

OP. NO. 04-080

**COUNTIES, CITIES AND TOWNS: VIRGINIA WATER AND WASTE
AUTHORITIES ACT — JOINT ACTION BY LOCALITIES – JOINT EXERCISE
OF POWERS**

Virginia Water and Waste Authorities Act authorizes town of Independence to create Virginia water authority in conjunction with Grayson County, Virginia, town of Sparta, North Carolina, and Alleghany County, North Carolina.

Mr. Roger D. Brooks
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December 22, 2004

Issue Presented

You ask whether the town of Independence is authorized by the Virginia Water and Waste Authorities Act, §§ 15.2-5100 through 15.2-5158, to create a water authority under the Act with Grayson County, Virginia, the town of Sparta, North Carolina, and Alleghany County, North Carolina.

Response

It is my opinion that the town of Independence is authorized by the Virginia Water and Waste Authorities Act, §§ 15.2-5100 through 15.2-5158, to create a Virginia water authority in conjunction with Grayson County, Virginia, the town of Sparta, North Carolina, and Alleghany County, North Carolina.

Background

You advise that a preliminary engineering study of the long-term water supply needs of the towns of Independence and Sparta, North Carolina, and the land areas adjacent to each locality, including Grayson County, Virginia, and Alleghany County, North Carolina, indicates that demand will outstrip supply. The study also indicates that construction of a new water treatment plant is the best solution to this matter. You relate that representatives of the four localities have discussed approaching the project on a regional basis. Under consideration is the creation of a Virginia regional water authority under the Virginia Water and Waste Authorities Act, §§ 15.2-5100 through 15.2-5158. It is proposed that such an authority would contract with all four localities in order to construct the treatment plant and supply the water.

You further advise that the Virginia Water and Waste Authorities Act authorizes the town of Independence and Grayson County ("Virginia localities") to create a water authority. You ask that I assume the town of Sparta and Alleghany County ("North Carolina localities") have similar powers or authority under North Carolina law. Furthermore, you ask that I assume there is nothing in any charter or special act applicable to the Virginia localities that would prevent them from forming an authority under the Act with the North Carolina localities.

In your request,¹ you note that the Virginia Water and Waste Authorities Act authorizes the creation of public service authorities for the purpose of owning and operating water systems. Under the provisions of the Act, two or more localities may create such an authority. It is your opinion that because the definition of locality used in Title 15.2 is not expressly limited to Virginia localities, the North Carolina localities will meet the definition of "locality" for purposes of the Act. Should that conclusion not have merit, you relate that § 15.2-1300 will permit the Virginia localities and the North Carolina localities to form a Virginia water authority under the Act.

Applicable Law and Discussion

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."² "[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."³ The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are delegated powers.⁴ Therefore, any doubt as to the existence of power must be resolved against the locality.⁵

The Virginia Water and Waste Authorities Act is set forth in Chapter 51 of Title 15.2, §§ 15.2-5100 through 15.2-5158. The Act "shall constitute full and complete authority, without regard to the provisions of any other law for the doing of the acts herein authorized."⁶ Furthermore, the General Assembly requires the Act to be "liberally construed to effect the purposes of [Chapter 51]."⁷ Section 15.2-5102(A) provides:

The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a water authority The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate. The ordinance, resolution or agreement creating the authority shall not be adopted or approved until a public hearing has been held on the question of its adoption or approval, and after approval at a referendum if one has been ordered pursuant to this chapter.

It is your opinion that because the definition of locality used in Title 15.2 is not expressly limited to Virginia localities, the North Carolina localities will meet the definition of "locality" for purposes of the Act. The General Assembly sets forth the definitions of the terms used in Title 15.2 in § 15.2-102. The definitions apply "unless such construction would be inconsistent with the context or manifest intent of the statute."⁸ For purposes of Title 15.2, § 15.2-102 defines the term "locality" "to mean a county, city, or town as the context may require." The provision does not expressly require that such county, city or town be located within the Commonwealth. The jurisdiction of the legislature of any state, however, generally is limited to the geographical area governed by that state. Therefore, "legislative enactments apply only to persons or things within the territory over which the enacting legislature exercises jurisdiction."⁹ Furthermore, as a general rule, the statutory law of a state can have no effect outside the territorial limits of that state, unless it is given effect in a foreign jurisdiction by courtesy or comity. The Supreme Court of Virginia notes that "[s]tatutes derive

their force from the authority of the Legislature, and as a necessary consequence their effect will be limited to the boundaries of the State."¹⁰

This general rule must be considered universal because

[T]he general rule is that no state or nation can by its laws directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. A statute may thus be valid insofar as it relates to persons or things within the jurisdiction although it is invalid insofar as it relates to persons and things outside the jurisdiction. However, a state may have the power to legislate concerning the rights and obligations of its citizens with regard to transactions occurring beyond its boundaries.^[11]

To the extent that a statute may have any extraterritorial effect, the rule of statutory construction is that

unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter, or history, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only within the territorial jurisdiction of the state or country enacting it. Thus, an extraterritorial effect is not to be given statutes by implication.^[12]

"The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its express terms."¹³ The applicable provisions of the Virginia Water and Waste Authorities Act and the provisions of §§ 15.2-102 and 15.2-1300 govern the formation of a water authority within the Commonwealth. Section 15.2-1300(G) indicates that power exists for political subdivisions of the Commonwealth to form a water authority with political subdivisions of other states. The agreement must comply with § 15.2-1300.¹⁴ You advise that none of the applicable Virginia statutory provisions are to be exercised outside the geographic area of the Commonwealth. In addition, you advise that the North Carolina localities desire to join with the Virginia localities within the Commonwealth to form a Virginia water authority pursuant to the laws of the Commonwealth. Furthermore, you request that I assume for the purposes of this opinion that the North Carolina localities are permitted under the law of the State of North Carolina to enter into an agreement to form a Virginia authority under the provisions of the Act. You also request that I assume nothing in the charter or any special act applicable to the Virginia localities would prohibit them from participating with the North Carolina localities.

Conclusion

Accordingly, it is my opinion that the town of Independence is authorized by the Virginia Water and Waste Authorities Act, §§ 15.2-5100 through 15.2-5158, to create a Virginia water authority in conjunction with Grayson County, Virginia, the town of Sparta, North Carolina, and Alleghany County, North Carolina.

¹Section 2.2-505(B) requires that any request by a town 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."

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

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

⁴See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 522 S.E.2d 610 (1999) (holding that county board of supervisors does not have unfettered authority to decide what matters to include in subdivision ordinance; must include requirements mandated by Land Subdivision and Development Act, and may include optional provisions contained in Act); Op. Va. Att'y Gen: 2002 at 77, 78; 1974-1975 at 403, 405.

⁵2A Eugene McQuillen, The Law of Municipal Corporations § 10.19, at 369 (3d ed. 1996); see Op. Va. Att'y Gen.: 2000 at 75, 76; 2002 at 83, 84.

⁶Section 15.2-5100 (LexisNexis Repl. Vol. 2003).

⁷*Id.*

⁸Section 15.2-102 (LexisNexis Repl. Vol. 2003).

⁹See 1 Norman J. Singer, Sutherland Statutory Construction § 2:2, at 32 (6th ed. 2002).

¹⁰C.I.T. Corp. v. Guy, 170 Va. 16, 22, 195 S.E. 659, 661 (1938) (citations omitted).

¹¹73 Am Jur. 2d *Statutes* § 250, at 431-32 (2001) (citations omitted).

¹²*Id.* at 431.

¹³Vollin v. Arlington Co. Electoral Bd., 216 Va. 674, 679, 222 S.E.2d 793, 797 (1976).

¹⁴Section 15.2-1300 provides: "A. Any power, privilege or authority exercised or capable of exercise by any political subdivision of this Commonwealth may be exercised and enjoyed jointly with any other political subdivision of this Commonwealth having a similar power, privilege or authority except where an express statutory procedure is otherwise provided for the joint exercise.

"B. Any two or more political subdivisions may enter into agreements with one another for joint action pursuant to the provisions of this section. The participating political subdivisions shall approve such agreement before the agreement may enter into force. Localities shall approve such agreements by ordinance. Other political subdivisions shall approve such agreements by resolution.

"C. The agreement shall specify the following:

"1. Its duration.

"2. Its purpose or purposes.

"3. The manner of financing the joint undertaking and of establishing and maintaining a budget therefor.

"4. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

"5. All other necessary and proper matters.

"D. The agreement, in addition to the items enumerated in subsection C hereof, may contain the following:

"1. Provision for an administrator or a joint board responsible for administering the undertaking. The precise organization, composition, term, powers and duties of any administrator or joint board shall be specified.

"2. The manner of acquiring, holding (including how title to such property shall be held) and disposing of real and personal property used in the undertaking.

"3. How issues of liability will be dealt with and the types, amounts and coverages of insurance.

"E. No agreement made pursuant to this section shall relieve any political subdivision of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by an administrator or joint board created by an agreement made hereunder, such performance may be offered in satisfaction of the obligation or responsibility.

"F. Any political subdivision entering into an agreement pursuant to this section may appropriate funds and may sell, lease, give, or otherwise supply the administrator or joint board created to operate the undertaking with such property, personnel or services therefor as may be within its legal power to furnish.

"G. Any power, privilege or authority exercised or capable of exercise by any political subdivision of this Commonwealth may be exercised and enjoyed jointly with any political subdivision of any other state or the District of Columbia subject to the provisions of subsections A, B, C, D, E and F above, which shall apply mutatis mutandis."

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