



COMMONWEALTH OF VIRGINIA

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The Honorable G. Glenn Oder
Member, House of Delegates
213 Robin Drive
Newport News, Virginia 23606

Dear Delegate Oder:

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 Charter of the City of Newport News requires that the Newport News School Board exclusively rely on the legal advice of the attorney for the City or whether the Board may engage alternate legal counsel.

Response

It is my opinion that the Charter of the City of Newport News does not require that the Newport News School Board rely on the sole legal advice of the attorney for the City, and the Board may retain its own counsel.

Applicable Law and Discussion

The Charter of the City of Newport News (the "Charter") provides that "[t]he city attorney shall ... be the legal advisor of the council ... and all ... boards ... and agencies of the city, including the school board, in all matters affecting the interest of the city and shall upon request furnish a written opinion on any question of law."¹ Section 22.1-82(A) provides, however, that:

Notwithstanding any other provision of law, the attorney for the Commonwealth or other counsel may be employed by a school board to advise it concerning any legal matter or to represent it, any member thereof or any school official in any legal proceeding to which the school board, member or official may be a party, when such proceeding is instituted by or against it or against the member or official by virtue of his actions in connection with his duties as such member or official.

¹Section 10.03(A) (1978), available at http://library1.municode.com/default-test/home.htm?infobase=14013&doc_action=whatsnew; see also 1978 Va. Acts ch. 576, at 886, 907-08 (enacting "Charter of City of Newport News," including § 10.03 of Chapter 10).

Thus, there is an apparent conflict between the provisions of the Charter relating to the duties of the City attorney and § 22.1-82(A). Ordinarily, where a charter and a statute conflict, the charter controls.² However, this canon of construction does not apply where the statute clearly indicates that the General Assembly intended it to control conflicts.³ The language in § 22.1-82(A), “[n]otwithstanding any other provision of law,” manifests just such an intent.⁴

Article VIII, § 7 of the Constitution of Virginia provides that “[t]he *supervision of schools in each school division shall be vested in a school board*, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law.” (Emphasis added.) In this analysis, it is important to consider the constitutional requirement that the supervision of schools is vested with the school boards. The ability to retain legal counsel can be important to the school board in fulfilling its mission. Further, the General Assembly, through its chosen language, ensured the flexibility of the school board to retain its own counsel.⁵

Conclusion

Accordingly, it is my opinion that the Charter of the City of Newport News does not require that the Newport News School Board rely on the sole legal advice of the attorney for the City, and the Board may retain its own counsel.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli
Attorney General

1:875; 1:941/10-001

²See Op. Va. Att’y Gen.: 1997 at 46, 46; 1995 at 155, 157; 1978-1979 at 35, 35; *see also* 1976-1977 at 42, 44 (noting charter provision generally prevails over statute).

³See Op. Va. Att’y Gen.: 1997, *supra* note 2, at 46; 1995, *supra* note 2, at 157; 1978-1979, *supra* note 2, at 36.

⁴See 1978-1979 Op. Va. Att’y Gen., *supra* note 2, at 36 (concluding that statutory phrase “[n]otwithstanding any other provision of law” is evidence of legislative intent that statute must be interpreted to prevail over provision in charter); *see also* *Chambers v. Roanoke*, 114 Va. 766, 768, 78 S.E. 407, 408 (1913) (holding that amendment to specific charter provision is not repealed by reenactment of prior general statute when statute declares that nothing “in conflict with any provision of the charter of any city or town shall be construed to repeal such provision” unless expressly stated). The phrase “[n]otwithstanding any other provision of law” indicates a clear legislative intent to override potential conflicts with all earlier legislation. *See* Op. Va. Att’y Gen.: 1996 at 197, 198; 1987-1988 at 1, 2; *see also* 1998 Op. Va. Att’y Gen. 19, 21 (interpreting statute beginning with phrase, “[n]otwithstanding any other provision of this chapter”).

⁵See 1981-1982 Op. Va. Att’y Gen. 326, 327 (discussing change to § 22-56.1, predecessor to § 22.1-82, regarding authority of school board to hire counsel).