



COMMONWEALTH OF VIRGINIA

Office of the Attorney General

William C. Mims
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

August 24, 2009

The Honorable J. Chapman Petersen
Member, Senate of Virginia
P.O. Box 1066
Fairfax, Virginia 22038

Dear Senator Petersen:

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

Issues Presented

You inquire regarding what effect Fairfax County becoming a city would have on the existing charter for the City of Fairfax (the "City") and the Town of Vienna (the "Town"). You also ask whether there is any difference between a town and a township as those terms are used in § 15.2-3916, and whether Fairfax County becoming a city would have any impact on the legal powers or limitations of the City and the Town. Finally, you ask whether Fairfax County is prevented from using the name City of Fairfax should it become a city.

Response

It is my opinion that should Fairfax County become a city pursuant to Chapter 39 of Title 15.2, there would be no effect on the existing charters of the City of Fairfax and the Town of Vienna. It further is my opinion that a town and a township, as those terms are used in § 15.2-3916, essentially are the same. Further, should Fairfax County become a city, it is my opinion that there will be no impact on the legal powers of or limitations on the City and the Town. Finally, it is my opinion that the General Assembly would have to approve the charter for the new city, which would include its name.

Applicable Law and Discussion

Chapter 39 of Title 15.2, §§ 15.2-3900 through 15.2-3919, governs the process for the transition of counties to cities. Section 15.2-3915 provides that:

A county may become an independent city in accordance with the foregoing provisions of [Chapter 39] without the necessity of any action being taken by the council of any town situated in such county and without the necessity of separate referenda in any such town on the question of the transition of the county to a city.

Furthermore, § 15.2-3916(A) provides:

Each town located within any county which becomes a city pursuant to the provisions of [Chapter 39] shall automatically continue as a township within the city, and the charter of each such town shall become the charter of the township with the law governing the relationship of the town to the county continuing in effect. Such townships established pursuant to this subsection shall continue to exercise such powers and elect such officers as the township charter may authorize and such other powers as the former town previously exercised under general law.

Finally, § 15.2-3917 provides Chapter 39 “shall in no way affect the organization, government, officers, charter or laws governing any city declared to be such prior to July 1, 1978.”

The 1892 Session of the General Assembly originally incorporated the City of Fairfax as a town.¹ By order of the Circuit Court of Fairfax County, dated June 30, 1961,² the Town of Fairfax was made a city of the second class, and the 1962 Session of the General Assembly enacted a new charter for the City of Fairfax.³ Therefore, the City was “declared to be such prior to July 1, 1978.”

Statutory language is ambiguous when it may be understood in more than one way.⁴ An ambiguity also exists when statutory language lacks clarity and precision, or is difficult to comprehend.⁵ “The province of [statutory] construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation.”⁶ However, when statutory language is clear and unambiguous, the plain meaning and intent of the enactment will be given to it.⁷ It is my opinion that §§ 15.2-3915, 15.2-3916 and 15.2-3917 are free of any ambiguities. Therefore, the existing charters for the City and the Town would not be affected should Fairfax County become a city under Chapter 39.

In § 15.2-102, the General Assembly defines the term “town” for purposes of Title 15.2 to mean any existing town or an incorporated community within one or more counties which became a town before noon, July one, nineteen hundred seventy-one, as provided by law or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.

Because § 15.2-3916 is a part of Title 15.2, the definition of “town” in § 15.2-102 is applicable. However, the General Assembly has not defined the term “township” as it is used in § 15.2-3916. The

¹ See 1891-1892 Va. Acts ch. 282, at 464, 464-68.

² See 1962 Va. Acts ch. 360, at 770, 770 (noting order of circuit court in enacting clause).

³ *Id.* at 770-83.

⁴ *Supinger v. Stakes*, 255 Va. 198, 205, 495 S.E.2d 813, 817 (1998); *Va.-Am. Water Co. v. Prince William County Serv. Auth.*, 246 Va. 509, 514, 436 S.E.2d 618, 621 (1993); *Va. Dep’t of Labor & Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 101, 353 S.E.2d 758, 762 (1987).

⁵ *Supinger*, 255 Va. at 205, 495 S.E.2d at 817; *Lee-Warren v. Sch. Bd.*, 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991).

⁶ *Winston v. City of Richmond*, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954).

⁷ *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

only difference between the use of the term “town” and the term “township” is set forth by the General Assembly in § 15.2-3916(A). When a county becomes a city under the provisions of Chapter 39 of Title 15.2, each town located within that county automatically becomes a township based on its geographical location within the county. In addition, § 15.2-3916(A) provides that the charter of the town becomes the charter of the township, “with the law governing the relationship of the town to the county continuing in effect.” Furthermore, the townships formed as a result of a county becoming a city “shall continue to exercise such powers and elect such officers as the township charter may authorize and such other powers as the former town previously exercised under general law.” In the context of this statute, there is no substantive legal distinction between a town and a township.

Finally, the General Assembly previously enacted a charter for the City when the Town of Fairfax was made a city of the second class by order of the Circuit Court of Fairfax County.⁸ In considering the request of Fairfax County, pursuant to approval of its proposed charter as a city,⁹ to use the name of the “City of Fairfax,” the General Assembly must consider the fact that the name already exists and is used by the City. Accordingly, the General Assembly may permit the County to use the name “City of Fairfax” by approving the proposed charter upon certification by the special court. To prevent the confusion that would occur should two localities bear the name of the City of Fairfax, the General Assembly would need to pass special legislation to amend the existing charter of the City to change its name accordingly.

Conclusion

Accordingly, it is my opinion that should Fairfax County become a city pursuant to Chapter 39 of Title 15.2, there would be no effect on the existing charters of the City of Fairfax and the Town of Vienna. It further is my opinion that a town and a township, as those terms are used in § 15.2-3916, essentially are the same. Further, should Fairfax County become a city, it is my opinion that there will be no impact on the legal powers of or limitations on the City and the Town. Finally, it is my opinion that the General Assembly would have to approve the charter for the new city, which would include its name.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W C Mims", with a stylized flourish at the end.

William C. Mims

⁸ See *supra* notes 2-3 and accompanying text.

⁹ Section 15.2-3914 requires that the proposed charter for a county that desires to become a city which is adopted by a majority voting at the required election, must be submitted by the special court “in the form of a proposed bill to grant the charter” and “shall be certified to one or more members of the General Assembly representing the county for introduction as a bill in the General Assembly.”