



# COMMONWEALTH of VIRGINIA

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October 9, 2008

Jennifer LeLacheur Jones, Esq.  
Town Attorney for Drakes Branch  
P.O. Box 75  
Keysville, Virginia 23947

Dear Ms. Jones:

I am responding to your request for an official advisory opinion in accordance with the provisions of § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether the Charter (the "Charter") for the Town of Drakes Branch authorizes the town council to appoint a town sergeant when the council deems such appointment to be proper and necessary. You also ask whether the towns of Drakes Branch and Charlotte Court House may enter into a valid agreement to contract for the services of a town sergeant when the town charters of both towns authorize the appointment of a town sergeant.

## Response

It is my opinion that the Charter for the Town of Drakes Branch authorizes the appointment of a town sergeant when the town council deems such appointment to be proper and necessary. It further is my opinion that the towns of Drakes Branch and Charlotte Court House may enter into a valid, reciprocal agreement to contract for the services of a town sergeant provided the town charters of both towns authorize the appointment of a town sergeant.

## Background

You advise that the Charter previously identified the office of town sergeant as one of the town's offices.<sup>1</sup> You relate that on November 17, 1997, the Town Council of Drakes Branch (the "Council") passed a resolution of intent to amend the Charter to make the position of town sergeant discretionary as opposed to mandatory.<sup>2</sup> You also note that the Council resolved to amend "Section 3" of the Charter to provide for a mayor, six council members, and "such other offices as the Council may deem proper and necessary."<sup>3</sup>

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<sup>1</sup>See 1902-3-4 Va. Acts ch. 150, at 229, 229 (incorporating Drakes Branch (§ 1) and establishing mandatory office of sergeant (§ 3)).

<sup>2</sup>See Resolution of Intent to Amend the Charter of the Town of Drakes Branch (Nov. 17, 1997) (providing that "the Town Council has determined that the position of Town Sergeant should be discretionary rather than mandatory") (copy provided to this Office).

<sup>3</sup>See Resolution to Amend the Charter of the Town of Drakes Branch, Section 3 (Dec. 1, 1997) (copy provided to this Office).

Ms Jennifer LeLacheur Jones

October 9, 2008

Page 2

You state that on December 1, 1997, the Council passed a Resolution to Amend the Charter containing the proposed amendment to section 3. The 1998 Session of the General Assembly amended the Charter as requested by the Council.<sup>4</sup> You relate that Drakes Branch has continued to employ a town sergeant as an officer based upon the Council's determination that such position is necessary and proper.

You advise that in 2006 the town of Charlotte Court House contracted with Drakes Branch for the use of the Drake's Branch town sergeant to enforce the laws of the Commonwealth within Charlotte Court House. Finally, you note that Charlotte Court House has a town charter that specifically includes the office of "a town sergeant, who shall be the conservator of the peace."<sup>5</sup>

### **Applicable Law and Discussion**

Under the Dillon Rule of strict construction, municipal corporations possess and may exercise only those powers expressly granted by the General Assembly, powers necessarily or fairly implied from such express powers, and those powers that are essential and indispensable.<sup>6</sup> Section 15.2-1102 confers general police powers on cities and towns which are not:

expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof[.]

Section 15.2-1701 requires that, "[w]hen a locality<sup>[7]</sup> provides for a police department, the chief of police shall be the chief law enforcement officer of that locality. However, in towns, the chief law-enforcement officer may be called the town sergeant."

Statutes using the word "may" are permissive rather than mandatory.<sup>8</sup> The Charter authorizes, but does not require, the Council to appoint "such other officers as the council *may* deem proper and necessary for the government of the town and the conduct of its business."<sup>9</sup> The town sergeant, if appointed, would be the chief law-enforcement officer of Drakes Branch.<sup>10</sup> The applicable rule of

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<sup>4</sup>1998 Va. Acts ch. 275, at 405, 405 (amending § 3 to remove mandatory office of sergeant and providing that town officers include mayor, six council members, "and such other officers as the council *may* deem proper and necessary") (emphasis in original).

<sup>5</sup>1989 Va. Acts ch. 117, § 4.1, at 162, 163-64. Section 4.2 of the Charter provides that appointees serve at the pleasure of the council. *Id.* at 164.

<sup>6</sup>*Norton v. City of Danville*, 268 Va. 402, 408 n.3, 602 S.E.2d 126, 129 n.3 (2004); *Arlington Co. v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000); *Bd. of Supvrs. v. Countryside Inv. Co.*, 258 Va. 497, 503, 522 S.E.2d 610, 613 (1999); *County of Fairfax v. S. Iron Works, Inc.*, 242 Va. 435, 448, 410 S.E.2d 674, 682 (1991).

<sup>7</sup>The term "locality," as used in Title 15.2, "shall be construed to mean a county, city, or town as the context may require." VA. CODE ANN. § 15.2-102 (2008).

<sup>8</sup>*See Op. Va. Att'y Gen.*: 1992 at 133, 135; 1991 at 225, 226.

<sup>9</sup>1998 Va. Acts, *supra* note 4, at 405 (emphasis in original).

<sup>10</sup>*See* § 15.2-1701 (2008) (providing that chief law-enforcement officer of town may be called town sergeant).

statutory construction requires that words be given their ordinary meaning, given the context in which they are used.<sup>11</sup> The plain and unambiguous meaning of the words used in the Charter clearly authorizes the Council to appoint a town sergeant when the Council deems such an appointment to be necessary and proper.

Section 15.2-1726 authorizes localities to enter into reciprocal agreements concerning consolidation of police departments or for cooperation in furnishing police services and provides that:

Any locality may, in its discretion, enter into a *reciprocal agreement* with any other locality, ..., for such periods and under such conditions as the contracting parties deem advisable, for *cooperation* in the furnishing of police services.... The governing body of any locality also may, in its discretion, enter into a *reciprocal agreement* with any other locality, or combination thereof, for the *consolidation* of police departments or divisions or departments thereof. Subject to the conditions of the agreement, all police officers, officers, agents and other employees of such consolidated or cooperating police departments shall have the same powers, rights, benefits, privileges and immunities in every jurisdiction subscribing to such agreement, including the authority to make arrests in every such jurisdiction subscribing to the agreement .... [Emphasis added.]

In interpreting a specific inquiry related to § 15.2-1726, a 2008 opinion<sup>12</sup> (the “2008 Opinion”) concluded that a municipality that does not have a police charter or a police force may not enter into a reciprocal agreement with another municipality that has a police charter and police force. For purposes of the 2008 Opinion only, “a municipality with ‘no police charter’ means a municipality that has not enacted an ordinance authorizing a police force pursuant to § 15.2-1701 or one that does not have a charter providing for the establishment of a police force.”<sup>13</sup> Furthermore, the 2008 Opinion relied upon a 1986 opinion (the “1986 Opinion”) interpreting portions of § 15.1-131.3, predecessor to § 15.2-1726, as being “uniquely applicable to the consolidation of *police* departments.”<sup>14</sup> Because the requesting county did not have a police force at the time of the proposed reciprocal agreement, the predecessor statute to § 15.2-1726 did not authorize two towns to contract with that county to have the county sheriff serve as chief of police for the towns and to provide law-enforcement services for the three localities.

The General Assembly has not substantially amended or changed the portion of § 15.2-1726 providing for “consolidation of police departments” considered by the Attorney General in the 1986 Opinion. While an opinion of the Attorney General is not binding on the courts of the Commonwealth, it is entitled to due consideration.<sup>15</sup> “The legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative

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<sup>11</sup>Va. Beach v. Bd. of Supvrs., 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993).

<sup>12</sup>2008 Op. Va. Att’y Gen. No.08-028, available at <http://www.vaag.com/OPINIONS/2008opns/08-028-Jones.pdf>.

<sup>13</sup>*Id.* at n.1.

<sup>14</sup>*Id.* (quoting 1986-1987 Op. Va. Att’y Gen. 130, 132 n.1) (emphasis in original).

<sup>15</sup>See Twietmeyer v. City of Hampton, 255 Va. 387, 393, 497 S.E.2d 858, 861 (1998) (quoting Va. Beach v. Va. Rest. Ass’n, 231 Va. 130, 135, 341 S.E.2d 198, 201 (1986)).

acquiescence in the Attorney General's view.”<sup>16</sup> Therefore, § 15.2-1726 does not permit localities to contract for the consolidation of the police departments of separate localities when one of the contracting localities does not have a police department.

Section 15.2-1726 also permits localities to enter into reciprocal agreements “for cooperation in the furnishing of police services.” Based upon the definitions of “reciprocal”<sup>17</sup> and “reciprocity,”<sup>18</sup> the 2008 Opinion concluded that there must be mutual or bilateral action.<sup>19</sup> Consequently, all contracting localities must have a police department before they may enter into reciprocal agreements “for cooperation in the furnishing of police services.”<sup>20</sup>

You advise that Charlotte Court House has contracted with Drakes Branch to use the Drakes Branch town sergeant to enforce the laws of the Commonwealth within Charlotte Court House. You also advise that the town charters of both Drakes Branch and Charlotte Court House have provisions authorizing the appointment of a town sergeant.<sup>21</sup> Therefore, I conclude that the reciprocal agreement between the Drakes Branch and Charlotte Court House is a valid agreement to contract for the services of a town sergeant when the town charters of both towns authorize the appointment of a town sergeant.

### Conclusion

Accordingly, it is my opinion that the Charter for the Town of Drakes Branch authorizes the appointment of a town sergeant when the town council deems such appointment to be proper and necessary. It further is my opinion that the towns of Drakes Branch and Charlotte Court House may enter into a valid, reciprocal agreement to contract for the services of a town sergeant provided the town charters of both towns authorize the appointment of a town sergeant.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:213; 1:941/08-071

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<sup>16</sup> *Browning-Ferris, Inc. v. Commonwealth*, 225 Va. 157, 161, 300 S.E.2d 603, 605-06 (1983) (quoting *Richard L. Deal & Assocs. v. Commonwealth*, 224 Va. 618, 622, 299 S.E.2d 346, 348 (1983)).

<sup>17</sup> See BLACK'S LAW DICTIONARY 1297 (8th ed. 2004) (defining “reciprocal” to mean “[d]irected by each toward the other or others; MUTUAL” or “BILATERAL”).

<sup>18</sup> See *id.* at 1298 (defining “reciprocity” to mean “[t]he mutual concession of advantages or privileges for purposes of commercial or diplomatic relations”).

<sup>19</sup> See 2008 Op. Va. Att’y Gen., *supra* note 12.

<sup>20</sup> Section 15.2-1726 (2008).

<sup>21</sup> See *supra* notes 1, 4-5 and accompanying text.