



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

October 29, 2010

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Michael F. McClellan Carrico, Esquire
Town Attorney for the Town of Gate City
101 East Jackson Street, Suite 103
Gate City, Virginia 24251

Dear Mr. Carrico:

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 inquire whether it is lawful for a municipality to enact an ordinance exempting a nonprofit organization from all charges on utilities (e.g., water, sewer, garbage collection) provided by the municipality as a charitable donation of money or in-kind services to that nonprofit organization pursuant to § 15.2-953.

Response

It is my opinion that the Town may enact an ordinance exempting a charitable institution or association from the payment of utility charges as a donation of money or in-kind services pursuant to that provision.

Background

You relate that the Town of Gate City provides fee-based utility services of water, sewer and garbage collection to its residents. You also state that the Gate City Town Council on August 20, 1996, approved a motion to provide free water, sewer and garbage collection services to a property within the Gate City town limits that is operated by a nonprofit organization that provides essential services to battered women. Since the approval of this ordinance in 1996, the organization has enjoyed an exemption from all charges on utilities provided by the Town of Gate City.

Applicable Law and Discussion

Under the Dillon Rule, localities have only those powers that the General Assembly grants them.¹ Towns, in particular, have all the powers conferred upon them by their charters and those set forth in §§

¹ See *Commonwealth v. Arlington County Bd.*, 217 Va. 558, 573-75, 232 S.E.2d 30, 40-41 (1977) (“[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.”).

15.2-1100 through 15.2-1133.² Section 15.2-1102 authorizes towns to exercise all necessary “powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth.”

The Constitution of Virginia provides that the General Assembly may “authorize counties, cities, or towns to make ... appropriations to any charitable institution or association.”³ Section 15.2-953(A) of the *Code of Virginia* implements this constitutional provision and authorizes localities to make “appropriations of public funds, of personal property or of any real estate and donations” to “any charitable institution or association, located within their respective limits or outside their limits if such institution or association provides services to residents of the locality; however, such institution or association shall not be controlled in whole or in part by any church or sectarian society.”⁴

A 2002 opinion of the Attorney General previously concluded that a town may not contribute or donate in-kind resources to a nonprofit organization pursuant to the authority granted in § 15.2-953(A).⁵ Subsequently, the General Assembly in 2007 amended § 15.2-953, inserting “and donations” in subsection A and adding what is now subsection E to provide that for purposes of this section, “‘donations’ shall include the lawful provision of in-kind resources for any event sponsored by the donee.”⁶

Section 15.2-953(A) expressly authorizes localities to make appropriations to charitable entities of “public funds, of personal property or of any real estate and donations.” The term “donation” should be construed according to its plain language.⁷ A donation simply means “a gift.”⁸ The General Assembly has not limited its definition of the term “donation.” Therefore, although the statute does not specifically reference providing utility services without charge to properties maintained by such nonprofit entities, there is no reason donations of utility services should be excluded from the scope of donations that may be made.⁹

Appropriations of funds must be made only on an annual, semi-annual, quarterly, or monthly basis,¹⁰ prompting the locality to periodically review the issue. A donation that consists of an exemption

² See VA. CODE ANN. §§ 15.2-204; 15.2-1102; 15.2-1103 (2008).

³ VA. CONST. art. IV, § 16.

⁴ Section 15.2-953(A) (Supp. 2010).

⁵ See 2002 Op. Va. Att’y Gen. 70 (the express language of § 15.2-953(A) did not contemplate the contribution of the in-kind services described, *i.e.*, a town council’s decision to direct town employees to assist in the setup for an annual festival held by the local business and civic association).

⁶ 2007 Va. Acts ch. 292.

⁷ See 2002 Op. Va. Att’y Gen. 214 (“in the absence of a statutory definition, a term should be given its plain and ordinary meaning”).

⁸ MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 344 (10th ed. 1997).

⁹ A nonprofit organization’s ongoing operation of a property would not constitute an “event” to which a municipality may make a donation of in-kind resources. The word “event” is not defined in the statute and, thus, should be given its plain and ordinary meaning. See 2002 Op. Va. Att’y Gen. 214 (“in the absence of a statutory definition, a term should be given its plain and ordinary meaning”). See also MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 401 (10th ed. 1994) (defining “event” as “a social occasion or activity”).

¹⁰ See § 15.2-2506 (Supp. 2010) (“No money shall be paid out or become available to be paid out for any contemplated expenditure unless and until there has first been made an annual, semiannual, quarterly or monthly appropriation for such contemplated expenditure by the governing body”).

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of utility charges is not subject to the same requirement of periodic re-appropriation. Consequently, an ordinance that simply exempts a non-profit organization from payment of utility charges on a permanent basis is less transparent and reduces accountability compared the procedures required for an appropriation of money. The plain language of the statute, however, authorizes a locality to make such donations.¹¹

Conclusion

Accordingly, it is my opinion that municipalities may enact an ordinance exempting a charitable organization or association from the payment of utility charges as a donation pursuant to § 15.2-953.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹¹ If the charitable institution ceases to qualify under § 15.2-953, for example because it no longer provides services in the locality making the donation of in-kind services, the locality would be precluded from continuing to make the in-kind donation.