

OP. NO. 04-068

COUNTIES, CITIES AND TOWNS: POWERS OF CITIES AND TOWNS.

Section 2-1240(b) of Richmond City Code may not be enforced regarding persons in classified or unclassified service until it is administratively precleared by Department of Justice or approved by declaratory judgment of United States District Court for District of Columbia. No authority for City of Richmond to define council members as unclassified employees subject to City's personnel system. Prohibition requiring forfeiture of position with city government when standing as candidate for election for certain offices is not applicable to city council members. Regardless of application of § 2-1240(b) to city council members, statute must be submitted for preclearance prior to enforcement with respect to classified and unclassified city employees.

Mr. John A. Rupp
City Attorney for the City of Richmond
October 8, 2004

Issue Presented

You ask whether the City of Richmond may enforce a provision added to § 2-1240(b) of the city code, relating to "unclassified" employees or officers who are prohibited from continuing in service after becoming a candidate for elective office, when the United States Department of Justice has not precleared the provision and the city charter sets two-year term limits for city council members.

Brief Response

It is my opinion that § 2-1240(b) of the city code may not be enforced with regard to those persons in the classified or unclassified service of the City of Richmond unless and until that section is administratively precleared by the Department of Justice or approved by a declaratory judgment in the United States District Court for the District of Columbia.

It is further my opinion that the City of Richmond did not have authority to define unclassified employees, for the purpose of its personnel system, to include council members thereby subjecting council members to the City's personnel system. Consequently, the prohibition contained in § 2-1240(b) requiring the forfeiture of one's position with city government when standing as a candidate for election for certain city offices does not apply to members of city council.

Such determination, however, does not negate the need for preclearance by the United States Department of Justice of § 2-1240(b) as it relates to those persons who hold classified and unclassified positions in city government. It is my opinion that § 2-1240(b) must be submitted to the Department of Justice, regardless of its application to city council members, prior to its enforcement with respect to classified and unclassified employees of the City of Richmond.

Applicable Law and Discussion

A. The Federal Voting Rights Act

Section 5 of the Voting Rights Act of 1965, as amended,¹ which applies to the City of Richmond, requires that any change in state or local election laws, voting practices or procedures be submitted either to the "United States District Court for the District of Columbia for a declaratory judgment" or to the Department of Justice for a determination as to whether the proposed change has the purpose or effect of abridging certain constitutional rights. Specifically, the submitting jurisdiction must demonstrate that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color"² or because a citizen "is a member of a language minority group."³ The Department of Justice has adopted regulatory procedures for the administrative review of § 5,⁴ commonly referred to as "§ 5 preclearance."⁵

A qualification, prerequisite, standard, practice, or procedure affecting voting, and thereby requiring § 5 preclearance, may not be implemented until preclearance is obtained.⁶ The regulatory procedures include among the examples of changes that must be submitted to the Department, "[a]ny change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices."⁷ Under accepted rules of statutory construction, interpretations by the agency charged with administering a statute are entitled to great weight.⁸

The Department's regulations authorize the United States Attorney General to bring civil actions for appropriate relief against violations of § 5⁹ and allow private parties to enforce § 5.¹⁰ A voting change that is implemented without § 5 preclearance is subject to "an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order."¹¹

B. Application of the Federal Voting Rights Act to § 2-1240(b) of the City Code

You indicate that city council adopted an ordinance on May 10, 1999, which has become a part of the city code. You note that recently certain provisions of the city code were recodified. On July 26, 2004, §§ 2-134 and 2-131 of the city code became §§ 2-1240 and 2-1237, respectively, of the city code. Section 2-1240(b) of the city code provides:

No officer or employee in either the classified or unclassified service of the city shall continue in such position after becoming a candidate for nomination or election to an office elected by voters of an election district which includes all or a part of the city or by the voters at large of the city for a constitutional office serving only the city.^[12]

The prohibitions in § 2-1240(b) apply to both classified and unclassified employees. Section 2-1236 provides that "[t]he classified service shall comprise all positions, including those in the police and fire departments, not specifically included in the unclassified service."¹³ Section 2-1237(1) provides that the city's "unclassified" personnel shall consist of "[o]fficers elected by the people and persons appointed to fill vacancies in elective offices."¹⁴ It is the inclusion of the phrase "[o]fficers elected by the people" in the definition of "unclassified"

employees¹⁵ that subjects city council members to the prohibitions in § 2-1240(b).

Section 2-1240(b) prohibits employees defined as classified and unclassified from continuing in their positions with the city government when they choose to run for certain elected offices within the City of Richmond. It appears the provision was intended to prevent employees of city government from running for council or other elected office within the city while associated with city government. Section 2-1240(b) impacts who within the city is eligible to run for an elected office of city government. Consequently, it is my opinion that § 2-1240(b) is subject to § 5 preclearance.¹⁶

Section 5 of the Voting Rights Act requires "changes" in voting practices or procedures to be approved by the Department of Justice or the District of Columbia federal district court.¹⁷ In your opinion request you indicate that the "change" about which you are inquiring is the addition of "unclassified" employees, particularly "officers elected by the people,"¹⁸ to the group of those prohibited by § 2-1240(b) from continuing in office after becoming a candidate for elective office.

I note that the "change" in question is not just the language pertaining to "unclassified" employees, but to § 2-1240(b) in its entirety. The language pertaining only to *classified* employees appeared in § 9.13 of the charter for the City of Richmond prior to July 1, 1998:

No officer or employee in the classified service of the city shall continue in such position after becoming a candidate for nomination or election to ~~any public~~ *an office elected by voters of an election district which includes all or a part of the City of Richmond, or by the voters at large of the city for a constitutional office serving only the City of Richmond.*^{19]}

Notably absent from § 9.13 of the city charter is the inclusion of "unclassified" employees. The 1998 Session of the General Assembly repealed this provision, as well as § 9.07,²⁰ which defined "unclassified service" as consisting of "officers elected by the people."²¹ You indicate that the repeal of the city personnel provisions from the charter was in order to have such provisions moved entirely to the city code.

The repeal of these provisions was effective July 1, 1998. Based on the facts presented, it appears that from July 1, 1998, until May 10, 1999, there was no provision addressing whether a classified employee must forfeit his position if he ran for city office.²² The adoption of the ordinance on May 10, 1999, inserted into the city code the language from former § 9.13 of the city charter with additional language pertaining to "unclassified service."

Adoption by city council of the language applying to *both classified and unclassified employees* constituted a "change" affecting voting. It does not matter that the language applying only to classified employees previously appeared in the city charter. Such language was repealed. Upon its adoption on May 10, 1999, the pertinent provisions of the ordinance should have been submitted for § 5 preclearance. Consequently, § 2-1240(b), as it applies to those persons defined as *classified and unclassified* employees, may not be implemented until it is precleared.²³

The 1987 and 1998 Sessions of the General Assembly amended the city charter. The 1987 change affected § 9.13 of the charter which required classified employees to forfeit their city positions in order to run for an office elected by the city voters. The 1998 change repealed §§ 9.07, defining "unclassified service," and § 9.13 of the charter. Given the conclusion that the enactment § 2-1240(b) of the city code should have been precleared, it is apparent that the 1987 and 1998 charter changes should also have been submitted for preclearance. You do not indicate whether the Department of Justice precleared either change. Consequently, I offer no opinion on what effect the failure to preclear either or both changes has on the validity or enforcement of § 2-1240(b) of the city code.

C. Effect of § 5 Preclearance of Mayor at-Large Provisions on City Code § 2-1240(b)

You note that some have argued that the Department of Justice may have precleared the city code provision when it recently precleared Chapters 514, 877, and 898 of the 2004 Acts of Assembly.²⁴ These chapters institute certain election changes to the city charter, including the term of office for council members and election of a mayor citywide. Chapter 514 extends the terms of council members from two to four years, subject to approval by voter referendum.²⁵ It also provides that "[n]o primary election shall be held for the nomination of candidates for the office of councilman, and candidates shall be nominated only by petition."²⁶ Chapters 877 and 898 provide for the direct election of the mayor, beginning in November 2004.²⁷ The chapters also provide for certain procedures and requirements for determining who is elected mayor, term of office, and powers of the position.²⁸ In addition, the chapters outline the powers of a newly created position of chief administrative officer.²⁹ No portion of these changes affects the city code. The changes in Chapters 514, 877 and 898 are confined to the city charter.

It is clear that the preclearance of Chapters 514, 877, and 898 does not constitute a preclearance of city code § 2-1240(b). The Department of Justice regulatory procedures define "submission" as a "written presentation to the Attorney General by an appropriate official of any *change* affecting voting."³⁰ The submission should contain "[a] copy of any ordinance, enactment, order, or regulation embodying a *change* affecting voting."³¹ The Attorney General has 60 days to "notify the submitting authority of a decision to interpose no objection to a submitted *change* affecting voting."³²

The regulations are clear that the material before the Department of Justice is the proposed change and not all manner of peripheral laws that may have some effect on the proposed change. While the Department may review other provisions of law as they interact with the proposed change as part of its § 5 analysis, such review cannot be said to constitute preclearance of nonsubmitted provisions.

Interpreting the prior versions of the Department's regulations, the Supreme Court of the United States noted that "[t]he regulations indicate that the focus of the Attorney General's scrutiny of a statute was, understandably, limited to the specific changes submitted for consideration."³³ The Court determined that

[w]hen a jurisdiction adopts legislation that makes clearly defined changes in its election practices, sending that legislation to the Attorney General merely with a general request for preclearance pursuant to § 5 constitutes a submission of the changes made by

the enactment and cannot be deemed a submission of changes made by previous legislation which themselves were independently subject to § 5 preclearance.... *A request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones thus cannot be considered an adequate submission of the latter practices.*^[34]

Consequently, the submission of Chapters 514, 877, and 898, and their subsequent preclearance, does not constitute preclearance of § 2-1240(b) of the city code.

D. Authority to Subject Officers Elected by the People to § 2-1240(b) of the City Code

You next ask whether the City of Richmond had authority to enact § 2-1240(b) of the city code. You assert that if § 2-1240(b) were enforced, each member of city council that declared himself a candidate for reelection or for another office representing all or part of the city (i) would not serve a full two-year term and (ii) would not remain in office until a successor has qualified. You believe that the prohibition in § 2-1240(b) on "officers elected by the people" continuing in office after becoming a candidate for reelection or another office in the city not only exceeds the authority granted to the city by the General Assembly but also violates state election law.

Essentially, you assert that the effect of § 2-1240(b), when applied to city council members, impermissibly "shortens" the term of office for such members. Section 2-1240(b) does not "shorten" the terms of city council members in the sense that it sets a term less than two years for service. Instead, it imposes essentially a "resign-to-run" condition on such members and city employees.³⁵ Under the city code, a councilman or city employee who chooses to run for a local office elected by the voters of the city would forfeit his or her current position with the city.

The question remains whether the City of Richmond had authority to enact § 2-1240(b), regardless of how it operates. This Office historically has followed a policy of responding to official opinion requests only when such requests concern an interpretation of federal or state law, rule or regulation.³⁶ In instances when a request requires an interpretation of a local ordinance, the Attorney General has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control.³⁷ Any ambiguity that exists in a local ordinance is a problem to be rectified by the local governing body rather than by an interpretation by this Office.³⁸ In addition, Virginia Attorneys General traditionally have declined to render such opinions when the request involves a matter of purely local concern or procedure.³⁹ Consequently, my comments are limited to the authority of the City of Richmond to adopt § 2-1240(b) and to define "unclassified service" within the city to include officers elected by the voters.

In 1997, the General Assembly granted certain cities the authority to establish personnel for certain officers and employees.⁴⁰ Pursuant to § 15.2-1131, the City of Richmond established "a human resources system for the city's administrative officers and employees."⁴¹ Section 15.2-1131 provides:

Notwithstanding any contrary provisions of law, general or special, in any city with a population over 200,000 ..., the city

council ... may establish a personnel system for the city *administrative officials and employees*. Such system shall be based on merit and professional ability and shall not discriminate on the basis of race, national origin, religion, sex, age, disabilities, political affiliation or marital status. The personnel system shall consist of rules and regulations which provide for the general administration of personnel matters, a classification plan for employees, a uniform pay plan and a procedure for resolving grievances of employees as provided by general law for either local government or state government employees. [Emphasis added.]

Section 15.2-1131 generally authorizes certain cities to enact a personnel system for the orderly management of local government officials and employees. Section 15.2-1131 does not define the phrase "administrative officials and employees." Generally, when a statute does not define a particular word, the word must be given its ordinary meaning.⁴²

The word "administrative" generally means "concerning or relating to the management of affairs."⁴³ The word is the adjective form of the noun "administration," which means "the practical management and direction of the executive department and its agencies."⁴⁴ Use of the adjective "administrative" before "officials" indicates that the General Assembly intended such personnel policies to apply to persons involved in the practical day-to-day management of city government and *not* to elected officials. The term "official" means "[o]ne who holds or is invested with a public office."⁴⁵ A "public office" may be appointed or elected.⁴⁶ When modified by the adjective "administrative," it is clear that § 15.2-1131 is intended to capture only nonelected public officials.

Such an interpretation is further supported by reading the provisions of § 15.2-1131 as a whole. "[A] fundamental rule of statutory construction requires that courts view the entire body of legislation and the statutory scheme to determine the 'true intention of each part.' In construing statutes, courts should give the fullest possible effect to the legislative intent embodied in the entire statutory enactment."⁴⁷ The personnel system authorized by § 15.2-1131 must be "based on merit and professional ability," be nondiscriminatory, and "consist of rules and regulations which provide for the general administration of personnel matters, a classification plan for employees, a uniform pay plan and a procedure for resolving grievances." All of these things are typical of personnel plans for administrative officials and employees and not officers elected by the people.

Section 15.2-1131 does not define the word "employee." Title 15.2 addresses aspects of the employer/employee relationship in local government. Specifically, § 15.2-1500(A) provides that "[e]very locality shall provide for all the governmental functions of the locality, including, without limitation, ... the employment of ... employees needed to carry out the functions of government." Because § 15.2-1131 does not define the term "employee," the term must be given its "ordinary and obvious meaning."⁴⁸ Generally, there are four elements to determine whether an employer/employee relationship exists: (1) the employer's selection and engagement of the employee; (2) the payment of wages to the employee; (3) the employer's retention of the power of dismissal; and (4) the employer's retention of the power of control.⁴⁹ Finally, public officers are distinguished from public employees.⁵⁰ An officer is distinguished from an employee in the greater importance and independence of the position, and by the authority to direct and supervise.⁵¹ Thus, when a public employee enters an

elected office, he becomes a public officer and is no longer considered to be a public employee.⁵²

Virginia adheres to the Dillon Rule of strict construction, which provides that local governing bodies "have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable."⁵³ "[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."⁵⁴ The Dillon Rule recognizes that localities are political subdivisions of the Commonwealth, which, in turn, rests on the foundation of Article I, § 14 of the Constitution of Virginia.⁵⁵

Section 15.2-1131 is a grant of authority to certain cities to enact a personnel policy. That grant of authority is specific to personnel policies that are established for "administrative officials and employees."⁵⁶ 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.⁵⁷ Since public "officers elected by the people"⁵⁸ are not administrative officials or employees, the City of Richmond is without authority under § 15.2-1131 to subject elected officers to the city's personnel policies. Therefore, it is my opinion that the city council had no authority to adopt an ordinance placing council members in the city's personnel system.⁵⁹ Consequently, the City of Richmond does not have authority to define unclassified employees, for the purpose of its personnel system, to include council members. Therefore, the prohibitions contained in § 2-1240(b) do not apply to members of city council.

Please note, however, that this determination does not negate the need for preclearance of § 2-1240(b) as it relates to those persons who hold classified and unclassified positions in city government. For the reasons stated in part B of this opinion, it is my opinion that § 2-1240(b) in its entirety must be submitted to the Department of Justice, regardless of its application to city council members, prior to its enforcement with respect to classified and unclassified employees of the City of Richmond.

Conclusion

It is my opinion that § 2-1240(b) of the city code may not be enforced with regard to those persons in the classified or unclassified service of the City of Richmond unless and until that section is administratively precleared by the Department of Justice or approved by a declaratory judgment in the United States District Court for the District of Columbia.

It is further my opinion that the City of Richmond did not have authority to define unclassified employees, for the purpose of its personnel system, to include council members thereby subjecting council members to the City's personnel system. Consequently, the prohibition contained in § 2-1240(b) requiring the forfeiture of one's position with city government when standing as a candidate for election for certain city offices does not apply to members of city council.

Such determination, however, does not negate the need for preclearance by the United States Department of Justice of § 2-1240(b) as it relates to those persons who hold classified and unclassified positions in city government. It is my opinion that § 2-1240(b) must be submitted to the Department of Justice, regardless of its

application to city council members, prior to its enforcement with respect to classified and unclassified employees of the City of Richmond.

¹ 42 U.S.C.A. § 1973c (West 2003).

² *Id.*

³ 42 U.S.C.A. § 1973b(f)(2) (West 2003).

⁴ *See* 28 C.F.R. pt. 51 (2003).

⁵ *See* 28 C.F.R. § 51.2 (defining "preclearance"); §§ 51.4(b), 51.6, 51.10, 51.12, 51.13.

⁶ *See, e.g.*, 1992 Op. Va. Att'y Gen. 34, 37 (concluding that statutory amendment prohibiting simultaneous service requires § 5 preclearance prior to implementation).

⁷ 28 C.F.R. § 51.13(g).

⁸ *United States v. Bd. of Comm'rs*, 435 U.S. 110, 131-35 (1978) (noting Congress' adoption of United States Attorney General's long-standing administrative interpretation of § 5, which is binding on Supreme Court).

⁹ 28 C.F.R. § 51.62(a).

¹⁰ 28 C.F.R. § 51.63.

¹¹ 42 U.S.C.A. § 1973j(d) (West 2003).

¹² City of Richmond, Va. Code ch. 2, § 2-1240 (2004), available at http://library9.municode.com/gateway.dll/VA/virginia/10902?f=templates&fn=default.htm&npusername=13859&nppassword=MCC&npac_credentialsp resent=true&vid=default [hereinafter Richmond City Code].

¹³ Richmond City Code, *supra* note 12, § 2-1236.

¹⁴ Richmond City Code, *supra* note 12, § 2-1237(1).

¹⁵ *Id.*

¹⁶ *See Dougherty County Bd. of Educ. v. White*, 439 U.S. 32, 47 (1978) (holding that county board of education's personnel rule, requiring employees to take unpaid leaves of absence while campaigning for elective political office, is "standard, practice, or procedure with respect to voting" that is subject to preclearance requirements of Voting Rights Act); *see also* 28 C.F.R. § 51.13(g) (providing that "change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices" must be precleared under the Voting Rights Act prior to implementation).

¹⁷ 42 U.S.C.A. § 1973c.

¹⁸ Richmond City Code, *supra* note 12, § 2-1237(1).

¹⁹ 1987 Va. Acts ch. 230, at 302, 306 (amending 1948 Va. Acts ch. 116, § 9.13, at 175, 229).

²⁰ 1998 Va. Acts ch. 711, at 1670, 1694 (enacting clause 2, repealing §§ 9.01 to 9.17).

²¹ 1948 Va. Acts, *supra* note 19, at 226 (quoting § 9.07(a)).

²² As previously stated, those positions identified as "unclassified" by the city charter were not subject to the prohibition in § 9.13 of the charter.

²³ Your opinion request cites *Morse v. Republican Party of Virginia*, 517 U.S. 186, 225 (1996), for the proposition that the change involving unclassified employees is void and legally unenforceable. In *Morse*, the Supreme Court of the United States explained that "the fundamental purpose of the preclearance system was to 'shift the advantage of time and inertia from the perpetrators of the evil to its victims,' by declaring all changes in voting rules void until they are cleared by the Attorney General or by the District Court for the District of Columbia." *Id.* at 225 (citation omitted). I agree that a change that is not precleared is unenforceable. I caution against misinterpreting the use of the word "void" by the Supreme Court. The legal definition of "void" means having "no legal effect;" "an absolute nullity." Black's Law Dictionary 1568 (7th ed. 1999). In this instance, the ordinance eventually may be enforced, rather than be declared void, upon preclearance. In that sense, the city code section at issue may be "saved" upon preclearance and consequently does not meet the strict legal definition of "void."

²⁴ Any request by a city 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).

²⁵ 2004 Va. Acts ch. 514 (citing § 3.01(A)), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0514>.

²⁶ *Id.* (quoting § 3.01(B)).

²⁷ 2004 Va. Acts chs. 877, 898 (citing § 3.01.1) available at <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0877>, <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0898>, respectively.

²⁸ *Id.* (citing §§ 3.01.1, 4.16(b)-(c), 5.01, 5.01.1, 5.05, 5.06, 5.07, 6.02, 6.03, 6.04, 6.06, 6.07, 6.08, 6.11, 6.13, 6.14, 6.16, 6.19).

²⁹ *Id.* (citing §§ 4.16(b)-(c), 5.01.1, 5.02, 5.04, 5.05.1, 5.07, 17.02, 18.03).

³⁰ 28 C.F.R. § 51.2 (emphasis added).

³¹ 28 C.F.R. § 51.27(a) (emphasis added).

³² 28 C.F.R. § 51.41(a) (emphasis added).

³³ *McCain v. Lybrand*, 465 U.S. 236, 255 (1984).

³⁴ *Id.* at 256-57 (emphasis added).

³⁵ This Office previously has issued an opinion on the validity of imposing "resign-to-run" provisions on certain officers. See 1986-1987 at 36, 38, cited in 1991 Op. Va. Att'y Gen. 53, 55 n.1.

³⁶ See Op. Va. Att'y Gen.: 1998 at 71, 72; 1997 at 105, 107; 1991 at 237, 238; 1989 at 288, 293 n.1; 1986-1987 at 347, 348; 1977-1978 at 31, 33; 1976-1977 at 17, 17.

³⁷ See Op. Va. Att'y Gen.: 1995 at 260, 261; 1986-1987, *supra* note 36, at 348; 1976-1977, *supra* note 36, at 17.

³⁸ See Op. Va. Att'y Gen.: 1986-1987, *supra* note 36, at 348; 1976-1977, *supra* note 36, at 17; see also Op. Va. Att'y Gen.: 1993 at 151, 153 n.1; 1992 at 131, 132 n.1; 1981-1982 at 471, 472.

³⁹Op. Va. Att'y Gen.: 1999 at 90, 93; 1997, *supra* note 36, at 107; 1987-1988 at 69, 72; 1985-1986 at 64, 65; 1977-1978, *supra* note 36, at 33; 1976-1977, *supra* note 36, at 17.

⁴⁰See 1997 Va. Acts ch. 211 at 293.

⁴¹See Richmond City Code, *supra* note 12, § 2-1206.

⁴²See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

⁴³The Oxford American Dictionary and Language Guide 13 (1999).

⁴⁴Black's Law Dictionary 44, *supra* note 23.

⁴⁵*Id.* at 1114; see, e.g., Va. Code Ann. § 42.1-77 (LexisNexis Repl. Vol. 2002) (defining "public official," as that term is used in Virginia Public Records Act, to include "all persons holding office created by the Constitution of Virginia").

⁴⁶See 2004 Op. Va. Att'y Gen. 04-016, available at <http://www.vaag.com/media%20center/Opinions/2004opns/04-016w.htm>, and opinions cited therein (noting that public office must be created by Constitution or statutes, and that it is position filled by election or appointment, with designation or title, and duties concerning public, assigned by law).

⁴⁷Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989) (citation omitted).

⁴⁸*Charlottesville Music Ctr., Inc. v. McCray*, 215 Va. 31, 35, 205 S.E.2d 674, 677 (1974); Op. Va. Att'y Gen.: 1997 at 202, 202; *id.* at 72, 73; 1993 at 210, 213.

⁴⁹See *Atl. Coast Line R.R. Co. v. Tredway's Adm'x*, 120 Va. 735, 93 S.E. 560 (1917) (describing relationship of master and servant); Op. Va. Att'y Gen.: 2002 at 232, 233; 1999 at 142, 145; 1991 at 140, 143.

⁵⁰See Op. Va. Att'y Gen.: 1985-1986 at 28, 29; 1982-1983 at 392, 392-93; 1974-1975 at 373, 373.

⁵¹See Op. Va. Att'y Gen.: 1982-1983, *supra* note 50, at 392; 1974-1975, *supra* note 50, at 373.

⁵²See, e.g., 1985-1986 Op. Va. Att'y Gen., *supra* note 50, at 29 (concluding that when employee of commissioner of revenue was appointed commissioner, he became public officer and was no longer employee).

⁵³*City of Chesapeake v. Gardner Enters., Inc.*, 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997).

⁵⁴*Commonwealth v. County Bd.*, 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

⁵⁵The language in Article I, § 14 is identical to that in the 1902 Constitution and remains unchanged from § 14 of the Declaration of Rights, adopted June 12, 1776. Under Article I, § 14 of the Constitution, no government, separate and independent of state government, is permitted. *Bd. of Supvrs. v. Cox*, 155 Va. 687, 709-10, 156 S.E. 755, 762 (1930). See, e.g., *Taylor v. Smith*, 140 Va. 217, 238, 124 S.E. 259, 265 (1924) (affirming that state, and city as arm of state, has absolute control of streets in interest of public).

⁵⁶Va. Code Ann. § 15.2-1131 (LexisNexis Repl. Vol. 2003).

⁵⁷See 2A Norman J. Singer, *Sutherland Statutory Construction* § 47:23 (6th ed. 2000) (explaining maxim, *expressio unius est exclusio alterius*, as applied to statutory construction); Op. Va. Att'y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

⁵⁸Richmond City Code, *supra* note 12, § 2-1237(1).

⁵⁹You do not provide a copy of the ordinance(s) adopting the predecessor to §§ 2-1237(1) and 2-1240(b). I do not know whether such ordinance(s) contained a severability clause. Consequently, I cannot opine on the status or validity of the remaining provisions contained in the ordinance(s).

[Back to October 2004 Opinion Index](#)