

**OP. NO. 05-046**

**COUNTIES, CITIES AND TOWNS: GENERAL POWERS OF LOCAL GOVERNMENT – PUBLIC HEALTH AND SAFETY; NUISANCES — GOVERNING BODIES OF LOCALITIES – ORDINANCES AND OTHER ACTIONS BY THE LOCAL GOVERNING BODY.**

**No requirement for county with county executive form of government to file ordinances with clerk of circuit court; no violation of Constitution of Virginia for failure to file. Citizen must receive notice before such county may remove objects causing nuisance.**

The Honorable Jeffrey M. Frederick  
Member, House of Delegates  
September 6, 2005

**Issue Presented**

You inquire regarding the abatement or removal of nuisances<sup>1</sup> by a county with a county executive form of government.<sup>2</sup> You ask whether such a county is required to file its ordinances with the clerk of the circuit court. Next, you ask whether it violates the Constitution of Virginia if that county does not file its ordinances with the circuit court clerk. Finally, you ask whether a citizen must be notified before that county removes the objects causing a nuisance.

**Response**

It is my opinion that a county with a county executive form of government is not required to file its ordinances with the clerk of the circuit court, and the failure to do so is not a violation of the Virginia Constitution. Finally, it is my opinion that a citizen must receive notice before that county may remove the objects causing a nuisance.

**Background**

You advise that Prince William County has removed objects from the property of a citizen in your district. You further advise that Prince William County deemed the objects to be a nuisance or unsightly and has removed them from the property.

You also relate that the citizen believes that the statutory law of the Commonwealth requires that he be notified and given an opportunity to remove, cover, or fence the objects prior to Prince William County taking action.<sup>3</sup> In addition, you note that the citizen believes that the Prince William County ordinances authorizing the removal of his property were not properly implemented since they were not filed in the Office of the Clerk of the Circuit Court of Prince William County.

**Applicable Authorities and Discussion**

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.<sup>4</sup> The Commonwealth follows the rule of strict construction of statutory provisions. 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.<sup>5</sup> 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.<sup>6</sup>

"The powers of county boards of supervisors are fixed by statute and are limited to those powers conferred expressly or by necessary implication."<sup>7</sup> "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."<sup>8</sup> "[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."<sup>9</sup>

You ask whether a county with a county executive form of government is required to file its ordinances with the clerk of the circuit court. Section 15.2-1427 generally provides the procedure that counties must follow in adopting ordinances. The only statutory requirement regarding the filing of ordinances is found in § 15.2-1427(F), and provides:

In counties, except as otherwise authorized by law, no ordinance shall be passed until after descriptive notice of an intention to propose the ordinance for passage has been published once a week for two successive weeks prior to its passage in a newspaper having a general circulation in the county. The second publication shall not be sooner than one calendar week after the first publication. The publication shall include a statement either that the publication contains the full text of the ordinance or that a copy of the full text of the ordinance is on file in the clerk's office of the circuit court of the county or in the office of the county administrator; *or in the case of any county organized under the form of government set out in Chapter 5, 7 or 8 of [Title 58.1], a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the county board.* Even if the publication contains the full text of the ordinance, a complete copy shall be available for public inspection in the offices named herein. [Emphasis added.]

Prince William County is a county with a county executive form of government<sup>10</sup> organized under the form of government set out in Chapter 5 of Title 15.2 of the Code. "Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation."<sup>11</sup> Accordingly, when adopting ordinances, Prince William County is required by the General Assembly to file a full text of a proposed ordinance in the office of the clerk of *the county board of supervisors*. In addition, when a subdivision ordinance is adopted, or amended, by Prince William County, § 15.2-2252 requires that a certified copy of the ordinance and any amendments "be filed in the office of an official of the locality, designated in the ordinance, and in the clerk's office of the circuit court." The only other provisions governing filing of an ordinance with the clerk of the circuit court deal with vacation of interests in real property granted to a locality as a condition of site plan approval, vacation of a plat of survey before the sale of any lot, and the vacation of a plat of survey after the sale of any lot.<sup>12</sup> I find no statutory provision requiring a locality to file a copy of its ordinances with the clerk of the circuit court.

The provisions pertaining to the abatement or removal of nuisances by localities are found in Article 1, Chapter 9 of Title 15.2, §§ 15.2-900 through 15.2-926.2. There is no requirement in Article 1 directing a locality to file a copy of its ordinances regarding the abatement or removal of nuisances with the clerk of the circuit court. Accordingly, I must conclude that a county with a county executive form of government is not required to file a copy of its ordinances with the clerk of the circuit court.

You next ask whether the filing procedures of Prince William County violate the Virginia Constitution because copies of the county ordinances are not filed with the clerk of the circuit court. The Virginia Constitution does not require that a copy of the county ordinances be filed with the clerk of the circuit court. The practices of Prince William County in this regard are not addressed by the Virginia Constitution and, therefore, do not violate the Constitution.

Finally, you ask whether a county with a county executive form of government must notify a citizen before taking action to remove inoperable motor vehicles, trailers, or semitrailers from his property.<sup>13</sup> Section 15.2-905(A) authorizes the Prince William County Board of Supervisors to adopt an ordinance that prohibits:

any person from keeping, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned or used for residential purposes, or on any property zoned for commercial or agricultural purposes, any motor vehicle, trailer or semitrailer, as such are defined in § 46.2-100, which is inoperable.

The locality in addition may by ordinance limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure.

Section 15.2-905(B) further authorizes Prince William County to adopt an ordinance to "remove the inoperable motor vehicle, whenever the owner of the premises, after reasonable notice, has failed to do so." Prince William County has adopted such an ordinance<sup>14</sup> pursuant to the authority granted in § 15.2-905. Furthermore, § 13-485 of the Prince William County Code provides that the chief of police or the administrative bureau give written notice of the violation and request compliance therewith within ten days after receipt of the notice. Whenever a person fails to comply with the written notice, § 13-488 of the Prince William County Code permits the chief of police or the administrative bureau to direct the removal of the vehicle from the "subject property after obtaining any necessary warrants as may be required." Finally, § 13-488 does not permit removal of any inoperative motor vehicle, trailer, or semitrailer "until after the time for compliance or appeal under sections 13-485 and 13-487 has elapsed, or until such appeal has been heard."

"Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation."<sup>15</sup> A statute that limits the method by which something shall be done indicates a legislative intent that it not be done otherwise.<sup>16</sup> Accordingly, the clear language of the Prince William County Code, as authorized by § 15.2-905, requires that a citizen receive notice before Prince William County may take action to remove inoperable motor vehicles, trailers or semitrailers from the property of any citizen.

### **Conclusion**

Accordingly, it is my opinion that a county with a county executive form of government is not required to file its ordinances with the clerk of the circuit court, and the failure to do so is not a violation of the Virginia Constitution. Finally, it is my opinion that a citizen must receive notice before that county may remove the objects causing a nuisance.

<sup>1</sup>Based on the terms used in your request regarding the removal of objects from a citizen's property by Prince William County, I will assume, for purposes of this opinion, that such objects are inoperable motor vehicles, trailers, or semitrailers.

<sup>2</sup>See Va. Code Ann. §§ 15.2-500 through 15.2-541 (LexisNexis Repl. Vol. 2003).

<sup>3</sup>See *supra* note 1.

<sup>4</sup>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.

<sup>5</sup>See *Page v. Belvin*, 88 Va. 985, 990, 14 S.E. 843, 845 (1892).

<sup>6</sup>See *Groner v. City Council*, 77 Va. 488, 490 (1883); *Kirkham v. Russell*, 76 Va. 956, 961 (1882).

<sup>7</sup>*County Bd. v. Brown*, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985); see also *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).

<sup>8</sup>*Commonwealth v. County Bd.*, 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977).

<sup>9</sup>*Id.* at 575, 232 S.E.2d at 41.

<sup>10</sup>See Va. Ass'n Counties, *Virginia County Supervisor's Manual*, at 3-7 (6th ed. 1998).

<sup>11</sup>*Sykes v. Commonwealth*, 27 Va. App. 77, 80, 497 S.E.2d 511, 512 (1998) (quoting *Last v. Va. State Bd. of Med.*, 14 Va. App. 906, 910, 421 S.E.2d 201, 205 (1992)).

<sup>12</sup>See §§ 15.2-2270, 15.2-2271, 15.2-2272, respectively (LexisNexis Repl. Vol. 2003) (providing that when no appeal is filed or ordinance is upheld on appeal, ordinance "may be" recorded in clerk's office).

<sup>13</sup>See *supra* note 1.

<sup>14</sup>Section 13-483 of Article XVIII of Chapter 13 of the Prince William County Code. The Prince William County Code is available via the Internet. See <http://www.co.prince-william.va.us/Documents/CountyCode/>.

<sup>15</sup>See *Sykes*, 27 Va. App. at 80, 497 S.E.2d at 512 (quoting *Last*, 14 Va. App. at 910, 421 S.E.2d at 205).

<sup>16</sup>*Grigg v. Commonwealth*, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982) (explaining maxim *expressio unius est exclusio alterius*).

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