

**CONSERVATION: FLOOD PROTECTION AND DAM SAFETY - WATERSHED IMPROVEMENTS DISTRICTS - STORMWATER MANAGEMENT — SOIL AND WATER CONSERVATION - SOIL AND WATER CONSERVATION DISTRICTS.**

**ADMINISTRATION OF GOVERNMENT GENERALLY: ATTORNEY GENERAL AND DEPARTMENT OF LAW — DEPARTMENT OF GENERAL SERVICES - DIVISION OF RISK MANAGEMENT.**

**COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES — BOUNDARY CHANGES OF TOWNS AND CITIES.**

**TAXATION: REAL PROPERTY TAX.**

**Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later.**

The Honorable Kathy J. Byron  
Member, House of Delegates  
June 7, 1999

You ask several questions related to the rights and responsibilities of a watershed improvement district created pursuant to § 10.1-614 of the *Code of Virginia*. Your questions relate specifically to the Timberlake Watershed Improvement District located in Campbell County.

Article 3, Chapter 6 of Title 10.1, §§ 10.1-614 through 10.1-635, authorizes the establishment of watershed improvement districts and specifies their rights and responsibilities. Section 10.1-614 provides that a watershed improvement district may be established within a soil and water conservation district to promote "the construction of improvements to check erosion, provide drainage, collect sediment or stabilize the runoff of surface water."<sup>1</sup> Section 10.1-620 provides that, upon its organization, "[t]he watershed improvement district shall<sup>[2]</sup> thereupon constitute a political subdivision of this Commonwealth."

The governing body of a watershed improvement district is to consist of the directors of the soil and water conservation district or districts in which the watershed improvement district is located.<sup>3</sup> The directors may appoint three landowners within the watershed improvement district as trustees to perform the administrative duties and powers delegated to them by the directors.<sup>4</sup> "The trustees may, with the approval of the directors . . . , employ such officers, agents, and other employees as they require."<sup>5</sup> Section 10.1-625 establishes the general powers of a watershed improvement district:

A watershed improvement district shall have all of the powers of the soil and water conservation district or districts in which the watershed improvement district is situated,<sup>[6]</sup> and in addition shall have the authority to levy and collect a tax or service charge to

be used for the purposes for which the watershed improvement district was created.<sup>[7]</sup>

Section 10.1-632 provides that the powers granted watershed improvement districts are in addition "to the powers of the soil and water conservation district or districts in which the watershed improvement district is situated." The section further provides that, notwithstanding the creation of the watershed improvement district, the soil and water conservation district(s) may continue to exercise their powers within the watershed improvement district.

You ask first whether a watershed improvement district has access to state legal system services and other available state-run governmental services. Section 2.1-117 provides that "[t]he Attorney General shall be the chief executive officer of the Department of Law, and as such shall perform such duties as may be provided by law." Section 2.1-121 requires the Attorney General to provide "legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge."

Because a watershed improvement district is a political subdivision of the Commonwealth, and not a state department or agency encompassed within § 2.1-121,<sup>8</sup> a watershed improvement district is not encompassed within § 2.1-121 and would have no access to legal services provided by the Attorney General unless a specific statute so provides. Because the governing body of a watershed improvement district is composed of the district directors of the soil and water conservation district in which it lies, a watershed improvement district may have access to services provided by the Attorney General pursuant to § 10.1-501.1, if a claim is made against a district director exercising powers of the district for the benefit of a watershed improvement district. Section 10.1-501.1 provides:

The Attorney General shall provide the legal defense against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

Insurance for public liability for such claims through the Department of General Services, Division of Risk Management, is authorized by § 2.1-526.8(E).<sup>9</sup>

Neither § 10.1-501.1 nor § 2.1-526.8(E) refers to trustees, officers, agents or employees of watershed improvement districts or to buildings, grounds or properties owned by such districts. Therefore, the defense provided by the Attorney General and the insurance provided by the Division of Risk Management would be limited to any acts or omissions of district directors while acting in the course and scope of that office for the benefit of the watershed improvement district. Whether either of these sections applies, of course, will depend on the particular circumstances.

Your second question involves the relationship between the Timberlake Watershed Improvement District and Campbell County. You ask specifically what would be the effect on the Timberlake Watershed Improvement District if Campbell County were to create an entity to deal with the problem of storm water runoff in the Timberlake watershed and whether the residents of the

Timberlake Watershed Improvement District would be subject to taxes imposed as a result of the creation of the entity.

The statutes relating to watershed improvement districts do not specify any particular type of relationship between a district and the county within which such a district is established.<sup>10</sup> While the purpose of a watershed improvement district is to raise funds for conservation or water management improvements within one drainage basin or watershed, or two or more contiguous watersheds, a watershed within the district could be a part of a larger watershed being managed by a county. I am aware of no statute that expressly prohibits a county from including an existing watershed improvement district within a larger watershed. Should such a relationship develop, it would be logical and prudent for the district and the county to coordinate the programs to avoid duplication and to assure that proposed projects are mutually supporting.

In connection with this issue, you inquire specifically about county stormwater ordinances adopted pursuant to § 15.2-2114, industrial development authorities created under § 15.2-4903, and community development authorities created for the purposes of stormwater management under § 15.2-5158. Industrial development authorities are designed to facilitate industrial development and generally would be used to control pollution and stormwater to the extent connected with the industrial development. Similarly, community development authorities are created to construct some particular improvement for a community. I cannot anticipate at this point how the operations of either type of authority would interfere with the Timberlake Watershed Improvement District.

Regarding local stormwater ordinances adopted under § 15.2-2114, the statute authorizes the imposition of a service fee. Section 15.2-2114(B) provides that the charges assessed to property owners shall be based on their contributions to the stormwater runoff. Should Campbell County adopt a stormwater program pursuant to § 15.2-2114 to control stormwater runoff in the watershed which includes the Timberlake watershed, the Timberlake watershed would, of course, be included in the program. If, however, the Timberlake Watershed Improvement District controlled its stormwater runoff in a manner consistent with the county program, no charges would be assessed against the Timberlake property owners within the district pursuant to § 15.2-2114(B). In addition, the Timberlake Watershed Improvement District could be entitled to a waiver of charges under the language in § 15.2-2114(B), providing that a locality adopting such a system "shall provide for full waivers of charges to ... government agencies when the agency owns and provides for maintenance of storm drainage and stormwater control facilities."

Your next question is what remedial process is available to a watershed improvement district that receives massive destructive and costly amounts of stormwater runoff and silt from outside its boundaries. The answer to this question depends, of course, on the particular facts. To the extent that the damage is caused by an upstream landowner that collects the water together and discharges it in a more damaging fashion than the natural discharge, the watershed improvement district may have a cause of action for damage to its facilities. I note also that the Board of Conservation and Recreation is authorized to promulgate regulations specifying "minimum technical criteria and administrative procedures for stormwater management programs in Virginia."<sup>11</sup> Local governments may adopt the programs.<sup>12</sup> If a locality has such a program, a watershed improvement district may request assistance from the locality in eliminating or diminishing harm from outside the boundaries of the district resulting from violations of the local stormwater management programs.

You ask also what would be the effect on the watershed improvement district if, at some time in the future, the City of Lynchburg annexed the area of Campbell County in which the district is located. I can anticipate no particular effect on the watershed improvement district that would result from any future annexation. As you know, since the passage of § 15.1-1032.2 in 1987,<sup>13</sup> cities and counties have been barred from instituting involuntary annexation proceedings. At its 1999 Session, the General Assembly extended the moratorium on annexation to the sooner of

July 1, 2010, or the expiration of a biennium during which the General Assembly fails to appropriate a yearly sum of money for aid to localities with police departments.<sup>14</sup>

Your final question concerns the maintenance and delivery of the watershed improvement district land book. You ask what information the land book is to contain and to whom and when the land book is to be delivered. Section 10.1-626(B) sets out the requirements of the land book.<sup>15</sup> The land book is to be on forms similar to those used by the county and is to contain a list of the properties subject to the tax or service charge and the tax rate or service charge fixed by the governing body. The land book is to be certified to the county treasurer and filed in the clerk's office on or before the day that the county land book is required to be certified.<sup>16</sup>

Section 58.1-3301 provides that "[t]he Department of Taxation shall prescribe the form of the land book to be used by the commissioner of the revenue." Therefore, the watershed improvement district should use a form of land book similar to the form the Department of Taxation furnishes each commissioner of the revenue. Section 58.1-3310 provides that the county commissioner of the revenue is to deliver the county land book to the treasurer "on or before September 1 of each year or within ninety days from the date on which the rate of tax on real property has been determined, whichever is later."<sup>17</sup> The watershed improvement district likewise is to certify the land book to the county treasurer and file a copy in the clerk's office on or before that date.

<sup>1</sup>Sections 10.1-615 to 10.1-620 set out the procedure for creating a watershed improvement district.

<sup>2</sup>The use of the word "shall" indicates that the General Assembly intends the terms of this provision to be mandatory. See *Andrews v. Shepherd*, 201 Va. 412, 111 S.E.2d 279 (1959); *Op. Va. Att'y Gen.*: 1998 at 102, 103; 1986-1987 at 300, 300, and opinions cited therein.

<sup>3</sup>Section 10.1-623.

<sup>4</sup>*Id.* The appointment of the trustees is subject to the approval of the Virginia Soil and Water Conservation Board. *Id.*

<sup>5</sup>Section 10.1-624.

<sup>6</sup>See tit. 10.1, ch. 5, art. 3, §§ 10.1-506 to 10.1-559 (governing soil and water conservation districts).

<sup>7</sup>Section 10.1-628 grants a watershed improvement district the power to incur indebtedness, borrow funds, and issue bonds, and § 10.1-633 authorizes a watershed improvement district to accept and expend gifts, grants or loans from any source.

<sup>8</sup>See 1985-1986 *Op. Va. Att'y Gen.* 336 (discussing distinction between state agency and political subdivision); see *id.* at 149, 149-50 (soil and water conservation districts are independent political subdivisions and not state agencies).

<sup>9</sup>Section 2.1-526.8(E) expressly includes within the state insurance plan soil and water conservation district directors acting in the course and scope of their employment or authorization.

<sup>10</sup>In the absence of any legislation to the contrary, a watershed improvement district, as a separate political subdivision, may exercise its statutory powers within its jurisdiction without seeking the approval of the county.

<sup>11</sup>Section 10.1-603.4; see *a/so* tit. 10.1, ch. 6, art. 1.1, §§ 10.1-603.1 to 10.1-603.15.

<sup>12</sup>Section 10.1-603.3.

<sup>13</sup>Section 15.1-1032.2 is presently codified at § 15.2-3201.

<sup>14</sup>See 1999 Va. Acts ch. 744 (amending § 15.2-3201).

<sup>15</sup>Section 10.1-626(B) states: "The trustees of a watershed improvement district which imposes a tax on real estate or a service charge based on the increase in the fair market value of real estate caused by the district's project shall make up a landbook of all properties subject to the watershed improvement district tax or service charge on forms similar to those used by the county or city affected.

"A separate landbook shall be made for each county or city if the district is located in more than one county or city. The landbook or landbooks of all properties subject to the district tax or the service charge, along with the tax rate or service charge rate fixed by the governing body of the district for that year, shall be certified to the appropriate county or city treasurer or treasurers, and filed in the clerk's office of such locality or localities, by the governing body of the watershed improvement district on or before the day the county or city landbook is required to be so certified. Such landbook or landbooks shall be subject to the same retention requirements as the county or city landbook."

<sup>16</sup>Section 10.1-627 requires that the tax or service charge imposed on the landowners in the watershed improvement district "shall be collected at the same time and in the same manner as county or city taxes with the proceeds therefrom to be kept in a separate account by the county or city treasurer identified by the official name of the watershed improvement district."

<sup>17</sup>The Department of Taxation may extend the time for delivery of the land book. Section 58.1-3310.