



COMMONWEALTH of VIRGINIA

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July 10, 2008

The Honorable Dan C. Bowling
Member, House of Delegates
Box 429
Oakwood, Virginia 24631

Dear Delegate Bowling:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask if a school board makes a decision to consolidate certain schools within a county, whether the school board may reconsider its decision based on passage of a referendum that would fund the continued operation of the schools originally designated for consolidation.

Response

It is my opinion that when circumstances change, a school board may revisit any decision regarding consolidation of schools. However, unless the amendment to or abandonment of a consolidation proposal contributes to the efficiency of the school division, it is not properly a factor in the school board's analysis. Finally, it is my opinion that whether a planned consolidation or an amendment of abandonment thereof contributes to the efficiency of a school division is a factual determination and not a legal conclusion.¹

Background

You advise that the Tazewell County School Board ("School Board") voted to consolidate Pocahontas High School and Pocahontas Middle School with other Tazewell County schools. Thereafter, the Tazewell County Board of Supervisors adopted a motion requesting a referendum² to enact a meals tax. You relate that the Board of Supervisors has proposed that a portion of the monies received from the

¹For many years, Attorneys General have concluded that § 2.2-505, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law. *See* Op. Va. Att'y Gen.: 2003 at 21, 24; 2001 at 73, 74; 1991 at 122, 124.

²Based on the information you provide, it appears that the referendum has not yet been held. Thus, the status of the additional funding is unresolved.

meals tax, if approved, would be used to fund the continued operation of Pocahontas High School and Pocahontas Middle School for two years. If the number of students does not improve within the two-year period, the funding for these schools would end. Therefore, you ask whether the School Board may reconsider its original decision to consolidate the specified schools or whether § 22.1-79 prohibits the School Board from considering the Supervisors' meal tax funding proposal.

Applicable Law and Discussion

Article VIII, § 7 of the Constitution of Virginia and § 22.1-28 provide that "[t]he supervision of schools in each school division shall be vested in a school board." "School boards ... constitute public quasi corporations that exercise limited powers and functions of a public nature granted to them expressly or by necessary implication, and none other."³ Virginia follows the Dillon Rule of strict construction concerning the powers of local governing bodies, whereby such powers are limited to those conferred expressly by law or necessarily implied from conferred powers.⁴ "[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."⁵ Thus, the initial inquiry is whether school boards have an express grant of power to establish school boundaries.

Section 22.1-79 enumerates powers and duties of school boards, which include an obligation to "[p]rovide for the consolidation of schools or redistricting of school boundaries or adopt pupil assignment plans whenever such procedure will contribute to the efficiency of the school division."⁶ Although § 22.1-79 expressly grants to local school boards the authority to redistrict school boundaries, such authority is limited to situations where redistricting "will contribute to the efficiency of the school division."

You do not specify the criteria which the School Board considered in deciding to consolidate or identify the "efficiency" findings of the School Board justifying its original consolidation decision. Based on the information you provide, one may only speculate whether the proposed meals tax, if adopted, might affect the School Board's deliberations or conclusions regarding the efficiency of the school system. I find nothing in § 22.1-79 that prohibits or limits the authority of a school board to modify decisions regarding consolidation in light of a change in circumstances. Section 22.1-79 does not compel consolidation even when efficiencies may be realized; however, such a finding is a condition precedent to consolidation. If, in light of changed circumstances, a school board determines that continuing with a proposed consolidation does not contribute to the efficiency of the school system, it is my opinion that the school board must reconsider its earlier decision. In any other circumstances, a school board may reconsider its earlier decision.

³Kellam v. Sch. Bd., 202 Va. 252, 254, 117 S.E.2d 96, 98 (1960), *quoted in* Commonwealth v. County Bd., 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977).

⁴See 1999 Op. Va. Att'y Gen. 101, 102.

⁵County Board, 217 Va. at 575, 232 S.E.2d at 41.

⁶VA. CODE ANN. § 22.1-79(4) (2006).

The Honorable Dan C. Bowling
July 10, 2008
Page 3

Conclusion

Accordingly, it is my opinion that when circumstances change, a school board may revisit any decision regarding consolidation of schools. However, unless the amendment to or abandonment of a consolidation proposal contributes to the efficiency of the school division, it is not properly a factor in the school board's analysis. Finally, it is my opinion that whether a planned consolidation or an amendment or abandonment thereof contributes to the efficiency of a school division is a factual determination and not a legal conclusion.⁷

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive, flowing style with a large initial "R" and "M".

Robert F. McDonnell

1:61; 1:941/08-034

⁷ See *supra* note 1.