COUNTIES, CITIES AND TOWNS: CERTAIN LOCAL GOVERNMENT OFFICERS.

Winchester city attorney may prosecute criminal violations of city ordinances without concurrence of Commonwealth’s attorney.

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You ask whether § 15.2-1542(D) of the Code of Virginia requires the concurrence of the Commonwealth’s attorney for the City of Winchester to permit the Winchester city attorney to prosecute criminal cases charging the violation of city ordinances.

Section 15.2-1542(D) provides:

City … attorneys, if so authorized by their local governing bodies, and with the concurrence of the attorney for the Commonwealth for the locality, may prosecute criminal cases charging either the violation of city … ordinances, or the commission of misdemeanors within the city …, notwithstanding the provisions of § 15.2-1627. [Emphasis added.]

The 1988 Session of the General Assembly amended and reenacted § 5 of the charter for the City of Winchester relating to the powers and duties of city council by adding subsection (e) pertaining to the employment of a city attorney.1 Section 5(e) of the Winchester city charter provides, in part:

Council is hereby empowered to employ a city attorney, and may employ or contract for the services of one or more assistants to the city attorney.… He shall be authorized to represent the city in all legal proceedings, including the prosecution of violations of city ordinances.2

"[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction. A Statutes should not be construed to frustrate their purpose. In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive. Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.

Section 5(e) of the Winchester charter, significantly, does not provide that the city attorney is authorized, by the local governing body, to represent the city in all legal proceedings, including the prosecution of violations of city ordinances. Rather, it is clearly the General Assembly that authorizes the Winchester city attorney to prosecute violations of the Winchester city ordinances.

It is my opinion, therefore, that in Winchester’s charter, the General Assembly has given the Winchester city attorney the same authority over prosecution of misdemeanor city ordinance violations that § 15.2-1627(B) confers on the Commonwealth’s attorney over comparable misdemeanor violations of state law. Accordingly, it is my opinion that the Winchester city attorney does not require the concurrence of the Commonwealth’s attorney for the City of Winchester to prosecute criminal cases charging the violation of city ordinances.

2Id. at 163.


5See Andrews v. Shepherd, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also


71988 Va. Acts ch. 137, supra note 1, at 163.