



# COMMONWEALTH of VIRGINIA

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The Honorable Thomas A. Hazelwood  
Commissioner of the Revenue, City of Suffolk  
Post Office Box 1459  
Suffolk, Virginia 23439

Dear Commissioner Hazelwood:

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 devolution of the Commissioner of the Revenue's duties with respect to the assessment of real estate to a city real estate assessor transfers to the assessor the Commissioner's responsibility under § 58.1-3984(B) of the *Code of Virginia*.

## Response

It is my opinion that, in the City of Suffolk, the devolution of the Commissioner of the Revenue's duties with respect to the assessment of real estate to a city real estate assessor transfers to the assessor the Commissioner's responsibility under § 58.1-3984(B) to the extent § 58.1-3984(B) applies to assessments of real property.

## Applicable Law and Discussion

The Charter for the City of Suffolk (the "Charter") generally sets forth the duties of the Commissioner of Revenue.<sup>1</sup> These duties include the assessment<sup>2</sup> of property for tax purposes.<sup>3</sup> The Charter further provides, however, for the delegation to a city real estate assessor the function of assessing real property. Specifically, § 8.06 of the Charter states:

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<sup>1</sup> See CHARTER FOR THE CITY OF SUFFOLK, VA. § 8.05, available at [http://library1.municode.com/default-test/home.htm?infobase=11612&doc\\_action=whatsnew](http://library1.municode.com/default-test/home.htm?infobase=11612&doc_action=whatsnew).

<sup>2</sup> "As used in the various statutes relating to the taxation of real property in Virginia the word 'assessment' has a dual meaning, referring either to the valuation of property for tax purposes or to the levy of taxes on the basis of previously determined property values." 1977-78 Op. Va. Att'y Gen. 71, 71 (citing *Hoffman v. Augusta County*, 206 Va. 799, 146 S.E.2d 249 (1966); see also *St. Andrew's Ass'n v. City of Richmond*, 203 Va. 630, 633-34, 125 S.E.2d 864, 866-67 (1962). As used in this opinion, the term "assessment" means the determination of property value for tax purposes.

<sup>3</sup> Charter § 8.05 provides: "The commissioner of revenue shall perform all duties required by statute and perform such duties not inconsistent with the laws of the Commonwealth in relation to the assessment of property and licenses as may be assigned by the director of finance or the council."

The council may, in lieu of the methods prescribed by general law, provide by ordinance for the annual assessment and reassessment and equalization of assessments of real estate for local taxation and to that end may appoint one or more assessors within the city *and prescribe their duties* and terms of office. Such assessors shall make assessments and reassessments on the same basis as real estate is required to be assessed under the provisions of general law...and shall be charged with duties similar to those thereby imposed upon such assessors . . . .<sup>[4]</sup>

Pursuant to this Charter provision, the City Council created the office of city real estate assessor.<sup>5</sup> In creating the office, the City Council specified:

Annual real estate assessments shall be made by a single assessor appointed by the city council for such purpose . . . . He shall be known as the city real estate assessor, and he shall have all the powers and duties prescribed by laws of the state for assessors of real estate; *and all the duties now or formerly devolved upon the commissioner of the revenue of the city with respect to the assessment of real estate for taxation are transferred to and devolve upon the city real estate assessor.*<sup>[6]</sup>

Section 58.1-3984(B) of the *Code of Virginia* provides that, under certain circumstances, the Commissioner of the Revenue of a locality shall apply to the appropriate court for the correction of an erroneous assessment.<sup>7</sup> You ask whether the assignment of the Commissioner of the Revenue's duties to the city assessor encompasses the responsibilities under § 58.1-3984(B).

"When the language of a statute is unambiguous, we are bound by the plain meaning of that language and may not assign the words a construction that amounts to holding that the General Assembly did not mean what it actually stated."<sup>8</sup> Similarly, when an ordinance is unambiguous, its plain meaning is controlling.<sup>9</sup> To the extent, therefore, that the relevant provisions of the Charter and the City Code are clear, they must be given their plain meaning.

In enacting the Charter, the General Assembly used broad language in the provision authorizing the transfer of assessment duties to the assessor. It provided that the City Council may appoint assessors for the valuation of real estate "and prescribe their duties. . . ."<sup>10</sup> When establishing the assessor's office, the City Council also used broad language with regard to the duties of the assessor. The ordinance creating the office provides that "*all the duties now or formerly devolved upon the commissioner of the revenue of the city with respect to the assessment of real estate . . . are transferred to and devolve upon the*

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<sup>4</sup> CHARTER FOR THE CITY OF SUFFOLK, VA. § 8.06 (emphasis added).

<sup>5</sup> See CITY OF SUFFOLK, VA., CODE §§ 82-426; 82-427 (1998) (creating office of assessor), available at [http://library1.municode.com/default-test/home.htm?infobase=11612&doc\\_action=whatsnew](http://library1.municode.com/default-test/home.htm?infobase=11612&doc_action=whatsnew).

<sup>6</sup> *Id.* § 82-427 (emphasis added).

<sup>7</sup> See VA. CODE ANN. § 58.1-3984(B) (2009).

<sup>8</sup> *Commonwealth v. Diaz*, 266 Va. 260, 264-65, 585 S.E.2d 552, 554 (2003) (citing *Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003); *Mozley v. Prestwold Bd. of Dirs.*, 264 Va. 549, 554, 570 S.E.2d 817, 820 (2002)).

<sup>9</sup> *Hanover County v. Bertozzi*, 256 Va. 350, 354, 504 S.E.2d 618, 620 (1998) (citing *Bd. of Supvrs. of Fauquier County v. Machnick*, 242 Va. 452, 456, 410 S.E.2d 607, 609 (1991)).

<sup>10</sup> CHARTER FOR THE CITY OF SUFFOLK, VA. § 8.06.

city real estate assessor.”<sup>11</sup> Based on the plain meaning of the clear language of the Charter and the ordinance creating the assessor’s office, the duties in § 58.1-3984(B), to the extent they apply to the assessment of real property, have been assigned to the assessor.<sup>12</sup>

This interpretation is consistent with a prior opinion of this Office. A 1977 Opinion addressed whether the Commissioner of the Revenue for the City of Norfolk had “any responsibility in the assessment of real estate or any responsibility in the case of incorrect assessments.”<sup>13</sup> Norfolk had appointed an assessor pursuant to Chapter 29 of the Acts of Assembly of 1947.<sup>14</sup> The 1977 Opinion concluded that, in Norfolk’s situation, the Commissioner of the Revenue had no responsibility with regard to the valuation of real estate or the correction of inaccurate assessments.<sup>15</sup>

### Conclusion

Accordingly, it is my opinion that, in the City of Suffolk, the devolution of the Commissioner of the Revenue’s duties with respect to the assessment of real estate to a city real estate assessor transfers to the assessor the Commissioner’s responsibility under § 58.1-3984(B) to the extent § 58.1-3984(B) applies to assessments of real property.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General

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<sup>11</sup> CITY OF SUFFOLK, VA., CODE § 82-427 (emphasis added).

<sup>12</sup> The Commissioner of the Revenue may continue to have obligations under § 58.1-3984(B). For example, the duty to petition for corrections of personal property assessments under § 58.1-3984(B) may remain with the Commissioner of the Revenue. See 2004 Op. Va. Att’y Gen. 218, 222 (finding that the Commissioner of the Revenue for the City of Hampton has a duty to initiate a judicial correction pursuant to § 58.1-3984(B) when he determines an assessment for tangible personal property taxes is improper or in obvious error).

<sup>13</sup> 1977-78 Va. Op. Att’y. Gen 71 (citing requester’s letter of inquiry).

<sup>14</sup> *Id.* (Chapter 29 of the Acts of Assembly of 1947 was continued in effect by § 58.1-3260(2) (2009)).

<sup>15</sup> *Id.* But see 1998 Va. Op. Att’y. Gen. 128 (recognizing that the valuation of real estate for taxes “ordinarily is performed by the local board of assessors or a local real estate appraiser rather than by the commissioner of the revenue” and concluding that in certain circumstances the commissioner of the revenue has a mandatory duty to file under § 58.1-3984(B)). The 1998 Opinion is distinguishable from this situation as it did not address the question presented here, and it did not examine the relevant ordinances or enabling legislation.