COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES – APPROVAL OF SEWAGE SYSTEMS BY COUNTIES.

Town that proposes to extend its sewage system into adjacent county without sewage system and sewerage services is not required to give notice and submit application to county for approval of extension.

Mr. George Mason III  
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You ask whether the requirements in §§ 15.2-2126 and 15.2-2127 of the Code of Virginia, relating to giving of notice and submission of application to counties for approval of sewage systems, are applicable to a town seeking to expand its existing sewage system into a designated service area of the county in which the town is located.

You relate that a county has two independent towns located within its boundaries, one of which is the town in issue. You also relate that the county participates in a sewer authority with the other town. You further relate that the county proposes to build a sewage system on a portion of the county remote from either town. You note that the county expects to begin construction of the system within twelve months, with service beginning approximately twelve to eighteen months thereafter. Additionally, you note that the county has adopted a master sewer plan to include construction of a sewage system adjacent to the town limits of the town in issue. You conclude that the participation of the county in a sewer authority, along with the anticipated construction of a sewage system in the area remote from the town in issue, and the county’s adoption of a master sewer plan negate the provision in § 15.2-2126, which allows a town to expand its sewage system into a county without notice to the county if the county itself does not operate a sewage system or provide sewage services. For the reasons that follow, I respectfully disagree with your conclusion.

The authority for a municipality to establish and operate water and sewer systems is set forth in § 15.2-2109(A). Specifically, this statute grants to any locality the power to "establish, maintain, operate, extend and enlarge … sewerage … systems … within or outside the limits of the locality." Accordingly, the authority for the town in issue to extend its existing sewer system outside its limits is clear and unambiguous. Whether it may
do so without notice to and subsequent approval or disapproval by the adjacent county in which such service is extended is determined by § 15.2-2126.

Section 15.2-2126 provides:

Any person, including municipal corporations, that proposes ... an extension of any existing [sewage] system ... shall ... notify in writing the governing body of the county in which such sewage system is to be located and shall appear at a regular meeting thereof and notify such governing body in person. However, a town proposing to ... expand a sewage system shall not be required to provide notice in writing or in person to a county if the county itself does not operate a sewage system or provide sewerage services.

The plain language of § 15.2-2126 requires the town in issue to notify in writing and in person the county wherein the town’s sewage service would be extended, unless the county does not operate a sewage system or provide sewerage services. Under the facts presented, the county does not presently operate a sewage system nor does it provide sewerage services. With respect to its participation in a sewer authority, the Attorney General has concluded previously that a locality’s power to provide utility services under state statutes is independent of a locality’s power to create a water and sewer authority. Thus, the county’s participation in a sewer authority consisting of the county and another town is not tantamount to the county itself operating a sewage system or providing sewerage services.

Accordingly, it is my opinion that the town in issue falls within the purview of the exception to the general notice requirement provided in § 15.2-2126. Consequently, the requirements in §§ 15.2-2126 and 15.2-2127, relating to giving of notice and submission of application to counties for approval of sewage systems, are not applicable to such town.

1 See Va. Code Ann. § 15.2-5102 (Michie Supp. 2001) (authorizing governing bodies of two or more localities to create sewer authority by ordinance).

2 See Va. Code Ann. § 15.2-2128 (Michie Repl. Vol. 1997) (authorizing governing body of county or town which has adopted master plan for sewage system to deny application for sewage system if such denial appears to it to be in best interest of inhabitants of county or town).
Section 2.1-118 requires that a request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."


See Va. Code Ann. § 15.2-2127 (Michie Repl. Vol. 1997) (providing that governing body of county notified of proposed extension of sewage system in county pursuant to § 15.2-2126 is authorized to disapprove same).

Compare 1973-1974 Op. Va. Att'y Gen. 108, 110 (concluding that town which sought to extend its sewer system into adjacent county did not have to follow notice provisions of § 15.1-326, predecessor statute to § 15.2-2126, because statute did not include municipal corporations thereunder). Section 15.1-326 subsequently was amended to include municipal corporations. See 1974 Va. Acts ch. 246, at 357, 357.

Utility services include those services related to "waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, [and] stormwater management systems." Section 15.2-2109(A).


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