

99-058

COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES — VIRGINIA WATER AND WASTE AUTHORITIES ACT.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT.

Term requirements and notice and bid restrictions generally placed on transfers of city-owned property are not applicable to transfer of such property to water authority. Colonial Heights may grant public easement to Appomattox River Water Authority of which city is member.

The Honorable M. Kirkland Cox
Member, House of Delegates
October 12, 1999

You ask whether Article VII, § 9 of the Constitution of Virginia (1971) and §§ 15.2-2100 through 15.2-2105 of the *Code of Virginia* are applicable to the conveyance of an easement from the City of Colonial Heights to the Appomattox River Water Authority ("Authority") of which the city is a member.

You relate that the Authority is created pursuant to §§ 15.2-5102 through 15.2-5124,¹ and the city is a member of the Authority.² You further relate that the Authority desires to install a water transmission main in the city along a city street right-of-way. You state that the city is agreeable to this installation and would like to grant an easement to the Authority to accomplish the installation. You inquire whether the City of Colonial Heights may grant such easement to the Authority without going through the procedures set forth in §§ 15.2-2100 through 15.2-2105 and Article VII, § 9.

Article VII, § 9 places restrictions on the rights of a city or town to create franchises, leases, or other rights to use public property, including its streets and avenues.³ In addition to limiting the term of such franchises,⁴ § 9 imposes the following procedural requirement:

Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor.

Sections 15.2-2100 through 15.2-2105 implement the provisions of Article VII, § 9 and detail the procedures for advertising and receiving bids accordingly.

Generally, the grant of a public easement of any description in any manner not permitted to the general public is limited to forty years in duration.⁵ The purpose of this restriction, found in Article VII, § 9 and § 15.2-2100, is to prevent "the permanent dedication of publicly owned property to private use."⁶ Additionally, the notice and bid provisions of Article VII, § 9 and §§ 15.2-2101 through 15.2-2105 are intended to "prevent the hasty or clandestine disposition of municipally owned real property by a city or town council."⁷

The language of these sections does not restrict their application based on the identity or nature of the grantee.⁸ Thus, a 1989 opinion of the Attorney General concludes that "[i]n the absence of ... an express exception, ... a city or town council is required to comply with the requirements of [§§ 15.2-2101 through 15.1-2105 and] with the limitation on the ... term imposed by [§ 15.2-2100]."⁹ Conversely, however, if a statute authorizes a city or town to convey municipal property to an independent political subdivision for such consideration and with such conditions as the

municipal council may determine, the 1989 opinion stipulates that such statutes indicate that the General Assembly has construed these requirements as inapplicable.¹⁰

Section 15.2-5148 provides that

[a]ny unit,^[11] notwithstanding any contrary provision of law, may transfer jurisdiction over or lease, lend, grant or convey to an authority, upon the request of the authority and upon such terms and conditions to which the governing body and authority may agree, such real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a stormwater control system or water or waste system by the authority, including public roads and other property already devoted to public use.

This provision expressly provides for the grant of the easement in question upon such terms and conditions as the city may determine. This statute thus evidences the intent of the General Assembly that the restrictions generally placed on transfers of city-owned property are not applicable to the transfer of such property to a water authority.

Accordingly, it is my opinion that the restrictions articulated in Article VII, § 9 and §§ 15.2-2100 through 15.2-2105 are not applicable to the grant by the City of Colonial Heights of a public easement to the Authority of which the city is a member.

¹These sections provide for the creation, dissolution, and functions of certain authorities.

²See § 15.2-5102(A) (providing that one or more localities may by ordinance, resolution, or agreement "create a water authority").

³Article VII, § 9 also requires an affirmative vote of three fourths of the members elected to a city or town governing body before a city or town may sell any rights "in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works."

⁴The franchises, leases or rights may not exceed 40 years or, for air rights and easements for columns of support, 60 years. Art. VII, § 9.

⁵See 1990 Op. Va. Att'y Gen. 43, 44 (concluding that city could not grant perpetual easement for installation of natural gas pipeline to public service corporation).

⁶1989 Op. Va. Att'y Gen. 125, 127.

⁷*Id.* (citing 2 AE. Dick Howard, Commentaries on the Constitution of Virginia 854-55 (1974)).

⁸*See id.*

⁹*Id.* (citing §§ 15.1-307 to 15.1-310, predecessor statutes to §§ 15.2-2100 to 15.2-2102).

¹⁰*See id.*

¹¹"Unit," as used in § 15.2-5148, means "locality." Section 15.2-5101.