



# **COMMONWEALTH of VIRGINIA**

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June 15, 2009

David W. Rowan, Esq.  
Nassawadox Town Attorney  
P.O. Box 561  
Accomac, Virginia 23301

Dear Mr. Rowan:

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 the withdrawal of Northampton County from the Northampton County Joint Planning Commission requires the towns of Eastville, Cheriton, and Nassawadox to create separate planning commissions.

## **Response**

It is my opinion that the withdrawal of Northampton County from the Northampton County Joint Planning Commission requires the towns of Eastville, Cheriton, and Nassawadox to create separate planning commissions.

## **Background**

You advise that on April 10, 1978, the Board of Supervisors of Northampton County and the Town Council of Exmore entered into an agreement ("Agreement") creating the Northampton County Joint Planning Commission ("Commission") under § 15.1-443, the predecessor statute to § 15.2-2219. The Agreement set forth the general duties and composition of the Commission, which contemplated the addition of other municipalities. Subsequently, the towns of Cheriton, Nassawadox, and Eastville were admitted to the Commission.

You further advise that Article V, Section 2 of the Agreement provides that:

Any governmental subdivision may withdraw from the Commission by submitting to the Commission in writing, at least 30 days before the end of the Commission's then current fiscal year, a notice of intent to withdraw. Such withdrawal shall become effective upon the conclusion of the Commission's then current fiscal year.

You relate that the Northampton County Board of Supervisions, by letter dated April 16, 2009, to Cheriton, Eastville, and Nassawadox, announced the County's intention to withdraw from the

Commission effective on June 30, 2009. You note that Exmore previously had withdrawn from the Commission. When the withdrawal of Northampton County becomes effective, the Commission will be comprised solely of representatives of Eastville, Cheriton, and Nassawadox.

Finally, you advise it is your legal conclusion<sup>1</sup> that the three remaining municipalities in the Commission, Nassawadox, Eastville, and Cheriton, are not adjoining or adjacent.<sup>2</sup> All three towns are located within Northampton County; however, Nassawadox is nearly ten miles from Eastville and more than fourteen miles from Cheriton. Further, you note that Cheriton and Eastville are nearly five miles apart.

### **Applicable Law and Discussion**

“The power of a municipality, unlike that of the [General Assembly], must be exercised pursuant to an express grant”<sup>3</sup> because “municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.”<sup>4</sup> “If the power cannot be found, the inquiry is at an end.”<sup>5</sup> The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are delegated powers.<sup>6</sup> Therefore, any doubt as to the existence of power must be resolved against the locality.<sup>7</sup>

Section 15.2-2210 requires every local governing body in the Commonwealth to create a local planning commission:

Every locality shall by resolution or ordinance create a local planning commission in order to promote the orderly development of the locality and its environs. In accomplishing the objectives of § 15.2-2200 the local planning commissions shall serve primarily in an advisory capacity to the governing bodies.

Any locality may participate in a planning district commission in accordance with Chapter 42 (§ 15.2-4200 et seq.) of this title or a joint local commission in accordance with § 15.2-2219.

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<sup>1</sup> 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.” VA. CODE ANN. § 2.2-505(B) (2008).

<sup>2</sup> See *infra* note 12.

<sup>3</sup> Nat’l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

<sup>4</sup> Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (noting Dillon Rule).

<sup>5</sup> Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

<sup>6</sup> See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 504-05, 522 S.E.2d 610, 613-14 (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, but may include optional provisions contained in act); Op. Va. Att’y Gen.: 2002 at 77, 78; 1974-1975 at 403, 405.

<sup>7</sup> 2A EUGENE MCQUILLEN, THE LAW OF MUNICIPAL CORPORATIONS § 10.19, at 369 (3d ed. 1996); see also Op. Va. Att’y Gen.: 2002 at 83, 84; 2000 at 75, 76.

Section 15.2-2210 provides that localities may participate in a joint local commission under § 15.2-2219, which provides that:

Any one or more adjoining or adjacent counties or municipalities including any municipality within any such county may<sup>8</sup> by agreement provide for a joint local planning commission for any two or more of such counties and municipalities. The agreement shall provide for the number of members of the commission and how they shall be appointed, in what proportion the expenses of the commission shall be borne by the participating localities, and any other matters pertinent to the operation of the commission as the joint local planning commission for the localities. Any commission so created shall have, as to each participating locality, the powers and duties granted to and imposed upon local planning commissions under [Chapter 22].

The General Assembly does not define the terms “adjoining” or “adjacent” in § 15.2-2219. Generally, when a term is not defined by the General Assembly, it must be given its ordinary meaning.<sup>9</sup> The term “adjoining” generally means “[t]ouching; sharing a common boundary; CONTIGUOUS.”<sup>10</sup> “Adjacent” generally means “[l]ying near or close to, but not necessarily touching.”<sup>11</sup>

As previously noted, you advise that the three remaining municipalities in the Commission, Eastville, Cheriton, and Nassawadox, are not adjoining or adjacent.<sup>12</sup> It is well-settled that “[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it.”<sup>13</sup> It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.<sup>14</sup>

The application of the Dillon Rule in the Commonwealth requires a narrow interpretation of all powers conferred on local governments because any such powers are delegated powers.<sup>15</sup> Thus, the

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<sup>8</sup>“Unless it is manifest that the purpose of the legislature was to use the word ‘may’ in the sense of ‘shall’ or ‘must,’ then ‘may’ should be given its ordinary meaning—permission, importing discretion.” *Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949), *quoted in* *Bd. of Supvrs. v. Weems*, 194 Va. 10, 15, 72 S.E.2d 378, 381 (1952); *see also* *Op. Va. Att’y Gen.*: 2000 at 29, 32 n.2; 1999 at 193, 195 n.6; 1997 at 10, 12 (noting that use of “may” in statute indicates statute is permissive and discretionary, rather than mandatory).

<sup>9</sup>*See* *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

<sup>10</sup>BLACK’S LAW DICTIONARY 44 (8th ed. 2004).

<sup>11</sup>*Id.*

<sup>12</sup>This opinion does not provide an analysis or conclusion regarding the definition of adjacent for purposes of § 15.2-2219. Instead, I rely upon the conclusion that you state in your request dated May 4, 2009. Generally, adjoining or contiguous means touching, and adjacent means an object intervenes. *See* 1966-1967 *Op. Va. Att’y Gen.* 90, 90. The size and nature of the object may render the question of whether the localities are adjacent for purposes of § 15.2-2219 a question of fact. Attorneys General historically have declined to render official opinions when the request involves a question of fact rather than one of law. *See, e.g., Op. Va. Att’y Gen.*: 2007 at 116, 118; 1997 at 195, 196; 1996 at 207, 208.

<sup>13</sup>*Temple v. Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).

<sup>14</sup>*Commonwealth v. Sanderson*, 170 Va. 33, 38-39, 195 S.E. 516, 519 (1938).

<sup>15</sup>*See supra* note 6 and accompanying text.

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withdrawal of Northampton County effectively abolishes the Commission because the remaining municipalities are not adjacent as that term is narrowly interpreted.

**Conclusion**

Accordingly, it is my opinion that the withdrawal of Northampton County from the Northampton County Joint Planning Commission requires the towns of Eastville, Cheriton, and Nassawadox to create separate planning commissions.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Mims', with a stylized flourish at the end.

William C. Mims