



# **COMMONWEALTH of VIRGINIA**

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February 2, 2009

The Honorable Phillip P. Puckett  
Member, Senate of Virginia  
P.O. Box 2440  
Lebanon, Virginia 24266

Dear Senator Puckett:

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 § 58.1-3713 permits the Buchanan County Coal and Gas Road Improvement Advisory Committee to include in its budget the payment of salary and benefits for an employee of the Commissioner of the Revenue whose primary responsibility will be to audit the records of coal and gas companies to ensure that the proper license tax for severance of coal and gas from Buchanan County is being paid.

## **Response**

It is my opinion that § 58.1-3713 does not permit the Buchanan County Coal and Gas Road Improvement Advisory Committee to include in its budget the payment of salary and benefits for an employee of the Commissioner of the Revenue regardless of his primary responsibility.

## **Background**

You observe that § 58.1-3713 establishes Coal and Gas Road Improvement Advisory Committees in localities in which coal and gas are severed from the earth. The section also provides for the creation of a Coal and Gas Road Improvement Fund (the "Fund") in each such locality and specifies how the Fund may be distributed. It is your view that the Fund generally may be used to improve public roads in such localities, to provide funding for water and sewer system lines, and to provide funding to the Virginia Coalfield Economic Development Authority. Although there is no specific provision for the payment of administrative costs of the Advisory Committee, you state that Buchanan County's Advisory Committee construes the statute to permit a budget providing for administrative expenses, including paying salary and benefits of the Committee's employees.

You further advise that the Buchanan County Commissioner of the Revenue recently approached the Advisory Committee with a request that the Committee fund a full- or part-time position in the Commissioner's office to assist in auditing the records of coal and gas companies.

### Applicable Law and Discussion

The General Assembly enacted the Virginia Coalfield Economic Development Authority in 1988 “to enhance the economic base for the seven county and one city coalfield region of Virginia.”<sup>1</sup> Section 15.2-6009 provides that

[o]n September 1, 1988, and on the first day of each month thereafter, each county and city shall remit to the Virginia Coalfield Economic Development Fund twenty-five percent of the revenues collected during the next to last calendar month from the coal and gas road improvement tax pursuant to § 58.1-3713.

Section 58.1-3713(A) provides, in part, that:

The moneys collected for each county or city from the tax imposed under authority of this section shall be paid into a special fund of such county or city to be called the Coal and Gas Road Improvement Fund of such county or city, and shall be spent for such improvements to public roads as the coal and gas road improvement advisory committee and the governing body of such county or city may determine as provided in subsection B of this section.

Additionally, § 58.1-3713(A) permits any county or city to impose a “license tax on every person engaging in the business of severing coal or gases from the earth.” The tax is based on the producers’ gross receipts from the sale of the coal and gas.<sup>2</sup> The monies collected from this tax are paid into a special county fund, the Fund.<sup>3</sup> Three-fourths of the revenue from such license tax must be paid to the Fund and spent only for improvements to public roads in the Southwest Virginia coalfield region,<sup>4</sup> and the remaining one-fourth of the revenue must be paid to the Virginia Coalfield Economic Development Fund,<sup>5</sup> which is administered by the Authority.<sup>6</sup>

Section 58.1-3713(B) provides, in part, that:

Any county or city imposing the tax authorized in this section shall establish a Coal and Gas Road Improvement Advisory Committee, to be composed of four members: (i) a member of the governing body of such county or city, appointed by the governing body, (ii) a representative of the Department of Transportation, and (iii) two citizens of such county or city connected with the coal and gas industry, appointed for a term of four years, initially commencing July 1, 1989, by the chief judge of the circuit court.

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<sup>1</sup> VA. CODE ANN. § 15.2-6002 (2008); *see also* § 15.2-6001 (2008) (mandating that Authority is to assist the coal producing areas “to achieve some degree of economic stability”).

<sup>2</sup> *See* VA. CODE ANN. § 58.1-3713(A) (Supp. 2008) (providing that methodology of measuring gross receipts in § 58.1-3712 applies to tax).

<sup>3</sup> *Id.* (designating that fund “be called the Coal and Gas Road Improvement Fund of such county”).

<sup>4</sup> *Id.* “[H]owever, one-fourth of such revenue may be used to fund construction of new water and/or sewer systems and lines” in certain circumstances. *Id.*

<sup>5</sup> *See id.*; § 15.2-6009 (2008).

<sup>6</sup> Section 15.2-6010 (2008).

The power of a local governing body, and thus of a committee created by statute, unlike that of the General Assembly, “must be exercised pursuant to an express grant”<sup>7</sup> because the powers of a locality and a committee created by statute “are limited to those conferred expressly or by necessary implication.”<sup>8</sup> “If the power cannot be found, the inquiry is at an end.”<sup>9</sup> The Dillon Rule requires a narrow interpretation of all powers conferred on local governments, and in this case on the Coal and Gas Road Improvement Advisory Committee, since they are delegated powers.<sup>10</sup> Therefore, any doubt regarding the existence of power must be resolved against the locality.<sup>11</sup> In this case, such doubt must be resolved against the Coal and Gas Road Improvement Advisory Committee.

In ascertaining whether a power may be implied from a statutory grant of authority, the Supreme Court of Virginia has provided the following guidance:

“In questions of implied power, the answer is to be found in legislative intent. To imply a particular power from a power expressly granted, it must be found that the legislature intended that the grant of the express also would confer the implied.

“In determining legislative intent, the rule is clear that where a power is conferred and the mode of its execution is specified, no other method may be selected; any other means would be contrary to legislative intent and, therefore, unreasonable. A necessary corollary is that where a grant of power is silent upon its mode of execution, a method of exercise clearly contrary to legislative intent, or inappropriate to the ends sought to be accomplished by the grant, also would be unreasonable.

“Consistent with the necessity to uphold legislative intent, the doctrine of implied powers should never be applied to create a power that does not exist or to expand an existing power beyond rational limits. Always, the test in application of the doctrine is reasonableness, in which concern for what is necessary to promote the public interest is a key element.”<sup>[12]</sup>

Statutory language is ambiguous when it may be understood in more than one way.<sup>13</sup> An ambiguity also exists when statutory language lacks clarity and precision, or is difficult to comprehend.<sup>14</sup>

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<sup>7</sup> Nat’l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

<sup>8</sup> Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975).

<sup>9</sup> Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

<sup>10</sup> See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 504, 522 S.E.2d 610, 613 (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.

<sup>11</sup> 2A EUGENE MCQUILLEN, THE LAW OF MUNICIPAL CORPORATIONS § 10.19, at 369 (3d ed. rev. 1996); see also Op. Va. Att’y Gen.: 2002 at 83, 84; 2000 at 75, 76.

<sup>12</sup> Arlington County v. White, 259 Va. 708, 720, 528 S.E.2d 706, 712-13 (2000) (citation omitted).

<sup>13</sup> Supinger v. Stakes, 255 Va. 198, 205, 495 S.E.2d 813, 817 (1998); Va.-Am. Water Co. v. Prince William County Serv. Auth., 246 Va. 509, 514, 436 S.E.2d 618, 621 (1993); Va. Dep’t of Labor & Indus. v. Westmoreland Coal Co., 233 Va. 97, 101, 353 S.E.2d 758, 762 (1987).

<sup>14</sup> Supinger, 255 Va. at 205, 495 S.E.2d at 817; Lee-Warren v. Sch. Bd., 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991).

“The province of [statutory] construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation.”<sup>15</sup> But when statutory language is clear and unambiguous, the plain meaning and intent of the enactment will be given to it.<sup>16</sup> The language used in § 58.1-3713(A) is clear and unambiguous as the General Assembly directs that the moneys collected from this tax “*shall* be spent for ... improvements to public roads.” (Emphasis added.) The General Assembly clearly does not authorize the expenditure of such funds for any purpose other than for improvements to public roads. Thus, I cannot reasonably conclude that an implied authority exists to expend such funds to pay the salary and benefits of an employee, including one whose primary duty is to audit the records of coal and gas companies, based on the express grant of authority to establish a Coal and Gas Road Improvement Advisory Committee. This particularly is so because the Advisory Committee is tasked with developing “a plan for improvement of roads.”<sup>17</sup>

### Conclusion

Accordingly, it is my opinion that § 58.1-3713 does not permit the Buchanan County Coal and Gas Road Improvement Advisory Committee to include in its budget the payment of salary and benefits for an employee of the Commissioner of the Revenue regardless of his primary responsibility.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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<sup>15</sup>Winston v. City of Richmond, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954).

<sup>16</sup>Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

<sup>17</sup>Section 58.1-3713(B) (Supp. 2008).