

99-090

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (DEBT).

COUNTIES, CITIES AND TOWNS: PUBLIC FINANCE ACT - BONDS ISSUED BY COUNTIES – PROVISIONS APPLICABLE TO ALL BONDS.

Local governments are subordinates of Commonwealth, possessing only those powers conferred upon them by General Assembly. General Assembly has not conferred upon counties ability to create corporation. County has no statutory authority to create corporation whose sole authorized purpose is to contract debt on its behalf.

The Honorable Harry J. Parrish
Member, House of Delegates
January 4, 2000

You ask whether a county may create a corporation with the sole authorized purpose to contract debt on behalf of the county.

Article VII, § 10(b) of the Constitution of Virginia (1971) provides:

No debt shall be contracted by or on behalf of any county or district thereof or by or on behalf of any regional government or district thereof except by authority conferred by the General Assembly by general law. The General Assembly shall not authorize any such debt, except the classes described in paragraphs (1) and (3) of subsection (a),^[1] refunding bonds, and bonds issued, with the consent of the school board and the governing body of the county, by or on behalf of a county or district thereof for capital projects for school purposes and sold to the Literary Fund, the Virginia Retirement System, or other State agency prescribed by law, unless in the general law authorizing the same, provision be made for submission to the qualified voters of the county or district thereof or the region or district thereof, as the case may be, for approval or rejection by a majority vote of the qualified voters voting in an election on the question of contracting such debt. Such approval shall be a prerequisite to contracting such debt.

Article VII, § 10(a) imposes a debt limitation on cities and towns² that is not imposed by § 10(b) on counties. Other than the exceptions authorized by Article VII, § 10(b), the issuance of bonds or other obligations by the county must be approved by a majority of the county's qualified voters. If voter approval of a bond issue is required, a certified copy of the resolution or ordinance adopted by the governing body requesting the referendum on the issuance of the bond must be filed with the circuit court for the jurisdiction.³ The circuit court then will enter an order calling for election on the issuance of bonds.⁴ Notice of the election

must be published "at least once but not less than ten days before the election in a newspaper published or having general circulation in the [county]."⁵ All bond elections are held and conducted in the manner prescribed by law for other elections.⁶ The amount of the bond issue on which the vote is to be taken must be stated on the ballot,⁷ but there is no requirement that the ballot specify the maximum interest rate which the bonds are to bear.⁸

Section 15.2-2638(B) of the *Code of Virginia* states that voter approval is not required when a county (1) contracts debt or issues bonds described in Article VII, § 10(a)(1) and (3);⁹ (2) issues refunding bonds; and (3) issues bonds, with the consent of the county's school board and governing body, for capital projects for school purposes and sold to the Literary Fund, the Virginia Retirement System, or other state agency prescribed by law,¹⁰ such as the Virginia Public School Authority.

The Commonwealth follows the Dillon Rule of strict construction in that "municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable."¹¹ The powers of county boards of supervisors in the Commonwealth are also limited to those "conferred expressly or by necessary implication."¹² Any doubt as to the existence of a power must be resolved against the locality.¹³ Accordingly, because local governments are subordinate creatures of the Commonwealth, they possess only those powers conferred upon them by the General Assembly.¹⁴

I can find no statute wherein the General Assembly has conferred upon counties the ability to create a corporation. Consequently, I must conclude that a county is not statutorily authorized by the General Assembly to create a corporation whose sole authorized purpose is to contract debt on behalf of the county.

¹Article VII, § 10(a) provides:

"No city or town shall issue any bonds or other interest-bearing obligations which, including existing indebtedness, shall at any time exceed ten per centum of the assessed valuation of the real estate in the city or town subject to taxation, as shown by the last preceding assessment for taxes. In determining the limitation for a city or town there shall not be included the following classes of indebtedness:

"(1) Certificates of indebtedness, revenue bonds, or other obligations issued in anticipation of the collection of the revenues of such city or town for the then current year; provided that such certificates, bonds, or other obligations mature within one year from the date of their issue, be not past due, and do not exceed the revenue for such year.

* * *

"(3) Bonds of a city or town the principal and interest on which are payable exclusively from the revenues and receipts of a water system or other specific undertaking or undertakings from which the city or town may derive a revenue or secured, solely or together with such revenues, by contributions of other units of government."

²See *supra* note 1.

³Va. Code Ann. § 15.2-2610.

⁴*Id.*

⁵*Id.*

⁶See *id.* ; §§ 24.2-681 to 24.2-687 (holding of special elections).

⁷See *Williamson v. Graham*, 113 Va. 449, 74 S.E. 393 (1912).

⁸See *Miller v. Ayres*, 211 Va. 69, 76-79, 175 S.E.2d 253, 258-60 (1970).

⁹See *supra* note 1.

¹⁰See art. VII, § 10(b).

¹¹*Commonwealth v. Arlington County Bd.*, 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977) (quoting *Bd. of Supervisors v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975)).

¹²*Id.* at 572, 232 S.E.2d at 39.

¹³2A Eugene McQuillin, *The Law of Municipal Corporations* § 10.19 (3rd ed. rev. 1996 & Supp. 1999).

¹⁴See *Gordon v. Fairfax County*, 207 Va. 827, 153 S.E.2d 270 (1967) (county board of supervisors did not abuse its discretion in voting to lend money to airport authority; power was expressly implied from act of legislature allowing local governing body to lend money to any authority created by such governing body).