

99-099

COMMISSIONS, BOARDS AND INSTITUTIONS: APPOINTMENT TO BOARDS AND COMMISSIONS.

Authority established by legislature, whose membership is appointed by Governor, is not board, commission, or council on which member of General Assembly is ineligible to serve.

The Honorable Robert S. Bloxom
Member, House of Delegates
January 12, 2000

You ask whether § 9-6.23 of the *Code of Virginia*, which prohibits members of the General Assembly from serving on boards, commissions and councils within the executive branch, extends to service on an authority that is established by the General Assembly whose members are appointed by the Governor.

Section 9-6.23 provides, in part:

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils^[1] within the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

Subsequent sessions of the General Assembly have added exceptions to the general prohibition set forth in § 9-6.23. None of the exceptions, however, appear to apply to your question.²

There are several rules of statutory construction that must be applied to this matter. Obviously, the primary goal of statutory construction is to ascertain and give effect to legislative intent.³ "[T]ake the words as written" ... and give them their plain meaning."⁴ "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."⁵ The use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.⁶ Finally, when the language of an enactment is plain and unambiguous, its plain meaning must be applied.⁷

The plain and unambiguous language in § 9-6.23 prohibits members of the General Assembly from serving on "boards, commissions, and councils within the executive branch." The clear language does not prohibit service on an authority. I

am of the opinion that an authority is not a "board, commission, or council" within the scope of the prohibition in § 9-6.23. Consequently, I must conclude that the language of § 9-6.23 does not prohibit a member of the General Assembly from serving on an authority established by the legislature whose membership is appointed by the Governor.

¹Section 9-6.23 was enacted during the 1977 Session of the General Assembly to prohibit legislators' service on boards and commissions within the executive branch. See 1977 Va. Acts ch. 629, at 1245. "Councils" appeared as a prohibited entity in 1998. See 1998 Va. Acts: ch. 622, at 1450, 1451-52; ch. 724, at 1726, 1727.

²See *generally* § 9-6.23.

³See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1993 Op. Va. Att'y Gen. 237, 239.

⁴*Adkins v. Com.*, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998) (quoting *Birdsong Peanut Co. v. Cowling*, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989) (quoting *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985))).

⁵*Turner v. Commonwealth*, 226 Va. at 459, 309 S.E.2d at 338.

⁶See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

⁷*City of Winchester v. American Woodmark*, 250 Va. 451, 457, 464 S.E.2d 148, 152 (1995).