You ask whether it is the responsibility of the local commissioner of the revenue to administer the local food and beverage tax imposed pursuant to § 58.1-3833 of the Code of Virginia.

Under Article VII, § 4 of the Constitution of Virginia (1971), the commissioner of the revenue is a constitutional officer whose duties "shall be prescribed by general law or special act" of the General Assembly. The duties of commissioners of the revenue are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2, as well as generally in Titles 15.2 and 58.1.

Absent specific legislation, local governing bodies have no authority to specify the duties of constitutional officers. Additionally, even when specific legislation authorizes a local governing body to specify the duties of a commissioner, it may not specify duties that are inconsistent with the duties of a commissioner as prescribed by law. In accordance with this proviso that a local governing body may add additional duties to be performed by a constitutional officer, as long as those additional duties are not inconsistent with the office and its statutorily prescribed duties, prior opinions of the Attorney General conclude, for example, that because a commissioner of the revenue is required by statute to assess business license taxes, he is the appropriate official to be designated by a county for issuing a business license, and to swear out warrants for certain unlicensed entities.

With respect to a duty which a local governing body seeks a constitutional officer to assume, but which does not fall within the purview of his statutorily prescribed duties, the
Attorney General has determined that the officer "may, at [his] discretion, assume this duty."\(^7\) Additionally, § 15.2-1636 provides:

> The commissioner of the revenue shall exercise all the powers conferred and perform all the duties imposed upon such officer by general law. He *may* perform such other duties, not inconsistent with his office, as the governing body may request. [Emphasis added.]

It is well established that the use of the term "may" in a statute indicates that the statute is permissive and discretionary, rather than mandatory.\(^8\) Consequently, it is within the discretion of a local commissioner of the revenue to voluntarily assume duties that are not statutorily prescribed.

Section 58.1-3833 authorizes a county to levy a tax on certain food and beverages. A recent opinion of the Attorney General notes that state law does not direct local governments to maintain any particular type of system in connection with the administration of a local meals tax, and the adoption of reasonable recordkeeping requirements is a matter for determination by the governing body and local tax officials.\(^9\) Thus, the duty to administer the tax is not a statutorily prescribed duty of the commissioner of the revenue; however, it is a duty consistent with his office that may be voluntarily assumed by him.\(^10\)

Accordingly, the administration of a locality's food and beverage tax is not a duty that a local governing body may compel the local commissioner of the revenue to assume. The commissioner may, however, in his discretion, agree to assume this duty.


\(^2\) Id. at 49 (concluding that city council may not implement procedure for appeal of property assessments made by commissioner).

\(^3\) Id. at 50 n.2. *Compare* 1975-1976 Op. Va. Att'y Gen. 137, 138 (concluding that local treasurer's statutory duty to collect taxes and other amounts payable into treasury of political subdivision includes duty to collect local parking fines).

\(^4\) See § 58.1-3109.


