

OP. NO. 05-023

COUNTIES, CITIES AND TOWNS: TAXES & ASSESSMENTS FOR LOCAL IMPROVEMENTS – SERVICE DISTRICTS.

Authority for local governing bodies to create service district to construct, maintain, and operate facilities and equipment required to, and to employ and fix compensation of technical, clerical, or other force to, test water, remove debris, control weeds, and maintain navigational aids on Smith Mountain Lake. No authority for board of supervisors of one county to adopt ordinance to form service district that encompasses portion of other counties. Properties within service district may be assessed fixed dollar amount for local improvements; such assessments may not be in excess of peculiar benefits resulting from improvements to owner's property within district. Service district may not be loosely described and must have well-defined geographical boundary, not general description. Local government may only exclude section, district, or zone that is specifically identified within service district.

The Honorable Kathy J. Byron
Member, House of Delegates
May 3, 2005

Issues Presented

You inquire concerning service districts created pursuant to § 15.2-2400. First, you inquire whether a service district may be formed to provide governmental services that currently are provided by other agencies of the Commonwealth. Specifically, you ask whether a service district may perform the water testing on Smith Mountain Lake that the Department of Environmental Quality currently provides. Additionally, you ask whether such a service district may remove debris from, control weeds in, and maintain navigational aids on the lake, which the **Tri-County Lake Administrative Commission currently provides. Further, you inquire whether the properties within a service district may be assessed a fixed dollar amount per year to cover the budget of the service district, which budget merely estimates the amount needed for multiple projects spanning multiple years.** You next ask whether a single county's board of supervisors may adopt an ordinance to form a service district that will encompass parts of each of the three separate counties that comprise the lake area. You then inquire whether the property to be included within a service district may be loosely described to be waterfront property, off-water property that has water access, and businesses that benefit from the lake. You next ask whether a service district must have a well-defined geographical boundary as opposed to a general property description, such as waterfront and off-water, but with deeded lake access. Further, you ask whether a service district may exclude, from assessment or taxation, specific types of property that are within the geographical boundary of the service district, i.e., farms, property without water access, or businesses with less than a fixed dollar amount of gross income. Finally, you inquire whether such property descriptions contain sufficient specificity to comply with the statutory requirements.

Response

It is my opinion that the General Assembly authorizes local governing bodies to create a service district to construct, maintain, and operate facilities and equipment necessary or desirable that are required for water testing, debris removal, control of weeds, and maintenance of navigational aids. Furthermore, the General Assembly authorizes local governing bodies to create a service district to employ and fix the compensation of any technical, clerical, or other force, and to employ the help necessary or desirable to test water, remove debris, control weeds, and maintain navigational aids. When there is a geographical area that occupies a portion of three counties, it is my opinion that the board of supervisors of one county may not adopt an ordinance to form a service district that encompasses a portion of the other counties. It is further my opinion that properties within a service district may be assessed a fixed dollar amount required for the local public improvements. Such assessments may not be in excess of the peculiar benefits resulting from the improvements to the owner's property within the district. It is also my opinion that a service district may not be loosely described to be waterfront property, off-water property that has water access, and businesses that benefit from the lake. Additionally, a service district must have a well-defined geographical boundary as opposed to a general description of the property included within the district. Finally, it is my opinion that the General Assembly only authorizes a local governing body to exclude from a service district any section, district, or zone that is specifically identified within the service district.

Applicable Authorities and Discussion

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.¹ The Commonwealth follows the rule of strict construction of statutory provisions.² In determining legislative intent, the rule is clear that where a power is conferred and the mode of its execution is specified, no other method may be selected; any other means would be contrary to legislative intent and, therefore, unreasonable.³ A necessary corollary is that where a grant of power is silent upon its mode of execution, a method of exercise clearly contrary to legislative intent, or inappropriate to the ends sought to be accomplished by the grant, also would be unreasonable.⁴

Service districts are creatures of statute.⁵ As such, service districts function within the ambit of powers conferred by the General Assembly. Their organization, management, purposes, and powers are delineated in Chapter 24, "Service Districts; Taxes and Assessments for Local Improvements," of Title 15.2, §§ 15.2-2400 through 15.2-2413. In § 15.2-2403(1), the General Assembly authorizes a service district "to provide additional, more complete or more timely governmental services within a service district."

1. Formation of a Service District

You first ask whether a service district may be formed to provide governmental services that currently are provided by other agencies of the Commonwealth. You specifically ask whether a service district may perform water testing on Smith Mountain Lake that currently is performed by the Department of Environmental Quality. In addition, you ask whether a service district may remove debris from, control weeds in, and maintain navigational aids that the **Tri-County Lake Administrative Commission** currently provides.⁶

Section 15.2-2400 authorizes local governing bodies to create service districts "to provide additional, more complete or more timely services of government." A

prior opinion of the Attorney General concludes that the phrase "additional governmental services" includes those services of a type usually provided by local governments on a jurisdiction-wide basis.⁷ In the service district context, however, such services are provided on an exclusive or enhanced basis within the service district, rather than on a uniform basis throughout the jurisdiction.⁸

In § 15.2-2403, the General Assembly authorizes the governing bodies of localities to exercise certain enumerated powers with regard to service districts. The delegated powers include the maintenance and operation of equipment that is either necessary or desirable to provide additional "services, ... which will enhance the public use and enjoyment of and the public safety, public convenience, and public well-being within a service district."⁹ Furthermore, the General Assembly authorizes the governing bodies of localities forming service districts

[t]o employ and fix the compensation of any technical, clerical or other force and help which from time to time, in their judgment may be necessary or desirable to provide the governmental services authorized by subdivisions 1, 2 and 11 or for the construction, operation or maintenance of any such facilities and equipment as may be necessary or desirable in connection therewith.^[10]

For the purposes of this opinion, I must assume that water testing of the Lake water, debris removal from the Lake, control of weeds in the Lake and maintenance of navigational aids on the Lake enhance the public use and enjoyment of the Lake. Furthermore, I must assume that these additional services will enhance the public safety, public convenience and public well-being within the service district. ""The manifest intention of the legislature, clearly disclosed by its language, must be applied.""¹¹ I must conclude, therefore, that the General Assembly authorizes local governing bodies with respect to a service district to construct, maintain and operate facilities and equipment necessary or desirable that is required for water testing, debris removal, control of weeds and maintenance of navigational aids. Therefore, I conclude that the General Assembly authorizes local governing bodies with respect to a service district to employ and fix the compensation of any technical, clerical or other force and help necessary or desirable that is required for water testing, debris removal, control of weeds and maintenance of navigational aids.

2. Service District Ordinance

You next ask whether a single county board of supervisors may adopt an ordinance to form a service district that will encompass parts of three separate counties within the service district, including the board of supervisors' county.

In § 15.2-2400, the General Assembly provides that "[a]ny locality may by ordinance, or any two or more localities may by concurrent ordinances, create service districts within the locality or localities in accordance with the provisions of this article."

When a particular word in a statute is not defined therein, the word must be given its ordinary meaning.¹² In § 15.2-2400, the General Assembly authorizes local governing bodies to create service districts "within the locality." The term "within" is generally defined to mean "inside the bounds of a place or region."¹³ The

General Assembly, therefore, authorizes a single local governing body to create a service district within the geographic area of that locality. Consequently, I must conclude that when there is a geographic area that is a part of three separate counties, the board of supervisors of only one of the counties may not adopt an ordinance to form a service district that will encompass portions of each of the three separate counties. Further, § 15.2-2400 clearly provides that two or more localities must enact "concurrent ordinances" to create a service district within such localities.

3. Assessment of Fixed Dollar Amount

Your next question is whether individual properties within a service district may be assessed a fixed dollar amount as opposed to an amount based upon a rate of the fair market value of the property to cover the budget of the service district when the budget covers multiple projects over multiple years and the amount required for each project is only estimated in the budget.¹⁴

Section 15.2-2404 authorizes a *locality* to impose taxes or assessments upon abutting property owners for local public improvements. Section 15.2-2404 also provides that the taxes or assessments imposed on abutting property owners "shall not be in excess of the peculiar benefits resulting from the improvements to such property owners." Special assessments for such local improvements are generally distinguished from general tax levies and service charges because special assessments are intended to impose a just share of the costs of improvements on the adjacent property that is enhanced in value. Under the provisions of § 15.2-2405, "[s]uch improvements may be ordered by the governing body" pursuant to (1) "an agreement between the governing body and the abutting landowners"; (2) "a petition from not less than three-fourths of the landowners" affected by the improvement; or (3) "a two-thirds vote of all the members elected to the governing body." "Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation."¹⁵ It is clear from the plain and unambiguous language of § 15.2-2405 that the taxes and assessments must be related to the specific project improvement for which it is being collected, and further, cannot be in excess of the peculiar benefits obtained by the property owner from that project. Therefore, I must conclude that properties within a service district may be assessed a fixed dollar amount required for the local public improvements, but cannot be "in excess of the peculiar benefits resulting from the improvements to such ... property owners."¹⁶

4. Description of Service District Property

You next inquire regarding whether property to be included within a service district may be loosely described to be waterfront property, off-water property that has water access and business that benefit from the lake.

Section 15.2-2402 provides:

Any ordinance or petition to create a service district shall:

1. Set forth the name and describe the boundaries of the proposed district and specify any areas within the district that are to be excluded;

2. Describe the purposes of the district and the facilities and services proposed within the district;
3. Describe a proposed plan for providing such facilities and services within the district; and
4. Describe the benefits which can be expected from the provision of such facilities and services within the district.

The language in § 15.2-2402(1) clearly provides that the ordinance creating the service district shall "set forth the name and describe the boundaries of the proposed district." The use of the word "shall" in a statute generally implies that the General Assembly intends its terms to be mandatory, rather than permissive or directive.¹⁷ The language used by the General Assembly in § 15.2-2402(1) requires that property to be included within a service district must be described by name with its boundaries clearly described. I am, therefore, of the opinion that a service district may not be loosely described to be waterfront property, off-water property that has water access and businesses that benefit from the lake.

5. Service District Boundary

You next ask whether a service district is required to have a well-defined geographical boundary as opposed to a general description of the property within the district, such as waterfront, and off-water but with deeded lake access.

Since a service district is purely a statutory creation,¹⁸ it has no authority to change in any way the mold in which it was fashioned by the General Assembly.¹⁹ It cannot alter the fact that it is a governmental agency.²⁰ In addition, when a statute is expressed in plain and unambiguous terms, whether general or limited, the legislature is assumed to mean what it plainly has expressed, and "no room is left for construction."²¹ The provisions of § 15.2-2402(1) clearly require that a service district have a well-defined geographical boundary as opposed to a general description of the property included within the district.

6. Exclusions from Service District

Finally, you ask whether a service district may exclude specific property, such as farms, property without water access, or businesses of less than a dollar amount of gross income that are within the geographical boundary of the service district, from being subject to tax or assessment for improvements within the district. You also inquire regarding whether such property descriptions contain sufficient specificity to comply with the statutory requirements.

The language in § 15.2-2402(1) clearly provides that the ordinance creating a service district shall "specify any areas within the district that are to be excluded" from the proposed service district. The term "area" is generally defined to mean "a section, district, or zone of a town or city."²² "Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation."²³ Furthermore, the term "specify" is generally defined to mean "to mention or name in a specific or explicit manner."²⁴ The clear, unambiguous language used by the General Assembly, therefore, requires that area containing a section, district or zone of the district that is to be excluded from the proposed district must be specifically described. The General Assembly does not permit

specific property that is not specifically described in a section, district or zone such as you describe, to be excluded from a service district.

A statute specifying the method by which something shall be done indicates a legislative intent that it not be done otherwise.²⁵ The authority and powers of county boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication.²⁶ This rule is a corollary to Dillon's Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.²⁷ "[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."²⁸ The General Assembly expressly authorizes a local governing body to exclude from the service district any section, district or zone that is specifically identified within the service district. A local governing body, therefore, is not authorized to exclude property, generally described as farms, property without water access, or businesses of less than a dollar amount of gross income that are within the geographical boundary of the service district, from being subject to tax or assessment for improvements within the district.

Conclusion

Accordingly, it is my opinion that the General Assembly authorizes local governing bodies to create a service district to construct, maintain, and operate facilities and equipment necessary or desirable that are required for water testing, debris removal, control of weeds, and maintenance of navigational aids. Furthermore, the General Assembly authorizes local governing bodies to create a service district to employ and fix the compensation of any technical, clerical, or other force, and to employ the help necessary or desirable to test water, remove debris, control weeds, and maintain navigational aids. When there is a geographical area that occupies a portion of three counties, it is my opinion that the board of supervisors of one county may not adopt an ordinance to form a service district that encompasses a portion of the other counties. It is further my opinion that properties within a service district may be assessed a fixed dollar amount required for the local public improvements. Such assessments may not be in excess of the peculiar benefits resulting from the improvements to the owner's property within the district. It is also my opinion that a service district may not be loosely described to be waterfront property, off-water property that has water access, and businesses that benefit from the lake. Additionally, a service district must have a well-defined geographical boundary as opposed to a general description of the property included within the district. Finally, it is my opinion that the General Assembly only authorizes a local governing body to exclude from a service district any section, district, or zone that is specifically identified within the service district.

¹ See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976); 1990 Op. Va. Att'y Gen. 155, 155, and opinions cited therein.

²"The Dillon Rule of strict construction controls our determination of the powers of local governing bodies. This rule provides that [local governments] have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." *City of Chesapeake v. Gardner Enters., Inc.*, 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997), *quoted in* 2004 Op. Va. Att'y Gen. 224, 229 n.22 (forthcoming July 2005),

available at <http://www.vaag.com/media%20center/Opinions/2004opns/04-019w.htm>.

³See *Page v. Belvin*, 88 Va. 985, 990, 14 S.E. 843, 845 (1892).

⁴See *Groner v. City Council*, 77 Va. 488, 490 (1883); *Kirkham v. Russell*, 76 Va. 956, 961 (1882).

⁵See Va. Code Ann. § 15.2-2400 (LexisNexis Repl. Vol. 2003) (creation of service districts).

⁶The counties of Bedford, Franklin, and Pittsylvania formed the Tri-County Lake Administrative commission pursuant to § 15.2-1300. See "Organizational Cooperative Agreement Creating the Tri-County Lake Administrative Commission" (partial copy on file with this Office).

⁷1986-1987 Op. Va. Att'y Gen. 113, 114 (1986) (interpreting § 15.1-18.2(b)(5), predecessor to § 15.2-2403).

⁸*Id.*

⁹Section 15.2-2403(1) (LexisNexis Supp. 2004).

¹⁰Section 15.2-2403(8).

¹¹*Sykes v. Commonwealth*, 27 Va. App. 77, 80, 497 S.E.2d 511, 512 (1998) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944))).

¹²See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

¹³Webster's Third New International Dictionary of the English Language Unabridged 2627 (1993) [hereinafter Webster's Third].

¹⁴Section 15.2-2403(6) permits a tax or assessment to be levied on any property in the service district subject to local taxation. Thus, additional taxes could be imposed on real estate alone, or any of the other categories of property subject to local taxation alone or any combination thereof, subject to the uniformity requirement of Article X, § 1 of the Constitution of Virginia. See 1986-1987 Op. Va. Att'y Gen. 111, 113 n.4 (interpreting § 15.1-18.2(b)(5), predecessor to § 15.2-2403).

¹⁵*Last v. Va. State Bd. of Med.*, 14 Va. App. 906, 910, 421 S.E.2d 201, 205 (1992), *quoted in Sykes*, 27 Va. App. at 80, 497 S.E.2d at 512.

¹⁶Section 15.2-2404 (LexisNexis Repl. Vol. 2003). The Supreme Court of Virginia has also discussed this principal in relation to local improvements. See *City of Richmond v. Eubank*, 179 Va. 70, 18 S.E.2d 397 (1942) (noting that assessments for local improvements are based on maxim that person receiving benefit should bear burden apportionately).

¹⁷ See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959) (discussing intention of legislature in using words "shall" and "may"); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that word "shall" in statute generally is used in imperative or mandatory sense).

¹⁸ See *supra* note 5 and accompanying text.

¹⁹ See, e.g., *Kellam v. Sch. Bd.*, 202 Va. 252, 254, 117 S.E.2d 96, 97 (1960).

²⁰ *Id.*

²¹ *Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

²² Webster's Third, *supra* note 13, at 115.

²³ See *supra* note 15.

²⁴ Webster's Third, *supra* note 13, at 2187.

²⁵ *Grigg v. Commonwealth*, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982) (explaining maxim, *expressio unius est exclusio alterius*).

²⁶ See *County Bd. v. Brown*, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985); *Gordon v. Bd. of Supvrs.*, 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967); *Johnson v. County of Goochland*, 206 Va. 235, 237, 142 S.E.2d 501, 502 (1965).

²⁷ *City of Richmond v. Bd. of Supvrs.*, 199 Va. 679, 684-85, 101 S.E.2d 641, 644-45 (1958).

²⁸ *Commonwealth v. County Bd.*, 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

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