

## **DRAINAGE, SOIL CONSERVATION, ETC.: SANITARY DISTRICTS.**

**Only specified number of qualified voters of proposed district may petition circuit court for establishment of sanitary district. County may not request circuit court to designate entire county to be sanitary district.**

The Honorable Harry J. Parrish

Member, House of Delegates

March 15, 1999

You ask whether a county may request a circuit court to designate the entire county to be a sanitary district.

You express concern that should a county be permitted to request a circuit court to designate the entire county to be a sanitary district, the county government, through its agent, the sanitary district, would be able to bypass certain statutory requirements placed on local governing bodies but not on sanitary districts. You advise further that you have found no statute prohibiting the size of a sanitary district, except in § 21-113 of the *Code of Virginia*, which provides that the circuit court shall, by order, prescribe the metes and bounds of the district so established by the court.

Chapter 2 of Title 21<sup>1</sup> provides for the creation of sanitary districts within localities and sets forth the powers of the governing body with respect to any such sanitary district that is created.<sup>2</sup> Section 21-113, a portion of Chapter 2, provides for the creation of sanitary districts by petition:

The circuit court of any county in this Commonwealth, ... upon the petition of 50 qualified voters of a proposed district, or if the proposed district contains less than 100 qualified voters upon petition of fifty percent of the qualified voters of the proposed district, may make an order creating a sanitary district or districts in and for the county, which order shall prescribe the metes and bounds of the district.

Section 21-114, also a portion of Chapter 2, provides for a hearing on the petition requesting the sanitary district:

Upon the filing of the petition the court *shall* fix a day for a hearing on the question of the proposed sanitary district which hearing shall embrace a consideration of whether the property embraced in the proposed district will or will not be benefited by the establishment thereof; all interested persons, who reside in or who own real property in (i) a proposed district ... *shall* have the right to appear and show cause why the property under consideration should or should not be included in the proposed district ...; notice of such hearing *shall* be given by publication once a week for three consecutive weeks in some newspaper of general circulation within the county to be designated by the court .... At least ten days *shall* intervene between the completion of the publication and the date set for the hearing, ... and no such district *shall* be created until the notice has been given and the hearing had.<sup>[3]</sup> [Emphasis added.]

Consistent with the plain meaning and intent of the language contained in Chapter 2 of Title 21,<sup>4</sup> only a specified number of the "qualified voters of a proposed district" may petition the circuit court for the

establishment of a sanitary district.<sup>5</sup> Therefore, I am of the opinion that a county may not request a circuit court to designate the entire county to be a sanitary district.

<sup>1</sup>Sections 21-112.22 to 21-140.3 (entitled "Sanitary Districts").

<sup>2</sup>*See, e.g.*, § 21-118 (providing for powers and duties of governing body after entry of order creating sanitary district in county).

<sup>3</sup>Use of the word "shall" in a statute generally indicates that the General Assembly intended its procedures to be mandatory, rather than permissive or directive. *See* 1986–1987 Op. Va. Att’y Gen. 300, 300, and opinions cited therein.

<sup>4</sup>"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent." *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *see also* 1997 Op. Va. Att’y Gen. 88, 89 (stating that statute’s plain meaning and intent govern). Analysis of legislative intent includes appraisal of the subject matter and purpose of the statute, in addition to its express terms. *See* *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976). Moreover, "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." *Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944). It is equally well-settled that when a statute creates a specific grant of authority, the authority exists only to the extent plainly granted. 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1998); 1997 Op. Va. Att’y Gen. 115, 116.

<sup>5</sup>Section 21-113.