

**OP. NO. 04-009**

**EDUCATION: SCHOOL BOARDS; SELECTION,  
QUALIFICATION AND SALARIES OF MEMBERS – POPULAR  
ELECTION OF SCHOOL BOARD.**

**COUNTIES, CITIES AND TOWNS: COUNTY BOARD FORM OF  
GOVERNMENT.**

**Authority for county board of supervisors to appoint tie  
breaker for county school board.**

The Honorable Phillip P. Puckett  
Member, Senate of Virginia  
March 22, 2004

### **Issue Presented**

You ask whether the Russell County Board of Supervisors has the authority to appoint the tie breaker for the Russell County School Board, an elected school board.

### **Response**

It is my opinion that § 15.2-410(D) authorizes the Russell County Board of Supervisors to appoint the tie breaker for the Russell County School Board.

### **Background**

You enclose with your request a letter from the attorney for the Russell County School Board ("School Board attorney"), which provides an explanation and information about your request. The School Board attorney relates that Russell County uses the county board form of government.<sup>1</sup> At its organizational meeting on January 5, 2004, the Russell County Board of Supervisors appointed a resident of Russell County to serve as the tie breaker for the Russell County School Board. The School Board consists of six members elected by the qualified voters of Russell County.

The School Board attorney advises that, pursuant to § 22.1-57.2,<sup>2</sup> the county held a referendum, which the voters of Russell County approved. The referendum changed the selection of School Board members to a direct election by the voters. Additionally, the School

Board attorney relates that § 22.1-57.3 governs school board member elections in counties that have adopted the county board form of government.<sup>3</sup> The School Board attorney notes that § 22.1-57.3 does not provide a method for appointing a tie breaker for school boards. The School Board attorney, however, notes that § 15.2-531 provides for the appointment of a tie breaker under the county executive form of government.<sup>4</sup> Section 15.2-531 permits a school board to appoint a county resident as the tie breaker to exercise the duties prescribed in § 22.1-75. The School Board attorney also notes that § 15.2-410(D), providing for the appointment of a tie breaker for a school board under the county board form of government, predates the statutes permitting popular elections of school boards.<sup>5</sup> The School Board attorney concludes that, prior to the popular election of school boards, the General Assembly clearly authorized a county board of supervisors to appoint school board members as well as a tie breaker for the school board.

### **Applicable Law and Discussion**

Section 22.1-57.3 establishes the procedure for the election of school board members following the approval of the required referendum. Section 22.1-57.3(A) provides that, upon voter approval of the referendum, "the members of the school board shall be elected by popular vote."

Section 22.1-75 generally provides for the appointment of a special tie breaker:

In any case in which there is a tie vote of the school board of any school division in a county when all the members are not present, the question shall be passed by until the next meeting when it shall again be voted upon even though all members are not present. In any case in which there is a tie vote on any question after complying with this procedure or in any case in which there is a tie vote when all the members of the school board are present, the proceedings thereon shall be in conformity with the proceedings prescribed below, except that the tie breaker, if any, appointed pursuant to §§ 15.2-410, 15.2-531, 15.2-627, 15.2-837, 22.1-40, 22.1-44, or § 22.1-47, whichever is applicable, shall cast the deciding vote.

The tie breaker must be a qualified voter and resident of the county.<sup>6</sup>

Section 15.2-410(D) governs school board appointments under the county board form of government:

The board of county supervisors may also appoint a resident of the county to cast the deciding vote in case of a tie vote of the school board as provided in § 22.1-75. The tie breaker, if any, shall be appointed for a four-year term whether appointed to fill a vacancy caused by expiration of a term or otherwise.

Section 15.2-410(F) also provides that "[n]otwithstanding any contrary provisions of this section, a county which has an elected school board shall comply with the applicable provisions of Article 7<sup>[7]</sup> (§ 22.1-57.1 et seq.) of Title 22.1." The phrase, "[n]otwithstanding any contrary provisions of *this section*,"<sup>8</sup> clearly indicates a legislative intent to override any potential conflicts with the other subsections of § 15.2-410 and with Article 7. The phrase clearly is limited to conflicts arising from the express language used in § 15.2-410. Use of such phrase in this limited manner contrasts with a statute containing the phrase, "[n]otwithstanding any other provision of *law*."<sup>9</sup> The latter phrase indicates a clear legislative intent to override potential conflicts with *all* earlier legislation.<sup>10</sup>

In analyzing § 15.2-410(D), which permits the board of supervisors in the county board form of government to appoint a tie breaker, and § 22.1-57.3, several rules of statutory construction apply. First, a statute should not be construed to frustrate its purpose.<sup>11</sup> Secondly, statutes related to the same subject should be considered *in pari materia*.<sup>12</sup> Finally, statutes dealing with the same subject matter should be construed to achieve a harmonious result.<sup>13</sup>

The mere fact that statutes relate to the same subject or are part of the same general plan, however, does not necessarily mean that they cannot also be in conflict. Indeed, the Supreme Court of Virginia has long held that the reason for considering statutes *in pari materia* is that this permits "any apparent inconsistencies [to] be ironed out whenever that is possible."<sup>14</sup> Thus, the Court recognizes that considering statutes relating to the same subject as *in pari materia* is but one rule among many of statutory construction:

In the construction of statutes, the courts have but one object, to which all rules of construction are subservient, and that is to ascertain the will of the legislature, the true intent and meaning of the statute, which are to be gathered by giving to all the words used their plain meaning, and construing all statutes *in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious and just in their operation."<sup>[15]</sup>

As noted by the School Board attorney, Article 7, Chapter 5 of Title 22.1, specifically § 22.1-57.3, does not contain a provision for the appointment of a tie breaker for elected school boards. Indeed, Article 7 is silent regarding such an appointment. Consequently, § 15.2-410(D) is not *contrary* to Article 7 regarding a tie breaker for an elected school board. Since § 15.2-410(D) is not contrary to § 22.1-57.3, the appointment procedure expressly set forth therein will apply to the situation you present.

In this instance, it is clear that §§ 15.2-410 and 22.1-57.3 are both applicable to the fact situation presented by the School Board attorney. The General Assembly is presumed to be aware of the law existing at the time it adopts a statute,<sup>16</sup> as well as its own previous enactments.<sup>17</sup> The 1980 Session of the General Assembly added § 15.1-708(d), the predecessor statute to § 15.2-410(D).<sup>18</sup> Next, in 1992, the General Assembly enacted § 22.1-57.3.<sup>19</sup> Finally, the 1997 Session of the General Assembly added § 15.2-410(F).<sup>20</sup> It is, therefore, reasonable to conclude that the 1997 Session of the General Assembly was aware of the provisions of §§ 15.2-410(D) and 22.1-57.3 when it added § 15.2-410(F).

### **Conclusion**

Accordingly, it is my opinion that § 15.2-410(D) authorizes the Russell County Board of Supervisors to appoint the tie breaker for the Russell County School Board.

<sup>1</sup>See Va. Code Ann. §§ 15.2-400 to 15.2-418 (LexisNexis Repl. Vol. 2003).

<sup>2</sup>Section 22.1-57.2 provides that "[t]he registered voters of any ... county ... may, by petition ..., ask that a referendum be held on the

question of whether the members of the school board of the county ... shall be elected directly by the voters."

<sup>3</sup>See § 15.2-410(F) (LexisNexis Repl. Vol. 2003).

<sup>4</sup>See §§ 15.2-500 to 15.2-541 (LexisNexis Repl. Vol. 2003).

<sup>5</sup>See *infra* notes 6, 18, 19 and accompanying text.

<sup>6</sup>See Va. Code Ann. § 22.1-40 (LexisNexis Repl. Vol. 2003). The tie breaker procedure generally has been in effect since 1922. See 1922 Va. Acts ch. 423, at 737, 738 (enacting § 5 (codified at Va. Code Ann. § 644e (Michie 1924))). The 1928 Session of the General Assembly repealed Chapter 423 of the 1922 Acts of Assembly, which included § 644e. See 1928 Va. Acts ch. 471, 1186, 1187, 1227. In 1934, the General Assembly again added provisions to govern tie votes of school boards. See 1934 Va. Acts ch. 151, at 231, 231 (amending and reenacting § 655 (codified as amended in 1950 *Code of Virginia* at § 22-70)). Recognizing that the omission of a tie vote procedure was detrimental to the operations of a school board, the General Assembly declared that "[a]n emergency exist[s], [and] this act shall be in force from its passage." *Id.* The 1980 Session of the General Assembly recodified Title 22 at Title 22.1. See 1980 Va. Acts ch. 559, cl. 3, at 679, 765-66. The provisions of § 22-70 were codified as amended at § 22.1-75. *Id.* at 692.

<sup>7</sup>Article 7, Chapter 5 of Title 22.1, §§ 22.1-57.1 through 22.1-57.5, governs popular elections of school boards.

<sup>8</sup>Section 15.2-410(F) (emphasis added).

<sup>9</sup>See, e.g., Va. Code Ann. § 10.1-1126.1(B) (Michie Repl. Vol. 1998); Va. Code Ann. § 58.1-3010 (Michie Repl. Vol. 2000) (emphasis added); see also § 15.2-2100(A) (LexisNexis Repl. Vol. 2003) ("[n]otwithstanding any contrary provision of law"); Va. Code Ann. § 24.2-684 (LexisNexis Repl. Vol. 2003) ("[n]otwithstanding any other provision of any law").

<sup>10</sup>See Op. Va. Att'y Gen.: 1996 at 197, 198; 1987-1988 at 1, 2; see also 1998 Op. Va. Att'y Gen. 19, 21 (interpreting statute beginning with phrase, "[n]otwithstanding any other provision of this chapter").

<sup>11</sup>See Op. Va. Att'y Gen.: 1999 at 59, 60; 1982-1983 at 309, 311.

<sup>12</sup>See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957); 1996 Op. Va. Att'y Gen. 134, 135. Statutes *in pari materia* are those "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7th ed. 1999). Such statutes "may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject." *Id.*

<sup>13</sup>See *Prillaman*, 199 Va. at 405, 100 S.E.2d at 7; Op. Va. Att'y Gen.: 2003 at 18, 19, available at <http://www.vaag.com/media%20center/Opinions/2003opns/03-090w.htm>; 2000 at 182, 185.

<sup>14</sup>*Commonwealth v. Sanderson*, 170 Va. 33, 38, 195 S.E. 516, 518 (1938).

<sup>15</sup>*Covington Virginian, Inc. v. Woods*, 182 Va. 538, 548-49, 29 S.E.2d 406, 411 (1944) (quoting *Tyson v. Scott*, 116 Va. 243, 253, 81 S.E. 57, 61 (1914)).

<sup>16</sup>See *Cape Henry Towers, Inc. v. Nat'l Gypsum Co.*, 229 Va. 596, 600, 331 S.E.2d 476, 479 (1985).

<sup>17</sup>17 Michie's Jur. *Statutes* § 46, at 411 (1994); Op. Va. Att'y Gen.: 1997 at 167, 169; 1994 at 60, 62.

<sup>18</sup>See 1980 Va. Acts ch. 559, *supra* note 6, at 759 (adding § 15.1-708(d)). The original language of § 15.1-708(d) directed that the "supervisors shall also appoint" a tie breaker. *Id.* In 1981, the General Assembly amended § 15.1-708(d) to provide that "supervisors ... *may* also appoint" a tie breaker. 1981 Va. Acts ch. 246, at 269, 270. The 1997 Session of the General Assembly recodified Title 15.1 at Title 15.2. See 1997 Va. Acts ch. 587, cls. 2, 4, 5, at 976, 1400-01. Section 15.1-708(d) was recodified at § 15.2-410(D). *Id.* at 984.

<sup>19</sup>See 1992 Va. Acts ch. 594, at 852, 852-53. The 1992 Act added Article 7, governing popular elections of school boards, to Chapter 5 of Title 22.1. *Id.*

<sup>20</sup>See 1997 Va. Acts, *supra* note 18, at 985.

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