CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).

Local elected constitutional officer is "unit of local government" falling within definition of "agency" under Act. Act’s definition of "agency" includes local constitutional officer.

The Honorable Barbara O. Carraway
Treasurer for the City of Chesapeake
April 4, 2002

Issue Presented

You ask whether the term “agency,” as used in the Government Data Collection and Dissemination Practices Act (the "Act"), includes a local constitutional officer.

Response

In my opinion, the Act’s definition of the term "agency" includes a local constitutional officer.

Applicable Law

You observe that the Act allows any "agency" that maintains an information system containing personal information to "disseminate only that personal information … necessary to accomplish a proper purpose of the agency." The term "agency," as used in the Act, means

any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns and regional governments and the departments and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this [Act] if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.[3]

Discussion

The offices of treasurer, sheriff, Commonwealth’s attorney, circuit court clerk, and commissioner of the revenue are constitutional offices created pursuant to Article VII, § 4 of the Constitution of Virginia, and the duties of such officers "shall be
prescribed by general law or special act" of the General Assembly. While the
powers and duties of a constitutional officer are those prescribed by statute,4
except as limited by law, the constitutional officer is free to discharge his
prescribed powers and duties in the manner he deems appropriate.

Where the language of an enactment is plain and unambiguous, as in this case,
its plain meaning must be applied.5 Accordingly, the words must be taken as
written and the history of the particular enactment, extrinsic facts, or general
rules of construction of enactments that have a doubtful meaning are not used.6
Prior opinions of the Attorney General implicitly assume that local constitutional
officers are "agencies" under the Act.7 The offices of treasurer, sheriff,
Commonwealth's attorney, circuit court clerk, and commissioner of the revenue,
however, clearly do not constitute an "agency, authority, board, department,
division, commission, institution, bureau, or like governmental entity of the
Commonwealth."8 Such constitutional offices constitute a "unit of local
government," which is designated as an "agency" for the purposes of the Act.9

In construing a general term, such as "unit of local government," I am required to
relate the general to the more specific terms found elsewhere in the definition,
employing the principle of ejusdem generis.10 Therefore, the term "unit of local
government," as included in the definition of "agency" in the Act, must be
restricted to the entities enumerated in the definition, i.e., "authority, board,
department, division, commission, institution, bureau, or like governmental
entity."11 The common thread shared by those entities specified in the Act's
definition of "agency" is that they are bodies constitutionally or legislatively
charged with the governance of, and ultimate responsibility for, a discrete agency
government. Therefore, using the familiar principle of statutory construction,
noscitur a sociis,12 the term "unit of local government" must take on a limited
meaning and not the global meaning that may be applied to the term. This
principle requires that the term be construed with reference to the words with
which it is used. Like the words that precede it—"authority, board, department,
division, commission, institution, bureau, or like governmental entity"—the term
"unit of local government"13 must be construed to mean an entity charged with the
governance of, and ultimate responsibility for, a discrete agency of government.

Conclusion

Accordingly, it is my opinion that a local elected constitutional officer is a "unit of
local government" falling within the definition of "agency" under the Act.
Therefore, I must also conclude that the Act's definition of the term "agency"
includes a local constitutional officer.

2Id. § 2.2-3803(A)(1).
3Id. § 2.2-3801(6).
4See Hilton v. Amburgey, 198 Va. 727, 729, 96 S.E.2d 151, 152 (1957); Old v.
5City of Winchester v. American Woodmark, 250 Va. 451, 457, 464 S.E.2d 148,
152 (1995); Southern Ry. Co. v. City of Richmond, 175 Va. 308, 312, 8 S.E.2d
271, 272 (1940).


8 Section 2.2-3801(6) (emphasis added).

9 Id.

10 Where a particular class of persons or things is enumerated in a statute and general words follow, the general words are to be restricted in their meaning to a sense analogous to the less general, particular words. See Ea. Coast Fr. Lines v. City of Richmond, 194 Va. 517, 525, 74 S.E.2d 283, 288 (1953); Rockingham Bureau v. Harrisonburg, 171 Va. 339, 198 S.E. 908 (1938).

11 Section 2.2-3801(6).

12 "The meaning of a word … takes color and expression from the purport of the entire phrase of which it is a part, and it must be construed so as to harmonize with the context as a whole." Kohlberg v. Va. Real Estate Comm., 212 Va. 237, 239, 183 S.E.2d 170, 172 (1971). "[I]t is known by its associates." Black’s Law Dictionary 1084 (7th ed. 1999) (noting Latin derivation of noscitur a sociis).

13 Section 2.2-3801(6).