



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

May 1, 2014

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The Honorable James Edmunds  
Member, House of Delegates  
Post Office Box 1115  
60 South Main Street  
Halifax, Virginia 24558

Dear Delegate Edmunds:

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 Prince Edward County may create a service district pursuant to Chapter 24 of Title 15.2 of the *Code of Virginia* to collect an additional *ad valorem* property tax to help pay for the expenses of a regional jail.

## Response

A service district may not legally be created to encompass an entire locality where the funds to be raised thereby would replace an existing source of general fund revenues to maintain a regional jail, and where the special service district is not being created to provide additional, more complete, or more timely services.

## Background<sup>1</sup>

You report that the Piedmont Regional Jail Board was established in 1986 by the counties of Amelia, Buckingham, Cumberland, Lunenburg, Nottoway, and Prince Edward.<sup>2</sup> Each locality pays a portion of the net operating costs of the regional jail.<sup>3</sup>

In recent years, jail revenues have decreased significantly because of several factors, including a decrease in federal prisoners (a source of net revenue) and a decrease in the state's share of the cost of jail operations. Although efforts have been made to reduce operating costs, including staff reductions, these

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<sup>1</sup> The conclusions expressed herein are based on information this office received in an e-mail from your office dated April 8, 2014, supplemented by an e-mail dated April 11, 2014.

<sup>2</sup> VA. CODE ANN. § 53.1-82 (2013) expressly authorizes localities to enter into contracts providing for cooperative jailing and directs the participating localities to establish a representative board "to advise the locality in which the jail facility is located on matters affecting operation of the facility."

<sup>3</sup> See § 53.1-87 (2013).

measures have not sufficiently offset the reduced revenues. In addition, required improvements to medical services for inmates are creating additional costs. As a result, Prince Edward County has had to increase its local funding for the regional jail by approximately \$1,400,000 over the last two years.

You indicate that, in order to continue to provide the needed funding, Prince Edward County may have to adopt a sizeable tax increase for the upcoming budget. The Board of Supervisors has sought guidance regarding the ability to create a special service district to help generate revenue to meet the county's share of funding requirements. The special service district would encompass the entire county and impose an additional tax levy for the regional jail in order to reduce or eliminate the proposed general tax increase. The information related to you is that citizens will better understand the overall tax increase if the tax revenues raised for regional jail costs are characterized as a separate tax, rather than as part of the general tax. You relate that the special service district taxes would not be used for debt service on bonds for any capital improvements at the regional jail.

### Applicable Law and Discussion

In determining the authority of local governments, Virginia follows the Dillon Rule of strict construction, which provides that local governing bodies have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.<sup>4</sup> Further, once a power is conferred, that authority exists only to the extent granted.<sup>5</sup> Finally, any doubt as to the existence of a legislative power must be resolved against the locality.<sup>6</sup>

Pursuant to § 15.2-2400, local governments have the express power to establish service districts "to provide additional, more complete or more timely services of government than are desired in the locality. . . as a whole."<sup>7</sup> Once a service district is created, § 15.2-2403 permits an annual tax to be imposed

upon any [real] property in such district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith[.]<sup>8</sup>

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<sup>4</sup> *Sinclair v. New Singular Wireless PCS, LLC*, 284 Va. 567, 576, 720 S.E. 2d 543 (2012) (citing *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 690 S.E.2d 84, 88 (2010) and *Bd. of Zoning Appeals v. Bd. of Supvrs.*, 276 Va. 550, 553-54, 666 S.E.2d 315, 317 (2008)). The antecedents of Dillon's Rule trace back to 11th century England. As Professor Howard notes in his *Commentaries on the Constitution of Virginia*,

Much of what local government has come to be in modern America has its roots in events centuries ago. For example, when William the Conqueror imposed upon England a degree of centralized authority unequalled on the Continent, power was seen as flowing from the Crown, and units of local government had only so much authority as the King might grant them - a concept not unrelated to the modern notion that local governments are essentially creatures of the state.

A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA, Vol. II, at 783-784.

<sup>5</sup> *See, e.g.*, 2019 Op. Va. Att'y Gen. 5, 6.

<sup>6</sup> *Bd. of Supvrs. v. Reed's Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995).

<sup>7</sup> VA. CODE ANN. § 15.2-2400 (2012).

<sup>8</sup> Section 15.2-2403(6) (2012).

Thus, a locality clearly is authorized to create a service district to raise revenue for certain purposes. Such purposes, however, must be those “authorized by subdivisions 1, 2 and 11” of § 15.2-2403, as set forth above.

Subdivisions 2 and 11 of §15.2-2403 pertain exclusively to transportation services and preservation of open-space land, respectively, and therefore do not provide a locality any authority to create a service district for regional jail purposes.<sup>9</sup> Subdivision 1 of § 15.2-2403 enumerates several services that may be delivered through creation of a service district, including specific services related to utilities, recreation, pest control, roads, and other public works.<sup>10</sup> While maintenance of jail facilities is not expressly cited, the scope of services authorized by § 15.2-2403(1) is not limited to the cited examples, as it authorizes service district funding generally for “services, events or activities that will enhance the public use and enjoyment of and the public safety, public convenience, and public well-being within a service district.”<sup>11</sup> Nevertheless, the very nature of the service district revenue model dictates that the service to be funded must be one that can be provided on a targeted basis to benefit primarily taxpayers in a district of the locality. A regional jail is not such a service; it is instead a general government service that benefits a region of the Commonwealth. Section 15.2-2403(1) expressly provides that “an annual tax shall not be levied for or used to pay for schools, police, or general government services not authorized by this section.” This language makes clear that a service district is not intended to be a separate funding source for governmental services that benefit the entire locality, nor intended to be a replacement funding source for existing general services. A service district is intended to provide area-specific funding to pay for additional services for a discrete area or region of the locality.

Even given a service permitted to be funded by service district taxes, the service district law<sup>12</sup> is intended to fund possible enhanced governmental services to a specific geographic portion of a locality, with the enhanced services to be paid for by an additional *ad valorem* tax to be imposed on citizens or businesses within the affected area. The facts provided indicate that the county seeks to raise revenue by creation of a service district only to maintain the level of services provided by the existing regional jail. Section 15.2-2403(1) empowers a locality to create a service district to maintain and operate facilities only as necessary or desirable to provide “additional, more complete, or more timely” services than presently provided to the district. Without a goal or aim to add to or otherwise improve the delivery of jail services on a district basis, the county may not create a service district to fund its share of regular, recurring regional jail costs.

Finally, I also note that a public hearing is required for any increase in the general tax rate.<sup>13</sup> The intent of this statute would be defeated if such a public hearing could be avoided by the device of creating a service district to provide funding for county-wide services.<sup>14</sup> Statutes should be construed *in pari materia* so as to give effect to both.<sup>15</sup>

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<sup>9</sup> See §15.2-2403(2) and 15.2-2403(11).

<sup>10</sup> See §15.2-2403(1).

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

<sup>12</sup> See 15.2-2400 through 15.2-2413 (2012 & Supp. 2013).

<sup>13</sup> See 58.1-3007 (2013).

<sup>14</sup> A public hearing is required by *Sec.* 15.2-2402 to create a service district, but not for any subsequent increase in the tax rate of the service district.

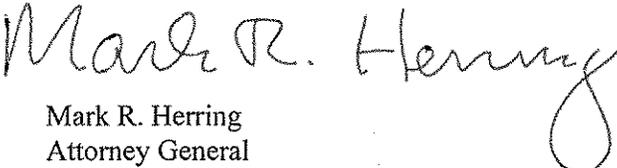
<sup>15</sup> *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957).

**Conclusion**

Accordingly, it is my opinion that Prince Edward County may not create a county-wide service district to provide needed funding to continue operating an existing regional jail.

With kindest regards, I am

Very truly yours,

  
Mark R. Herring  
Attorney General