ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

EDUCATION: SCHOOL BOARDS; SELECTION, ETC. — POWERS AND DUTIES OF SCHOOL BOARDS.

Annual meeting at which each school board is required to elect chairman from its membership falls within purview of Act’s definition of ‘meeting’ which must be open to public. List of personnel-related actions which school board may discuss in executive session does not include election. Local school board may not meet in executive session to discuss selection of its chairman and vice-chairman.

The Honorable Patricia S. Ticer
Member, Senate of Virginia
April 5, 1999

You ask whether § 2.1-344(A)(1) of the Code of Virginia, a portion of The Virginia Freedom of Information Act¹ (the "Act"), permits a local school board to meet in executive session to discuss the selection of its chairman and vice-chairman.

Section 22.1-76 provides that "at its annual meeting each school board shall elect one of its members as chairman [and] may also elect one of its members as vice-chairman."² Clearly, the annual meeting is a meeting falling within the purview of the Act.³ Furthermore, a prior opinion of the Attorney General concludes that the election of a chairman must be conducted by an openly recorded vote taken in an open public session.⁴

The General Assembly has determined that the Act is to be liberally construed so that citizens are afforded the opportunity to witness the operations of government.⁵ The Act requires that all meetings of public bodies be public meetings, "[e]xcept as otherwise specifically provided by law."⁶

Local school boards are "public bodies" under the Act.⁷ Section 2.1-344(A)(1) of the Act allows public bodies to discuss certain matters in executive or closed meetings, including discussion or consideration of "assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body." "Any exception or exemption from [the Act's] applicability shall be narrowly construed."⁸

The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory.⁹ "[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."¹⁰ Analysis of legislative intent includes appraisal of the subject matter and purpose of the statute, in addition to its express terms.¹¹ The purpose underlying a statute’s enactment is particularly significant in construing it.¹² Moreover, statutes should not be interpreted in ways that produce absurd or irrational consequences.¹³

"Section 2.1-344(A)(1) allows public bodies to discuss certain personnel matters in executive or closed meetings."¹⁴ "This exception to the open meeting requirement allows private discussion of personnel matters involving individual employees"¹⁵ and is "designed to protect the privacy of individual employees of public bodies in matters relating to their employment."¹⁶ Giving the required narrow construction to this exception, it is not available for a decision regarding which members of a school board shall serve as the board’s chairman and vice-chairman; rather, it is available only to discuss "personnel considerations regarding the individuals [a public body] appoints or employs."¹⁷ Section 22.1-76 specifically requires a school board to elect a chairman and permits the election of a vice-chairman. The list of personnel-related actions which, pursuant to § 2.1-344(A)(1), may be discussed in closed or executive session does not include an election.
A 1980 opinion summarily concludes that the exception provided in § 2.1-344(A)(1) permits a city council to meet in executive session to select one of its members to serve as mayor. It is my opinion that such discussion, like the one in issue, does not concern a personnel matter as contemplated by the exception. Accordingly, to the extent the 1980 opinion is inconsistent with this opinion, it is overruled.

Based on the above, therefore, it is my opinion that a local school board may not meet in executive session to discuss the selection of its chairman and vice-chairman.

1 Sections 2.1-340 to 2.1-346.1.

2 Compare § 22.1-57.3:3(B) (providing that, in certain counties, school board member elected at large "shall be the chairman of the school board").


4 1987-1988 Op. Va. Att'y Gen., supra, at 35 (concluding that election of chairman of county school board by secret ballot, even though secret ballot voting was conducted in open public session, is violative of Act).


6 Section 2.1-343.

7 Section 2.1-341 (including "school boards" in Act's definition of "public body").

8 Section 2.1-340.1 (emphasis added).

9 See Andrews v. Shepherd, 201 Va. 412, 414, 111 S.E.2d 279, 281 (1959) ("shall" is word of command, used in connection with mandate); see also Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) ("shall" generally indicates procedures are intended to be mandatory, imperative or limited); Op. Va. Att'y Gen.: 1997 at 16, 17; 1996 at 20, 21; 1991 at 126, and opinions cited therein; id. at 127, 129, and opinions cited therein.


14 1998 Op. Va. Att'y Gen. 9, 10. This prior opinion concludes that a city council may not meet in executive session to discuss personnel matters related to city employees not under its authority. Id. at 11.


19 To the extent the 1980 opinion agrees that a public body may meet in executive session to discuss personnel matters related to individuals over whom it exercises authority, it is still valid. See Op. Va. Att'y Gen.: 1998, supra note 14, at 9; 1982-1983, at 714.