessor statute to § 15.2-2400).

<sup>4</sup>1990 Va. Acts ch. 515, at 761, 763 (quoting § 15.1-18.3(1)).

<sup>5</sup>*Id.* at 762 (quoting § 15.1-18.2(a)).

<sup>6</sup>*Id.* at 763 (quoting § 15.1-18.3).

<sup>7</sup>*Id.* (quoting § 15.1-18.3(1)).

<sup>8</sup>See 1997 Va. Acts ch. 587, cl. 1, at 976; see *id.* cl. 13, at 1401. In 1997, the Virginia Code Commission recommended the recodification of Title 15.1, which had not been recodified since 1962, to resolve confusion caused by conflicting and outdated provisions, and to reorganize and simplify existing statutes into a more user-friendly Title 15.2. See 5 H. & S. Docs., *Report of the Virginia Code Commission on the Recodification of Title 15.1 of the Code of Virginia*, S. Doc. No. 5, at i (1997).

<sup>9</sup>5 H. & S. Docs., *supra* note 8, at 723-24, 725-29.

<sup>10</sup>See 1997 Va. Acts, *supra* note 8, at 1181; see also 5 H. & S. Docs., *supra* note 8, at 725.

<sup>11</sup>See *Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982); *City of Richmond v. Sutherland*, 114 Va. 688, 693, 77 S.E. 470, 472 (1913).

<sup>12</sup>See *Cape Henry Towers, Inc. v. Nat'l Gypsum Co.*, 229 Va. 596, 331 S.E.2d 476 (1985); *Williams v. Commonwealth*, 190 Va. 280, 293, 56 S.E.2d 537, 543 (1949).

<sup>13</sup>See *Ambrogi v. Koontz*, 224 Va. 381, 297 S.E.2d 660 (1982).

<sup>14</sup>See, e.g., 1998 Op. Va. Att'y Gen. 71 (concluding that legislation enacted by 1997 Session of General Assembly states intent of legislature as to use of common stock local school divisions received in Trigon demutualization).

<sup>15</sup>1997 Va. Acts, *supra* note 8, at 1401 (enacting clause 14).

<sup>16</sup>2A Norman J. Singer, *Sutherland Statutory Construction* § 47:33, at 369 (West 6th ed. 2000).

<sup>17</sup>See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970) (noting that ordinary meaning must be given to "lascivious" to determine legislative intent of word as used in statute).

<sup>18</sup>See *Sansom v. Bd of Supvrs.*, 257 Va. 589, 514 S.E.2d 345 (1999); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); 1999 Op. Va. Att'y Gen. 10, 11.

<sup>19</sup>*Woolfolk v. Commonwealth*, 18 Va. App. 840, 847, 447 S.E.2d 530, 534 (1994).

<sup>20</sup>Webster's Third New International Dictionary of the English Language Unabridged 532 (1993).

<sup>21</sup> *Id.* at 804.

<sup>22</sup> *Sykes v. Commonwealth*, 27 Va. App. 77, 80, 497 S.E.2d 511, 512 (1998) (quoting *Last v. Va. State Bd. of Med.*, 14 Va. App. 906, 910, 421 S.E.2d 201, 205 (1992)).

<sup>23</sup> It would be prudent for the city to simultaneously repeal § 32-102 of the Roanoke City Code and adopt a new ordinance that creates the new downtown service district with an expanded geographic area and that exempts from additional taxation residential properties within the expanded area, to avoid potential confusion and disruption of the expanded government services provided within such a district.

[Back to October 2003 Index](#)