



COMMONWEALTH of VIRGINIA

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The Honorable Patrick A. Hope
Member, House of Delegates
Post Office Box 3148
Arlington, Virginia 22203

Dear Delegate Hope:

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 Arlington County may conduct an advisory referendum regarding a proposed streetcar system.

Response

It is my opinion that Arlington County lacks the authority to conduct an advisory referendum regarding a proposed streetcar system.

Background

Arlington County has proposed to develop a 7.4-mile streetcar system to reduce congestion and strengthen economic development.¹ The proposed streetcar system includes two segments: (i) the Columbia Pike segment stretching west to east from the Skyline area of Fairfax County to Pentagon City; and (ii) the Crystal City segment stretching north to south from Crystal City to Potomac Yard.² The cost of the Columbia Pike segment borne by Arlington County is projected to be in excess of \$250 million.³ Arlington County has stated that the "streetcar funding plan relies on dedicated transportation funds and includes zero homeowner dollars through General Obligation bonds."⁴

¹See ARLINGTON COUNTY, VA., *Streetcar Presentation (Streetcar Update)*, available at http://sites.arlingtonva.us/streetcar/files/2014/07/Streetcar_handouts_Sept2014.pdf.

² *Id.*

³ *Id.*

⁴ ARLINGTON COUNTY, VA., News Release: *Arlington & Fairfax County Choose Streetcar Program Management Team*, available at <http://news.arlingtonva.us/releases/arlington-and-fairfax-county-choose-streetcar-program-management-team>.

Applicable Law and Discussion

In Virginia, localities are not sovereign bodies, but are mere local agencies of the state, having no powers other than such as are clearly and unmistakably granted by the law making power.⁵ A county, including Arlington County, may exercise only those powers expressly granted by the General Assembly, or necessarily or fairly implied from those expressly granted powers, and those that are essential and indispensable.⁶ “If there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.”⁷

A “referendum” is “any election held pursuant to law to submit a question to the voters for approval or rejection.”⁸ Section 24.2-684 of the *Code of Virginia* expressly provides that: “[n]o referendum shall be placed on the ballot unless specifically authorized by statute or by charter.” While counties may be granted charters,⁹ Arlington does not have one. Instead, it has operated under the County Manager Plan of Government, as set forth in Chapter 7 of Title 15.2 of the *Code of Virginia* since approximately 1930. Accordingly, its power to hold a referendum on any given subject exists only as may be authorized by either a statute of general application or a statute applicable only to the County Manager Plan of Government.

A number of statutes authorize counties in the Commonwealth to hold referenda in circumstances ranging from the establishment of a county police force¹⁰ to determining whether the election of county supervisors should be staggered,¹¹ to the creation of an electric authority.¹² A review of the *Code of Virginia*, however, reveals no statute of general application that would allow Arlington County to conduct a referendum on the proposed streetcar system.

As stated, Arlington operates under the County Manager Plan of Government. Under this type of government, a referendum is authorized only for purposes of establishing a department of real estate assessments.¹³ A referendum is not authorized for transportation matters such as streetcar systems.¹⁴

The only legal authority that might otherwise apply in this scenario — the constitutional requirement that a county conduct a referendum prior to assuming debt to be repaid by general obligation

⁵ *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576, 727 S.E.2d 40, 44 (citing *Marble Techs. v. City of Hampton*, 279 Va. 409, 418 (2010)).

⁶ *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (citations omitted) (“In Virginia the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. This rule is a corollary to Dillon’s Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.”); *accord* *Bd. of Supvrs. v. Countryside Inv. Co.*, 258 Va. 497, 503, 522 S.E.2d 610, 613 (1999).

⁷ *Bd. of Supvrs. v. Reed’s Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995).

⁸ VA. CODE ANN. § 24.2-101 (Supp. 2014).

⁹ *Id.*, §15.2-201.

¹⁰ *Id.*, § 15.2-1702 (2012).

¹¹ Sections 24.2-219 (2011) and 24.2-220 (2011).

¹² Section 15.2-5403 (2012).

¹³ VA. CODE ANN. § 15.2-716 (2012).

¹⁴ VA. CODE ANN. § 15.2-749 (2012) does set forth the procedures to be followed under the County Manager Plan for conducting a referendum, but only if the referendum is authorized by law. It does not expand or add to the subjects for which a referendum may be held under the County Manager Plan.

bonds¹⁵ — is not implicated because of the financing plan put forward by the County, which does not include general obligation bonds.

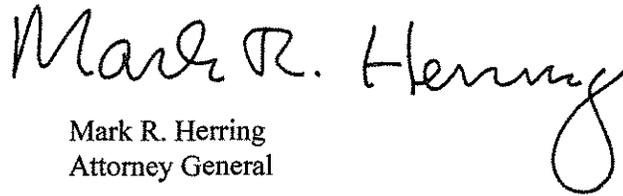
I therefore must conclude that, because the General Assembly has neither granted a charter to Arlington County authorizing this type of referendum nor enacted a statute of general application applicable to the County Manager Form of Government granting such authority, Arlington County may not conduct an advisory referendum on the proposed streetcar system. This conclusion is consistent with several prior opinions of the Attorney General.¹⁶

Conclusion

Accordingly, it is my opinion that Arlington County does not have authority to conduct an advisory referendum regarding a proposed streetcar system.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹⁵ See VA. CONST. art. VII, § 10(b).

¹⁶ See, e.g., 2001 Op. Va. Att’y Gen. No. 135 (finding no authority for the City of Colonial Heights to call for advisory referendum regarding the establishment of a recreation center); 1988 Op. Va. Att’y Gen. 359 (finding no authority for Rockbridge County to call for an advisory referendum on prohibiting the transportation of loaded rifles and shotguns on public highways in the county); 1983 Op. Va. Att’y Gen. 70 (concluding that the City of Fairfax may hold an advisory referendum for the abolition of constitutional officers); 1978 Op. Va. Att’y Gen. 72 (concluding that Washington County lacks the authority to hold an advisory referendum on the adoption of a comprehensive plan); 1975 Op. Va. Att’y Gen. 331 (concluding that the City of Fredericksburg has no authority to conduct an advisory referendum on a school bond issue); and 1974 Op. Va. Att’y Gen. 161 (concluding that Carroll County does not have the authority to conduct an advisory referendum on whether to terminate membership in the Mt. Rogers Planning District Commission).