



COMMONWEALTH OF VIRGINIA

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C. Eric Young, Esq.
Tazewell County Attorney
108 East Main Street
Tazewell, Virginia 24651

Dear Mr. Young,

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 Tazewell County Public Service Authority Board may charge a nonuser fee to persons whose properties front the streets along a proposed refuse collection and disposal service route, and who decline the collection service.

Response

It is my opinion that the Tazewell County Public Service Authority Board may not assess a nonuser service charge to persons who decline to accept its refuse collection services.

Background

You state that the Tazewell County Public Service Authority Board (“Board”) was organized pursuant to Chapter 51 of Title 15.2, §§ 15.2-5100 through 15.2-5159. You relate that pursuant to § 15.2-5121, the Board is considering the establishment of a refuse collection and disposal system within Tazewell County. The Board is seeking advice regarding whether it may charge a nonuser fee to persons whose properties front on the streets along the proposed route, but who decline to use the collection service.

Applicable Law and Discussion

Section 15.2-5102(A) authorizes the governing body of a locality to create “a refuse collection and disposal authority.” Section 15.2-5136(A) authorizes a public service authority (“PSA”) to establish “rates, fees and other charges ... for the use of and for the services furnished or to be furnished” by a PSA. Section 15.2-5136(F) specifically authorizes the setting of rates and charges for a refuse collection system.

Virginia follows the Dillon Rule of strict construction applicable to the powers of local governing bodies, limiting such powers to those conferred expressly by law or by necessary implication from such

conferred powers. The Dillon Rule provides that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.¹ “[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end.”²

Section 15.2-5137 authorizes a PSA to charge nonuser fees for particular services. Specifically, § 15.2-5137(B) authorizes a PSA to assess a “monthly nonuser service charge” to persons for whom PSA water service is available, but who use private water systems instead. Similarly, § 15.2-5137(C) authorizes a “monthly nonuser service charge” for persons to whom public sewer service is available, but who use private septic systems. I find nothing in § 15.2-5137 that specifically allows a PSA to assess a nonuser service charge to persons who decline refuse collection services or that generally allows nonuser service charges for any nonspecified services a PSA provides.

Section 15.2-5137 specifically authorizes nonuser service charges for water systems and public sewer services; however, I find no similar authority for nonuser service charges for refuse collection services.³ Therefore, based on the applicable rules of statutory construction,⁴ the Board is not authorized to assess nonuser service charges to persons who decline its refuse collection services.

Conclusion

Accordingly, it is my opinion that the Tazewell County Public Service Authority Board may not assess a nonuser service charge to persons who decline to accept its refuse collection services.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

1:1278; 1:941/10-022

¹ City of Richmond v. Bd. of Supvrs., 199 Va. 679, 684, 101 S.E.2d 641, 645 (1958).

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

³ When a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute. See 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47:23 (7th ed. 2007) (explaining maxim of statutory construction, “*expressio unius est exclusio alterius*”); Op. Va. Att’y Gen.: 2002 at 117, 118; 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10. Where a statute specifies certain things, the intention to exclude that which is not specified may be inferred. See *id.*; 1999 Op. Va. Att’y Gen. 215, 217-18.

⁴ See *supra* notes 1-3 and accompanying text.