COUNTIES, CITIES AND TOWNS: HOSPITAL OR HEALTH CENTER COMMISSIONS - COUNTY, CITY AND TOWN OFFICERS GENERALLY.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (MULTIPLE OFFICES).

Governing body is not prohibited from appointing more than one of its members to hospital commission; county board of supervisors may appoint majority of its members to county nursing home commission.

Mr. Thomas B. Dix Jr.

County Attorney for Accomack County

November 12, 1996

You ask whether more than one member of the county board of supervisors may serve on the county nursing home commission and, if so, whether members of the board of supervisors may comprise a majority of the nursing home commission.

Section 15.11514 of the Code of Virginia authorizes a locality, singly or in conjunction with other localities, to create a hospital or health center commission. Section 15.11518 provides that the members of the commission shall be appointed by the governing body of the locality or localities the commission represents.

Consistent with Article VII, § 6 of the Constitution of Virginia (1971), § 15.150.5(A) prohibits members of a governing body, during their term of office, from holding any office appointed by the governing body, "except that a member of a governing body may be named a member of such other boards, commissions, and bodies as may be permitted by general law." (Emphasis added.) Section 15.150.5(B) sets forth boards, commissions and authorities excepted from the prohibition and includes members of a hospital or health center commission established pursuant to § 15.11514.

Section 15.150.5(D) establishes two limitations on appointments to the bodies specified in § 15.150.5(B):

Except as specifically provided in general or special law, no appointed body listed in subsection B shall be comprised of a majority of elected officials as members, nor shall any county, city, or town be represented on such appointed body by more than one elected official. [Emphasis added.]

Section 15.150.5 expresses a legislative intent that a governing body's authority to appoint its members to other bodies and the limitations on that authority are to be determined by reference to the general or special law relating to the composition of the particular board or commission. Accordingly, whether more than one member of the county board of supervisors may serve on the nursing home commission and whether the commission may be comprised of a majority of such board members depends on the language of § 15.11518.

Under § 15.11518, the number of members of a hospital commission varies according to the number of political subdivisions participating in the commission. A commission representing a single county with a population of less than 200,000 is to be comprised of five members. Section 15.11518 provides that "[t]he respective members shall be appointed by the
governing bodies of the subdivisions they represent, may be members of such governing bodies, shall be residents of such subdivisions, and shall be appointed for such terms as the governing body shall designate." The governing body may remove a member at any time and fill vacancies for unexpired terms. No other provision in the statutes governing hospital commissions relates to the appointment or composition of the commission.

In statutes detailing the appointment and composition of other commissions and boards, the General Assembly has clearly and unequivocally expressed its intent that the prohibition in § 15.150.5(D) applies. For example, § 37.1195, relating to community services boards, expressly provides that such boards shall not be composed of a majority of elected officials and that no county or city shall be represented on such board by more than one elected official. Likewise, § 15.11231, relating to park authorities, provides that members of a governing body may be appointed to the board but shall not comprise a majority of the board.

The language in § 15.11518 neither expressly nor impliedly adopts as a prohibition on the composition of a hospital commission the prohibition contained in § 15.150.5(D). Rather, the plural "members" in § 15.11518 stating that commission appointees "may be members of such governing bodies" lends itself to an interpretation that the General Assembly did not intend the prohibition in § 15.150.5(D) to apply. This interpretation is sufficiently apparent to conclude that had the General Assembly intended otherwise, it would have included in § 15.11518, as it did in statutes relating to the composition of other bodies, language so providing.

It is my opinion that § 15.11518 does not prohibit a governing body from appointing more than one of its members to a hospital commission. Since § 15.11518 does not limit the number of members of the governing body that may be appointed to a hospital commission and contains no language suggesting otherwise, it is also my opinion that a majority of the commission may be members of the board of supervisors.

Pursuant to § 15.11515, "`hospital' or `health center' shall ... include[] nursing homes."

Section 15.150.5(B)(5). The list contained in § 15.150.5(B) does not "limit[] any other provision of general law" and, thus, is not exhaustive.

I construe the word "specifically" in § 15.150.5(D) as a reference to the specific statute or law authorizing appointment to the other body pursuant to § 15.150.5(A), not as a requirement that the specific statute expressly permit the appointed body to be composed of more than one elected official or a majority of the appointed body to be comprised of elected officials. When the General Assembly intends to require express language, it so provides. See, e.g., § 3611 (except as "expressly" provided by charter, commissioner of housing authority may not be officer or employee of city or county).

Section 15.11518.

Id.
See 1984-1985 Op. Va. Att'y Gen. 21, 22 (concluding that language in § 37.1195, authorizing appointment of elected officials to community services board, authorizes appointment of members of governing body within certain limitations). Compare 1990 Op. Va. Att'y Gen. 202, 203 (language in § 53.1106, authorizing appointment to regional jail board of one elected official—the sheriff—does not constitute authorization for appointment of member of governing body). Following the 1990 opinion, the General Assembly amended the statutes to permit the appointment of members of the governing body to a regional jail authority. Ch. 568, 1991 Va. Acts 1026, 1027 (adding subdivision 12 to § 15.150(A) and amending § 53.1106(A)).

See also § 15.11377 (providing that no director of industrial development authority's board of directors shall be officer or employee of municipality except in towns under 3,500 in population where members of town governing body may serve as directors but may not comprise majority of board). Compare § 5.136 (members of governing bodies of several political subdivisions comprising airport authority may serve as members of board).

Another possible basis for using the plural "members" is simply to accommodate a joint commission in which, although each participating locality appoints only one member of its governing body to the commission, the joint commission may be composed of more than one governing body member.