

OP. NO. 06-014

ELECTIONS: ELECTION DISTRICTS, PRECINCTS, POLLING PLACES.

Authority for county board of supervisors to alter boundaries of voting precincts at any time other than within sixty days before any general election.

The Honorable Jeffrey M. Frederick
Member, House of Delegates
March 10, 2006

Issue Presented

You ask whether a county board of supervisors has the authority to modify the boundaries of voting precincts at any time.

Response

It is my opinion that a county board of supervisors is statutorily authorized to alter the boundaries of voting precincts at any time other than within sixty days before any general election.

Background

You advise that a constituent has voted in a precinct for a number of years. However, the county Board of Supervisors recently has changed the boundaries of the constituent's voting precinct, and his residence is now located in another voting precinct. The new voting precinct is located considerably farther from his residence than the previous precinct. You advise that after a review of the statutory provisions and a consultation with personnel of the State Board of Elections, it is your understanding that the county board establishes and modifies the boundaries of each voting precinct. Additionally, the board determines which residences are located within each voting precinct. You also advise that Board members with whom you have spoken have expressed the view that the Board of Supervisors does not have statutory authority to return the constituent's residence to the previous precinct.

You relate that you interpret the applicable statutory provisions as authorizing the county Board of Supervisors to make precinct boundary changes at any time other than within sixty days before any general election. Therefore, it is your view that the county Board of Supervisors may choose to return the constituent and his neighbors to their previous voting precinct. You inquire whether your interpretation is correct.

Applicable Law and Discussion

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.¹ The Commonwealth follows the Dillon Rule² of strict construction of statutory provisions and its corollary that "[t]he powers of county boards of supervisors are fixed by statute and are limited to those powers

conferred expressly or by necessary implication."³ Additionally, the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication.⁴ "[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."⁵

Chapter 3 of Title 24.2, §§ 24.2-302 through 24.2-313, governs the requirements for election districts, precincts, and polling places. Section 24.2-307 provides that:

The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary. Each governing body is authorized to increase or decrease the number of precincts and alter precinct boundaries subject to the requirements of [Chapter 3].

....

Each precinct shall be wholly contained within any election district used for the election of one or more members of the governing body or school board for the county or city.

The governing body shall establish by ordinance one polling place for each precinct.

The use of the word "shall" in this statutory provision implies that the General Assembly intends its terms to be mandatory, rather than permissive or directive.⁶ Accordingly, the board of supervisors is required to establish by ordinance all voting precincts that are required within the county.

Section 24.2-307 clearly authorizes a county board of supervisors to "alter precinct boundaries subject to the requirements of [Chapter 3]." Section 24.2-305(A) requires that each precinct be composed of "compact and contiguous territory" that has "clearly defined and clearly observable boundaries." Each county precinct must also have "no fewer than 100 registered voters" and "no more than 5,000 registered voters" at the time the local governing body establishes the precinct.⁷ Finally, changes in local voting precincts may not be made "within 60 days next preceding any general election."⁸ The General Assembly has not imposed other statutory requirements regarding the alteration of a local voting precinct by a board of supervisors.

When a statute is expressed in plain and unambiguous terms, whether general or limited, it is assumed that the General Assembly means what it plainly has expressed, and no room is left for construction.⁹ Therefore, the county Board of Supervisors may elect to return the constituent and his neighbors to their previous voting precinct provided that the precinct change does not occur within the sixty days before any general election.¹⁰

Conclusion

Accordingly, it is my opinion that a county board of supervisors is statutorily authorized to alter the boundaries of voting precincts at any time other than within sixty days before any general election.

¹See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976); 1990 Op. Va. Att'y Gen. 155, 155 and opinions cited therein.

²*City of Richmond v. Bd. of Supvrs.*, 199 Va. 679, 684-85, 101 S.F.2d 641, 644-45 (1958) (noting Dillon's Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable).

³*County Bd. v. Brown*, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985).

⁴*Gordon v. Bd. of Supvrs.*, 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967); *Johnson v. County of Goochland*, 206 Va. 235, 237, 142 S.E.2d 501, 502 (1965).

⁵*Commonwealth v. County Bd.*, 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

⁶See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959) (discussing intention of legislature in using words "shall" and "may"); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that word "shall" in statute generally is used in imperative or mandatory sense).

⁷Va. Code Ann. § 24.2-307 (2003).

⁸Section 24.2-306(A) (Supp. 2005).

⁹*Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

¹⁰Under Section 5 of the federal Voting Rights Act of 1965, as amended, all changes in voting practices and procedures in the Commonwealth and its localities must be precleared by the United States Department of Justice before they may be implemented. See 42 U.S.C.S. § 1973c (LexisNexis 2000). The Justice Department regulation implementing that statutory requirement lists examples of changes that must be submitted for preclearance. See 28 C.F.R. § 51.13 (2005). Among the examples listed is "[a]ny change in the boundaries of voting precincts or in the location of polling places." *Id.* § 51.13(d). Accordingly, any further change by the board of supervisors to return the constituent and his neighbors to their previous voting precinct must be submitted for Section 5 preclearance. See Op. Va. Att'y Gen: 1994 at 33, 38 n.3; 1989 at 49, 53.

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