

7/7/2015

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 24. Service Districts; Taxes and Assessments for Local Improvements

§ 15.2-2400. Creation of service districts.

Any 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. Service districts may be created to provide additional, more complete or more timely services of government than are desired in the locality or localities as a whole.

Any locality seeking to create a service district shall have a public hearing prior to the creation of the service district. Notice of such hearing shall be published once a week for three consecutive weeks in a newspaper of general circulation within the locality, and the hearing shall be held no sooner than ten days after the date the second notice appears in the newspaper.

Code 1950, § 15-8.2; 1962, c. 581, § 15.1-18.2; 1981, c. 631, § 15.1-18.3; 1982, c. 96; 1984, c. 385; 1985, c. 150; 1987, cc. 61, 80, 82; 1988, c. 402; 1989, c. 3; 1990, cc. 44, 515; 1991, cc. 12, 29; 1992, cc. 232, 655; 1993, c. 744; 1994, c. 166; 1996, cc. 99, 430, 844; 1997, c. 587; 2000, cc. 853, 925.

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Title 15.2. Counties, Cities and Towns

Chapter 24. Service Districts; Taxes and Assessments for Local Improvements

§ 15.2-2403. Powers of service districts.

After adoption of an ordinance or ordinances or the entry of an order creating a service district, the governing body or bodies shall have the following powers with respect to the service districts:

1. To construct, maintain, and operate such facilities and equipment as may be necessary or desirable to provide additional, more complete, or more timely governmental services within a service district, including but not limited to water supply, dams, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; dredging of creeks and rivers to maintain existing uses; control of infestations of insects that may carry a disease that is dangerous to humans, gypsy moths, cankerworms or other pests identified by the Commissioner of the Department of Agriculture and Consumer Services in accordance with the Virginia Pest Law (§ 3.2-700 et seq.); public parking; extra security, street cleaning, snow removal and refuse collection services; sponsorship and promotion of recreational and cultural activities; upon petition of over 50 percent of the property owners who own not less than 50 percent of the property to be served, construction, maintenance, and general upkeep of streets and roads; construction, maintenance, and general upkeep of streets and roads through creation of urban transportation service districts pursuant to § 15.2-2403.1; and other services, events, or activities that will enhance the public use and enjoyment of and the public safety, public convenience, and public well-being within a service district. Such services, events, or activities shall not be undertaken for the sole or dominant benefit of any particular individual, business or other private entity. Any transportation service, system, facility, roadway, or roadway appurtenance established under this subdivision that will be operated or maintained by the Virginia Department of Transportation shall be established with the involvement of the governing body of the locality and meet the appropriate requirements of the Department.
2. Notwithstanding the provisions of § 33.2-326, to provide, in addition to services authorized by subdivision 1, transportation and transportation services within a service district, regardless of whether the facilities subject to the services are or will be operated or maintained by the Virginia Department of Transportation, including, but not limited to: public transportation systems serving the district; transportation management services; road construction, including any new roads or improvements to existing roads; rehabilitation and replacement of existing transportation facilities or systems; and sound walls or sound barriers. However, any transportation service, system, facility, roadway, or roadway appurtenance established under this subdivision that will be operated or maintained by the Virginia Department of Transportation shall be established with the involvement of the governing body of the locality and meet the appropriate requirements of the Department. The proceeds from any annual tax or portion thereof collected for road construction pursuant to subdivision 6 may be accumulated and set aside for such reasonable period of time as is necessary to finance such construction; however, the governing body or bodies shall make available an annual disclosure statement, which shall contain the amount of any such proceeds accumulated and set aside to finance such road construction.
3. To acquire in accordance with § 15.2-1800, any such facilities and equipment and rights, title, interest or easements therefor in and to real estate in such district and maintain and operate the same as may be necessary and desirable to provide the governmental services authorized by subdivisions 1 and 2.
4. To contract with any person, municipality or state agency to provide the governmental services authorized by subdivisions 1 and 2 and to construct, establish, maintain, and operate any such facilities and equipment as may be necessary and desirable in connection therewith.
5. To require owners or tenants of any property in the district to connect with any such system or systems, and to contract with the owners or tenants for such connections. The owners or tenants shall have the right of appeal to the circuit court within 10 days from action by the governing body.
6. To levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in

whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith; however, such annual tax shall not be levied for or used to pay for schools, police, or general government services not authorized by this section, and the proceeds from such annual tax shall be so segregated as to enable the same to be expended in the district in which raised. Such tax may be levied on taxable real estate zoned for residential, commercial, industrial or other uses, or any combination of such use classification, within the geographic boundaries of the service district; however, such tax shall only be levied upon the specific classification of real estate that the local governing body deems the provided governmental services to benefit. In addition to the tax on property authorized herein, in the City of Virginia Beach, the city council shall have the power to impose a tax on the base transient room rentals, excluding hotels, motels, and travel campgrounds, within such service district at a rate or percentage not higher than five percent which is in addition to any other transient room rental tax imposed by the city. The proceeds from such additional transient room rental tax shall be deposited in a special fund to be used only for the purpose of beach and shoreline management and restoration. Any locality imposing a tax pursuant to this subdivision may base the tax on the full assessed value of the taxable property within the service district, notwithstanding any special use value assessment of property within the service district for land preservation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, provided the owner of such property has given written consent. In addition to the taxes and assessments described herein, a locality creating a service district may contribute from its general fund any amount of funds it deems appropriate to pay for the governmental services authorized by subdivisions 1, 2, and 11 of this section.

7. To accept the allocation, contribution or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, transportation district, locality, or state or federal agency for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, expansion, and the operation or maintenance of any facilities and services in the district.

8. To 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.

9. To create and terminate a development board or other body to which shall be granted and assigned such powers and responsibilities with respect to a special service district as are delegated to it by ordinance adopted by the governing body of such locality or localities. Any such board or alternative body created shall be responsible for control and management of funds appropriated for its use by the governing body or bodies, and such funds may be used to employ or contract with, on such terms and conditions as the board or other body shall determine, persons, municipal or other governmental entities or such other entities as the development board or alternative body deems necessary to accomplish the purposes for which the development board or alternative body has been created. If the district was created by court order, the ordinance creating the development board or alternative body may provide that the members appointed to the board or alternative body shall consist of a majority of the landowners who petitioned for the creation of the district, or their designees or nominees.

10. To negotiate and contract with any person or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system within the district.

11. To acquire by purchase, gift, devise, bequest, grant, or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land as provided for in the Open-Space Land Act (§ 10.1-1700 et seq.). Notwithstanding the provisions of subdivision 3, the governing body shall not use the power of condemnation to acquire any interest in land for the purposes of this subdivision.

12. To contract with any state agency or state or local authority for services within the power of the agency or

authority related to the financing, construction, or operation of the facilities and services to be provided within the district; however, nothing in this subdivision shall authorize a locality to obligate its general tax revenues, or to pledge its full faith and credit.

13. In the Town of Front Royal, to construct, maintain, and operate facilities, equipment, and programs as may be necessary or desirable to control, eradicate, and prevent the infestation of rats and removal of skunks and the conditions that harbor them.

14. In Accomack County, to construct, maintain, and operate in the Wallops Research Park, consistent with all applicable federal, state, and local laws and regulations, such infrastructure, services, or amenities as may be necessary or desirable to provide access for aerospace-related economic development to the NASA/Wallops Flight Facility runway and related facilities, and to create and terminate a Wallops Research Park Partnership body, which shall consist of one representative of the NASA/Wallops Research Flight Facility, one representative of the U.S. Navy Surface Combat Systems Center, one representative of the Marine Science Consortium, one representative of the Accomack County government, the Chancellor of the Virginia Community College System, and one representative of the Virginia Economic Development Partnership. The Partnership body shall have all of the powers enumerated in § 15.2-2403. Federal appointees to the Partnership body shall maintain their absolute duties of loyalty to the U.S. government.

Code 1950, § 15-8.2; 1962, c. 581, § 15.1-18.2; 1981, c. 631, § 15.1-18.3; 1982, c. 96; 1984, c. 385; 1985, c. 150; 1987, cc. 61, 80, 82; 1988, c. 402; 1989, c. 3; 1990, cc. 44, 515; 1991, cc. 12, 29; 1992, cc. 232, 655; 1993, c. 744; 1994, c. 166; 1996, cc. 99, 430, 844; 1997, c. 587; 1999, c. 295; 2000, cc. 743, 853, 925; 2002, cc. 198, 202, 230, 356; 2003, c. 493; 2004, c. 810; 2006, cc. 10, 394; 2007, cc. 210, 229, 813, 835, 896; 2009, cc. 302, 408; 2010, c. 212.



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

May 1, 2014

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The Honorable James Edmunds
Member, House of Delegates
Post Office Box 1115
60 South Main Street
Halifax, Virginia 24558

Dear Delegate Edmunds:

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 Prince Edward County may create a service district pursuant to Chapter 24 of Title 15.2 of the *Code of Virginia* to collect an additional *ad valorem* property tax to help pay for the expenses of a regional jail.

Response

A service district may not legally be created to encompass an entire locality where the funds to be raised thereby would replace an existing source of general fund revenues to maintain a regional jail, and where the special service district is not being created to provide additional, more complete, or more timely services.

Background¹

You report that the Piedmont Regional Jail Board was established in 1986 by the counties of Amelia, Buckingham, Cumberland, Lunenburg, Nottoway, and Prince Edward.² Each locality pays a portion of the net operating costs of the regional jail.³

In recent years, jail revenues have decreased significantly because of several factors, including a decrease in federal prisoners (a source of net revenue) and a decrease in the state's share of the cost of jail operations. Although efforts have been made to reduce operating costs, including staff reductions, these

¹ The conclusions expressed herein are based on information this office received in an e-mail from your office dated April 8, 2014, supplemented by an e-mail dated April 11, 2014.

² VA. CODE ANN. § 53.1-82 (2013) expressly authorizes localities to enter into contracts providing for cooperative jailing and directs the participating localities to establish a representative board "to advise the locality in which the jail facility is located on matters affecting operation of the facility."

³ See § 53.1-87 (2013).

measures have not sufficiently offset the reduced revenues. In addition, required improvements to medical services for inmates are creating additional costs. As a result, Prince Edward County has had to increase its local funding for the regional jail by approximately \$1,400,000 over the last two years.

You indicate that, in order to continue to provide the needed funding, Prince Edward County may have to adopt a sizeable tax increase for the upcoming budget. The Board of Supervisors has sought guidance regarding the ability to create a special service district to help generate revenue to meet the county's share of funding requirements. The special service district would encompass the entire county and impose an additional tax levy for the regional jail in order to reduce or eliminate the proposed general tax increase. The information related to you is that citizens will better understand the overall tax increase if the tax revenues raised for regional jail costs are characterized as a separate tax, rather than as part of the general tax. You relate that the special service district taxes would not be used for debt service on bonds for any capital improvements at the regional jail.

Applicable Law and Discussion

In determining the authority of local governments, Virginia follows the Dillon Rule of strict construction, which provides that local governing bodies have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.⁴ Further, once a power is conferred, that authority exists only to the extent granted.⁵ Finally, any doubt as to the existence of a legislative power must be resolved against the locality.⁶

Pursuant to § 15.2-2400, local governments have the express power to establish service districts "to provide additional, more complete or more timely services of government than are desired in the locality. . . as a whole."⁷ Once a service district is created, § 15.2-2403 permits an annual tax to be imposed

upon any [real] property in such district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith[.]⁸

⁴ *Sinclair v. New Singular Wireless PCS, LLC*, 284 Va. 567, 576, 720 S.E. 2d 543 (2012) (citing *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 690 S.E.2d 84, 88 (2010) and *Bd. of Zoning Appeals v. Bd. of Supvrs.*, 276 Va. 550, 553-54, 666 S.E.2d 315, 317 (2008)). The antecedents of Dillon's Rule trace back to 11th century England. As Professor Howard notes in his *Commentaries on the Constitution of Virginia*,

Much of what local government has come to be in modern America has its roots in events centuries ago. For example, when William the Conqueror imposed upon England a degree of centralized authority unequalled on the Continent, power was seen as flowing from the Crown, and units of local government had only so much authority as the King might grant them - a concept not unrelated to the modern notion that local governments are essentially creatures of the state.

A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA, Vol. II, at 783-784.

⁵ See, e.g., 2019 Op. Va. Att'y Gen. 5, 6.

⁶ *Bd. of Supvrs. v. Reed's Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995).

⁷ VA. CODE ANN. § 15.2-2400 (2012).

⁸ Section 15.2-2403(6) (2012).

Thus, a locality clearly is authorized to create a service district to raise revenue for certain purposes. Such purposes, however, must be those "authorized by subdivisions 1, 2 and 11" of § 15.2-2403, as set forth above.

Subdivisions 2 and 11 of §15.2-2403 pertain exclusively to transportation services and preservation of open-space land, respectively, and therefore do not provide a locality any authority to create a service district for regional jail purposes.⁹ Subdivision 1 of § 15.2-2403 enumerates several services that may be delivered through creation of a service district, including specific services related to utilities, recreation, pest control, roads, and other public works.¹⁰ While maintenance of jail facilities is not expressly cited, the scope of services authorized by § 15.2-2403(1) is not limited to the cited examples, as it authorizes service district funding generally for "services, events or activities that will enhance the public use and enjoyment of and the public safety, public convenience, and public well-being within a service district."¹¹ Nevertheless, the very nature of the service district revenue model dictates that the service to be funded must be one that can be provided on a targeted basis to benefit primarily taxpayers in a district of the locality. A regional jail is not such a service; it is instead a general government service that benefits a region of the Commonwealth. Section 15.2-2403(1) expressly provides that "an annual tax shall not be levied for or used to pay for schools, police, or general government services not authorized by this section." This language makes clear that a service district is not intended to be a separate funding source for governmental services that benefit the entire locality, nor intended to be a replacement funding source for existing general services. A service district is intended to provide area-specific funding to pay for additional services for a discrete area or region of the locality.

Even given a service permitted to be funded by service district taxes, the service district law¹² is intended to fund possible enhanced governmental services to a specific geographic portion of a locality, with the enhanced services to be paid for by an additional *ad valorem* tax to be imposed on citizens or businesses within the affected area. The facts provided indicate that the county seeks to raise revenue by creation of a service district only to maintain the level of services provided by the existing regional jail. Section 15.2-2403(1) empowers a locality to create a service district to maintain and operate facilities only as necessary or desirable to provide "additional, more complete, or more timely" services than presently provided to the district. Without a goal or aim to add to or otherwise improve the delivery of jail services on a district basis, the county may not create a service district to fund its share of regular, recurring regional jail costs.

Finally, I also note that a public hearing is required for any increase in the general tax rate.¹³ The intent of this statute would be defeated if such a public hearing could be avoided by the device of creating a service district to provide funding for county-wide services.¹⁴ Statutes should be construed *in pari materia* so as to give effect to both.¹⁵

⁹ See §15.2-2403(2) and 15.2-2403(11).

¹⁰ See §15.2-2403(1).

¹¹ *Id.*

¹² See 15.2-2400 through 15.2-2413 (2012 & Supp. 2013).

¹³ See 58.1-3007 (2013).

¹⁴ A public hearing is required by Sec. 15.2-2402 to create a service district, but not for any subsequent increase in the tax rate of the service district.

¹⁵ *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957).

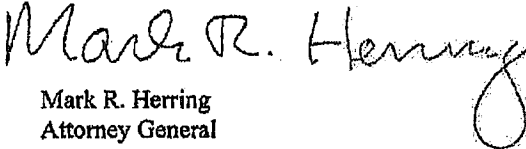
Honorable James Edmunds
May 1, 2014
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Conclusion

Accordingly, it is my opinion that Prince Edward County may not create a county-wide service district to provide needed funding to continue operating an existing regional jail.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

7/30/2015

Code of Virginia

Title 27. Fire Protection

Chapter 2. Fire/Ems Departments and Fire/Ems Companies

§ 27-23.1. Establishment of fire zones or districts; tax levies.

The governing bodies of the several cities or counties of the Commonwealth may create and establish, by designation on a map of the city or county showing current, official parcel boundaries, or by any other description which is legally sufficient for the conveyance of property or the creation of parcels, fire zones or districts in such cities or counties, within which may be located and established one or more fire departments, to be equipped with apparatus for fighting fires and protecting property and human life within such zones or districts from loss or damage by fire, illness or injury.

In the event of the creation of such zones or districts in any city or county, the city or county governing body may acquire, in the name of the city or county, real or personal property to be devoted to the uses aforesaid, and shall prescribe rules and regulations for the proper management, control, and conduct thereof. Such governing body shall also have authority to contract with, or secure the services of, any individual corporation, organization, or municipal corporation, or any volunteer firefighters for such fire protection as may be required.

To raise funds for the purposes aforesaid, the governing body of any city or county in which such zones or districts are established may levy annually a tax on the assessed value of all property real and personal within such zones or districts, subject to local taxation, which tax shall be extended and collected as other city or county taxes are extended and collected. However, any property located in Augusta County that has qualified for an agricultural or forestal use-value assessment pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1 may not be included within such a zone or district and may not be subject to such tax. In any city or county having a population between 25,000 and 25,500, the maximum rate of tax under this section shall be \$0.30 on \$100 of assessed value.

The amount realized from such levy shall be kept separate from all other moneys of the city or county and shall be applied to no other purpose than the maintenance and operation of the fire departments and companies established under the provisions of this section.

1970, c. 187; 1972, c. 252; 1977, c. 326; 1978, c. 682; 1985, c. 343; 1993, c. 915; 2001, cc. 111, 142; 2007, c. 813; 2015, cc. 502, 503.

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Title 27. Fire Protection

Chapter 2. Fire/Ems Departments and Fire/Ems Companies

§ 27-23.2. Advances by city or county to fire zone or district.

The governing body of any city or county in the Commonwealth may advance funds, not otherwise specifically allocated or obligated, from the general fund to a fire zone or district to assist the fire zone or district to exercise the powers set forth in § 27-23.1.

1970, c. 187; 1985, c. 343; 2001, c. 142; 2015, cc. 502, 503.

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Code of Virginia

Title 27. Fire Protection

Chapter 2. Fire/Ems Departments and Fire/Ems Companies

§ 27-23.5. Exclusion of certain areas from fire zones or districts and exemption of such areas from certain levies.

The governing body of any city or county having a fire zone or district created under the provisions of § 27-23.1, prior to June 1 of any calendar year, may alter the boundaries of such fire zone or district for the purpose of excluding an area of any such fire zone or district that is also within the boundaries of a sanitary district providing fire protection services or under contract to a sanitary district providing fire protection services.

Any area excluded from a fire zone or district as provided by this section shall not be subject to the levy set forth in § 27-23.1 for the year such area is excluded.

1970, c. 187; 1985, c. 343; 2001, c. 142; 2015, cc. 502, 503.

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Code of Virginia

Title 27. Fire Protection

Chapter 2. Fire/Ems Departments and Fire/Ems Companies

§ 27-23.7. Special levy for fire protection in certain counties.

Chapter 207 of the Acts of 1930, approved March 22, 1930 (codified as § 3144k of Michie Code of 1942), as amended, by Chapter 297 of the Acts of 1938, approved March 28, 1938, Chapter 392 of the Acts of 1940, approved April 1, 1940, Chapter 40 of the Acts of 1945, approved April 5, 1945, and Chapter 41 of the Acts of 1956, approved February 16, 1956, relating to special levy for fire protection in counties adjacent to a county containing more than 500 inhabitants a square mile, is continued in effect.

1970, c. 187.