

OP. NO. 05-073

TAXATION: LOCAL OFFICERS – COMMISSIONERS OF THE REVENUE.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).

Commissioner of revenue may not enter into agreement with commissioner of revenue in adjacent locality to change taxing jurisdiction of landowner's property from one locality to other locality; any such agreement is void.

Mr. J. Thompson Shrader
Amherst County Attorney
December 2, 2005

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

Issue Presented

You ask whether a commissioner of the revenue may enter into an agreement with the commissioner of the revenue in an adjacent locality to change the taxing jurisdiction of a landowner's property from one locality to the other locality.

Response

It is my opinion that a commissioner of the revenue may not enter into an agreement with the commissioner of the revenue in an adjacent locality to change the taxing jurisdiction of a landowner's property from one locality to the other locality. It is further my opinion that any such agreement is void.

Background

You advise that the boundary between Amherst County and Nelson County, as established by the General Assembly, is the Piney River. At the time the General Assembly created Nelson County out of Amherst County a landowner's property was physically located in Nelson County.

You note that subsequent to the creation of Nelson County, the Piney River changed course such that the river now runs on the opposite side of the landowner's property. You note, however, that the location of the old riverbed currently is ascertainable. You also state that the landowner has advised you of the existence of a Civil War map that shows the Piney River in its current location.

You relate that no action has been taken by the governing bodies of Amherst County and Nelson County to resolve the boundary location issue. Since 1989, however, you relate that a landowner's property has been mapped and taxed in Amherst County at his request. Further, you note that the property has been mapped and taxed in Amherst County as a result of a 1989 agreement between

the former Commissioners of the Revenue of Amherst and Nelson Counties ("1989 agreement"). Prior to the 1989 agreement, the landowner's property was mapped and taxed in Nelson County.

You advise that without knowing the cause for the change in course of the Piney River, you are unable to determine whether the present or the historic location of the river should serve as the current boundary between Amherst County and Nelson County. Furthermore, you conclude that the governing bodies of Amherst County and Nelson County must take action or initiate a friendly suit in the circuit court of either locality to resolve the issue. Therefore, you conclude that the 1989 agreement between the former Commissioners of the Revenue is *ultra vires*¹ and void because it exceeds the power granted to local constitutional officers by statute.²

Applicable Law and Discussion

The commissioner of the revenue is a constitutional officer whose duties "shall be prescribed by general law or special act" of the General Assembly.³ The duties of commissioners of the revenue are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2, as well as generally in Titles 15.2 and 58.1.⁴ An *ultra vires* act is one that is beyond the powers conferred upon a constitutional officer by law.⁵ Such acts are void *ab initio*, from the beginning.⁶

Article VII, § 4 of the Constitution of Virginia directs the General Assembly to assign duties by general or special law to constitutional officers, including the commissioner of the revenue.⁷ I am not aware of any statutory provision whereby the General Assembly authorizes a commissioner of the revenue to enter into an agreement with the commissioner of the revenue of an adjacent locality with regard to the location and taxing of property.⁸

Virginia follows the Dillon Rule of strict construction, which provides that "municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable."⁹ Additionally, the powers of local governments "are fixed by statute and are limited to those conferred expressly or by necessary implication."¹⁰ Any doubt as to the existence of a power must be resolved against the locality.¹¹ Accordingly, because local governments are subordinate creatures of the Commonwealth, they possess only those powers conferred upon them by the General Assembly.¹² These rules are also applicable to constitutional officers, such as county commissioners of the revenue.¹³ Therefore, I must conclude that a commissioner of the revenue is not empowered to enter into an agreement with the commissioner of the revenue in an adjacent locality.

Conclusion

Accordingly, it is my opinion that a commissioner of the revenue may not enter into an agreement with the commissioner of the revenue in an adjacent locality to change the taxing jurisdiction of a landowner's property from one locality to other locality. It is further my opinion that any such agreement is void.

¹The term "ultra vires" means "[u]nauthorized; beyond the scope of power allowed or granted ... by law." Black's Law Dictionary 1559 (8th ed. 2004).

²A request by a county 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. 2005).

³Va. Const. art. VII, § 4.

⁴2000 Op. Va. Att'y Gen. 204, 205.

⁵See *supra* note 1.

⁶*Id.* at 5 (defining "*ab initio*"); see also Op. Va. Att'y Gen.: 1986-1987 at 315, 316 (concluding that city council's refund of personal property was void because it lacked authority); 1982-1983 at 66, 67 (concluding that town's contract for indebtedness beyond its charter limitations is void, at least to extent of excess).

⁷1987-1988 Op. Va. Att'y Gen. 517, 518.

⁸Compare 1974-1975 Op. Va. Att'y Gen. 538 (concluding that county treasurer may serve as billing and collection agent for public service authority).

⁹Commonwealth v. County Bd., 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977) (quoting Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975)).

¹⁰*Id.* at 573-74, 232 S.E.2d at 40 (quoting Horne, 216 Va. at 117, 215 S.E.2d at 455).

¹¹2A Eugene McQuillin, The Law of Municipal Corporations § 10.19, at 369 (3d ed. 1996), see also 2002 Op. Va. Att'y Gen. 85, 87.

¹²See Gordon v. Bd. of Supvrs., 207 Va. 827, 153 S.E.2d 270 (1967) (finding that county board of supervisors did not abuse its discretion in voting to lend money to airport authority; power exercised by board was expressly implied from legislative act allowing local governing body to lend real property to any authority it created).

¹³1984-1985 Op. Va. Att'y Gen. 284, 284.

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