



COMMONWEALTH OF VIRGINIA

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September 21, 2009

Thomas J. McCarthy, Jr., Esq.
Pulaski County Attorney
P.O. Box 878
Pulaski, Virginia 24301

Dear Mr. McCarthy:

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 § 15.2-4901, which relates in part to subsidized single family housing facilities, is applicable to the Industrial Development Authority of Pulaski County.

Response

It is my opinion that § 15.2-4901, as it relates to subsidized single family housing facilities, is applicable to the Industrial Development Authority of Pulaski County.

Background

You advise that the Industrial Development Authority of Pulaski County (the "Authority") seeks guidance regarding enabling legislation for the Authority related to subsidized single family housing facilities. You observe that § 15.2-4901 authorizes the Commonwealth to grant certain powers to industrial development authorities created by municipalities regarding facilities used primarily for single or multi-family residences. You advise that Pulaski County is not a municipality; it is a county. Further, you note that § 15.2-4902 refers to "authority facilities" or "facilities" and to "localities" without defining the term "localities." Finally, you observe that § 15.2-4905(13) provides that an authority "shall not have the power to operate any single or multi-family housing facilities."

Therefore, you conclude that the powers related to single or multi-family housing facilities have not been granted to county industrial development authorities. You believe that if the General Assembly had intended for such powers to be granted, it would have granted the authority to "municipalities and counties."¹

¹Section 2.2-505(B) requires that an opinion request from a county attorney "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

Applicable Law and Discussion

Industrial development authorities are created under the Industrial Development and Revenue Bond Act² (the “Act”). The General Assembly has expressed its intent, by authorizing the creation of industrial development authorities, “that such authorities may acquire, own, lease, and dispose of properties and make loans” in furtherance of specific purposes.³ The purposes for an industrial development authority include the promotion of industry and the development of trade.⁴ In § 15.2-4901, the General Assembly set forth an additional purpose “to grant to industrial development authorities created by one or more municipalities whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1⁵ ... the powers contained herein with respect to facilities used primarily for single or multi-family residences in order to promote safe and affordable housing.” Section 15.2-102 defines certain terms, as used in Title 15.2, “unless [the definition] would be inconsistent with the context or manifest intent” of a particular statute in Title 15.2. The definition of the term “municipality” and “words or terms of similar import shall be construed to relate only to cities and towns.”⁶ Because § 15.2-4901 and the Act do not define the term “municipalities,” the definition of “municipality” contained in § 15.2-102⁷ must be applied.

Furthermore, § 15.2-4905 of the Act grants to authorities certain powers “together with all powers incidental thereto or necessary for the performance” of the powers expressed in the Act. An industrial development authority has the power to acquire, to improve or equip, to lease, and to convey “authority facilities.”⁸ Section 15.2-4902(xiii) defines “authority facilities” to include “facilities used primarily for single or multi-family residences.” However, “[c]ause (xiii) applies only to industrial development authorities created by one or more *localities* whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1.”⁹ Neither § 15.2-4902, nor the Act, defines the term “localities.” Thus, as discussed in the analysis regarding “municipalities,” the definition of “locality” in § 15.2-102 would apply. In § 15.2-102, the General Assembly requires that the term “locality” or “local government” “shall be construed to mean a county, city, or town as the context may require.”

Clearly, § 15.2-4901, which expresses the intent of the General Assembly to grant industrial development authorities created by a municipalities the powers contained in the Act related to facilities with a primary use as single or multi-family residences, is in direct conflict with the definition of the term “authority facilities” or “facilities” in § 15.2-4902. In § 15.2-4901, the General Assembly limits the grant of power to industrial development authorities regarding facilities used primarily for single or multi-

² See VA. CODE ANN. tit. 15.2, ch. 49, §§ 15.2-4900 to 15.2-4920 (2008 & Supp. 2009).

³ Section 15.2-4901 (2008).

⁴ *Id.*

⁵ Section 36-4 provides for the creation of housing authorities to be authorized by the qualified voters of a locality in a referendum election, held in accordance with § 36-4.1, to determine whether there is a need for such an authority prior to its activation for the transaction of business.

⁶ Section 15.2-102 (2008).

⁷ See *id.* (limiting construction of the term “municipality” to “cities and towns”).

⁸ Section 15.2-4905(4)-(6) (2008).

⁹ Section 15.2-4902 (2008) (emphasis added).

family residences to the authorities of cities and towns. However, the definition of “authority facilities” or “facilities” in § 15.2-4902 grants such power to the industrial development authorities of counties, cities, or towns.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the General Assembly.¹⁰ When the language of a statute is plain and unambiguous and its meaning is clear and definite, it must be given effect.¹¹ When resolving an apparent conflict between two statutes, the applicable rule of statutory construction is that the most recently enacted expression of legislative intent controls.¹² In this instance, both §§ 15.2-4901 and 15.2-4902 were amended by the 1997 Session of the General Assembly.¹³ However, the 2006 Session of the General Assembly (the “2006 Amendment”) further amended the definition of “authority facilities” or “facilities” in § 15.2-4902 to provide that:

“Authority facilities” or “facilities” means any or all ... (xiii) facilities used primarily for single or multi-family residences. Clause (xiii) applies only to industrial development authorities created by one or more ~~municipalities~~ *localities* whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1.^[14]

The 2006 Amendment did not expressly amend the intent of the legislature contained in § 15.2-4901; however, the 2006 Amendment is the most recent enactment by the General Assembly concerning the Act related to facilities used primarily as single or multi-family residences. Thus, the 2006 Amendment must control in determining the General Assembly’s intent related to the powers of industrial development authorities regarding such facilities. Based on the principles of statutory construction, I am required to apply the changes in the 2006 Amendment to the definition of “authority facilities” or “facilities,” which now includes facilities used primarily for single or multi-family residences created by one or more “localities,” as defined in § 15.2-102. Therefore, § 15.2-4901 and the definitions contained in § 15.2-4902, which pertain to subsidized single family housing facilities, are applicable to the Authority.¹⁵

Conclusion

Accordingly, it is my opinion that § 15.2-4901, as it relates to subsidized single family housing facilities, is applicable to the Industrial Development Authority of Pulaski County.

¹⁰See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

¹¹*Temple v. Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); 1997 Op. Va. Att’y Gen. 16, 17.

¹²See *Petersburg v. Gen. Baking Co.*, 170 Va. 303, 311, 196 S.E. 597, 600 (1938); *Commonwealth v. Sanderson*, 170 Va. 33, 39, 195 S.E. 516, 519 (1938); *Commonwealth v. Rose*, 160 Va. 177, 180, 168 S.E. 356, 357 (1933); Op. Va. Att’y Gen.: 1980-1981, 330, 331; 1974-1975 at 415, 416.

¹³See 1997 Va. Acts chs. 758, 763, at 1808, 1808-11, 1821, 1821-24, respectively (amending §§ 15.1-1375, 15.1-1374, predecessors to §§ 15.2-4901, 15.2-4902, respectively); see also *id.* ch. 587, at 976 (recodifying Title 15.1 as Title 15.2).

¹⁴2006 Va. Acts ch. 324, at 402, 403.

¹⁵As you note, in enacting § 15.2-4905, the General Assembly expressly withholds from all industrial development authorities the “power to operate any single or multi-family housing facilities.”

Thomas J. McCarthy, Jr., Esq.
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Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W C Mims". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the final letter.

William C. Mims