



COMMONWEALTH of VIRGINIA

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The Honorable Jeffrey L. McWaters
Member, Senate of Virginia
1207 Laskin Road
Virginia Beach, Virginia 23451

Dear Senator McWaters:

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

Issue Presented

You ask whether the Hampton Roads Partnership (“Partnership”) constitutes a “political subdivision” under § 51.1-124.3, so that the Partnership’s employees are entitled to coverage by the Virginia Retirement System (“VRS”).

Response

It is my opinion that employees of the Hampton Roads Partnership are not eligible for VRS coverage because the Partnership is not a “political subdivision” under § 51.1-124.3.

Applicable Law and Discussion

Eligible employees of “political subdivisions” may participate in the Virginia Retirement System.¹ Section 51.1-124.3 includes in its definition of “political subdivision” “any commission, public authority, or body corporate created by or under an act of the General Assembly specifying the powers, privileges or authority capable of exercise by the commission, public authority, or body corporate.”

The Regional Competitiveness Act² (“the Act”) provides for the establishment of regional partnerships by localities “to work together for their mutual benefit and the benefit of the Commonwealth.”³ Section 15.2-1307 defines “regional partnership” as “an organization composed of government, business, education and civic leaders approved by the local governing bodies of the region to carry out the provisions of” the Act.⁴

¹ See VA. CODE ANN. §§ 51.1-130; 51.1-132 (2009).

² VA. CODE ANN. §§ 15.2-1306 through 1310 (2008).

³ Section 15.2-1306.

⁴ For purposes of this opinion, I assume that the Hampton Roads Partnership is such an organization.

The Act provides for the creation and disbursement of an incentive fund to “encourage regional strategic planning and cooperation,” including “regional strategic economic development planning and joint activities.”⁵ The fund is administered by the Department of Housing and Community Development (“Department”).⁶ Existence of a regional partnership is a prerequisite for a region to receive incentive payments.⁷ To be eligible to receive these funds, the regional partnership must develop a regional strategic economic development plan as well as issue an annual progress report.⁸ The partnership also must identify any existing and proposed joint activities within the region.⁹ Furthermore, to be eligible to receive incentive funds, a partnership “shall include as broad a representation as is practical of local government, elementary and secondary education, higher education, the business community, and civic groups.”¹⁰

Whether employees of the Partnership are entitled to VRS participation hinges on whether the Partnership is a “political subdivision.” Generally speaking,

A political subdivision is created by the legislature to exercise some portion of the state’s sovereignty in regard to one or more specific governmental functions. It is independent from other governmental bodies, in that it may act to exercise those powers conferred upon it by law without seeking the approval of a superior authority. It employs its own consultants, attorneys, accountants and other employees whose salaries are fixed by the political subdivision, and it often incurs debts which are not debts of the Commonwealth but are debts of the political subdivision.^[11]

The Regional Competiveness Act does not explicitly designate regional partnerships as political subdivisions. In a different context, whether the Short Pump Community Development Authority could file a bond validation action, the Supreme Court of Virginia concluded that the Development Authority was not a political subdivision because it was not designated as such by the General Assembly.¹² The fact that the General Assembly did not designate regional partnerships as political subdivisions provides a strong indication that they do not qualify as political subdivisions, particularly when the General Assembly ordinarily provides for such a designation.¹³

⁵ Section 15.2-1308.

⁶ *Id.*

⁷ Section 15.1-1309(1).

⁸ Section 15.1-1309(2)&(3).

⁹ Section 15.1-1309(4).

¹⁰ Section 15.1-1309(1).

¹¹ 2002 Op. Va. Att’y Gen. 281, 283.

¹² See *Short Pump Town Center Cmty. Dev. Auth. v. Hahn*, 262 Va. 733, 742-46, 554 S.E.2d 441, 445-47 (2001) (citing instances where General Assembly expressly has designated various authorities and commissions as “political subdivisions”). The Supreme Court of Virginia found that, because the organic statute of a particular authority did not explicitly name the body as a “political subdivision,” it was not one for purposes of the Public Finance Act. *Id.* at 475-76, 554 S.E.2d at 447. *Short Pump* is not dispositive here because the code provisions governing the Virginia Retirement System provide their own definition of “political subdivision,” which does not require such designation by the General Assembly.

¹³ *Id.* at 743 n. 10, 554 S.E.2d at 446 n. 10 (listing authorities expressly designated as political subdivisions by the General Assembly).

Strengthening this conclusion is the fact that regional partnerships are not given any authority to exercise a sovereign “power[], privilege[], or authority.”¹⁴ The role of regional partnerships is to bring together stakeholders from local government, civic and educational groups and from the business community to foster prosperity and wise governance. In determining whether an entity is a political subdivision, past opinions from this office have examined whether the entity has been authorized to exercise a sovereign power. Examples include issuing its own debt,¹⁵ or enacting regulations having the force of law.¹⁶ These factors are not present here. Regional partnerships are not authorized to exercise any such sovereign “power[], privilege[], or authority.”¹⁷

Conclusion

Accordingly, it is my opinion that employees of the Hampton Roads Partnership are not eligible for VRS coverage because the Partnership is not a “political subdivision” under § 51.1-124.3.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹⁴ Section 51.1-124.3.

¹⁵ 2002 Op. Va. Att’y Gen. at 283 (Medical College a political subdivision because, among other attributes, it could issue its own debt).

¹⁶ 1985-86 Op. Va. Att’y Gen. 150, 151 (concluding that soil and water conservation districts were political subdivisions because, among other things, they could issue regulations having “the force and effect of law”).

¹⁷ Section 51.1-124.3.