

99-080

COUNTIES, CITIES AND TOWNS: CERTAIN LOCAL GOVERNMENT OFFICERS.

City of Hopewell may not hire employees on temporary basis, pursuant to written contracts, rather than hire such employees for indefinite period of time.

Mr. Edwin N. Wilmot
City Attorney for the City of Hopewell
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You ask whether the City of Hopewell may hire employees on a temporary basis, pursuant to written contracts, rather than hire such employees for an indefinite period of time.

It is your opinion¹ that § 15.2-1503 of the *Code of Virginia* permits the City of Hopewell to hire an employee on a temporary basis for a term not to exceed one year. You note that the charter for the City of Hopewell vests authority in the city to exercise all powers conferred upon cities.² You, therefore, conclude that the language in § 15.2-1503(A), which permits localities to hire employees "for temporary service not to exceed one year or except as otherwise provided by general law or special act," is applicable to your request.

Title 15.2 contains several provisions addressing aspects of the employer/employee relationship in local government. Section 15.2-1500(A) specifically provides that "[e]very locality shall provide for all the governmental functions of the locality, including, without limitation ... the employment of ... employees needed to carry out the functions of government." Section 15.2-1503(A) provides that employees hired by a locality "shall be without definite term, unless for temporary services not to exceed one year or except as otherwise provided by general law or special act."

Chapter V of the Hopewell City Charter pertains to the position of city manager. Section 2 provides, in part:

The city manager shall appoint for an indefinite term and remove, subject to the provisions of this charter and except as herein provided, the heads of all departments and all other officers, (except executive officers), and employees of the city.^[3]

"[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."⁴ Statutes should not be construed to frustrate their purpose.⁵ In addition, 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 A fundamental rule of statutory construction is that statutes which relate to the same subject matter should, to the extent possible, be read together, the object being to give effect to

the legislative intent of each statute.⁷ An equally fundamental rule of construction is that a specific or special statute supersedes a general statute insofar as there is a conflict.⁸ Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.⁹

Chapter V, § 2 of the Hopewell charter pertains specifically to the hiring of employees by the City of Hopewell. Section 2 requires the city manager to appoint employees "for an *indefinite term*."¹⁰ A charter provision that establishes the powers of a local government is special legislation authorized by Article VII, § 2 of the Constitution of Virginia (1971),¹¹ and will prevail over general law, absent an indication of legislative intent to the contrary, in the event of a conflict between the two.¹² Words used in a statute are to be given their common meanings unless a contrary legislative intent is manifest.¹³ The term "indefinite" generally means "having no exact limits : indeterminate in extent or amount : not clearly fixed ... : not narrowly confined or restricted ... : continuing with no immediate end being fixed : unlimited."¹⁴

Applying the required rules of statutory construction and the above definition to this inquiry, I must conclude that the City of Hopewell may not hire employees on a temporary basis, pursuant to written contracts, rather than hire such employees for an indefinite period of time. Section 15.2-1503(A) is the general statute pertaining to the hiring of temporary employees by all local governments within the Commonwealth. The specific provisions of the Hopewell charter supersede the general provisions of § 15.2-1503(A).

Accordingly, I must conclude that the City of Hopewell is not authorized to fill a city position with a temporary employee.¹⁵

¹Section 2.1-118 requires that any request by a city attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

²"The city shall have and may exercise all powers which are now or may hereafter be conferred upon or delegated to cities under the constitution and law of the Commonwealth and all other powers pertinent to the conduct of the city government" 1950 Va. Acts ch. 431, at 828, 830 (quoting ch. II, § 1).

³*Id.* at 837.

⁴Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁵See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

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.

⁷See *Commonwealth v. Sanderson*, 170 Va. 33, 195 S.E. 516 (1938).

⁸See *City of South Norfolk v. Dail*, 187 Va. 495, 499, 47 S.E.2d 405, 406 (1948); *Commonwealth v. Sanderson*, 170 Va. at 40, 195 S.E. at 519; *Commonwealth v. R. & P. R. R. Co.*, 81 Va. (6 Hansbrough) 355 (1886); see also *City of Roanoke v. Land*, 137 Va. 89, 119 S.E. 59 (1923) (local ordinance adopted under general charter powers that conflicts with specific statute empowering court to grant or refuse pawnbroker license to applicant is void); Op. Va. Att'y Gen.: 1987-1988 at 276, 277; 1985-1986 at 65, 68.

⁹See 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.23 (5th ed. 1992 & Supp. 1999); Op. Va. Att'y Gen.: 1992 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

¹⁰1950 Va. Acts ch. 431, *supra* note 2, at 837 (emphasis added).

¹¹"The General Assembly may also provide by special act for the ... powers of any county, city, town, or regional government" Art. VII, § 2.

¹²See *Pierce v. Dennis*, 205 Va. 478, 138 S.E.2d 6 (1964); *Petersburg v. General Baking Co.*, 170 Va. 303, 196 S.E. 597 (1938); Op. Va. Att'y Gen.: 1983-1984 at 140, 141; 1978-1979 at 35.

¹³See Op. Va. Att'y Gen.: 1998 at 91, 93; 1990 at 233, 234; 1989 at 155, 155.

¹⁴Webster's Third New International Dictionary of the English Language 1147 (1993).

¹⁵You ask a second question regarding whether such hiring of temporary employees must be made open for application from all interested applicants. Since I conclude that the city may not hire employees on a temporary basis, pursuant to a written contract, it is unnecessary to respond to your second inquiry.