



COMMONWEALTH of VIRGINIA

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December 8, 2008

The Honorable Lynwood W. Lewis, Jr.
Member, House of Delegates
P.O. Box 760
Accomac, Virginia 23301

Dear Delegate Lewis:

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 individuals holding public offices in a town may be appointed to serve on that town's wetlands board created pursuant to a wetlands zoning ordinance under Chapter 13 of Title 28.1. You specifically ask whether an individual serving on a historic review board or board of building code appeals may be appointed to such wetlands board.

Response

It is my opinion that individuals holding public offices in a town may be appointed to serve on that town's wetlands board, which was created pursuant to a wetlands zoning ordinance under Chapter 13 of Title 28.1. It further is my opinion that an individual serving on a town board of historic review or board of building code appeals may be appointed to the town's wetlands board.

Applicable Law and Discussion

You advise that the Town of Cape Charles has requested that you inquire about appointments of persons to the Cape Charles Wetlands Board. Specifically, you ask whether persons serving in public offices in the town and persons who serve on the town's historic review board or board of building code appeals may be appointed to the Wetlands Board.

Chapter 13 of Title 28.2, §§ 28.2-1300 through 28.2-1320 ("Chapter 13"), governs wetlands within the Commonwealth. Section 28.2-1303(A) provides, in part, that:

Every county, city, or town that enacts a wetlands zoning ordinance pursuant to [Chapter 13] shall create a wetlands board, consisting of five or seven residents of that jurisdiction appointed by the local governing body. All board members' terms shall be for five years, except that the term of at least one of the original appointments shall expire during each of the succeeding five years. The chairman of the board shall notify the local governing body at least 30 days prior to the expiration of any member's term and shall promptly

notify the local governing body if any vacancy occurs. Vacancies shall be filled by the local governing body without delay upon receipt of such notice. Appointments to fill vacancies shall be for the unexpired portion of the term. Members may serve successive terms. A member whose term expires shall continue to serve until his successor is appointed and qualified. *Members of the board shall hold no public office in the county or city other than membership on the local planning or zoning commission, the local erosion commission, the local board of zoning appeals, a board established by a local government to hear cases regarding ordinances adopted pursuant to the Chesapeake Bay Preservation Act and regulations promulgated thereunder, or as director of a soil and water conservation board.*¹ When members of these local commissions or boards are appointed to a local wetlands board, their terms of appointment shall be coterminous with their membership on those boards or commissions. [Emphasis added.]

Legislative intent is determined from the plain meaning of the words used.² Furthermore, “when legislative intent is plain,” One is required “to respect it and give it effect.”³ Language is only ambiguous if it admits of being understood in more than one way or refers to two or more things simultaneously.⁴ “If language is clear and unambiguous, there is no need for construction ...; the plain meaning and intent of the [statute] will be given it.”⁵

Section 28.2-1303(A) plainly directs that “[e]very county, city, or town that enacts a wetlands zoning ordinance pursuant to [Chapter 13] shall create a wetlands board.” The portion of § 28.2-1303(A) about which you inquire clearly provides that members of the wetlands board “shall hold no public office in the county or city.” The omission of towns from the prohibition contained in this sentence is significant and demonstrates a legislative intent to exclude towns from the operation of this specific prohibition.⁶ Accordingly, I conclude that individuals holding public offices in towns may be appointed to serve on a wetlands board enacted pursuant to Chapter 13. For the same reasons, I conclude that individuals who serve on a town board, such as the historic review board or the board of building code appeals, may be appointed to serve on a wetlands board.

¹You advise that your inquiries arise from this emphasized portion of § 28.2-1303(A).

²*Marsh v. City of Richmond*, 234 Va. 4, 11, 360 S.E.2d 163, 167 (1987); *Va. Dept. of Labor & Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 99, 353 S.E.2d 758, 760-61 (1987); *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

³*Commonwealth v. County Bd.*, 217 Va. 558, 579, 232 S.E.2d 30, 43 (1977).

⁴*Lincoln Nat’l Life Ins. Co. v. Commonwealth Corrugated Container Corp.*, 229 Va. 132, 136-37, 327 S.E.2d 98, 101 (1985); *see also* *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (“An ambiguity exists when the language is difficult to comprehend, is of doubtful import, or lacks clearness and definiteness.”).

⁵*Brown*, 229 Va. at 321, 330 S.E.2d at 87 (1985); *accord* *Gillespie v. Commonwealth*, 272 Va. 753, 757-58, 636 S.E.2d 430, 432 (2006); *Lynch v. Commonwealth Transp. Comm’r*, 255 Va. 227, 231, 495 S.E.2d 247, 249 (1998); *Sch. Bd. v. Sch. Bd.*, 219 Va. 244, 250, 247 S.E.2d 380, 384 (1978).

⁶*See, e.g., Williams v. Matthews*, 248 Va. 277, 284, 448 S.E.2d 625, 629 (1994) (noting that when statute contains provision with reference to one subject, omission of such provision is significant to show different legislative intent); *Va. Beach v. Va. Rest. Ass’n*, 231 Va. 130, 134, 341 S.E.2d 198, 200 (1986) (finding that omission of word “tax” in statute prohibiting certain actions was significant when word “tax” was used in other parts of act).

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Conclusion

Accordingly, it is my opinion that individuals holding public offices in a town may be appointed to serve on that town's wetlands board, which was created pursuant to a wetlands zoning ordinance under Chapter 13 of Title 28.1. It further is my opinion that an individual serving on a town board of historic review or board of building code appeals may be appointed to the town's wetlands board.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink that reads "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert F. McDonnell