



COMMONWEALTH of VIRGINIA

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January 6, 2009

The Honorable Roslyn C. Tyler
Member, House of Delegates
25359 Blue Star Highway
Jarratt, Virginia 23867

Dear Delegate Tyler:

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 whether the failure of the City Council of the City of Franklin to give the notice of meeting required by § 2.2-3707(C) invalidates the selection and appointment of a nominee to the school board.

Response

It is my opinion the failure of the City Council of the City of Franklin to give the notice of meeting required by § 2.2-3707(C) invalidates the appointment of a nominee to the school board.

Background

You advise that the Charter for the City of Franklin ("Charter") creates a separate school district. The school board ("Board") consists of seven members who are qualified voters of the City of Franklin ("City") and not members of the City Council of the City of Franklin ("City Council"). One member of the Board is to be selected from each ward of the City and one member is selected from the City at large. The City Council fills any vacancy on the Board for the unexpired term.

You advise that the at-large member of the Board resigned. Pursuant to proper notice posted in the local newspaper, a public hearing was held by the City Council on March 24, 2008, to receive nominations from the public to fill this vacancy. At the public hearing, three citizens were considered to fill the unexpired term. The City Council in open session discussed a date for interviewing the three nominees and agreed upon April 1, 2008.

You advise that no other notice was given regarding the City Council meeting scheduled for April 1, 2008. You state that City Council met on April 1, 2008, and voted for one of the three citizens to fill the unexpired term. At the City Council meeting held on July 14, 2008, a citizen noted that the April 1, 2008 Council meeting was conducted without the notice required by § 2.2-3707(C).

You state there is no authority to invalidate the actions taken by the City Council due to the failure to give notice. Therefore, you conclude the actions taken by the City Council on April 1, 2008, including the appointment to the Board, are valid.¹

Applicable Law and Discussion

The power of a local governing body, unlike that of the General Assembly, “must be exercised pursuant to an express grant”² because the powers of a county “are limited to those conferred expressly or by necessary implication.”³ “If the power cannot be found, the inquiry is at an end.”⁴ The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are since they are delegated powers.⁵ Therefore, any doubt as to the existence of power must be resolved against the locality.⁶

Section 2.2-3700(B) of The Virginia Freedom of Information Act⁷ (“Act”) expresses the public policy that the citizens of the Commonwealth are to have “free entry to meetings of public bodies wherein the business of the people is being conducted.” Furthermore, “[a]ny ordinance adopted by a local governing body that conflicts with the provisions of [Chapter 37] shall be void.”⁸ Section 2.2-3707(C) of the Act provides, in part, that:

Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator.

The Supreme Court of Virginia repeatedly has held that “the use of ‘shall,’ in a statute requiring action by a public official[, such as in § 2.2-3707(C),] is directory and not mandatory unless the statute manifests a contrary intent.”⁹ However, statutory construction dictates that statutes on a particular subject should not be read in isolation, but must be construed as parts of a coordinated whole.¹⁰ Section 2.2-3710(A) of the Act provides, in part, that:

¹Section 2.2-505(B) requires that an opinion request from a city attorney “shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney’s legal conclusions.”

²Nat’l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

³Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (noting Dillon Rule).

⁴Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

⁵See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 504-05, 522 S.E.2d 610, 613-14 (1999) (holding that county board of supervisors does not have unfettered authority to decide what matters to include in subdivision ordinance; must include requirements mandated by Land Subdivision and Development Act and may include optional provisions contained in act); Op. Va. Att’y Gen.: 2002 at 77, 78; 1974-1975 at 403, 405.

⁶2A EUGENE MCQUILLEN, THE LAW OF MUNICIPAL CORPORATIONS § 10.19, at 369 (3d ed. 1996); see also Op. Va. Att’y Gen.: 2002 at 83, 84; 2000 at 75, 76.

⁷See VA. CODE ANN. tit. 2.2, ch. 37, §§ 2.2-3700 to 2.2-3714 (2008) (codified in scattered sections).

⁸Section 2.2-3700(B).

⁹Jamborsky v. Baskins, 247 Va. 506, 511, 442 S.E.2d 636, 638 (1994).

¹⁰See Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); Op. Va. Att’y Gen.: 2002 at 331, 333; 1993 at 177, 187; 1992 at 108, 112.

Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of [Chapter 37].

When a statute is clear and unambiguous, its plain meaning must be accepted without resort to extrinsic evidence or to the rules of construction.¹¹ Legislative intent is determined from the plain meaning of the words used.¹² Furthermore, when legislative intent is plain, I am required to respect it and give it effect.¹³ It is clear that the use of the word “shall” by the General Assembly in § 2.2-3707(C) is intended to make its requirements mandatory.

It also is clear, with respect to meetings of public bodies such as the City Council, that no vote of any kind is authorized “other than a vote taken at a meeting conducted in accordance”¹⁴ with the Act. The City Council may only exercise powers expressly granted, and in the manner granted, by the General Assembly. The General Assembly clearly and unequivocally requires the City Council to “give notice of the date, time, and location of its meetings” in a prominent public location “at which notices are regularly posted,” and in the office of its clerk or the administrator’s office if there is no clerk.¹⁵

You have advised that the City Council did not give notice of the meeting held on April 1, 2008. Section 2.2-3710(A) specifically forbids any vote by the City Council on any public business unless the vote is taken “at a meeting conducted in accordance with the provisions” of the Act. Since proper notice of the April 1, 2008 meeting was not given, I must conclude that the vote of the City Council was not taken “at a meeting conducted in accordance” with the Act.¹⁶ Therefore, the City Council’s vote selecting a person to fill the unexpired term of the at-large school board member is null and void.¹⁷

Conclusion

Accordingly, it is my opinion the failure of the City Council of the City of Franklin to give the notice of meeting required by § 2.2-3707(C) invalidates the appointment of a nominee to the school board.

¹¹Marsh v. City of Richmond, 234 Va. 4, 11, 360 S.E.2d 163, 167 (1987); Va. Dep’t of Labor & Indus. v. Westmoreland Coal Co., 233 Va. 97, 99, 353 S.E.2d 758, 760-61 (1987); Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

¹²Marsh, 234 Va. at 11, 360 S.E.2d at 167.

¹³Arlington County Board, 217 Va. at 579, 232 S.E.2d at 43.

¹⁴Section 2.2-3710(A).

¹⁵Section 2.2-3707(C).

¹⁶See Glazebrook v. Spotsylvania County, 266 Va. 550, 554, 587 S.E.2d 589, 591 (2003) (holding that if notice published by board of supervisors did not meet requirements of *Code*, board acted outside authority granted by General Assembly and amendments are void *ab initio*); City Council v. Potomac Greens Associates P’ship, 245 Va. 371, 378, 429 S.E.2d 225, 228 (1993) (concluding that where *Code* required two notices for hearing before planning commission and city failed to give requisite notices, ordinance was void *ab initio*). “*Ab initio*” means “from the beginning.” BLACK’S LAW DICTIONARY 5 (8th ed. 2004).

¹⁷*Id.*

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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 style with a large, stylized "R" and "M".

Robert F. McDonnell