

00-004

**EDUCATIONAL INSTITUTIONS: COMMUNITY COLLEGE BOARD.**

**Member of State Board for Community Colleges must be from Commonwealth when chosen to serve. No requirement that Board member remain citizen or resident of Commonwealth throughout term of service. Board member may continue to serve after relocating residence to another state; will be ineligible for reappointment to Board if residence remains outside Commonwealth at expiration of term.**

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You ask whether a member of the State Board for Community Colleges ("State Board" or "Board") may continue his term on the Board once he relocates his residence outside the Commonwealth.

You advise that the appointment term of the chairman of the Board runs through the year 2001. You further advise that, during the spring, the chairman will relocate to another state as a result of his acceptance of a job promotion. The chairman wishes to continue serving his term on the State Board.

Chapter 16 of Title 23, §§ 23-214 through 23-231.1 of the *Code of Virginia*, contains the statutory provisions applicable to the State Board and Virginia Community College System. Section 23-115 establishes the Board and authorizes it to be responsible for establishing, controlling and administering "a statewide system of publicly supported comprehensive community colleges." Section 23-216(a) structures the Board to contain "fifteen members appointed by the Governor subject to confirmation by the General Assembly." Section 23-216(b) contains the following criteria for Board membership:

The State Board shall be composed of persons selected from the Commonwealth at large. No officer, employee, or member of the governing board of any public institution of higher education, or of any school subject to the control of the State Board, or any member of the General Assembly, or any member of the State Board of Education, shall be eligible for appointment to the Board. All members of the Board shall be deemed members at large charged with the responsibility of serving the best interests of the whole Commonwealth. No member shall act as the representative of any particular region or of any particular institution of higher education.

There are several rules of statutory construction that should be applied to this matter. Obviously, the primary goal of statutory construction is to ascertain and give effect to the intent of the legislature.<sup>1</sup> "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."<sup>2</sup> Statutes should not be construed to frustrate their purpose.<sup>3</sup> 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.<sup>4</sup> Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>5</sup>

Statutes are also to be read as a whole rather than in isolated parts.<sup>6</sup> Section 23-216(b) requires the Board to be "composed of persons selected from the Commonwealth at large." The members of the Board are specifically "charged with the responsibility of serving the best interests of the whole Commonwealth."<sup>7</sup> Accordingly, each member of the Board is prohibited from acting "as the representative of any particular region or of any particular institution of higher education."<sup>8</sup> Words used in a statute are to be given their common meanings unless a contrary legislative intent is manifest.<sup>9</sup> The General Assembly does not, however, define the term "selected" as used in § 23-216(b). Consequently, the term must be given its ordinary meaning within the statutory context.<sup>10</sup> The term "select[ed]" means "[chosen] from a number or group."<sup>11</sup> Therefore, a member of the Board must be "from the Commonwealth" *when chosen to serve*. By its definition, however, the term "selected" does not impose a continuing requirement that a member of the Board remain a citizen or resident of the Commonwealth to continue to be eligible to serve.

My conclusion is dictated by the rule of statutory construction that "every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary."<sup>12</sup> To read "selected" in § 23-216(b) to require a Board member to remain a citizen or resident of the Commonwealth throughout the term of his or her service would render the term meaningless. It is my opinion that under such an interpretation, the statutory provision would have the same meaning if the term were omitted.

I, therefore, conclude that a Board member may continue to serve after relocating his residence to another state. The Board member, however, will be ineligible for reappointment to the Board if his residence remains outside the Commonwealth when his term expires.

<sup>1</sup>See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1993 Op. Va. Att'y Gen. 237, 239.

<sup>2</sup>*Turner v. Commonwealth*, 226 Va. at 459, 309 S.E.2d at 338.

<sup>3</sup>See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

<sup>4</sup>*See* *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.

<sup>5</sup>*See* 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.23 (5th ed. 1992 & Supp. 1999); Op. Va. Att'y Gen.: 1992 at 145, 146; 1989 at 252, 253.

<sup>6</sup>*See* *Jones v. Conwell*, 227 Va. 176, 314 S.E.2d 61 (1984); *Gallagher v. Commonwealth*, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); Op. Va. Att'y Gen.: 1996 at 26, 27; 1994 at 93, 95; 1985-1986 at 177, 178.

<sup>7</sup>Section 23-216(b).

<sup>8</sup>*Id.*

<sup>9</sup>*See* Op. Va. Att'y Gen.: 1990 at 233, 234; 1989 at 155, 155.

<sup>10</sup>*See* *Grant v. Commonwealth*, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982); *Loyola Fed. Savings v. Herndon*, 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978).

<sup>11</sup>*Webster's Third New International Dictionary of the English Language Unabridged* 2058 (1993).

<sup>12</sup>*Sansom v. Board of Supervisors*, 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999) (quoting *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998)).